

MODEL OPERATING REQUIREMENTS GUIDANCE NOTES

Version 5

Australian Registrars' National Electronic Conveyancing Council

Published: February 2019

Amendments made to the previous version of this document

These are the material amendments made to Version 4 of this document published in May 2017.

Part & Section	Amendment Made	Reason for Amendment
A & B – Throughout	Capitalising and decapitalising terms that are defined or not defined in these guidance notes or in the Operating Requirements. Minor corrections also made to grammar and punctuation.	To improve consistency and readability.
A & B – Throughout	Updating guidance to require a marked up copy where a revised document is be provided.	To facilitate speedier review of revised documents.
A & B – Throughout	Updating guidance to clarify that an Independent Certification must annex a report.	To provide clearer guidance.
A & B – Throughout	Updating terminology to align with the ECNL, particularly by replacing 'approved to operate' with 'approved as an ELNO'.	To improve consistency and provide clearer guidance.
A – 2.2	Deletion of defined terms which are defined in the Operating Requirements.	To improve consistency and readability.
A – 2.3	AS38500:2010 replaced with AS38500:2016; AS31000:2009 replaced with AS31000:2018; ISO10002:2014 replaced with ISO10002:2018; Office of the Australian Information Commissioner Guide to Securing Personal Information: 2013 replaced with Office of the Australian Information Commissioner Guide to Securing Personal Information: 2018; Australian Office of the Information Commissioner's Data Breach Preparation and Response Guide: 2018 included.	To align with the latest published versions of the Australian Standards and include a new guideline.
A – 2.4 – 2.19	Revising guidance to align with legal requirements, clarify requirements generally and reduce duplication.	To provide clearer guidance and improve readability.
B – Compliance Guidance	Updating what an ELNO should do where a Standard referred to in the guidance notes is superseded, withdrawn, or is inappropriate.	To provide clearer guidance.
B – 3	Updating purpose statement to align with legal requirements and clarify requirements generally.	To provide clearer guidance.
B – 4.2, 4.3.1, 4.3.2, 4.4, 5.1, 5.2, 6, 10.1 (a), 10.1	Revising guidance to align with the Operating Requirements and clarify requirements generally.	To improve consistency and provide clearer guidance.

Part & Section	Amendment Made	Reason for Amendment
(b), 15.8, 15.10, 16.1, 19.2, 19.4, 19.5		
B – 4.7	Requirements for demonstrating compliance with the Operating Requirements in relation to insurance updated.	To align with amendments made to the Operating Requirements.
B – 5.3 (d)	Requirements for demonstrating compliance with the Operating Requirements in relation to licences and regulatory approvals updated and additional guidance included.	To align with amendments made to the Operating Requirements and to provide clearer guidance.
B – 5.3 (e)	Requirement to Publish a Pricing Table included.	To align with amendments made to the Operating Requirements.
B – 5.3 (j)	Guidance on additional 'notifiable event' included.	To align with amendments made to the Operating Requirements.
B – 5.4	New section outlining requirements for charging ELNO Service Fees included.	To align with amendments made to the Operating Requirements.
B – 5.5	New section outlining requirements for Integration included.	To align with amendments made to the Operating Requirements.
B – 5.6	New section outlining requirements for Separation included.	To align with amendments made to the Operating Requirements.
B – 7.2	Guidance on providing access to ELN to Subscribers and Users and use of application to application technology included.	To align with amendments made to the Operating Requirements.
B – 7.11	New section outlining requirements for Data Breach Notifications included.	To align with amendments made to the Operating Requirements.
B – 7.12	New section outlining requirements for using a Cloud Service included.	To align with amendments made to the Operating Requirements.
B – 10.10	Minor update to guidance about agency relationship for collection of Lodgement Fees.	To provide clearer guidance.
B – 14.1	Minor updates to support amendments to section 14.7 by clarifying requirements for Subscriber Registration Process and Subscriber Review Process.	To align with amendments made to the Operating Requirements.

Part & Section	Amendment Made	Reason for Amendment
B – 14.7	Replacement of requirement to continuously monitor compliance with requirement for Subscriber Review Process.	To align with amendments made to the Operating Requirements.
B – 14.10	New section outlining requirements where an ELNO or its Related Entity intends to become a Subscriber to the ELNO's ELN.	To align with amendments made to the Operating Requirements.
B – 21.2	Clarifying the purpose of minimum requirements of a Transition Plan.	To align with amendments made to the Operating Requirements and provide clearer guidance.

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PART A – EXPLANATORY MATERIAL

1 Status of these guidance notes

These guidance notes are to assist you in complying with the Operating Requirements. They do not vary the Operating Requirements or your statutory obligation to comply with them. If there is any conflict between these guidance notes and the Operating Requirements, the Operating Requirements prevail.

The guidance notes are in two parts. PART A – this Part – consists of explanatory material that will assist you in understanding the nature and significance of the guidance provided in PART B about your compliance with individual Operating Requirements.

The information contained in these guidance notes does not constitute, nor should it be treated as, legal advice. The information is current as at the date of these guidance notes and is based on the Electronic Conveyancing National Law (ECNL) and Operating Requirements as at that date. This version of the guidance notes is aligned with the Model Operating Requirements Version 5 published by ARNECC in December 2018.

2 About the Notes

The Electronic Conveyancing National Law (ECNL), when implemented in a State or Territory of Australia, empowers the Registrar of Titles or their equivalent authority (Registrar or Land Registry) in the State or Territory to:

- approve you as an Electronic Lodgment Network Operator (ELNO), and
- determine Operating Requirements relating to your provision and operation of an Electronic Lodgment Network (ELN).

These guidance notes are presented from the perspective of your being or contemplating becoming an ELNO. They outline the role of the Registrar in approving you as an ELNO and in regulating your operations as an ELNO through determination of the Operating Requirements and assessment of your compliance with them. They are to be read in conjunction with the Model Operating Requirements (MOR) published by the Australian Registrars' National Electronic Conveyancing Council (ARNECC).

The primary purpose of these guidance notes is to let you know what the Registrar will be looking for when assessing your compliance with the Operating Requirements.

These guidance notes give you practical guidance on how you can comply with your obligations under the Operating Requirements. In particular, they set out:

- the Registrar's role in determining the Operating Requirements
- the Registrar's role in approving you to provide and operate an ELN
- the Registrar's role in assessing your compliance with the Operating Requirements
- how your compliance with the Operating Requirements will be assessed
- how you can obtain Approval as an ELNO.

How your obligations as an ELNO can be complied with is expressed in terms of:

- **Specified Documents** to be produced by you when applying for Approval to be an ELNO, prior to your commencing operation of your ELN, and monthly and annually thereafter while you are approved as an ELNO to provide and operate an ELN
- **Self-Certifications** (including No-Change Certifications) to be provided by you of your compliance with specific obligations in the Operating Requirements
- **Independent Certifications** to be obtained by you from an approved Independent Expert of your compliance with specific obligations in the Operating Requirements.

The emphasis in these guidance notes is on:

- where a Specified Document is to be produced, the expected content of that document
- where a Self-Certification is to be provided, what you are expected to have done to be able to provide that certification on an informed basis and in good faith
- where an Independent Certification is to be obtained, what is expected to have been done by you and the Independent Expert to provide a justifiable certification.

These guidance notes may be updated or varied by ARNECC from time to time as necessary in conjunction with changes to the MOR or separately. Any updates or variations will be made known through publication and by direct communication with you if you have been approved by the Registrar as an ELNO to provide and operate an ELN.

2.1 Scope of the guidance notes

The Operating Requirements distinguish between you, your ELN and your ELNO System. You are the ELNO responsible for the provisioning and operation of your ELN and ELNO System. Your ELN is a part of your ELNO System which may also include other aspects of your operation such as your Duty assessment and financial settlement arrangements for use in conjunction with your ELN in completing Conveyancing Transactions.

Your ELN is that part of your ELNO System that enables the preparation and Lodgment of Registry Instruments and other Documents and data in electronic form with the Land Registry in each Jurisdiction.

These guidance notes distinguish, where necessary, the scope of each of your obligations under the Operating Requirements.

2.2 Terms used in the guidance notes

Capitalised terms used in these guidance notes have the meanings referenced or set out here or the meanings given to them in the Operating Requirements or ECNL.

AASB means the Australian Accounting Standards Board

Change Management Plan means a specific management plan made in accordance with the CMF

Compliance Management System means a set of processes and controls intended to ensure that obligations in the Operating Requirements are complied with and the system continues to be effective

Operating Agreement means an agreement between the Registrar or Land Registry and an ELNO for the operation of an ELN

Pricing Policy means the set of principles used for determining ELNO Service Fees

Renewal of Approval means the renewal of an Approval

Signed Document Verification means a process by which relying parties can readily determine who signed a Digitally Signed document and that the signed document has not been altered since it was signed

Standards Authority means either or both of Standards Australia Ltd and International Organisation for Standardisation

Subscriber Security Policy means a policy issued by you to your users setting out their obligations in protecting the security of your ELN

2.3 Standards referenced in these guidance notes

AS8000:2003/Amdt 1-2004 Corporate Governance – Good governance principles

AS8001:2008 Corporate Governance – Fraud and corruption control

AS38500:2016 Information Technology – Governance of IT for the organization

AS27001:2015/Amdt 1-2016 Information Technology – Security techniques – Information security management systems - Requirements

AS31000:2018 Risk Management – Guidelines

AS19600:2015 Compliance Management Systems

AS5050:2010 Business continuity – Managing disruption-related risk

ISO24762:2008 Information technology – Security Techniques - Guidelines for information and communications technology disaster recovery services

ISO10002:2018 Customer satisfaction - Guidelines for complaints handling in organizations

ISO17021.1:2015 Conformity assessment - Requirements for bodies providing audit and certification of management systems

ISO20000.3:2014 Information Technology – Service Management – Guidance on scope definition and applicability of ISO/IEC 20000-1

AS25010-2013 Systems and software engineering – Systems and software – Quality Requirements and Evaluation (SQuaRE) - System and software quality models

ASX Corporate Governance Council's 2014 Principles and Recommendations for listed public companies

Australian Office of the Information Commissioner's Data Breach Preparation and Response Guide: 2018

Office of the Australian Information Commissioner Guide to Securing Personal Information: 2018 – Reasonable Steps to Protect Personal Information

References to Australian and International Standards include all parts of the Standard and all associated Handbooks, Protocols and Codes of Practice published by the respective Standards Authority.

2.4 Registrar's role in determining Operating Requirements

The ECNL empowers the Registrar to determine requirements relating to your operation of an ELN. The requirements are called Operating Requirements. As an ELNO you have a statutory obligation to comply with the Operating Requirements. In addition, in all Jurisdictions other than NSW, you have a contractual obligation to comply with the

Operating Requirements which are incorporated into the Operating Agreement you enter into with the Registrar prior to commencing the operation of your ELN in each jurisdiction.

In determining the Operating Requirements under the ECNL, the Registrar must have regard to any Model Operating Requirements (MOR) developed and published by ARNECC. ARNECC has developed and published the MOR at <http://www.arnecc.gov.au>. The Model Operating Requirements are model provisions and are not the Operating Requirements that apply to you as an ELNO. The Operating Requirements that apply to you as an ELNO are those determined by each Registrar in each Jurisdiction in which you operate. You should take steps to confirm that the Operating Requirements determined by each Registrar do not include any Jurisdiction specific or Additional Operating Requirements.

The Operating Requirements define the essential attributes of the ELN you are to provide for industry participants to use in Lodging electronic Registry Instruments and other electronic Documents with the Registrar. It is expected that your ELN will be:

- a trusted environment for Subscribers, Users and the community to have confidence in electronic conveyancing
- a suitable environment for producing Lodgments that adhere to the Data Standard specified by the Registrar and can be readily examined and registered electronically
- an accessible environment for industry participants
- a safe and secure environment for completion of transactions electronically
- a responsive environment capable of adapting to market changes and government policy developments
- an efficient environment that encourages widespread adoption of electronic conveyancing.

The Operating Requirements are necessary to ensure that industry participants, relying parties and the community have confidence in you as an ELNO approved by the Registrar to provide and operate an ELN.

The Operating Requirements are complemented by all other relevant regulation where applicable to the services you offer, such as:

- Privacy law
- Taxation law
- Corporations law
- Competition and consumer law
- Financial services regulation law
- Anti-money laundering and counter-terrorism financing law.

The Operating Requirements are also complemented by the Registrar's provision to you of Business Rules and information and transaction assurance services to be applied and made available by you for assisting your ELN's Subscribers to complete their transactions effectively and safely.

2.5 Registrar's role in approving you as an ELNO to operate an ELN

The ECNL empowers the Registrar to approve a Person as an ELNO to provide and operate an ELN. As an ELNO you have an obligation to provide and operate your ELN:

- for the period stated in the Approval
- subject to any conditions attached to the Approval, and
- in accordance with the Operating Requirements.

In all Jurisdictions other than NSW, your Approval to provide and operate an ELN in a jurisdiction is issued by the Registrar or equivalent authority of the jurisdiction by them entering into an Operating Agreement with you.

The ECNL also provides for the renewal of your Approval, and for its revocation or suspension if necessary.

2.6 Registrar's role in determining your compliance

The ECNL empowers the Registrar or the Registrar's delegate to conduct Compliance Examinations of you to:

- ascertain whether or not the Operating Requirements are being or have been complied with
- investigate any suspected or alleged misconduct with respect to the operation of your ELN.

In addition to the statutory power to conduct a Compliance Examination, the ECNL requires you to comply with the Operating Requirements at all times and the Operating Requirements themselves require you to be able to demonstrate your compliance with any aspect of them to the Registrar within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO.

You have obligations under the Operating Requirements to supply the Registrar with Specified Documents and compliance certifications:

- when applying for Approval as an ELNO to provide and operate an ELN
- prior to your commencing the operation of your ELN
- annually thereafter while you remain approved as an ELNO

- at any time you are directed to by the Registrar.

You are also required to make publicly available a Monthly Report of the performance of your ELN.

Your compliance certifications are either:

- **Self-Certifications**, including No-Change Certifications, or
- **Independent Certifications**, obtained by you from an Independent Expert approved by the Registrar.

Independent Certifications must annex by a report from the Independent Expert into the matters the subject of the Independent Certification that may set out recommendations for actions you need to take to achieve compliance with the Operating Requirements.

Assessment of your Specified Documents and compliance certifications provides the means for the Registrar to regularly determine your compliance with your obligations under the Operating Requirements and, if believed necessary, a basis for the Registrar to undertake a Compliance Examination as provided for in the ECNL.

The Registrar's role in determining your compliance with the Operating Requirements involves:

- assessing your documentation and certifications provided with your application for Approval or Renewal of Approval as an ELNO (refer to Category 1 in Schedule 3 of the Operating Requirements)
- assessing your documentation and certifications provided prior to your commencing operation of your ELNO System, including your ELN (refer to Category 2 in Schedule 3 of the Operating Requirements)
- approving Independent Experts to provide Independent Certifications which include reports and recommendations
- assessing your Annual Report to the Registrar, including the certifications and other information provided in it (refer to Category 3 in Schedule 3 of the Operating Requirements)
- monitoring your published Monthly Reports on the performance of your ELN (refer to Category 4 in Schedule 3 of the Operating Requirements)
- requesting your certifications and other demonstrations of compliance when necessary and assessing the information you provide
- undertaking Compliance Examinations when necessary and assessing the information you furnish and Documents you produce.

The Registrar may undertake a Compliance Examination at any time or engage another Person to undertake the work on his or her behalf.

2.7 Registrar's general approach to assessing compliance

The Registrar's general approach to assessing your compliance with the Operating Requirements is based upon:

- your producing comprehensive and high-quality documentation in your application for Approval as an ELNO and prior to commencing the operation of your ELN

The documentation you produce at this time and its assessment by the Registrar prior to your commencing the operation of your ELN will set the standard for your continuing compliance and reporting while approved as an ELNO.

- your regularly demonstrating compliance in general conformance with these guidance notes

Your Monthly Reports and your Annual Reports to the Registrar will properly reflect the standard of operation required by the Operating Requirements and continue the standard of documentation established prior to commencing operations. It is essential that all certifications, including Self-Certifications, No-Change Certifications and Independent Certifications are backed up with relevant compliance controls, information, analysis and reports that justify the certifications given to the Registrar. The mere giving of a certification is not considered sufficient in any circumstances.

- your readily demonstrating specific compliance with the Operating Requirements in response to a request at any time from the Registrar
- the Registrar undertaking a Compliance Examination when warranted in accordance with the Compliance Examination Procedure set out in the Operating Requirements.

2.8 How you can demonstrate compliance

You can demonstrate your compliance with the Operating Requirements by one or more of the following (in the way outlined in the Operating Requirements and these guidance notes):

- producing a Specified Document or a marked up copy of a revised Specified Document where applicable
- providing a Self-Certification, including when appropriate, a No-Change Certification
- obtaining and providing an Independent Certification
- providing an Annual Report to the Registrar
- publishing a Monthly Report

- responding to a reasonable request from the Registrar to:
 - (a) produce a Specified Document
 - (b) justify a Self-Certification or No-Change Certification
 - (c) obtain an Independent Certification
 - (d) provide other documented substantiation of your compliance
- advising the Registrar as soon as practicable whenever:
 - (a) you have breached the Operating Requirements
 - (b) you are likely to breach the Operating Requirements
 - (c) you have had to mitigate an identified risk of breaching the Operating Requirements.

The compliance guidance (Part B) that follows this explanatory material (Part A) sets out:

- what you are required to produce or publish when applying for Approval as an ELNO, eight (8) weeks prior to commencing operations, and monthly and annually thereafter while you remain approved as an ELNO, to demonstrate your compliance with the Operating Requirements
- what it is expected you will be able to produce, within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO, to substantiate your compliance with the Operating Requirements.

2.9 What is a Specified Document?

A Specified Document is a document that you are to produce to demonstrate your compliance with a specific obligation in the Operating Requirements. Specified Documents are the Documents set out in Schedule 3 of the Operating Requirements under the column heading “Document to be Produced”, as amended from time to time.

Specified Documents can be produced to the Registrar as either originals or as copies certified as such by one of your principals, directors or officers. An original may include a print out of a computer generated Document where no original paper Document exists.

Where these guidance notes require you to provide a revised Document the revised documentation should be provided as a marked up version of the original, or previous version of the, Document.

2.10 What is a Self-Certification?

A Self-Certification is a written certification made by you for the benefit of the Registrar certifying that you have complied with the Operating Requirement to which the certification

relates and including a description of what you have done to enable you to give the Self-Certification.

A Self-Certification must:

- be made for the benefit of the Registrar
- specifically certify that you have complied with all relevant parts of the Operating Requirement to which the certification relates
- include a description of what you have done to enable you to give the Self-Certification
- be signed by or on behalf of you in a way permitted by law, for example in accordance with section 127 of the Corporations Act
- be dated.

Each Self-Certification is expected to be supportable by what you have done to enable you to give the certification, including where appropriate:

- documentation reviewed for continuing relevance and appropriateness
- compliance controls reviewed and risk-assessed for continuing completeness and effectiveness
- operations reviewed for effective implementation of documented systems and procedures
- comparable situations reviewed for measures of contemporary best practice
- performance benchmarks assessed for continuing suitability
- changes and adjustments made to systems, procedures and compliance controls as a result of your reviews.

2.11 What is a No-Change Certification?

A No-Change Certification is a Self-Certification by you that the circumstances and evidence, including any prior No-Change Certification that previously demonstrated compliance, have not materially changed.

Where you are required to produce a Specified Document or give a Self-Certification to demonstrate compliance, and where there has been no change to the Specified Document or any event or occurrence which would render the Self-Certification incorrect, incomplete, false or misleading, you may give a No-Change Certification.

The circumstances in which a No-Change Certification can be given are set out in Schedule 3 of the Operating Requirements. When a No-Change Certification is not possible, the Specified Document is to be produced and/or a Self-Certification is to be provided that you

remain compliant with the Operating Requirements. Where you are required to produce a revised Specified Document you should provide a marked up copy of the original, or previous version of the, Specified Document.

2.12 What is an Independent Certification?

An Independent Certification is a written certification by an Independent Expert:

- obtained by you at your expense from an Independent Expert approved by the Registrar
- signed by the Independent Expert
- on the letterhead of the Independent Expert
- given by the Independent Expert for the benefit of the Registrar
- annexing a report of the Independent Expert into the matters the subject of the Independent Certification

certifying that you have complied with, or can readily comply with after adopting certain recommendations, a specific obligation of the Operating Requirements.

In providing an Independent Certification, the Independent Expert is to comment upon your:

- adoption of contemporary best practices (including compliance with relevant Standards) where such practices are readily identifiable, and
- use of systems and procedures that are suitable for the intended use.

Where an Independent Expert makes recommendations in conjunction with providing an Independent Certification, the recommendations are to be expressed as Essential Recommendations or Desirable Recommendations and you will be expected to Promptly implement any Essential Recommendations upon which the certification depends.

An Independent Expert is an appropriately qualified, competent and insured Person contracted to you for the purpose of providing an Independent Certification. The Independent Expert must be either:

- not related to, or in any way associated with, you or a director, officer, employee of yours, or
- a contractor or agent of yours who is able to demonstrate to the Registrar's satisfaction that any work to be undertaken as an Independent Expert is independent from any existing work being undertaken for you.

The Registrar must give written approval of the appointment of each Independent Expert before they commence the work necessary to provide their certification (Refer section 16.1).

Each Independent Expert you engage is to be briefed and managed by you. It is expected that you will contract the Independent Expert to carry out a documented and well-defined scope of works with specific deliverables that will produce the Independent Certification to your and the Registrar's satisfaction. The full cost of the works is to be met by you.

The Registrar may approve the use of an Independent Expert to provide more than one certification at the same time. The Registrar may also approve the use of an Independent Expert to provide the same certification at different times.

2.13 What is your Annual Report to the Registrar?

Your Annual Report to the Registrar is a written report you prepare and provide to the Registrar. Its purpose is to demonstrate your compliance with your obligations under the Operating Requirements during the previous Financial Year.

Your first Annual Report is to be for the period from your commencing the operation of your ELN to the end of the Financial Year in which operations commenced. If that period is three (3) months or less, your first Annual Report can be provided after your first full Financial Year of operation.

Each of your Annual Reports is to be provided within three (3) months of the end of the Financial Year and is to include an analysis of both your activities and the extent to which you have complied with each of your obligations under the Operating Requirements during the period. Where an Independent Expert has included Essential Recommendations in conjunction with an Independent Certification, your Annual Report is to include a description of the action you have taken, or intend to take and the timeframe within which the action is intended to be taken, to implement those Essential Recommendations.

Schedule 3 of the Operating Requirements sets out the Specified Documents, Self-Certifications (including No-Change Certifications), and Independent Certifications that are to be included in your Annual Reports.

2.14 What is your Monthly Report?

Your Monthly Report is a written report you prepare and publish. It is for the benefit of the Registrar, your Subscribers and other customers, other industry participants and the general community. Its purpose is to demonstrate your compliance with your performance obligations under the Operating Requirements during the previous calendar month.

Your Monthly Report is to be made publicly available within ten (10) Business Days of the end of each calendar month and is to address the obligations set out in Category Four of Schedule 3 of the Operating Requirements, including:

- your performance for the month on the Performance Levels set out in Schedule 2 of the Operating Requirements, that is:
 - (a) Service Availability
 - (b) Service Reliability
 - (c) System Responsiveness
 - (d) System Resilience
 - (e) Incident Resolution
 - (f) Problem Identification
- all of the complaints you received during the month, categorised by the nature of the complaint, and indicating whether you found them justified, how you resolved them, and whether or not they remain outstanding
 - (a) the specific complaints you received during the month about refusal of Subscriber applications, indicating whether you found them justified, how you resolved them, and whether or not they remain outstanding
 - (b) the specific complaints you received during the month about user training, indicating whether you found them justified, how you resolved them, and whether or not they remain outstanding.

It is expected that you will make your Monthly Reports publicly available and maintain that availability for at least the preceding 12 months while you remain approved as an ELNO.

2.15 Registrar's Compliance Examination powers under the ECNL

The ECNL provides the Registrar with powers to conduct Compliance Examinations of you and the operation of your ELN.

The powers enable the Registrar to conduct a Compliance Examination to:

- ascertain whether or not the Operating Requirements are being, or have been, complied with, and/or
- investigate any suspected or alleged case of misconduct with respect to the operation of your ELN.

You are obliged to co-operate with the Registrar in the conduct of such examinations.

The procedures to be followed in conducting a Compliance Examination are set out in Schedule 5 of the Operating Requirements.

The Registrar may appoint a delegate to conduct a Compliance Examination and must provide you with at least ten (10) Business Day' notice of such an examination.

2.16 How you can obtain Approval as an ELNO

Each Registrar has the power to approve a Person as an ELNO to provide and operate an ELN under that Jurisdiction's ECNL. The Registrar cannot approve a Person as an ELNO unless the Person meets the qualifications for approval set out in the Operating Requirements.

The process of applying for approval as an ELNO and approval to commence operating an ELN is a three-step process:

- Step 1 – Application for Approval as an ELNO – you must demonstrate compliance with the requirements in Category One in Schedule 3 of the Operating Requirements
- Step 2 – Granting of Approval, including any conditions of Approval, by each individual Registrar. In all Jurisdictions other than NSW, you must enter into an Operating Agreement with each Registrar
- Step 3 – Approval to commence operations – you must demonstrate compliance with the requirements in Category Two in Schedule 3 of the Operating Requirements.

2.17 Applications for Approval and Renewal of Approval as an ELNO

Applications for Approval and renewal of Approval as an ELNO are to be sent to the Australian Registrars' National Electronic Conveyancing Council (ARNECC) at chair@arnecc.gov.au.

ARNECC will co-ordinate the review of documentation provided to demonstrate compliance with the Operating Requirements. Each Registrar will appoint a representative from their Jurisdiction to a panel to review and examine the documentation submitted. The panel will make a recommendation to ARNECC to assist each individual Registrar in making their decision to approve you to be an ELNO.

Further guidance regarding the process and form of the application is published on ARNECC's website at <http://www.arnecc.gov.au>.

2.18 What you have to do before you can begin operating your ELN

You are required to demonstrate compliance with the Operating Requirements set out in Category Two in Schedule 3 of the Operating Requirements at least eight (8) weeks prior to the date you have notified the Registrar that you would like to commence operation of your ELN for the first time and at the time of applying for a renewal of your Approval as an ELNO.

2.19 Your Approval as an ELNO

Your Approval as an ELNO is on the basis of your continuing compliance with:

- the Operating Requirements
- in all Jurisdictions other than NSW, your Operating Agreement with the Registrar and in NSW, the conditions attached to your Approval, if any, and
- the Specified Documents and Certifications you provided to the Registrar.

Your Approval as an ELNO to provide and operate your ELN will have effect for the period stated in your Approval, likely approximately ten (10) years, and is renewable.

PART B – COMPLIANCE GUIDANCE

The guidance in this Part is generally provided within the following framework:

Requirement

Your obligation under the Operating Requirements.

Purpose

What the requirement is intended to achieve.

Scope

The extent of the requirement's application. Some requirements apply to your ELNO System, including your ELN, and some requirements apply to your ELN only.

Compliance

The Registrar's expectations of your arrangements to comply with the requirement. Where the Operating Requirements require arrangements complying with a particular Standard, that Standard is referenced as the essential determinant of compliance. Where the Operating Requirements do not require compliance with a particular Standard, one or more Standards may be referenced as guidance in developing complying arrangements.

If a Standard referenced in these guidance notes is partially or fully superseded before a new version of these guidance notes is published, you should apply the new Standard to the extent practicable.

If a Standard referenced in these guidance notes is withdrawn but not replaced, the Standard should still be referenced as guidance in developing complying arrangements but you should critically review the Standard's appropriateness, currency and suitability for your circumstances.

If you review a particular Standard referenced in these notes and form the view that compliance with an alternative Standard would be more appropriate to comply with the relevant Operating Requirement, your documentation should identify the alternative Standard and explain why that Standard is more appropriate.

Specific Inclusions

The Registrar's expectations of any specific matters that will be included in your compliance arrangements.

Compliance Demonstration

How you are required to demonstrate your compliance.

Immediate Documentation

What is required of you to demonstrate your compliance with an immediate reporting requirement.

Application Documentation

What is required of you to demonstrate your compliance when applying for Approval as an ELNO with the Category One reporting requirements in Schedule 3 of the Operating Requirements.

Pre-commencement Documentation

What is required of you to demonstrate your compliance at least eight (8) weeks prior to commencing operations with the Category Two reporting requirements in Schedule 3 of the Operating Requirements.

Monthly Documentation

What is required of you to demonstrate your compliance monthly while approved as an ELNO with the Category Four reporting requirements in Schedule 3 of the Operating Requirements.

Annual Documentation

What is required of you to demonstrate your compliance annually while approved as an ELNO with the Category Three reporting requirements in Schedule 3 of the Operating Requirements.

Material Change Documentation

What is required of you, prior to the implementation of a material change to your compliance arrangements, to demonstrate that after implementation of the change you will continue to be compliant with the Operating Requirements.

Section numbers in this Part refer to specific Operating Requirements.

References in this Part to providing documentation and/or certifications to the Registrar prior to commencing operations are to be taken as meaning provision at least eight (8) weeks prior to a date previously nominated by you for your commencing operations.

References in this Part to providing documentation and/or certifications to the Registrar annually while approved as an ELNO are to be taken as meaning inclusion in your Annual Report to the Registrar.

3 Compliance with Operating Requirements

Requirement

You have an obligation to continuously comply with the Operating Requirements and any conditions of your Approval to operate while you hold that Approval.

Purpose

The purpose of this requirement is to: ensure the proper and timely completion of Conveyancing Transactions and their presentation for Lodgment with a Land Registry using your systems; protect the integrity of the Titles Register; and maintain public confidence in your ELN and electronic conveyancing generally.

Scope

This requirement applies to you and to the operation of your ELNO System, including your ELN.

Compliance

You are expected to have in place thoroughly documented and well-understood processes to:

- inform your principals, directors, officers, employees agents and contractors of your obligations under the Operating Requirements and your Approval as an ELNO
- establish, maintain, monitor, assess and demonstrate your compliance with the Operating Requirements and your Approval as an ELNO
- reliably and efficiently identify actual and potential breaches of compliance
- deal adequately with any detected breaches or potential breaches of compliance
- enable you and the Registrar to at any time conclude fairly and reasonably whether you have complied with your obligations under the Operating Requirements and your Approval as an ELNO.

Your processes for monitoring, assessing and assuring your compliance are expected to:

- be sufficiently independent of your other activities to ensure that they are not improperly influenced by commercial considerations
- be comprehensive, rigorous and regularly undertaken

- include specific internal controls on all activities likely to affect your compliance, including provision to the Registrar when required of documents, reports and certifications demonstrating your compliance
- require you to assess the implications of and to re-assess relevant aspects of your compliance if there are significant changes to one or more of:
 - (a) the operation of your ELNO System, including your ELN
 - (b) the regulation of your Subscribers
 - (c) the Operating Requirements
 - (d) your resources
- include adequate processes for monitoring and assessing the performance of any of your obligations, including compliance monitoring, which are outsourced
- be regularly assessed for the risk of non-compliance occurring due to their inadequacy or incompleteness.

Your Compliance Management System is expected to:

- ensure your compliance with the Operating Requirements, including compliance with other statutory obligations and with any other relevant obligations you have, such as licence and regulatory approval conditions, industry standards and self-regulatory protocols
- ensure full awareness and understanding throughout your organisation of your obligations, including those in the Operating Requirements
- be flexible, responsive, effective and able to have their performance measured
- be regularly updated to ensure their completeness, relevance and currency
- be provisioned with adequate human and system resources and competencies and an initial and ongoing training program for all relevant employees and contractors involved in your business
- include any service agreements outsourcing functions to a third party that are material to your compliance with your obligations
- be capable of providing evidence and producing supporting documentation relevant to their design, implementation and functioning in satisfaction of your reporting obligations under the Operating Requirements.

AS19600:2015 provides guidance on establishing and managing an effective Compliance Management System.

Compliance Demonstration

Your Compliance Management System, including your regular risk assessment of it, are to provide the basis for all of your reporting, monitoring and assessment obligations under the Operating Requirements, including the documents, reports and certifications needing to be published or provided to the Registrar periodically or on request.

In the absence of any formal waivers granted by the Registrar under s.27 of the ECNL, you are required to:

- comply with the Operating Requirements
- continually monitor your compliance with the Operating Requirements
- demonstrate your compliance:
 - (a) prior to commencing operations
 - (b) monthly in your published Monthly Report
 - (c) annually in your Annual Report to the Registrar
 - (d) within ten (10) Business Days of a request from the Registrar
 - (e) when applying for renewal of your Approval as an ELNO
- after you cease to be approved to provide and operate an ELNO System, continue to comply with specific requirements for:
 - (a) data retention, generation and use
 - (b) provision of information to your Subscribers
 - (c) protection of intellectual property rights
 - (d) implementation of your Transition Plan.

Compliance with your overall obligation in this way is not in any respect to be diminished by your compliance with any individual requirement of the Operating Requirements and the specific compliance guidance that follows.

4 Eligibility Criteria

4.1 ABN

Requirement

You have an obligation to hold an Australian Business Number (ABN) and to be registered for Good and Services Tax (GST) in Australia.

Purpose

This requirement is to ensure that you can conduct business in Australia.

Scope

This requirement applies to you in the operation of your ELNO System, including your ELN.

Compliance

You are to hold an ABN and be registered for GST.

Compliance Demonstration

You are to provide your documentation of complying with this requirement to the Registrar when applying for Approval as an ELNO and you are to provide certifications of your arrangements being unchanged prior to commencing operations and annually thereafter while you remain approved as an ELNO.

Application Documentation

When applying for Approval as an ELNO you are to provide the Registrar with:

- your ABN
- your GST registration.

Pre-commencement and Annual Documentation

Prior to commencing operations and in each Annual Report to the Registrar, you are to provide a No-Change Certification that your ABN and GST registrations are unchanged. In the event any aspect of these arrangements has changed, you are to provide the Registrar with revised documentation.

4.2 Status

Requirement

You have an obligation to:

- be registered under the Corporations Act
- obtain any necessary approvals under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) if you are a foreign body corporate
- ensure your constituting documents allow you to comply with the Operating Requirements.

Purpose

The purpose of this requirement is to ensure you can conduct business in Australia.

Scope

This requirement applies to you in the operation of your ELNO System, including your ELN.

Compliance Demonstration

You are to provide your documentation to the Registrar when applying for Approval as an ELNO and you are to provide certifications of your status being unchanged prior to commencing operations and annually thereafter while you are approved as an ELNO.

Application Documentation

When applying for Approval as an ELNO you are to provide the Registrar with:

- your ASIC Registration Certificate plus a company search not more than 30 days' old
- any approval you require as a foreign body corporate under the *Foreign Acquisitions and Takeovers Act 1975* (Cth)
- your constitution and other constituting documents.

Pre-commencement and Annual Documentation

Prior to commencing operations and in each Annual Report to the Registrar, you are to provide a No-Change Certification that your status has not changed. In the event any aspect of your status has changed, you are to provide the Registrar with a marked up copy of revised documentation showing the changes.

4.3 Character

4.3.1 Character and Reputation

Requirement

You have obligations to:

- be of good corporate character and reputation
- ensure your principals, directors and officers are of good character and reputation
- take reasonable steps to ensure your employees, agents and contractors are of good character and reputation.

Purpose

The purpose of these obligations is to ensure confidence in you as an ELNO.

Scope

This requirement applies to you in the operation of your ELNO System, including your ELN.

Compliance

It is expected that to satisfy this requirement you and your principals, directors and officers will have not been subject to:

- any Insolvency Event within the last five years
- any conviction for fraud or an indictable offence or any offence for dishonesty against any law in connection with business, professional or commercial activities
- disqualification from managing a body corporate
- any fine, banning, suspension or other disciplinary measure for financial or professional misconduct
- any disciplinary action by any government or governmental authority or agency, or any regulatory authority of a financial market or a profession
- any refusal of membership or revocation of membership of any financial markets, legal or accounting professional organisation or body on the grounds of financial or professional misconduct, fraud or dishonesty
- any refusal of an application to provide an electronic Lodgment service in any jurisdiction of Australia or elsewhere
- any other material matter to do with honesty, integrity and ethical conduct.

It is also expected that you will take reasonable steps to ensure each of your employees, agents and contractors has not been subject to any of the same events.

In assuring your compliance with this requirement, it is expected that:

- your principals or directors will make sufficient diligent inquiries to be satisfied that you comply
- you will keep records of all inquiries made and of all information collected that demonstrate your compliance
- your processes for the appointment of employees and agents and the engagement of contractors will include reasonable steps to ensure your employees, agents and contractors comply.

Compliance Demonstration

You are to provide certifications to the Registrar of your compliance when applying for Approval as an ELNO, prior to commencing operations and annually thereafter while approved as an ELNO.

Application Documentation

When applying for Approval as an ELNO, you are to provide the Registrar with Self-Certifications of your compliance with all three obligations of this requirement. Your certifications are to be supportable by the Records of the enquiries made by you or on your behalf. Those Records may need to be produced if it becomes necessary to justify your certifications as having been given on an informed basis and in good faith.

Pre-commencement Documentation

Prior to commencing operations, you are to provide the Registrar with a No-Change Certification that nothing has changed and you remain in compliance with all obligations of this requirement.

In the event that something has changed, you are to provide details of the change and new Self-Certifications that you comply with the requirement.

Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a No-Change Certification that nothing has changed and you continue to comply with all obligations of this requirement.

In the event that something occurs or is brought to your attention that brings into question your continuing compliance with this requirement, you are to notify the Registrar of the full circumstances at the earliest possible opportunity.

4.3.2 Governance

Requirement

You have an obligation to maintain contemporary best practice governance arrangements that are regularly reviewed.

Purpose

The purpose of this requirement is to ensure confidence in you as an ELNO.

Scope

This requirement applies to you in the operation of your ELNO System, including your ELN.

Compliance

It is expected that you will document, establish and maintain efficient and effective organisational and management arrangements reflective of rigour, transparency and ethical conduct. Your arrangements on each of these governance characteristics are expected to reflect:

- your particular structure and task
- the manner in which you choose to undertake your task
- the evolving nature of best practice in corporate governance.

AS8000:2003/Amdt 1-2004 (noting withdrawn status), AS8001:2008 and AS38500:2016 provide guidance on the design and maintenance of contemporary best practice governance arrangements. The ASX Corporate Governance Council's 2014 Principles and Recommendations for listed public companies also provide guidance.

Specific Inclusions

In settling upon your governance arrangements, particular attention is to be paid to the minimum requirements you expect of any outsourced service suppliers.

Compliance Demonstration

You are to provide your documentation of your governance arrangements to the Registrar when applying for Approval as an ELNO together with a certification of those arrangements being contemporary best practice and suitable for the intended use. You are to provide certifications prior to commencing operations and annually thereafter while you are

approved as an ELNO that your arrangements remain unchanged, contemporary and suitable for the intended use.

Application Documentation

When applying for Approval as an ELNO you are to provide the Registrar with:

- documentation of your governance arrangements
- a Self-Certification of your governance arrangements' complying with contemporary best practice and being suitable for the intended use.

To provide the Self-Certification that your governance arrangements comply with contemporary best practice it is expected you will reference the relevant standards and industry recommendations and practices that justify your certification.

Pre-commencement Documentation

Prior to commencing operations, you are to provide the Registrar with a No-Change Certification that your governance arrangements remain unchanged. In the event that this is not possible due to changes you have made to your arrangements, you are to provide documentation of your revised arrangements and a new Self-Certification of those arrangements being in compliance with contemporary best practice and suitable for the intended use.

Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a No-Change Certification that your governance arrangements, including their documentation, remain unchanged, comply with contemporary best practice and are suitable for the intended use.

In the event that you are unable to provide such a certification, you are to provide the Registrar with:

- documentation of your revised governance arrangements in the form of a marked up copy showing the changes
- the reason for and basis of the revisions that you have made to your arrangements
- your Self-Certification that the revised arrangements comply with contemporary best practice and are suitable for the intended use.

It is expected that your governance arrangements as adopted and implemented will be regularly reviewed while you remain approved as an ELNO and any recommendations

arising from such reviews will be promptly implemented in the interests of your continued compliance with the requirement.

4.4 Financial Resources

Requirement

You have an obligation to demonstrate having sufficient financial resources to meet your obligations under the Operating Requirements.

Purpose

The purpose of this requirement is to ensure you have sufficient funds to set up and sustain the operation of your ELNO System.

Scope

The requirement applies to you in the operation of your ELNO System, including your ELN.

Compliance

You are expected to provide clear, complete and accurate evidence of the financial resources available to you to build and operate your ELNO System and otherwise meet your obligations under the Operating Requirements.

Where you produce audited financial statements they are to comply with the requirements of the Australian Accounting Standards Board and s.296 of the Corporations Act.

Specific Inclusions

Where you produce audited financial statements they are to include:

- at least profit and loss, balance sheet and cash flow statements, each with associated explanatory notes
- certifications of correctness by a director and your chief financial officer
- an Independent Certification as a true and fair representation of your financial situation at the time of certification according to the requirements of the Australian Auditing and Assurance Standards Board.

Where you cannot produce audited financial statements, other evidence could include:

- the audited financial statements of your shareholders together with a letter of intent outlining the financial resources they intend to commit to the development of your ELNO System

- evidence of loan facilities available to you for the development of your ELNO System
- an Independent Certification certifying that you have sufficient financial resources to meet your obligations under the Operating Requirements.

Compliance Demonstration

You are to provide your audited financial statements and / or other evidence of your financial resources to the Registrar together with certifications of your having sufficient financial resources to meet your obligations under the Operating Requirements when applying for Approval as an ELNO, prior to commencing operations and annually thereafter while you remain approved as an ELNO.

Application Documentation

When applying for Approval as an ELNO you are to provide the Registrar with:

- evidence of your financial resources being either:
 - (a) your audited financial statements for the previous two (2) Financial Years (if available); or
 - (b) other evidence of your financial resources
- a Self-Certification of your having sufficient financial resources to meet your obligations under the Operating Requirements.

To provide this certification, it is expected that you will have assessed what resources you will need to build and operate your ELNO System in a proper, competent, sustainable and efficient manner as an ongoing concern in compliance with the Operating Requirements.

If you cannot provide your audited financial statements for the previous two (2) Financial Years when applying for Approval as an ELNO you must explain why that is the case and provide those financial statements as soon as they are available.

Pre-commencement Documentations

Prior to commencing operations you are to provide the Registrar with a No-Change Certification that nothing has changed and you continue to have sufficient financial resources to meet your obligations under the Operating Requirements. If this is not possible for any reason, you are to provide the Registrar with an appropriate explanation.

Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with:

- your audited financial statements for the previous Financial Year
- a Self-Certification that you have sufficient financial resources to meet your obligations under the Operating Requirements.

To provide this Self-Certification each year, it is expected that you will have assessed what financial resources you will need to continue to operate your ELNO System in the same or a similar manner for the foreseeable future. It is expected you will have taken into account in your assessment your experience to date in operating your ELNO System and any changes and developments you have planned for the future.

Your Self-Certifications each year of continuing financial resource sufficiency are expected to be based on an analysis of at least:

- your financial position including future cash flow projections
- the nature and extent of the market for your services
- the continued appropriateness and resourcing of your Business Plan, and
- the future financial resource requirements to maintain your service and performance levels.

4.5 Technical Resources

Requirement

You have an obligation to demonstrate having sufficient technical resources to meet your obligations under the Operating Requirements.

Purpose

The purpose of this requirement is to ensure you can sustain the operation of your ELNO System.

Scope

The requirement applies to you in the operation of your ELNO System, including your ELN.

Compliance

You are to maintain a comprehensive description of your technical arrangements and capability benchmarked against comparable environments.

Specific Inclusions

It is expected that the description of your technical arrangements and capability will include at least:

- overall technical environment of your ELNO System
- special technical characteristics of your ELNO System and its operating environment
- management and technical skills required to establish and maintain your ELNO System
- market availability of the required management and technical skills
- particular qualifications required of your key management and technical specialist staff
- means of obtaining and retaining your key management and technical specialist staff
- nature and relevant terms of any key resources obtained through personal and service contracts
- numbers and classifications of all of your qualified management and technical specialist staff

- arrangements for deploying your key management and technical specialist staff
- arrangements for ensuring your key management and technical specialist staff remain up to date with contemporary technical best practices relevant to your ELNO System and its operating environment.

Compliance Demonstration

You are to provide the Registrar with your technical arrangements and capability description when applying for Approval as an ELNO together with certifications of your technical resources being sufficient to meet your obligations under the Operating Requirements when applying for Approval as an ELNO, prior to commencing operations and annually thereafter while you remain approved as an ELNO.

Application Documentation

When applying for Approval as an ELNO, you are to provide the Registrar with:

- a comprehensive description of your technical arrangements and capability
- a Self-Certification of your having sufficient technical resources to meet your obligations under the Operating Requirements.

To provide this Self-Certification, it is expected that you will have assessed what technical resources you will need to operate your ELNO System in a proper, competent, sustainable and efficient manner as an ongoing concern.

Pre-commencement Documentation

Prior to commencing operations, you are to provide the Registrar with a No-Change Certification that nothing has changed and you continue to have sufficient technical resources to meet your obligations under the Operating Requirements. If this is not possible for any reason, you are to provide the Registrar with an appropriate explanation.

Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a Self-Certification that you have sufficient technical resources to meet your obligations under the Operating Requirements.

To provide this Self-Certification each year, it is expected that you will have:

- reviewed your currently documented technical arrangements and capability description

- assessed what technical resources you will need to continue operating your ELNO System in the same or a similar manner for the foreseeable future, taking into account your experience to date in operating your ELNO System and any changes or developments you have planned for the future
- confirmed your currently documented technical capability description or prepared an amended one justifying your certification.

The Self-Certifications each year of your continuing technical resource sufficiency are to be based on an analysis of:

- your financial position
- the nature and extent of the market for your services
- the continued appropriateness and resourcing of your Business Plan, and
- the technical resource requirements to maintain your existing Performance Levels.

4.6 Organisational Resources

Requirement

You have an obligation to demonstrate having sufficient organisational resources to meet your obligations under the Operating Requirements.

Purpose

The purpose of this requirement is to ensure you can sustain the operation of your ELNO System.

Scope

The requirement applies to you in the operation of your ELNO System, including your ELN.

Compliance

You are to maintain a comprehensive description of your organisational arrangements and capability benchmarked against comparable environments.

Specific Inclusions

It is expected that the description of your organisational arrangements and capability will include at least:

- overall strategy for establishing and running your organisation
- resourcing strategy for your organisation
- key characteristics of your task that determine your resourcing strategy
- key management and specialist resources required
- market availability of the required management and specialist resources
- means for obtaining and retaining key management and specialist resources
- means of obtaining and retaining key management and specialist staff
- nature and relevant terms of any key resources obtained through personal and service contracts
- numbers and classifications of all key management and specialist staff
- arrangements for deploying key management and specialist staff
- arrangements for ensuring key management and specialist staff remain up to date with contemporary organisational best practices relevant to your systems and operating environment.

Compliance Demonstration

You are to provide the Registrar with your organisational arrangements and capability description when applying for Approval as an ELNO together with certifications of your organisational resources being sufficient to meet your obligations under the Operating Requirements when applying for Approval as an ELNO, prior to commencing operations and annually thereafter while you remain approved as an ELNO.

Application Documentation

When applying for Approval as an ELNO, you are to provide the Registrar with:

- a comprehensive description of your organisational arrangements and capability
- a Self-Certification of your having sufficient organisational resources to meet your obligations under the Operating Requirements.

To provide this Self-Certification, it is expected that you will have assessed what organisational resources you will need to operate your ELNO System in a proper, competent, sustainable and efficient manner as an ongoing concern.

Pre-commencement Documentation

Prior to commencing operations, you are to provide the Registrar with a No-Change Certification that nothing has changed and you continue to have sufficient organisational resources to meet your obligations under the Operating Requirements. If this is not possible for any reason, you are to provide the Registrar with an appropriate explanation.

Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a Self-Certification that you have sufficient organisational resources to meet your obligations under the Operating Requirements.

To provide this Self-Certification each year, it is expected that you will have:

- reviewed your documented organisational arrangements and capability description
- assessed what organisational resources you will need to continue operating your ELNO System in the same or a similar manner for the foreseeable future, taking into account your experience to date in operating your ELNO System and any changes or developments you have planned for the future
- confirmed your currently documented organisational capability description or prepared an amended one justifying your certification.

The Self-Certifications each year of your continuing organisational resource sufficiency are to be based on an analysis of:

- your financial position
- the nature and extent of the market for your services
- the continued appropriateness and resourcing of your Business Plan, and
- the organisational resource requirements to maintain your existing Performance Levels.

4.7 Insurance

Requirement

You have obligations to:

- obtain, and maintain current, specific insurance cover under policies with terms satisfactory to the Registrar
- ensure that your contractors maintain relevant and appropriate policies of insurance to cover the services they provide to you
- notify the Registrar of all claims, and events that may give rise to claims, under those policies
- keep the Registrar fully informed of the progress of all claims made under those policies.

Purpose

The purpose of this requirement is to ensure that the residual risks in the operation of your ELNO System are adequately insured.

Scope

The requirement applies to the operation of your ELNO System, including your ELN.

Compliance

Your insurance policies are to be on terms satisfactory to the Registrar.

You are to obtain your policies from a general insurer within the meaning of the *Insurance Act 1973* (Cth). The Australian Prudential Regulation Authority (APRA) maintains a register of general insurance on their website at <https://www.apra.gov.au/register-general-insurance>.

Your policies for professional indemnity and for fidelity insurance are to cover the acts and omissions of your principals, officers and employees. It is expected that you will require the same of your contractors' insurance arrangements.

You are to notify the Registrar in writing as soon as practicable when any event occurs that may give rise to a claim under one of your insurance policies or one of your contractors' insurance policies. You are to thereafter keep the Registrar fully informed of the making of the claim and of its progress to finalisation.

You are also required to hold insurances required under any law, such as workers compensation insurance and compulsory third party motor vehicle insurance.

Specific Inclusions

The insurances you are required to hold include:

- professional indemnity insurance to an aggregate amount of not less than \$20 million per annum
- fidelity insurance to an aggregate amount of not less than \$20 million per annum
- public and product liability insurance to an aggregate amount of not less than \$10 million per annum
- asset insurance to an amount not less than the replacement value of your assets.

The insurances you are to require your contractors to hold include statutory insurances and those necessary to cover unmitigated risks in the services each contractor provides to you.

Compliance Demonstration

You are to provide the Registrar prior to commencing operations and annually thereafter while you remain approved as an ELNO with certificates of currency for each insurance policy you are required to hold.

You are also required to provide the Registrar with certifications prior to commencing operation and annually thereafter while you remain approved as an ELNO that:

- your policies for professional indemnity and for fidelity insurance cover the acts and omissions of your principals, officers and employees, and
- your contractors maintain relevant and appropriate policies from an Approved Insurer to adequately cover the services they provide.

It is expected that to support these certifications you will have carefully reviewed your insurance policies and those of your contractors and will hold copies of those policies.

You are to notify the Registrar in writing as soon as practicable of:

- each claim received under any insurance policy you hold or you require your contractors to hold
- each event that may give rise to a claim in the future under any insurance policy you hold or you require your contractors to hold.

Pre-commencement Documentation

Prior to commencing operations, you are to provide the Registrar with certificates of currency for each insurance policy you are required to hold.

You are also required to provide the Registrar with a Self-Certification that:

- your policies for professional indemnity and for fidelity insurance cover the acts and omissions of your principals, officers and employees; and
- your contractors maintain relevant and appropriate policies from an Approved Insurer to adequately cover the services they provide.

Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar:

- certificates of currency for each insurance cover you are required to hold; and
- a Self-Certification that:
 - (a) your policies for professional indemnity and for fidelity insurance cover the acts and omissions of your principals, officers and employees; and
 - (b) your contractors maintain relevant and appropriate policies from an Approved Insurer to adequately cover the services they provide.

Claim and Event Documentation

In notifying the Registrar of a claim received or of an event having occurred which may give rise to a claim under an insurance policy in the future, it is expected that you will:

- provide the notification within five (5) Business Day of the claim being received or the event having occurred
- include in the notification:
 - (a) a copy of the claim received or a description of the event that occurred
 - (b) what action you intend to take to deal with any claim received
 - (c) what action you intend to take to mitigate the risk of another similar claim being received or event occurring.

5 Operation of ELN

5.1 Encourage Widespread Industry Use

Requirement

You have an obligation to encourage widespread industry use of your ELN.

Purpose

The purpose of this requirement is to maximise the value of your ELN to industry, the community and government.

Scope

The requirement applies to the operation of your ELN only.

Compliance

You are to have a Business Plan for the operation of your ELN.

It is expected that your Business Plan will include at least:

- demonstrated understanding of the Australian property conveyancing market in each jurisdiction
- summarised market research undertaken to determine the most effective service delivery model
- description of your service delivery model, including the customer base and expected market penetration nationally and by Jurisdiction
- timings for the development of operations and delivery of particular services and facilities and the anticipated means of servicing different classes of Subscribers
- projections of Subscriber take-up and sensitivity analysis, outlining the assumptions made and the implications of all likely outcomes
- intended actions to achieve planned Subscriber take-up, overall and by market segment
- descriptions and estimates of the economic benefits realisable by each class of Subscriber.

Specific Inclusions

Your Business Plan is to provide for your ELN being available:

- in each Jurisdiction where the Land Registry accepts electronic Lodgments
- to your Subscribers for their use in completing transactions in all Jurisdictions where the Land Registry accepts electronic Lodgments
- for a minimum set of transactions for electronic Lodgment in each Jurisdiction consisting, where applicable, of combinations of:
 - (a) Transfer
 - (b) Mortgage;
 - (c) Discharge or Release of Mortgage
 - (d) Caveat
 - (e) Withdrawal of Caveat
 - (f) Priority Notice
 - (g) Extension of Priority Notice
 - (h) Withdrawal of Priority Notice
 - (i) associated Duty Authority notices.

Compliance Demonstration

You are to provide the Registrar with:

- your Business Plan when applying for Approval as an ELNO
- a certification prior to commencing operations of your Business Plan remaining unchanged

Application Documentation

When applying for Approval as an ELNO, you are to provide the Registrar with your Business Plan.

Pre-commencement and Annual Documentation

Prior to commencing operations and annually thereafter while you remain approved as an ELNO, you are to provide the Registrar with a No-Change Certification that your Business Plan remains unchanged. In the event that this is not possible, you are to provide the Registrar with an explanation and a revised Business Plan in the form of a marked up copy showing the changes.

5.2 National System and Minimum Document Capability

Requirement

You have obligations to:

- make your ELN progressively available for electronic Lodgment with the Land Registries in all States and Territories, and
- provide for a minimum set of transactions in each State and Territory where your ELN is available.

Purpose

The purpose of this requirement is to maximise the value of your ELN to industry, the community and government.

Scope

This requirement applies to the operation of your ELN only.

Compliance

It is expected that your Business Plan will set out in detail your proposed plans to:

- make your ELN progressively available for electronic Lodgment with the Land Registries in all States and Territories
- progressively roll-out those of the following electronic Registry Instruments and other electronic Documents which are capable of Lodgment in each State and Territory where your ELN is available:
 - (j) Transfer
 - (a) Mortgage
 - (b) Discharge/Release of Mortgage
 - (c) Caveat
 - (d) Withdrawal of Caveat
 - (e) Priority Notice
 - (f) Extension of Priority Notice
 - (g) Withdrawal of Priority Notice
 - (h) associated Duty Authority notices
 - (i) administrative notices required to manage certificates of title.

Compliance Demonstration

You are to provide the Registrar with:

- your Business Plan when applying for Approval as an ELNO
- certifications prior to commencing operations and annually thereafter while you remain approved as an ELNO of your Business Plan remaining unchanged.

Application Documentation

When applying for Approval as an ELNO, you are to provide the Registrar with your Business Plan.

Pre-commencement and Annual Documentation

Prior to commencing operations, and annually thereafter while you remain approved as an ELNO you are to provide the Registrar with a No-Change Certification that your Business Plan remains unchanged. In the event that this is not possible, you are to provide the Registrar with an explanation and a revised Business Plan in the form of a marked up copy showing the changes.

5.3 General Obligations

5.3(a) Operating in a proper manner

Requirement

You have an obligation to operate your ELN in a proper, competent, sustainable and efficient manner.

Purpose

The purpose of this requirement is to ensure confidence in the operation of your ELN.

Scope

The requirement applies to the operation of your ELN only.

Compliance

It is expected that you will implement comprehensive and contemporary customer satisfaction and complaints handling processes to continually monitor the manner in which your operation of your ELN is being received by its Subscribers and relying parties. In this regard, ISO10002:2018 provides guidance on the establishment of such processes.

Compliance Demonstration

Your published Monthly Report of complaints received and dealt with is expected to include:

- complaints categorised by at least:
- subject and source
- how many received
- how many sustained (ie found justified)
- how many resolved and how they were resolved
- how many outstanding at end of the month, including carry-overs from previous months
- specific complaint categories for at least your:
 - (a) Subscriber Registration Process, especially refusals to register (refer Section 14.2)
 - (b) Subscriber training and awareness programs (refer Section 14.6).

5.3(b) Due care, skill and diligence

Requirement

You have an obligation to exercise due care, skill and diligence in operating your ELN and in your complying with the Operating Requirements.

Purpose

The purpose of this requirement is to ensure confidence in the use of your ELN.

Scope

The requirement applies to the operation of your ELN only.

Compliance

It is expected that you will implement:

- a Risk Management Framework (RMF) compliant with AS31000:2009 (refer Section 9.1)
- comprehensive and contemporary customer satisfaction and complaints handling processes to continually monitor the manner in which your operation of your ELN is being received by its users and relying parties. In this regard, ISO10002:2018 provides guidance on the establishment of such processes.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated:

- in the Independent Certifications of your RMF (refer Section 9.1)
- in the complaint statistics published in your Monthly Report
- within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO.

5.3(c) Disruption and interference

Requirement

You have an obligation to minimise any disruption of, or interference to, any systems connected to your ELN for the purpose of conducting Conveyancing Transactions.

Purpose

The purpose of this requirement is to ensure confidence in the operation of your ELN.

Scope

The requirement applies to the operation of your ELN only.

Compliance

It is expected that you will implement:

- proven standards of technical Integration in your ELN's connections with external systems
- contemporary products and practices for detection and prevention of unauthorised intrusion into your systems
- complaints handling processes to continually monitor disruptions and interference to connected external systems. In this regard, ISO10002:2018 provides guidance on the establishment of such processes.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated in the complaint statistics published in your Monthly Report and within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO.

5.3(d) Licences and regulatory approvals

Requirement

You have an obligation to obtain and maintain all necessary licences and regulatory approvals.

Purpose

The purpose of the requirement is to ensure that in every respect the services you provide to your Subscribers are within the law.

Scope

The requirement applies to the operation of your ELNO System, including your ELN.

Compliance

It is expected that you will identify, obtain and keep up to date all licences and regulatory approvals required in the Jurisdictions in which your ELNO System is available.

As a minimum you will be required to obtain a regulatory Approval as an ELNO to provide and operate an ELN from each Registrar prior to commencing operation of your ELN in that Jurisdiction. Whether you require other licences and regulatory approvals will largely depend on the nature of your organisation and the services you propose to offer.

Compliance Demonstration

You are to provide the Registrar with certifications when applying for Approval as an ELNO, prior to commencing operation and annually thereafter while you remain approved as an ELNO to operate that you have obtained and hold all licences and regulatory approvals to operate your ELNO System.

It is expected that to support of these certifications you will:

- maintain a Record of all of the licenses and regulatory approvals required to operate your ELNO System and the status of each license and regulatory approval required, including renewals and where necessary any exemptions granted or licences and approvals applied for but not yet obtained
- have made diligent enquiries and not be aware of any other licence or regulatory approval necessary to operate your ELNO System

- be able to provide, within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO, details of the licences and regulatory approvals you are required to hold and of the enquiries you have made to ensure that the details are complete.

Application, Pre-Commencement and Annual Documentation

When applying for Approval as an ELNO, prior to commencing operations and annually thereafter while you remain approved as an ELNO, you are to provide the Registrar with a Self-Certification of having obtained all of the licences and regulatory approvals necessary to operate your ELNO System.

5.3(e) Pricing Policy and Pricing Table

Requirement

You have an obligation to determine any ELNO Service Fees according to a publicly available, equitable and transparent Pricing Policy and publish a Pricing Table (refer Section 5.4).

Purpose

The purpose of this requirement is to ensure that any fees you charge to a Subscriber for access to and use of the ELN are reasonable and you are not exploiting any lack of market competition for the services you provide.

Scope

The obligation applies to the operation of your ELN.

Compliance

You are to:

- publish a Pricing Policy and include in it a set of principles that you apply at all times in determining the fees to be charged to users of your ELNO System, including your ELN, and
- publish a Pricing Table of ELNO Service Fees determined in accordance with your Pricing Policy (refer Section 5.4).

The principles of your Pricing Policy are to be such as to instil confidence in industry, your users and the community generally that your ELNO Service Fees are determined equitably and transparently. In this context, “equitable” means your policy is fair, reasonable and just for all parties, and “transparent” means your policy is expressed openly and candidly, so that it can be easily understood.

Specific Inclusions

Without limiting the principles, you may adopt to express your Pricing Policy, it is expected that you will consider at least:

- being cost-reflective, in that there is a direct link between your ELNO Service Fees and Costs

- being forward-looking, in that your ELNO Service Fees reflect the least cost of providing the service in the immediate future
- embracing user-pays, in that all services are charged for and any cross-subsidies are acknowledged, minimised and justified as being in the public interest
- ensuring revenue-adequacy, so that your services are sustainable into the future with ELNO Service Fees based on:
 - (a) benchmarked or competitively determined inputs for establishment Costs and operating expenses
 - (b) a return of capital based on the life of each asset, and
 - (c) a risk-related return on capital
- promoting sustainable investment by your Subscribers, in that they can invest in the necessary systems and procedures to take advantage of your services with the certainty of obtaining an adequate return on that investment
- ensuring regulatory efficiency, in that regulatory intrusion and compliance Costs for you and your Subscribers are minimised
- facilitating efficient conveyancing services including national consistency for the eventual achievement of least cost outcomes for all industry participants
- being in the public interest, in that they promote economically efficient and sustainable conveyancing services that deliver a dividend to the end users of those services for the public investment incurred in establishing the infrastructure for you to provide your services
- avoiding perverse or unintended outcomes likely to be in conflict with the public interest.

The extent to which your Pricing Policy is expected to be based upon principles such as these may vary with the number of genuine competitors operating in the market for your services and the extent of competition in that market for the services you offer.

Compliance Demonstration

Your Pricing Policy is to be made publicly available and its publication is to be kept up to date so that it can be reviewed and assessed at any time. You can expect at any time to be requested by the Registrar to demonstrate how your ELNO Service Fee determinations comply with your Pricing Policy.

Pre-commencement Documentation

Prior to commencing operations, you are to provide your Pricing Policy to the Registrar.

Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a No-Change Certification that your Pricing Policy, as currently published, remains unchanged and suitable to your circumstances. In the event that you are unable to provide such a certification, you are to provide documentation of a revised Pricing Policy to the Registrar, in the form of a marked up copy showing the changes, for assessment of its compliance with the obligations to be equitable and transparent.

When certifying to the continuing suitability of your published Pricing Policy in your Annual Report to the Registrar, it is expected that you will have conducted a review of your policy with regard to at least:

- the continuing applicability to your circumstances of the principles contained in your policy
- any need for additional principles in your policy to ensure equity and transparency
- consistent application of your policy in determining your ELNO Service Fees
- identified variances from your policy and the justifiable reasons for those variations
- the level of acceptance of your policy among your Subscribers.

5.3(f) Training and awareness programs

Requirement

You have an obligation to adequately train your officers, principals, employees, agents and contractors in the use of your ELN, and to make them aware of your obligations under the Operating Requirements, to the extent relevant to their duties and responsibilities.

Purpose

The purpose of this requirement is to ensure your ELN is operated competently and in compliance with the Operating Requirements.

Scope

The requirement applies to the operation of your ELN only.

Compliance

It is expected that you will maintain documentation of your training and awareness programs, setting out at least:

- nature, purpose and content of each program
- how each program is created, made available and delivered
- requirements for undertaking and satisfactorily completing each relevant program
- requirements for re-taking each relevant program on a remedial or refresher basis
- statistics on the delivery, coverage and effectiveness of each program.

Specific Inclusions

Your training and awareness programs are to specifically include:

- the use of all relevant aspects of your ELN
- all of your relevant obligations as an ELNO under the Operating Requirements.

Compliance Demonstration

Your compliance with this requirement is to be certified annually and demonstrated within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO.

Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a Self-Certification that each of your training and awareness programs is up to date and adequate for complying with the Operating Requirements.

It is expected that to support your certification you will maintain documentation on the delivery of your training and awareness programs during the period that will include:

- number of programs delivered
- numbers by category of persons satisfactorily completing each program
- percentage of persons by category completing each program
- content and delivery changes made to each program
- rationale for each content change and each delivery change made to each program.

5.3(g) Applicable laws and policies

Requirement

You have an obligation to comply with all applicable laws nationally and in each State and Territory in which your ELNO System is available and with all government policies notified to you in writing by the Registrar.

Purpose

The purpose of this requirement is to ensure you comply with all laws and regulatory requirements for operating your ELNO System.

Scope

The requirement applies to the operation of your ELNO System, including your ELN.

Compliance

It is expected that you will maintain documentation setting out:

- a list of all laws enacted nationally and in each State and Territory in which you are operating that are relevant to your activities
- a brief description of how you are complying with each relevant law
- a list of all government policies notified to you in writing by the Registrar (and not withdrawn) since you first received Approval as an ELNO
- a brief description of how you are complying with each notified government policy.

Specific Inclusions

Your documentation is to specifically include compliance with:

- privacy legislation, particularly with regard to collection, use, storage, disclosure and retention of Personal Information, whether applying nationally or in a State or Territory
- taxation legislation, particularly with regard to the application of GST to ELNO Service Fees
- competition and consumer legislation, particularly with regard to service pricing, restrictive practices and barriers to market entry
- corporations legislation, particularly with regard to governance requirements

- financial services regulation legislation, particularly with regard to the provision of financial settlement services
- anti-money laundering and counter-terrorism financing legislation, particularly with regard to verification of identity and the operation of financial settlement services
- government policies notified to you in writing by the Registrar.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated annually with a certification and within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO.

Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a Self-Certification that all relevant laws and notified government policies have been complied with during the period.

To support each of these certifications, it is expected you will maintain:

- a list of the laws and notified government policies relevant to your activities as an ELNO
- a description of how each law and government policy was complied with during the period
- a report on every potential non-compliance during the period and the remedial action you took in each instance.

5.3(h) Confidentiality of information

Requirement

You have an obligation to maintain the confidentiality of all information provided to you that the provider would reasonably expect you to keep confidential.

Purpose

The purpose of this requirement is to create and maintain confidence in the use of your ELNO System.

Scope

The requirement applies to the operation of your ELNO System, including your ELN.

Compliance

It is expected you will have documented procedures and practices in place for:

- handling of all information provided to you for which you do not have the express authority of the provider to disclose to any other party or parties
- recording of all actual or potential breaches of confidentiality and their implications
- taking remedial action to mitigate the risk of further or continued breaches of confidentiality.

Specific Inclusions

Your documented procedures and practices are to comply with legislation applying nationally and in a State or Territory with regard to the collection, use, disclosure, storage and retention of information, including Personal Information. In this regard, the Office of the Australian Information Commissioner's Guide to Securing Personal Information: 2018 provides relevant guidance.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO.

5.3(i) Reasonable directions

Requirement

You have an obligation to comply with any reasonable direction given by the Registrar for the purpose of the Operating Requirements.

Purpose

The purpose of this requirement is ensure industry and community confidence in the operation of your ELNO System.

Scope

The requirement applies to the operation of your ELNO System, including your ELN.

Compliance

It is expected you will have documented procedures in place for receiving, assessing, implementing and reporting on directions received from the Registrar.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO.

5.3(j) Notifiable events

Requirement

You have an obligation to Promptly notify the Registrar of all events which have the potential to affect the integrity of the Titles Register or pose a reputational risk to the ELN, the Titles Register or the Registrar.

Purpose

The purpose of this requirement is to enable the Registrar to protect the integrity of the Titles Register and to maintain public confidence in the ELN, Titles Register and Registrar.

Scope

The requirement applies to you and the operation of your ELN.

Compliance

You are expected to Promptly notify the Registrar of all events which have the potential to affect the integrity of the Titles Register or pose a reputational risk to the ELN, the Titles Register or the Registrar. Notifiable events may include security incidents or potential occurrences of fraud.

It is expected that you will maintain an open channel of communication with the Registrar and provide notifications to the Registrar even where it is unlikely an event will affect the integrity of the Titles Register or pose a reputational risk to the ELN, the Titles Register or the Registrar.

It is expected you will have documented procedures and practices in place for:

- establishing criteria for events with the potential to affect the integrity of the Titles Register or pose a reputational risk to the ELN, the Titles Register or the Registrar
- identifying all events which satisfy the established criteria
- recording all identified events which satisfy the established criteria
- notifying the Registrar of all recorded events which satisfy the established criteria
- regularly reviewing your notifiable event criteria for their continued relevance and completeness.

It is expected that you will notify each Registrar of any event which satisfies the established criteria irrespective of whether that event occurs in the Registrar's Jurisdiction.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO.

5.3(k) Assistance to the Registrar

Requirement

You have an obligation to give such assistance to the Registrar as the Registrar, or his or her authorised representative, requests in relation to the Registrar's functions and powers under the ECNL.

Purpose

The purpose of the requirement is to ensure the security and integrity of the Titles Register.

Scope

The requirement applies to you.

Compliance

It is expected you will have documented procedures and practices in place for:

- receiving requests for assistance from the Registrar or his or her authorised representative
- implementing each request in the shortest possible timeframe
- recording the outcome of the implementation
- reporting to the Registrar on the completion of the request.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO.

5.3(l) Business Plan

Requirement

You have an obligation to establish, implement, review and keep current a Business Plan.

Purpose

The purpose of the requirement is to demonstrate the ELN's products and/or services and delivery schedule as well as financial, marketing and operational objectives.

Scope

The requirement applies to the operation of your ELN only.

Compliance

It is expected that your Business Plan will include at least:

- demonstrated understanding of the Australian property conveyancing market in each jurisdiction
- summarised market research undertaken to determine the most effective service delivery model
- description of your service delivery model, including the customer base and expected market penetration nationally and by jurisdiction
- timings for the development of operations and delivery of particular services and facilities and the anticipated means of servicing different classes of Subscribers
- projections of user take-up and sensitivity analysis, outlining the assumptions made and the implications of all likely outcomes
- intended actions to achieve planned Subscriber take-up, overall and by market segment
- descriptions and estimates of the economic benefits realisable by each class of Subscriber.

Compliance Demonstration

You are to provide your Business Plan to the Registrar when applying for Approval as an ELNO and you are to provide certifications of your Business Plan being unchanged prior to commencing operations and annually thereafter while you remain approved as an ELNO.

Application Documentation

When applying for Approval as an ELNO you are to provide the Registrar with your Business Plan.

Pre-commencement and Annual Documentation

Prior to commencing operations and in each Annual Report to the Registrar, you are to provide a No-Change Certification that your Business Plan is unchanged. In the event any aspect of the Business Plan has changed, you are to provide the Registrar with a revised Business Plan in the form of a marked up copy showing the changes.

5.4 ELNO Service Fees

Requirement

If you elect to charge fees to a Subscriber for access to and use of your ELN (ELNO Service Fees) you have obligations to:

- calculate those fees in accordance with the principles outlined in your Pricing Policy (refer Section 5.3(e))
- prepare and publish on your website a table of your fees (Pricing Table) for each year commencing on 1 July
- not charge a fee greater than the amount specified in the published Pricing Table, subject to exceptions.

From 1 July 2019 to 30 June 2022 you may only increase your ELNO Service Fees once every year in accordance with the methodology outlined in the Operating Requirements unless:

- the Registrar grants you approval to change your Pricing Table, or
- your ELNO Service Fees include Information Fees and there is a change in those Information Fees.

You may charge a fee less than the amount specified in the published Pricing Table at any time.

Purpose

The purpose of this requirement is to ensure that any fees you charge to a Subscriber for access to and use of the ELN are reasonable and you are not exploiting any lack of market competition for the services you provide.

Scope

The obligation applies to the operation of your ELN only.

Compliance

You are to publish your Pricing Table on your website at least 20 Business Days, or as soon as reasonably practicable, before the Pricing Table takes effect. In the event that you do not publish your Pricing Table 20 Business Days before the Pricing Table takes effect you may be required to explain to the Registrar why it was not reasonably practicable to do so.

From 1 July 2019 to 30 June 2022, you are permitted to increase your ELNO Service Fees as listed in your Pricing Table, once every year on 1 July, provided that the percentage increase in the revised ELNO Service Fees does not exceed the percentage increase in the CPI for the immediately preceding March quarter when compared with the CPI for the March quarter of the previous year.

CPI means the all groups consumer price index for all capital cities in original terms published by the Australian Bureau of Statistics or its successor. The Australian Bureau of Statistics publishes CPI for March quarters on its website, www.abs.gov.au.

You are also permitted to make a request to the Registrar for proposed changes to your Pricing Table including in the event:

- of any change to the amount of any insurance premium payable by you in respect of any insurance policy the ELNO is required to hold
- that a change in any law gives rise to a change in your operating costs
- that additional fees, charges or costs are imposed on you by the Registrar, Land Registry or any other government agency.

If you make a request to the Registrar to make changes to your Pricing Table the request should:

- be in writing
- include a clear explanation of the basis for your request
- include any relevant supporting evidence, for example copies of documentation evidencing that your insurance premium has changed.

It is expected that you will maintain Records of the ELNO Service Fees you have charged to Subscribers. These Records may need to be produced to justify any fee increase in the event that the Registrar becomes aware you may have charged a fee greater than the amount specified in your published Pricing Table or have increased the fees in your published Pricing Table other than in accordance with the Operating Requirements.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO.

5.5 Integration

Requirement

You have obligations to:

- prepare and publish on your website a set of Integration terms and conditions which set out the requirements for a Person Wishing to Integrate, and
- treat any Person Wishing To Integrate or a Person Who Has Integrated on an Equivalent Basis, subject only to differences which are attributable to the type, level or class of Integration with the ELN provided that each Person Wishing To Integrate or Person Who Has Integrated has an equivalent opportunity to choose between those options compared with each other Person Wishing to Integrate or Person Who Has Integrated.

Purpose

The purpose of the requirement is to ensure Integration is provided on an equal basis subject to some exceptions.

Scope

The requirement applies to the operation of your ELN.

Compliance

You are required to publish on your website a set of Integration terms and conditions and include in those terms and conditions the requirements for a Person Wishing to Integrate to Integrate their system with your ELN. It is expected as a minimum that your Integration terms and conditions will address the matters outlined in Specific Inclusions (below).

You are also required to treat any Person Wishing To Integrate or a Person Who Has Integrated on an Equivalent Basis, subject only to differences which are attributable to the type, level or class of Integration with the ELN provided that each Person Wishing To Integrate or Person Who Has Integrated has an equivalent opportunity to choose between those options compared with each other Person Wishing to Integrate or Person Who Has Integrated. This means you must:

- facilitate and maintain integration with Person Wishing to Integrate if they meet the requirements outlined in your Integration terms and conditions.
- treat any Person Wishing To Integrate or a Person Who Has Integrated on an Equivalent Basis with each other including where the Person Wishing to Integrate or a Person Who Has Integrated is your Related Entity, by:
 - (a) using the same terms and conditions relating to price or the same method of ascertaining price, and
 - (b) by using the same application programming interfaces, other interfaces and technologies, and
 - (c) by using the same processes and systems in providing access to, or use of, your ELN, and
 - (d) in relation to the development of new application programming interfaces, other interfaces and technologies of the ELN or enhancing your ELN's functionality and capabilities, and
 - (e) in relation to other terms and conditions for supplying access to, or use of, your ELN.

Specific Inclusions

It is expected that your Integration terms and conditions will include at least:

- all technical requirements you have for a Person Wishing To Integrate to be permitted to Integrate with your ELN, including but not limited to requirements for:
 - (a) system testing
 - (b) security – including those required to meet Operating Requirement 7
 - (c) interfacing mechanisms
- the form (if any) that a request for Integration must be in and all information that you require from a Person Wishing To Integrate in order to facilitate Integration
- the types, levels or classes of Integration currently made available by you and categories of Persons Wishing To Integrate you will or will not Integrate with
- your charges (if any) for each type, level or class of Integration currently made available by you
- the service levels or key performance indicators which you will maintain and provide services by means of the Integration of the Person Who Has Integrated's systems with your ELN
- the service levels (if any) a Person who has Integrated will be required to meet and maintain

- the standard timeframes in which you will undertake Integration for each type, level or class of integration currently made available by you, including key milestones and dependencies
- the process (including the timeframes) by which you will notify a Person Who Has Integrated of material changes in the technical and operational requirements for integration, the functioning of your ELN or security requirements
- how you will prioritise competing requests for Integration
- the commercial terms and conditions on which you are prepared to Integrate with a Person Wishing To Integrate.

Compliance Demonstration

You are to provide certifications to the Registrar of your compliance prior to commencing operations and annually thereafter while approved as an ELNO.

Pre-commencement Documentation

When applying for Approval as an ELNO, you are to provide the Registrar with a Self-Certification of your compliance with this requirement. Your certifications are to be supportable by evidence of the publication of your Integration terms and conditions and Records of your actions in response to requests for Integration from Persons Wishing To Integrate. Those Records may need to be produced if it becomes necessary to justify your certifications as having been given on an informed basis and in good faith.

Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a No-Change Certification that nothing has changed and you continue to comply with all obligations of this requirement.

In the event that something occurs or is brought to your attention that brings into question your continuing compliance with this requirement, you are to notify the Registrar of the full circumstances at the earliest possible opportunity.

5.6 Separation

Requirement

In the event that you or your Related Entity supplies or proposes to supply a Downstream or Upstream Service, you have obligations to separate those services from your operations as an ELNO, either structurally or functionally, operate at arm's length and operate in a manner which does not give an unfair commercial advantage to the Related Downstream or Upstream Service Provider.

Purpose

The purpose of this requirement is to ensure that the related supplier of the Downstream or Upstream Service does not receive an advantage over its competitors as a result of its relationship with you and your position as an ELNO.

Scope

This requirement applies if you or your Related Entity supplies or proposes to supply a Downstream or Upstream Service. If applicable, this requirement applies to the operation of your ELNO System, including your ELN.

Downstream or Upstream Service is defined in the Operating Requirements. Examples of Downstream or Upstream Services may include:

- practice management software
- conveyancing or legal services
- information broking
- real estate services.

This requirement will not apply to services supplied by you to facilitate either of the following:

- financial settlement
- Duty assessment.

Compliance

You are to provide certifications to the Registrar of your compliance prior to commencing operations and annually thereafter while approved as an ELNO.

Your Separation Plan is to be a comprehensive and readily implementable plan outlining in detail how you will:

- establish a Related Entity or Downstream or Upstream Service business unit as applicable
- deal with the Related Downstream or Upstream Service Provider on an arm's length basis
- not give, or operate in a manner which gives, an unfair commercial advantage to a Related Downstream or Upstream Service Provider.

Specific Inclusions

It is expected that your Separation Plan will describe in detail how you will comply with the requirements, including how you will:

- manage the ELNO or ELN business unit independently from the Related Downstream or Upstream Service Provider. This should include a detailed description of your proposed governance arrangements
- deal with confidential or commercially sensitive information of a Person Wishing To Integrate or a Person Who Has Integrated with the ELN to ensure that information is not available to, or able to be used by or for the benefit of, the Related Downstream or Upstream Service Provider
- share personnel, systems and services, with the Related Downstream or Upstream Service Provider, including a detailed description of:
 - (a) what personnel, systems and services (if any) are proposed to be shared
 - (b) safeguards to ensure that the Related Downstream or Upstream Service Provider is not provided with an unfair competitive advantage as a result of sharing personnel, systems and services
 - (c) the basis for remuneration of shared employees
- implement suitable governance frameworks.

Compliance Demonstration

The timing of the requirement to demonstrate compliance will depend on the stage of your operations at which you or your Related Entity proposes to supply a Downstream or Upstream Service.

When applicable, you are to demonstrate your compliance with this requirement by:

- publishing your Separation Plan

- providing the Registrar with an Independent Certification and Independent Expert's review report that your Separation Plan complies with the requirements.

You are also to be able to demonstrate your compliance with the requirement within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO.

Application, Pre-commencement and Annual Documentation (where applicable)

If you or your Related Entity proposes to supply a Downstream or Upstream Service at the time you are: applying for Approval; about to commence operations; or while you remain approved as an ELNO, you are to provide the Registrar with an Independent Certification and Independent Expert's review report that your Separation Plan complies with the Operating Requirements at that stage.

If you have already provided the Registrar with an Independent Certification and Independent Expert's review report at a prior stage (i.e. when applying for Approval or prior to commencing operations) then you are required provide the Registrar with:

- a No-Change Certification that your Separation Plan, including its documentation, management and operation, is unchanged, and
- an Independent Certification and Independent Expert's review report that your Separation Plan remains compliant with the requirements.

In the event that you are unable to provide such a No-Change Certification, you are to advise the Registrar that your Separation Plan has changed and provide the Registrar with an Independent Certification of your Separation Plan, including its documentation, management and operation, remaining compliant with the requirements.

Independent Certifications

Your Separation Plan is to be reviewed and certified by an approved Independent Expert.

It is expected that the Independent Expert conducting the review will:

- assess your documentation for completeness, currency, relevance, integrity and quality
- assess the content of your documentation for compliance with Operating Requirement 5.6
- assess your Separation Plan as documented against similar relationships in comparable situations

- assess the likelihood that your Separation Plan will ensure that you will:
 - (a) deal with the Related Downstream or Upstream Service Provider on an arm's length basis
 - (b) not give, or operate in a manner which gives, an unfair commercial advantage to a Related Downstream or Upstream Service Provider
- make any Essential and Desirable Recommendations as a result of these assessments
- provide an Independent Certification and Independent Expert's review report as to your Separation Plan, as documented, complying with Operating Requirement 5.6.

Additionally, once you have commenced operations, the Independent Expert will be expected to:

- assess the operation and management of your Separation Plan against your documentation of it
- assess the awareness, knowledge and understanding of your principals, directors, agents, employees and contractors of your Separation Plan and their respective responsibilities in it
- assess the effectiveness of your Separation Plan in practice by reference to compliance failures and complaints
- consult with key affected, relying and co-regulatory parties on the suitability of your Separation Plan and each of its key characteristics and implementation features
- provide an Independent Certification as to your Separation Plan, as documented, operated and managed, facilitating compliance with Operating Requirement 5.6.

The Independent Expert will be expected to review their findings and recommendations with you and with your key affected, relying and co-regulatory parties before finalisation of its report, certification and any recommendations.

6 Initial Testing

Requirement

You have an obligation not to commence operating your ELN without first testing it in accordance with your Test Plan to the satisfaction of the Registrar.

Purpose

The purpose of this requirement is to ensure your ELN operates correctly.

Scope

This requirement applies to the initial testing of your ELN only.

Compliance

You are to have an extensive and comprehensively documented Test Plan for the initial testing and certification of all aspects of your ELN. Your Test Plan is expected to be based on at least:

- your detailed functionality specifications and comprehensive user documentation
- your documented ISMS and BCDRMP
- the System Performance measures in Schedule 2 of the Operating Requirements
- thorough and rigorous testing procedures prepared in advance and executed under tightly controlled conditions
- methodical test data generation that exercises all aspects of the system's operation, connectivity and integration under all possible scenarios
- reliable test result recording, evaluation and reporting
- sharing of test reports with all involved and affected parties
- adequate time for proper execution of all test procedures, evaluation of their outcomes and sharing of test reports
- certifications of correct operation and performance by all relevant responsible Persons.

Certifications of correct operation and performance are expected to be obtained from an independent assessor and/or the entity responsible for each directly interconnected system. Your Test Plan is to be consistent with the generic testing requirements set out in your CMF for the testing of all changes made to your ELN after the commencement of operations.

It is expected that your Test Plan will comply with contemporary best practice in testing of systems in environments comparable to your ELN. In this regard, AS25010:2013 provides relevant guidance.

Specific Inclusions

Your Test Plan is expected to include as a minimum testing of your ELN's:

- functionality available to users as well as that on which users and relying parties depend, including each electronic Registry Instrument and other electronic Document
- connectivity with external systems for exchanging messages
- responsiveness to the actions of users under all foreseeable load conditions
- intrusion resistance for preventing information corruption and unauthorised disclosure
- disruption resilience for maintaining system availability in all foreseeable situations
- disaster recovery for restoring services after an unexpected disruption.

Compliance Demonstration

Prior to commencing operations you are to provide the Registrar with a copy of your Test Plan.

Once the Registrar has advised you that your Test Plan is acceptable you will need to conduct testing of your ELN in accordance with the Test Plan and otherwise to the satisfaction of the Registrar. You will need to contact each individual Registrar to determine any Jurisdiction specific testing requirements and the process for that Registrar to advise that initial testing has been completed to their satisfaction.

Pre-commencement Documentation

Prior to commencing operations, you are to provide the Registrar with your Test Plan.

7 Obligations Regarding System Security and Integrity

7.1 Information Security Management System

Requirement

You have an obligation to establish, implement, operate, monitor, review, maintain and keep current a documented Information Security Management System (ISMS).

Purpose

The purpose of the requirement is to ensure confidence that the information you collect and store with your ELN is adequately protected from unauthorised access, use, amendment or disclosure.

Scope

This requirement applies to the operation of your ELNO System including your ELN.

Compliance

Your ISMS is to be comprehensively documented and kept up to date. It is to take into account all of your relevant obligations under the Operating Requirements, including the specific obligations related to information security at:

- Operating Requirement 7 (System Security and Integrity)
- Operating Requirement 7.11 (Data Breach Notification)
- Operating Requirement 7.12 (Cloud Service), if applicable
- Operating Requirement 14.1 (Subscriber Registration)
- Operating Requirement 14.3 (Subscriber and User Register)
- Operating Requirement 14.7 (Monitoring of Subscribers)
- Operating Requirement 14.8 (Restriction, Suspension and Termination of Subscribers)
- Operating Requirement 14.9 (Consequences of Restriction, Suspension and Termination of Subscribers)
- Operating Requirement 19.1 (Retention of Data and Information)
- Operating Requirement 19.2 (Generation and Retention of Audit Records)
- Operating Requirement 19.3 (Use).

In addressing these obligations, your ISMS is expected to cover at least:

- what system access and use rules, controls and practice assurance, including user accreditation and compliance monitoring, are employed
- how unauthorised system access, use, intrusion and service denial is prevented and attempts recorded and reviewed
- how access to your systems by your employees and contractors is controlled and monitored
- how unauthorised additions or modifications to your systems, such as viruses, trojans and other malware, are detected and removed
- how your systems are protected from intrusion or unauthorised access at any facilities where they are supplied from
- how system administration activities are conducted, managed and controlled
- how relying parties can efficiently and effectively authenticate Digitally Signed documents
- your requirements of users with regard to use of digital signatures, digital signing and information protection measures generally
- your means and procedures for data recovery in the event of information loss or corruption
- your means of integrity vetting, orientation, training, supervision and control of your employees, agents and contractors; and
- your incident management protocols, including corrective actions and responsibilities, and user and relying party notifications.

Your ISMS is to comply, as a minimum, with AS27001:2015/Amdt 1-2016, having regard to the particular circumstances and environment of your ELN. AS31000:2018 provides guidance on the periodic risk assessment of your ISMS and the Office of the Australian Information Commissioner's Guide to securing personal information:2018 provides guidance on the reasonable steps to be included in your ISMS for the protection of Personal Information.

Specific Inclusions

Your ISMS is to specifically address the following issues in ensuring information security for your Users and relying parties:

- your Subscriber Security Policy that each of your Subscribers is to comply with in accordance with the Participation Rules made under the ECNL and included in their Participation Agreement with you

- access to your ELN by known and authorised persons only (refer Section 7.2)
- security of your ELN from information loss or corruption (refer Section 7.3)
- accurate presentation and use of data by your ELN (refer Section 7.4).
- location of your ELN's servers in Australia (refer Section 7.5)
- reliability and independence of your Digital Certificate regime and in particular your compliance with the Gatekeeper requirements issued by the Australian Government and adopted as best practice by the governments of all jurisdictions (refer Section 7.6)
- your means of digital signing verification that ensures that Digitally Signed Documents and data that are created with your ELN can be verified by relying parties as to whom they were signed by and that they have not been altered since they were signed (refer Sections 7.7 and 7.8)
- your procedures for immediate notification of Jeopardised Conveyancing Transactions (refer Section 7.9)
- your means for preventing the delivery of any Documents or data to the Registrar when you have received notification from a Subscriber that Security Items may have been Compromised or a signing made without authority (refer Section 7.10).

Subscriber Security Policy

Your Subscribers have a significant role to play in ensuring the security of the information you collect and store. You are to have a Subscriber Security Policy and to keep it up to date. Your Policy is to be referenced in each Participation Agreement you enter into with each of your Subscribers with an obligation in the Participation Agreement for the Subscriber to comply with your Policy.

Your Policy is to cover the measures your Subscribers must implement, operate and maintain to comply with the Participation Rules, including at least:

- what security software they are to use including virus protection software
- what measures they are to take to safeguard your and their systems and information from unauthorised access and use
- what measures they are to take to protect their Security Items
- what measures they are to take to safeguard their Digital Certificates from unauthorised use
- what measures they are to take to safeguard their Access Credentials from unauthorised use
- training and monitoring of Users in relation to a Subscriber's security obligations

- what measures they are to take generally to protect the integrity of your and their systems, and the transactions completed and Documents signed using your and their systems, from corruption, falsification, unauthorised alteration or disclosure, or misuse.

Compliance Demonstration

You are to demonstrate your compliance with this requirement by providing your ISMS documentation, together with an Independent Certification and Independent Expert's review report of its being compliant and Fit for Purpose, to the Registrar prior to commencing operations and at any time that it is materially changed thereafter while you are approved as an ELNO.

You are also to provide the Registrar with certifications:

- of your ISMS being unchanged, compliant and Fit for Purpose annually while you are approved as an ELNO
- that your ISMS will continue to be compliant and Fit for Purpose after implementing any material change to your ISMS.

Pre-commencement Documentation

Prior to commencing operations, you are to provide the Registrar with:

- the documentation of your ISMS
- an Independent Certification that your documentation is compliant and Fit for Purpose.

Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with:

- a No-Change Certification that your ISMS, including its documentation, management and operation, is unchanged, and
- an Independent Certification that your ISMS is Fit for Purpose.

In the event that you are unable to provide such a No-Change Certification, you are to submit revised documentation of your ISMS to the Registrar in the form of a marked up copy showing the changes, together with an Independent Certification of your ISMS, including its documentation, management and operation, being Fit for Purpose and any recommendations of the Independent Expert providing the certification.

Material Change Documentation

You are to provide the Registrar with an Independent Certification and Independent Expert's review report that, with respect to a proposed material change to your ISMS, your ISMS will continue to be suitable, adequate and effective and otherwise Fit for Purpose after implementation of the change.

The Independent Certification is to be obtained and provided to the Registrar prior to implementing the proposed change and in the event that the certification cannot be obtained the change is not to be implemented.

A revision to the standard (AS27001:2015/Amdt 1-2016) with which your ISMS must comply, having regard to the particular circumstances and environment of your ELN, is not of itself to be considered a material change to your ISMS.

Independent Certifications

You are to have:

- the documentation of your ISMS reviewed and independently certified as Fit for Purpose by an Independent Expert prior to submitting the documentation to the Registrar for assessment and approval to commence operations. In conducting its review and providing its certification, it is expected that the Independent Expert will at least:
 - (a) assess the documentation of your ISMS for completeness, currency, integrity and quality
 - (b) assess the content of your ISMS documentation for compliance with AS27001:2015/Amdt 1-2016 having regard to the particular circumstances and environment of your ELN
 - (c) assess your ISMS as documented against similar systems in comparable situations
 - (d) make any Essential and Desirable Recommendations as a result of those assessments
 - (e) provide an Independent Certification as to your ISMS, as documented, being Fit for Purpose in the circumstances of your ELN
- your ISMS, as an operational management system, reviewed and certified annually as Fit for Purpose by an Independent Expert and to include the review report and Independent Certification in your Annual Report to the Registrar. This review is to be of the documentation of your system, of how completely and effectively you have

implemented and continue to operate the documented system, and of how your system as implemented, operated and managed suits your circumstances and compares with contemporary best practice. In conducting the review and providing its certification, it is expected that the Independent Expert will at least:

- (a) assess the awareness, knowledge and understanding of your principals, directors, agents, employees and contractors of your ISMS and of their respective responsibilities in its effective ongoing management
 - (b) assess the effectiveness of your ISMS in practice by reference to compliance failures, incident statistics, performance measures and available industry benchmarks
 - (c) consult with key users and relying parties on the suitability of your ISMS and each of its key characteristics and implementation features
 - (d) make any Essential and Desirable Recommendations as a result of those assessments and consultations
 - (e) review its findings and recommendations with you and with your key affected, relying and co-regulatory parties before finalising its review report, certification and any recommendations
 - (f) provide an Independent Certification of your ISMS, as documented, operated and managed, being Fit for Purpose in the circumstances of your ELN
- the Specific Inclusions in your ISMS, especially your Subscriber Security Policy, independently certified as Fit for Purpose as part of each Independent Certification of your ISMS
- any material change proposed to your ISMS independently certified, prior to implementation of the change, as not affecting the suitability, adequacy and effectiveness and otherwise fitness for purpose of your ISMS. In conducting the review and providing its certification, it is expected that the Independent Expert will at least:
 - (a) assess the nature and extent of the proposed change
 - (b) review the rationale for the change and the alternatives, if any, available for achieving the same purpose
 - (c) examine in detail the impact of the change on users and relying parties, including the adequacy of proposed documentation changes to your ISMS and your continuing compliance with AS27001:2015/Amdt 1-2016
 - (d) consult with key users and relying parties on the suitability to them of the change and each of its key characteristics and implementation features
 - (e) make any Essential and Desirable Recommendations as a result of these assessments, examinations and consultations

- (f) review its findings and recommendations with you and with your key affected, relying and co-regulatory parties before finalising its review report, certification and any recommendations
- (g) provide an Independent Certification as to your ISMS, as intended to be changed, being Fit for Purpose in the circumstances of your ELN.

The Independent Expert you engage in each instance is to be approved in advance by the Registrar and, on each occasion that such a review and independent certification is undertaken, any Essential Recommendations of the Independent Expert will be expected to have been promptly implemented.

7.2 Access to ELN

Requirement

You have an obligation to ensure that the only Persons able to access your ELN are:

- your registered Subscribers
- specific Persons authorised by your Subscribers
- specific Persons other than Subscribers authorised by you for particular purposes (i.e. privileged users, such as system administrators and technical diagnostic and programming staff).

You also have an obligation to provide access to your ELN on an Equivalent Basis to your registered Subscribers and their Users subject only to differences which are attributable to the type, level or class of Integration with the ELN, provided that each Subscriber or User has an equivalent opportunity to choose between those options compared with each other Subscriber or User.

This means that you must provide access to your ELN to all Subscribers and Users:

- by using the same terms and conditions relating to price or the same method of ascertaining price
- by using the same application programming interfaces, other interfaces and technologies
- by using the same processes and systems in providing access to, or use of, your ELN
- in relation to the development of new application programming interfaces, other interfaces and technologies of your ELN or enhancing your ELN's functionality and capabilities
- in relation to other terms and conditions for supplying access to, or use of, your ELN.

Purpose

The purpose of this requirement is to ensure that only known and authorised Persons access your ELN.

Scope

This requirement applies to the operation of your ELN only.

Compliance

As a part of your ISMS, you will be expected to have procedures and requirements in place that prevent any unauthorised Persons from accessing either the information stored in your ELN or the functionality available in your ELN to authorised Persons. Such access is to be prevented for those Persons attempting to access the ELN directly and for those Persons with access to any system connected to your ELN for other purposes, whether legitimate or not.

You will not breach this requirement if you permit a Subscriber to use application to application technology for accessing the ELN and data entry provided that the Subscriber does not use application to application technology for the function of Digital Signing or for Subscriber Administrator functions. In effect, this means that a Subscriber who has Integrated their system with your ELN may upload data into an Electronic Workspace without manual intervention by a human user.

It is expected you will maintain Records of the basis on which you have provided Subscribers and Users with access to your ELN. These Records may need to be produced in the event the Registrar needs to check that you have treated Subscribers and Users on an Equivalent Basis.

Specific Inclusions

It is expected that your ISMS will, for each distinct class of Person with access of your ELN, pay particular attention to:

- the number of authentication credentials required to gain access to your ELN
- the nature and minimum characteristics of those authentication credentials and how they are created and issued
- the way authentication credentials are stored and used by your ELN for entitlement verification purposes
- the hardness of your authentication credentialing arrangements as a whole in preventing known ways of securing unauthorised access to similar systems
- processes or functionality for ensuring that a Subscriber does not use application to application technology for the function of Digital Signing or for Subscriber Administrator functions.

Your ISMS is also expected to include provision for periodic intrusion testing of your ELN access control arrangements after you commence operations.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated by the Independent Certifications that your ISMS is Fit for Purpose required by the Registrar prior to commencing operations, annually thereafter while you are approved as an ELNO, and prior to any material change being made to your ISMS.

7.3 Security of ELN

Requirement

You have an obligation to protect the information in your ELN from anything that might compromise Conveyancing Transactions conducted using it or adversely affect any system connected to it or to which you supply information.

Purpose

The purpose of this requirement is to ensure Conveyancing Transactions can be completed using your ELN without unexpected risk.

Scope

This requirement applies to the operation of your ELN only.

Compliance

It is expected that the protection measures you use to satisfy this obligation will be documented and maintained as part of your ISMS and will include at least:

- physical measures, such as the location and accessibility of your ELN's servers
- system measures, such as firewalls and anti-virus software implemented in your ELN
- User measures, such as the Access Credentials used to verify access to your ELN
- social measures, such as procedures for authorising new Users and for re-setting Access Credentials.

The nature and extent of the measures you implement to achieve these outcomes are to be such as to reliably achieve compliance with the Operating Requirements on an ongoing basis. In this regard, your ISMS will be expected to include arrangements for:

- regular testing of the effectiveness of all of your information protection measures
- regular reviewing of contemporary best practice in information protection
- prompt adoption of well-tested refinements, enhancements and additions to existing practices and protection measures.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated by the Independent Certifications that your ISMS is Fit for Purpose required by the Registrar prior to

commencing operations, annually thereafter while you are approved as an ELNO and prior to any material change being made to your ISMS.

7.4 Data

Requirement

You have an obligation to accurately present and use information received from any source. In particular, you have an obligation not to alter any data received from a Land Registry without approval.

Purpose

The purpose of this requirement is to ensure confidence in the use of your ELN.

Scope

This requirement applies to the operation of your ELN only.

Compliance

It is expected that your ISMS will include your arrangements for:

- receiving, presenting and processing information received from any source
- validating the accuracy of your arrangements initially and at any time that they change
- maintaining a Record of approvals for altering any data received from a Land Registry
- monitoring your compliance with those approvals.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated by the Independent Certifications that your ISMS is Fit for Purpose required by the Registrar prior to commencing operations, annually thereafter while you remain approved as an ELNO and prior to any material change being made to your ISMS.

7.5 Protection of Land Information

Requirement

You have an obligation to ensure that the servers and other physical infrastructure on which you store and process Land Information are located in Australia.

Purpose

The purpose of this requirement is to ensure that Land Information stored on your ELNO System is available to the Registrar when necessary for a Compliance Examination or investigation.

Scope

This requirement applies to the operation of your ELNO System, including your ELN.

Compliance

It is expected that your ISMS will include the location of your ELNO System's servers and other physical infrastructure in Australia.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated by the Independent Certifications that your ISMS is Fit for Purpose required by the Registrar prior to commencing operations, annually thereafter while you remain approved as an ELNO and prior to any material change being made to your ISMS.

7.6 Digital Certificate Regime

Requirement

You have an obligation to accept only Gatekeeper compliant Digital Certificates issued by a Gatekeeper accredited and independent Certification Authority.

Purpose

The purpose of this requirement is to ensure confidence in the Digital Signings made with your ELN.

Scope

This requirement applies to the operation of your ELN only.

Compliance

Your ISMS is required to include:

- use of a Gatekeeper Accredited Certification Authority to issue and verify the Digital Certificates you accept, and you cannot also be that Certification Authority
- acceptance of only Digital Certificates issued under a Gatekeeper-approved Certificate Policy Specification
- verification that the Digital Certificates you accept identify the Subscriber, its ABN and the Key Holder to whom it was issued.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated by the Independent Certifications that your ISMS is Fit for Purpose required by the Registrar prior to commencing operations, annually thereafter while you remain approved as an ELNO and prior to any material change being made to your ISMS.

7.7 Verifying Digital Signing

Requirement

You have an obligation to implement an effective means for verifying that a Digitally Signed Registry Instrument or other Digitally Signed electronic Document created using your ELN has been signed:

- using a Digital Certificate that has not expired or been revoked
- using a Valid Digital Certificate of the user entitled to sign the Registry Instrument or Document
- by a User with the signing rights being exercised, and
- by a User whose right to sign the Registry Instrument or Document has not expired or been restricted, suspended or terminated.

You also have obligations to:

- ensure these signing conditions are met at the time of signing, and
- provide the Registrar with information identifying the Signer and verifying that the signing conditions were met at the time of signing.

Purpose

The purpose of this requirement is to ensure confidence in the Digital Signings made with your ELN.

Scope

This requirement applies to the operation of your ELN only.

Compliance

It is expected that your means of complying with this requirement will be documented and put into practice as part of your ISMS.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated by the Independent Certifications that your ISMS is Fit for Purpose required by the Registrar prior to commencing operations, annually thereafter while you remain approved as an ELNO and prior to making any material change to your ISMS.

7.8 Verifying No Alteration

Requirement

You have an obligation to implement an effective means for third parties to verify that Digitally Signed Registry Instruments and other electronic Documents and data created with your ELN have not been altered since they were signed.

Purpose

The purpose of this requirement is to ensure any alteration to Digitally Signed Registry Instruments and other electronic Documents and data can be readily detected.

Scope

This requirement applies to the operation of your ELN only.

Compliance

It is expected that the means by which you will comply with this requirement will be documented and put into practice as part of your ISMS.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated by the Independent Certifications that your ISMS is Fit for Purpose required by the Registrar prior to commencing operations, annually thereafter while you remain approved as an ELNO and prior to making any material change to your ISMS.

7.9 Notification of Jeopardised Conveyancing Transactions

Requirement

You have an obligation to immediately notify those of your Subscribers involved in a Conveyancing Transaction when you have reason to believe that the transaction has been Jeopardised in any way, including by fraud.

Purpose

The purpose of this requirement is to ensure that the participants in a Conveyancing Transaction that may have been Jeopardised can take appropriate action to protect their or their Clients' interests.

Scope

This requirement applies to the operation of your ELNO System, including your ELN.

Compliance

It is expected that the means by which you will identify the circumstances that may indicate that a transaction has been Jeopardised, deliver notifications to your Subscribers, and confirm that they have been received, will be documented and put into practice as part of your ISMS.

It is also expected that your arrangements for delivering notifications will include alternative means of delivery and contingency arrangements in the event that successful delivery cannot be confirmed.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated by the Independent Certifications that your ISMS is Fit for Purpose required by the Registrar prior to commencing operations, annually thereafter while you remain approved as an ELNO and prior to making any material change to your ISMS.

7.10 Obligations in relation to Notification of Compromised Security

Requirement

You have an obligation to prevent the delivery of any electronic Registry Instruments or other electronic Documents or data to the Registrar when you have received notification from a Subscriber that:

- its Security Items, such as Access Credentials, Digital Certificates and Private Keys, have or may have been Compromised
- electronic Registry Instruments or other electronic Documents or data have been signed without authority, either of the Subscriber or of the transacting Party the Subscriber is representing.

You also have an obligation to immediately notify the Registrar of the situation in the event that you cannot prevent delivery to the Registrar of electronic Registry Instruments or other electronic Documents or data of a Conveyancing Transaction associated with Compromised Security Items and/or unauthorised signings.

Purpose

The purpose of this requirement is to ensure any electronic Registry Instruments or other electronic Documents that may have been Digitally Signed without the authority of the transacting Party are not registered on the Titles Register.

Scope

This requirement applies to the operation of your ELNO System, including your ELN.

Compliance

It is expected that your ISMS will include arrangements for:

- receiving notifications from your Subscribers
- verifying the authenticity of each notification
- acting on each verified notification to either:
 - (a) prevent delivery of electronic Registry Instruments or other electronic Documents to the Registrar, or
 - (b) notify the Registrar of the situation and its circumstances if delivery cannot be prevented.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated by the Independent Certifications that your ISMS is Fit for Purpose required by the Registrar prior to commencing operations, annually thereafter while you remain approved as an ELNO and prior to making any material change to your ISMS.

7.11 Data Breach Notification

Requirement

You have obligations to:

- implement appropriate procedures and controls (including training) to detect Data Breaches and possible Data Breaches
- have an appropriately qualified independent security professional undertake a vulnerability assessment and penetration testing of your systems and networks that store or process Land Information at least once a year and make recommendations expressed in writing as either Essential Recommendations or Desirable Recommendations
- Promptly rectify all weaknesses or vulnerabilities identified in the assessment by the security professional as Essential Recommendations.

If you suspect or become aware that a Data Breach has occurred you also have obligations to:

- Promptly provide the Registrar and any affected Subscriber all details in respect of that event
- take all reasonable steps to investigate the event, contain the breach (if the event is a Data Breach) and mitigate against the adverse effect and harm arising from the event and allow the Registrar to participate in any investigation and mitigation steps
- provide all assistance and support required by the Registrar to assess the risk of harm arising from the event, and to recover from the event
- implement such additional measures as are required to protect against a similar Data Breach in the future.

Purpose

The purpose of this requirement is to ensure Data Breaches are prevented to the extent possible and to minimise the potential adverse effects and harm caused where a Data Breach occurs.

Scope

This requirement applies to the operation of your ELN only.

Compliance

Your compliance with this requirement is to be part of your ISMS (refer Section 7). You are also to provide the Registrar with certifications prior to commencing operation and annually thereafter while you remain approved to operate that vulnerability assessment and penetration testing has been undertaken and any Essential Recommendations have or will be implemented.

Your compliance with this requirement is otherwise to be demonstrated by your timely and complete notifications of Data Breaches to the Registrar while you remain approved as an ELNO.

Specific Inclusions

It is expected the arrangements included in your ISMS will include appropriate procedures, practices and controls (including training) to:

- detect Data Breaches and possible Data Breaches
- undertake the following where you suspect or become aware that a Data Breach has occurred:
 - (a) Promptly provide the Registrar and any affected Subscriber all details in respect of that event
 - (b) take all reasonable steps to investigate the event, contain the breach (if the event is a Data Breach) and mitigate against the adverse effect and harm arising from the event and allow the Registrar to participate in any investigation and mitigation steps
 - (c) provide all assistance and support required by the Registrar to assess the risk of harm arising from the event, and to recover from the event
 - (d) implement such additional measures as are required to protect against a similar Data Breach in the future.

Part 2 of the Australian Office of the Information Commissioner's Data Breach Preparation and Response Guide: 2018 provides guidance on preparing a data breach response plan which may be adapted to the specific requirements outlined in this section and the particular circumstances and environment of your ELN.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated:

- by providing your ISMS documentation, together with a certification of its being Fit for Purpose, to the Registrar prior to commencing operations and at any time that it is materially changed thereafter while you are approved as an ELNO
- in the certifications you give that the yearly vulnerability assessment and penetration testing of your systems and networks that store or process Land Information has been undertaken and Essential Recommendations are or will be implemented
- within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO.

Pre-commencement Documentation

Prior to commencing operations, you are to provide the Registrar with:

- the documentation of your ISMS
- an Independent Certification that your ISMS documentation is Fit for Purpose an Independent Certification and an Independent Expert's review report
- a Self-Certification certifying that the yearly vulnerability assessment and penetration testing of your systems and networks that store or process Land Information has been undertaken and you have either implemented any Essential Recommendations or will implement those Essential Recommendations and as soon as reasonably practicable, advise the Registrar in writing when you have implemented those recommendations.

Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with:

- a No-Change Certification that your ISMS, including its documentation, management and operation, is unchanged
- an Independent Certification that your ISMS is Fit for Purpose and an Independent Expert's review report
- a Self-Certification certifying that the yearly vulnerability assessment and penetration testing of your systems and networks that store or process Land Information has been undertaken and you have either implemented any Essential Recommendations or will implement those Essential Recommendations as soon as reasonably practicable and advise the Registrar in writing when you have implemented those recommendations.

In the event that you are unable to provide a No-Change Certification, you are to submit revised documentation of your ISMS to the Registrar in the form of a marked up copy showing the changes, together with an Independent Certification of the revised documentation, management and operation of your ISMS being Fit for Purpose and any Essential Recommendations of the Independent Expert.

7.12 Cloud Service

Requirement

You may use a Cloud Service for your ELN or to provision your ELN if all of the following are satisfied:

- you use reasonable endeavours to continuously mitigate any risks associated with using a Cloud Service as they are identified
- the Cloud Service only stores and processes Land Information in a secure computer infrastructure located within the Commonwealth of Australia
- the premises and systems used in connection with the provision and use of the Cloud Service are secure, having regard to the sensitive nature of your ELN and Land Information
- you implement and use security and encryption features, including any provided by the Cloud Service Provider, that are appropriate to protect Land Information (including access control, encryption in transit and encryption at rest)
- you have a legally binding agreement with the Cloud Service Provider which includes the following provisions:
 - (a) an undertaking by the Cloud Service Provider to maintain an information security program that complies with the ISO 27001 Standard (or such successor Standards) or such other alternative Standards as are substantially equivalent to ISO 27001
 - (b) an undertaking by the Cloud Service Provider to Promptly notify you if the Cloud Service Provider becomes aware of any security incident or data breach that affects or may affect the ELN
 - (c) an undertaking by the Cloud Service Provider to carry out annual independent audit assessments of its controls and processes and their effectiveness, and to provide an International Standard on Assurance Engagements 3402 (or equivalent successor Standards) SOC2 report to you
 - (d) an undertaking by the Cloud Service Provider to carry out a vulnerability assessment and penetration testing of its systems and online services at least once a year, and to Promptly rectify any identified weaknesses.

You also have an obligation to notify the Registrar if you are using, intend to use, commence using a Cloud Service, change Cloud Service Provider or cease to use a Cloud Service.

Purpose

The purpose of this requirement is to ensure your use of a Cloud Service for your ELN or to provision your ELN is subject to appropriate safeguards to protect Land Information, the integrity of the Titles Register and other information in the ELN.

Scope

This requirement applies to the operation of your ELN only.

Compliance

Your compliance with this requirement is to be part of your ISMS (refer Section 7).

Compliance Demonstration

You are to demonstrate your compliance with this requirement by providing your ISMS documentation, together with a certification of its being Fit for Purpose, to the Registrar prior to commencing operations and at any time that it is materially changed thereafter while you are approved as an ELNO.

You are also to provide the Registrar with certifications of your ISMS being unchanged and Fit for Purpose annually while you remain approved as an ELNO.

Pre-commencement Documentation

Prior to commencing operations, you are to provide the Registrar with:

- the documentation of your ISMS
- an Independent Certification that your ISMS documentation is Fit for Purpose.

Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with:

- a No-Change Certification that your ISMS, including its documentation, management and operation, is unchanged, and
- an Independent Certification that your ISMS is Fit for Purpose.

In the event that you are unable to provide a No-Change Certification, you are to submit revised documentation of your ISMS to the Registrar in the form of a marked up copy showing the changes, together with an Independent Certification of the revised

documentation, management and operation of your ISMS being Fit for Purpose and any Essential Recommendations of the Independent Expert.

8 Security and Integrity of Titles Register

Requirement

You have an obligation not to do anything that is likely to diminish the overall security and integrity of the Titles Register or public confidence in the Titles Register.

Purpose

The purpose of this requirement is to maintain public confidence in the Titles Register.

Scope

This requirement applies to you and the operation of your ELN only.

Compliance

It is expected that you will have:

- an effective Compliance Management System in place for other key requirements in the Operating Requirements, such as but not limited to:
 - (a) having adequate information security, risk management and business continuity arrangements in place
 - (b) satisfying the minimum Performance Levels required
 - (c) creating no greater risk of error or fraud in transactions than exists in the paper system
 - (d) verifying your Subscribers' compliance with their insurance requirements
 - (e) having sufficient financial, technical and organisational resources available
 - (f) being of good corporate character and reputation
- a policy on making public statements and comments on property conveyancing and related matters that complies with the requirement.

It is expected that your policy on public statements and comments will ensure you, including your principals, directors, officers, employees, agents and contractors, make no public statements that may negatively impact on public confidence in the Titles Register or the property conveyancing process, either paper or electronic, in any State or Territory.

Compliance Demonstration

You are to provide the Registrar with a certification annually, and within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO, that you have

an effective program in place to comply with the requirement and have done nothing to diminish public confidence in the Titles Register.

Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a Self-Certification that you have an effective program in place to ensure your compliance with this requirement and have done nothing to diminish public confidence in the Titles Register.

To support each certification, it is expected that you will maintain comprehensive Records of:

- your compliance controls directed at maintaining public confidence in the Titles Register
- your policy on making public statements and comments on property conveyancing and related matters in all forms of media, including social media
- total instances of your public statements and comments on property conveyancing and related matters during the period
- nature, rationale and audience for each of your public statements and comments on property conveyancing and related matters during the period
- nature and source of any adverse reactions to your public statements and comments on property conveyancing and related matters during the period
- remedial actions taken, if any, to each adverse reaction to a public statement or comment on property conveyancing and related matters during the period
- changes made, if any, to your compliance controls to address instances of non-compliance during the period and new compliance risks identified.

In the event that you cannot provide such a certification, you are to provide an explanation of when you will be able to provide such a certification and what actions you need to take to achieve the compliance required.

9 Risk Management

9.1 Mitigate Risk

Requirement

You have an obligation to establish, implement, operate, monitor, review, maintain and keep current a documented Risk Management Framework (RMF) to enable the identification and mitigation of risks in the operation of your ELN.

Purpose

The purpose of the requirement is to ensure that all foreseeable risks in the operation of your ELN are identified, assessed and mitigated.

Scope

This requirement applies to the operation of your ELN only.

Compliance

Your RMF is to be an active means for your effective ongoing management of risk in the completion of Conveyancing Transactions using your ELN through:

- regular risk assessments and re-assessments
- comprehensive and measurable risk mitigation treatments and programs, and
- ongoing monitoring and reporting on potential and actual risk incidents and outcomes.

Your RMF is to be fully documented and is to comply, as a minimum, with AS31000:2018 having regard to the circumstances and environment of your ELN.

Specific Inclusions

Your RMF is to have particular regard for at least the risks associated with:

- business continuity and sustainability
- service availability and performance
- system malfunction
- employee error, fraud and sabotage
- contractor liability
- User error, fraud and sabotage

- external intrusion.

Your RMF is also to specifically address the comparative risk of using your ELN to complete Conveyancing Transactions to that of using the alternative paper system.

Your RMF is to be fully documented and that documentation is to be kept up to date so that it can be reviewed and certified:

- prior to your commencing operations, by an Independent Expert as a competent plan for a complying, relevant and adequate RMF that is Fit for Purpose
- annually thereafter while you remain approved as an ELNO, by you and an Independent Expert, as Fit for Purpose.

In each instance of review and certification of your RMF by an Independent Expert, any Essential Recommendations of that Independent Expert are expected to be promptly implemented.

Compliance Demonstration

You are to provide the Registrar with:

- the documentation of your RMF prior to commencing operations together with a certification of its being Fit for Purpose
- certifications annually while you remain approved as an ELNO of your RMF being Fit for Purpose and that using your ELN does not constitute any greater risk to the completion of Conveyancing Transactions than the alternative paper system.

You are also to be able to demonstrate your compliance with the requirement within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO.

Pre-commencement Documentation

Prior to commencing operations, you are to provide the Registrar with:

- the documentation of your RMF, including your Risk Assessment and Risk Treatment Plan
- an Independent Certification and Independent Expert's review report on the compliance and adequacy of your RMF documentation as Fit for Purpose.

Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with:

- a No-Change Certification that your RMF, as documented, operated and managed, remains unchanged and suitable for the intended use
- a Self-Certification that use of your ELN to complete Conveyancing Transactions involves no greater risk of error or fraud than use of the alternative paper system
- an Independent Certification and Independent Expert's review report on your RMF as documented, operated and managed being Fit for Purpose in the circumstances of your ELN.

In the event that you are unable to provide a certification that your RMF remains unchanged and suitable for the intended use, you are to submit revised documentation of your RMF to the Registrar in the form of a marked up copy showing the changes, in conjunction with an Independent Certification of, and Independent Expert's review report and recommendations on, the revised documentation being Fit for Purpose.

Independent Certifications

Your RMF is to be reviewed and certified prior to your commencing operations and annually thereafter while you remain approved as an ELNO by an approved Independent Expert. This is to ensure your RMF is and remains Fit for Purpose.

It is expected that the Independent Expert conducting the review will:

- assess your documentation for completeness, currency, relevance, integrity and quality
- assess the content of your documentation for compliance with AS31000:2018
- assess your RMF as documented against similar systems in comparable situations
- assess the likelihood that your RMF will ensure that use of your ELN will create no greater risk of error or fraud than use of the alternative paper system for Lodgment of Conveyancing Transactions with the Registrar
- make any Essential and Desirable Recommendations as a result of these assessments
- provide an Independent Certification as to your RMF, as documented, being Fit for Purpose in the circumstances of your ELN.

Additionally, once you have commenced operations, the Independent Expert will be expected to:

- assess the operation and management of your RMF against your documentation of it
- assess the awareness, knowledge and understanding of your principals, directors, agents, employees and contractors of your RMF and their respective responsibilities in it
- assess the effectiveness of your RMF in practice by reference to compliance failures, incident statistics, performance measures and available industry benchmarks
- consult with key affected, relying and co-regulatory parties on the suitability of your RMF and each of its key characteristics and implementation features
- provide an Independent Certification as to your RMF, as documented, operated and managed, being Fit for Purpose in the circumstances of your ELN.

The Independent Expert will be expected to review their findings and recommendations with you and with your key affected, relying and co-regulatory parties before finalisation of its report, certification and any recommendations.

9.2 No Increased Risk of Fraud or Error

Requirement

You have an obligation to use reasonable endeavours to ensure that use of your ELN does not result in a greater risk of fraud or error in completing transactions compared to the risk of fraud or error in the alternative paper system.

Purpose

The purpose of this requirement is to ensure confidence in the use of your ELN and the integrity of the Titles Register.

Scope

This requirement applies to the operation of your ELN only.

Compliance

It is expected that:

- the Risk Assessment in your RMF will include a comparative assessment of the residual risks of using your ELN and of the risks of using the alternative paper system
- the Risk Treatment Plan in your RMF will ensure the residual risks of using your ELN are no greater than the risks of using the alternative paper system.

Compliance Demonstration

You are to provide a certification to the Registrar annually while you remain approved as an ELNO.

Annual Documentation

You are to include in each Annual Report to the Registrar a Self-Certification that use of your ELN involves no greater risk of error or fraud than use of the alternative paper system. In the event that no identified or unexpected risk events occurred during the period, you may give the Registrar a No-Change Certification.

To support this certification in each Annual Report to the Registrar, it is expected that you will be able to provide the Registrar, within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO, details of:

- all current risks identified and being managed by appropriate mitigation treatments in your RMF
- the incidence of identified risk events, if any, occurring during the period including descriptions of each risk event and the measures taken to deal with it
- the incidence of unexpected risk events, if any, occurring during the period including descriptions of each risk event and the measures taken to deal with it
- an analysis of whether each identified and unexpected risk event occurring during the period was peculiar to your ELN environment or could also have occurred in the paper system
- your comparative assessment of the risk of error or fraud in using your ELN to that of the alternative paper system.

10 Minimum System Requirements

Requirement

You have an obligation to ensure that your ELN meets minimum requirements determined by the Registrar.

Purpose

The purpose of this requirement is to ensure your ELN offers a minimum level of service to industry and government.

Scope

This requirement applies to the operation of your ELN only.

Compliance

You are to provision your ELN with the Registrar's minimum system requirements with regard to:

- functionality provided to your Subscribers and the Registrar (refer Section 10.1(a))
- design and provisioning for adaptability to changed requirements (refer Section 10.1(b))
- Data Standard used for communications with Land Registry Systems (refer Section 10.3)
- Business Rules applied in the preparation of transactions (refer Section 10.4)
- integrity assessment services made available to your Subscribers (refer Section 10.5)
- electronic Registry Instrument or other electronic Document and data unsigning capabilities available to your Subscribers (refer Section 10.6)
- templates used to create documents (refer Section 10.7)
- presentations for Lodgment only after settlement becomes irrevocable (refer Section 10.8)
- presentations for Lodgment only after Duty has been assessed and paid or an irrevocable commitment to pay has been made (refer Section 10.9)
- presentations for Lodgment only after applicable Land Registry Fees have been collected or an irrevocable commitment to pay has been made (refer Section 10.10)
- any other requirement determined by the Registrar and advised to you from time to time.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO.

10.1 Functionality

10.1(a) Functionality for Subscribers and the Registrar

Requirement

You have an obligation to ensure that your ELN provides sufficient functionality to enable:

- your Subscribers to comply with the ECNL, Land Titles Legislation and the Participation Rules, and
- the Registrar to comply with relevant legislative obligations and policy requirements.

Purpose

The purpose of this requirement is to ensure your Subscribers and the Registrar are not constrained in meeting their legal obligations by the functionality of your ELN.

Scope

This requirement applies to the operation of your ELN only.

Compliance

You are to provision your ELN with all of the functionality justifiably required by Subscribers and the Registrar to meet their legal obligations. It is expected that before you apply for Approval as an ELNO and before you commence building your ELN, you will have conducted an assessment of the functionality required to enable:

- your Subscribers to comply with the ECNL, Land Titles Legislation and the Participation Rules, and
- the Registrar to comply with relevant legislative obligations and policy requirements.

Compliance Demonstration

You are to provide an application document to the Registrar when applying for Approval as an ELNO.

Your compliance with this requirement is to be demonstrated within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO.

Application Documentation

When applying for Approval as an ELNO you are to provide the Registrar with an application document which complies with any published requirements of the Registrar and demonstrates your functionality meets the requirements.

10.1(b)ELN Design and Provisioning

Requirement

You have an obligation to ensure that your ELN is soundly designed and provisioned.

Purpose

The purpose of this requirement is to ensure your ELN is able to be readily maintained and enhanced to meet the future functionality requirements of Subscribers and the Registrar.

Scope

This requirement applies to the operation of your ELN only.

Compliance

You are to design, provision and maintain your ELN to comply with contemporary expectations of:

- being reliable, scalable and flexible
- utilising only software fully supported by its provider
- being architecturally sound with industry standard code design
- being compliant with industry standards for usability and accessibility.

In these regards, AS25010:2013 provides relevant guidance.

Compliance Demonstration

You are to provide the Registrar with certifications prior to commencing operations, and thereafter annually while you remain approved as an ELNO, that your ELN complies with contemporary expectations of sound design and provisioning.

Pre-commencement Documentation

Prior to commencing operations, you are to provide the Registrar with an Independent Certification and Independent Expert review report on your ELN's compliance with sound design and provisioning principles.

Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a No-Change Certification that your design and provisioning benchmarks and performance remain unchanged. If in any material respect they have changed, you are to provide an explanation of where they have changed together with a new Independent Certification and Independent Expert review report on the continuing compliance of your arrangements with this requirement.

Thereafter, while your most recent Independent Certification and Independent Expert review report remain relevant and your design and provisioning benchmarks remain unchanged, you are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a No-Change Certification.

Independent Certifications

It is expected that the Independent Expert conducting the review for you will:

- assess your design and provisioning benchmarks and practices for completeness, currency, relevance, integrity and quality
- assess your design and provisioning benchmarks and practices against similar performance measures in comparable circumstances
- assess the flexibility of your design, including its ability to be easily adapted to enable the Lodging of Registry Instruments and other Documents in electronic form in all Jurisdictions
- assess the awareness, knowledge and understanding of your principals, directors, agents, employees and contractors of your design and provisioning benchmarks and practices
- assess the effectiveness of your design and provisioning benchmarks and practices by reference to compliance failures, incident statistics, performance measures, test exercises and CMPs prepared in accordance with your CMF
- consult with key affected and relying parties on the suitability of your design and provisioning benchmarks and practices
- make any Essential and Desirable Recommendations as a result of these assessments
- provide an opinion as to the adequacy of your design and provisioning benchmarks and performance in the circumstances of your ELN.

The Independent Expert will be expected to review its findings and recommendations with you and with your key affected and relying parties before finalising its certification, report and any recommendations.

10.3 Data Standard

Requirement

You have an obligation to:

- have a robust means of implementing the Registrar's Data Standard, including maintaining version control and managing backward compatibility as the standard evolves over time
- use the Data Standard for exchanging messages with the Land Registry electronically, including presenting electronic Registry Instruments and other electronic Documents and data to the Registrar for Lodgment.

Purpose

The purpose of this requirement is to ensure the Registrar can readily process electronic Registry Instruments and other electronic Documents, data and messages received from your ELN.

Scope

This requirement applies to the operation of your ELN only.

Compliance

You are to have proven processes and procedures in place for:

- implementing the Registrar's Data Standard for electronic messaging with Land Registries
- maintaining version control over the Data Standard's use by Land Registries
- managing backward compatibility of the Data Standard's use by Land Registries.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO.

10.4 Apply Registrar's Business Rules

Requirement

You have an obligation to apply the Registrar's Business Rules to electronic Registry Instruments and other electronic Documents and data intended for presentation to the Registrar for Lodgment and to have an orderly means of implementing and testing the rules.

Purpose

The purpose of this requirement is to ensure confidence in the use of your ELN to present electronic Registry Instruments and other electronic Documents and data to the Registrar for Lodgment.

Scope

This requirement applies to the operation of your ELN only.

Compliance

It is expected that you will have documented processes and procedures in place for:

- receiving Business Rules and rule amendments from the Registrar
- implementing the Registrar's Business Rules and rule amendments in your ELN
- testing the effectiveness of your implementation of the Registrar's Business Rules and rule amendments.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO.

10.5 Services to Enable Assessment of Integrity

Requirement

You have an obligation to make services available to your Subscribers that assist them in assuring the integrity of their Conveyancing Transactions completed using your ELN, including determination of the fees payable to the Registrar for Lodgment.

Purpose

The purpose of this requirement is to ensure that Subscribers can have confidence in the transactions completed using your ELN.

Scope

This requirement applies to the operation of your ELN only.

Compliance

It is expected you will have arrangements in place to monitor the use and non-use of your ELN and to identify and implement enhancements to these services that will assist your Subscribers in assuring the integrity of their Conveyancing Transactions completed using your ELN.

As a minimum, your arrangements are to include services for:

- Land Title Reference Verification (verifying that a land title reference is valid and suitable for electronic conveyancing)
- Registry Information Supply (obtaining details of a land title for use in preparing documents and data for Lodgment)
- Lodgment Verification (verifying that electronic Registry Instruments and other electronic Documents and data are acceptable for Lodgment)
- Title Activity Check (checking whether there has been any recent activity on a land title), and
- determining Lodgment Fees payable.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO.

10.6 Ability to Unsign Digitally Signed Documents

Requirement

You have an obligation to enable your Subscribers to unsign any electronic Registry Instruments, other electronic Documents or data they have Digitally Signed using your ELN up until the time the Electronic Workspace for the Conveyancing Transaction is locked when the process of settlement and/or Lodgment of the transaction begins.

Purpose

The purpose of this requirement is to ensure confidence in the use of your ELN to prepare and sign documents.

Scope

This requirement applies to the operation of your ELN only.

Compliance

It is expected you will include a readily-identifiable and conveniently-actionable means of unsigning electronic Registry Instruments, other electronic Documents and data in your ELN that is available to Subscribers and their Users where the Registry Instrument or Document needs to be changed or not proceed to Lodgment.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO.

10.7 Document Templates

Requirement

You have an obligation to ensure that the correct document template supplied and determined by the Registrar is used by Subscribers when preparing electronic Registry Instruments and other electronic Documents using your ELN.

Purpose

The purpose of this requirement is to ensure confidence in the use of your ELN to prepare electronic Registry Instruments and other electronic Documents acceptable to the Registrar.

Scope

This requirement applies to the operation of your ELN only.

Compliance

It is expected you will have arrangements in place for receiving, testing and commissioning document templates provided to you by the Registrar, including reliable means of managing multiple template versions and applying template versions according to specific start and end dates determined by the Registrar.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO.

10.8 Presentation Following Completion of Financial Settlement

Requirement

You have an obligation to ensure that no electronic Registry Instrument or other electronic Document forming part of a transaction involving financial settlement is presented to the Registrar for Lodgment unless the settlement is irrevocable.

Purpose

The purpose of this requirement is to ensure only completed Conveyancing Transactions are presented to the Registrar for Lodgment.

Scope

This requirement applies to the operation of your ELN only.

Compliance

It is expected that you will have sufficient controls included in your ELN to prevent the presentation to the Registrar for Lodgment of any electronic Registry Instrument, other electronic Document or data forming part of a Settlement Transaction while there is any uncertainty as to whether the settlement has been or will be completed.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO.

10.9 Presentation Following Duty Payment or Commitment

Requirement

You have an obligation to ensure that no electronic Registry Instrument, other electronic Document or data is presented to the Registrar for Lodgment unless it has been assessed for Duty and, where applicable, the Duty has been paid or an irrevocable commitment to pay the Duty has been obtained from or on behalf of the Party liable for the Duty.

Purpose

The purpose of this requirement is to ensure that no dutiable electronic Registry Instrument, other electronic Document or data is presented to the Registrar for Lodgment without certainty that the Duty has or will be paid.

Scope

This requirement applies to the operation of your ELN only.

Compliance

It is expected that you will have sufficient controls included in your ELN to prevent the presentation to the Registrar for Lodgment of any electronic Registry Instrument, other electronic Document or data on which Duty is payable unless the Duty has been paid or an irrevocable commitment to pay the Duty has been obtained from or on behalf of the Party liable for the Duty.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO.

10.10 Land Registry Fees

Requirement

You have obligations to:

- ensure that no electronic Registry Instrument, other electronic Document or data is presented to the Registrar for Lodgment unless the fees payable for Lodgment have been collected by you or an irrevocable commitment to pay you has been obtained from or on behalf of the Party liable for the fees
- pay or remit to the Registrar all fees payable or collected in the manner determined by the Registrar
- provide all information required by the Registrar for the identification and reconciliation of all fees paid or remitted.

Purpose

The purpose of this requirement is to ensure the Registrar receives all fees due for the services provided to your ELN.

Scope

This requirement applies to the operation of your ELN only.

Compliance

It is expected you will have appropriate arrangements including controls in place to ensure that:

- no Registry Instrument is presented to the Registrar for Lodgment unless the Lodgment Fee has been collected or you have obtained an irrevocable commitment to pay the fee from or on behalf of the Party liable for the fee
- all Lodgment Fees collected and all Information Fees payable are remitted or paid to the Registrar
- all information required by the Registrar to identify and reconcile all fees paid, remitted and payable are provided to the Registrar.

An irrevocable commitment to pay Lodgment Fees may, for example, be obtained in the Participation Agreement each Subscriber enters into with you.

The collection of Lodgment Fees on behalf of, and their remittance to, the Registrar is to be in accordance with the provisions in your Operating Agreement or in the case of NSW, the conditions attached to your Approval, if any.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO.

11 Minimum Performance Levels

Requirement

You have an obligation to ensure your ELNO System achieves and maintains the Performance Levels.

Purpose

The purpose of this requirement is to ensure your Subscribers receive a minimum level of service.

Scope

This requirement applies to you and to the operation of your ELNO System, including your ELN.

Specific Inclusions

You are required to achieve, as a minimum, the Performance Levels set out in Schedule 2 of the Operating Requirements. These Performance Levels include specific measures of:

- Service Availability
- Service Reliability
- System Responsiveness
- System Resilience
- Incident Resolution
- Problem Identification.

Interpretation of Performance Level Measures

The Performance Levels set out in Schedule 2 of the Operating Requirements are to be interpreted as follows:

- **Service Availability** is a measure of the time your ELNO System is available to your Subscribers during the time you are required to have it available for the month. It is expressed as a percentage of the time required to be available during the month.

Your Service Availability requirement is 24 hours a day, 7 days a week, 52 weeks of the year exclusive of Scheduled Maintenance periods which can only be in Non-Core

Hours. Scheduled Maintenance is system maintenance activity of which system users are given reasonable notice in advance.

When every Scheduled Maintenance period during a month is completed on time or earlier, your Service Availability performance is 100%.

However, when Scheduled Maintenance periods during Non-Core Hours run over time, Service Availability is reduced by the total amount of over-run time. For example, in a month consisting of 31 days (=44640 minutes), a total over-run time of Scheduled Maintenance periods of 65 minutes during the month would reduce your Service Availability performance to 99.85% $(=(44640-65=44575)/44640=99.85\%)$.

It is expected that your reporting on this performance measure will be accompanied by details of your:

- (a) Scheduled Maintenance periods completed on time
- (b) individual and accumulated over-run time on Scheduled Maintenance periods.

Note: Emergency maintenance and other unplanned service disruptions at any time do not affect your Service Availability performance. They affect your Service Reliability performance (see below).

- **Service Reliability** is a measure of the time your ELNO System can be used by your Subscribers during the time it is available during the month. It is expressed as a percentage of the time during the month it would have been available in the absence of unplanned service disruptions.

Your Service Reliability requirement is not less than 99.8% during Core Hours and not less than 99% during Non-Core Hours.

When you have no unplanned service disruptions during a month, your Service Reliability performance is 100%.

Your Service Reliability performance in both Core and Non-Core Hours is reduced by the accumulated duration of your unplanned service disruptions in the respective period. For example, an automatic restart disruption lasting 10 minutes during Core Hours in a month with 20 Business Days $(=20 \times 16 \times 60 = 19200 \text{ minutes})$ would reduce your Core Hours Service Reliability to 99.95% $(=(19200-10=19190)/19200=99.95\%)$. An emergency maintenance period of 60 minutes during Core Hours in the same

month would reduce your Core Hours Service Reliability performance to 99.63% $(=(19200-10-60)/19200=99.63\%)$.

It is expected that you will separately report your Core Hours and your Non-Core Hours Service Reliability performance each month. It is also expected that your reporting on this performance measure, during both Core and Non-Core Hours, will be accompanied by details for each of your:

- (a) emergency maintenance periods (eg date, time, duration and purpose)
- (b) other unplanned service disruptions by type (eg automatic restarts, software errors, equipment failures, disaster recoveries, etc)
- (c) accumulated durations for each type of service disruption.

Note: All maintenance carried out during Core Hours is emergency maintenance affecting your Service Reliability performance. Scheduled Maintenance is not permitted during Core Hours.

- **System Responsiveness** is a measure of the time taken by your ELNO System to respond to a user-initiated request. It is exclusive of the time taken by external communications and external systems necessary to satisfy the request. It is expressed in seconds of time on average over a month.

Your Service Responsiveness requirement is less than 3 seconds under all reasonably expected load conditions.

It is expected that your reporting on this performance measure will include:

- (a) the nature of the user-initiated request on which your performance is measured
 - (b) the average load conditions under which your performance is measured
 - (c) the manner in which your performance is measured.
- **System Resilience** is a measure of your ELNO System's vulnerability to repeated service disruptions from the same cause. It is expressed as the number of repeat service disruptions from the same cause in the preceding six months.

Your System Resilience requirement is less than two. In the event that you experience multiple service disruptions from more than one cause during the six months, your System Resilience performance is expected to be reported for each separate cause.

It is expected that your reporting on this performance measure will include:

- (a) the causes of each service disruption during the month
- (b) the actions taken to address the cause of each service disruption during the month
- (c) the number of service disruptions for each cause during the preceding six months
- (d) the accumulated service disruption time for each cause during the preceding six months.

- **Incident Resolution** is a measure of your ELNO System's recovery time from a service disruption. It is expressed in hours or minutes of time from the incident's inception.

Your Incident Resolution requirement is within 4 hours for disaster recovery situations and within 40 minutes for all other situations such as automatic restarts, software errors or equipment failures.

It is expected that your reporting on this performance measure will include your:

- (a) time taken to resolve each disaster recovery situation
- (b) time taken to resolve each non-disaster recovery situation.

- **Problem Identification** is a measure of your ability to identify the root cause of each service disruption experienced by your ELNO System. It is expressed in days, hours and minutes of time from your system's recovery from the service disruption.

Your Problem Identification requirement is within 3 Business Days.

It is expected that your reporting on this performance measure will include:

- (a) the nature of each service disruption during the period
- (b) the identified root cause of each service disruption
- (c) the time at which full recovery from the service disruption was achieved
- (d) the time at which the root cause of the service disruption was identified
- (e) the time taken to identify the root cause of each service disruption.

Note: A root cause is to be reported for each service disruption affecting your Service Reliability performance. Emergency maintenance is a service disruption requiring the identification and reporting of a root cause.

Compliance

It is expected that your ELNO System will meet or exceed the Performance Levels at all times and that you will have sufficient means of monitoring and documenting your performance to demonstrate your compliance with the Performance Levels.

Compliance Demonstration

You are to publish Records of your ELNO System's performance in your Monthly Report and provide the Registrar annually while you remain approved as an ELNO with a certification that you have complied with the Performance Levels for the period.

Monthly Documentation

Your Monthly Report is to include, as a minimum, the performance of your ELNO System for the preceding month against the minimum level required for each Performance Level set out in Schedule 2 of the Operating Requirements. You may also include reporting on additional performance measures in the Report.

It is also expected that you will maintain and publish historical performance statistics that will enable identification of trends in performance over at least the previous twelve (12) months as an indication of your ELNO System's likely future performance.

Your Monthly Reports are expected to be sufficiently detailed and self-explanatory to enable ready assessment of you and your ELNO System's performance over the preceding month and year.

Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a Self-Certification of your and your ELNO System's having complied with the Performance Levels for the period.

It is expected you will base your Self-Certifications of compliance each year on detailed Records of performance against each of the six Performance Levels in Schedule 2 of the Operating Requirements.

In the event you cannot provide a Self-Certification of compliance in your Annual Report to the Registrar, it is expected you will provide an explanation of the cause of the non-compliance and a description of the remedial actions you have taken.

12 Business Continuity and Disaster Recovery Management

12.1 Business Continuity and Disaster Recovery Management Program

Requirement

You have an obligation to establish, implement, operate, monitor, review, maintain, test and keep current a documented, detailed and comprehensive Business Continuity and Disaster Recovery Management Program (BCDRMP).

Purpose

The purpose of the requirement is to ensure you can continue to operate your ELN with the minimum of service disruption to your Subscribers and the Registrar.

Scope

This requirement applies to the operation of your ELN only.

Compliance

It is expected that your BCDRMP will be fully documented and include at least:

- identification and risk rating of all foreseeable disaster and business and service interruption scenarios
- development of appropriate risk mitigation measures, including essential system design features, for each foreseeable disaster and business and service interruption scenario
- consultation with key affected, relying and co-regulatory parties on acceptable degraded service standards and scenarios
- determination of essential system design and operation features and characteristics
- provisioning of back-up facilities, for regular and emergency use
- specification and programming of essential maintenance activities
- documentation of disaster recovery event invocation, communication and management protocols
- specific provisions for achieving the Performance Levels in Schedule 2 of the Operating Requirements
- planning, conduct and evaluation of regular test event exercises
- incorporation of lessons learned from each test event exercise.

AS5050:2010 provides general guidance and ISO24762:2008 (noting withdrawn status) provides specific guidance on the development, documentation and operation of an effective BCDRMP. Your BCDRMP is to comply with these standards having regard for the particular circumstances of your ELN.

Compliance Demonstration

You are to provide your BCDRMP documentation to the Registrar prior to commencing operations with a certification of its being Fit for Purpose. Annually thereafter while you are approved as an ELNO you are to provide the Registrar with a certification that your BCDRMP, as documented, implemented and managed, is Fit for Purpose.

Pre-commencement Documentation

Prior to commencing operations, you are to provide the Registrar with:

- your BCDRMP documentation
- an Independent Certification and Independent Expert review report on your BCDRMP documentation being Fit for Purpose.

Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with:

- a No-Change Certification that your BCDRMP, as documented, implemented and managed, remains unchanged and Fit for Purpose
- an Independent Certification and Independent Expert review report on your BCDRMP as documented, implemented and managed being Fit for Purpose.

In the event that you are unable to provide a No-Change Certification that your BCDRMP remains unchanged and Fit for Purpose, you are to provide revised documentation of your BCDRMP to the Registrar in the form of a marked up copy showing the changes, in conjunction with the Independent Certification, Independent Expert review report and recommendations of your BCDRMP, as currently documented, implemented and managed, being Fit for Purpose.

Independent Certifications

Your BCDRMP documentation is to be reviewed and certified prior to your commencing operations and your BCDRMP, as documented, implemented and managed, is to be certified

annually thereafter while you remain approved as an ELNO by an Independent Expert. This is to ensure your BCDRMP is and remains Fit for Purpose.

It is expected that the Independent Expert conducting the review of your BCDRMP documentation prior to your commencing operations will:

- assess your BCDRMP documentation for completeness, currency, relevance, integrity and quality
- assess the content of your BCDRMP documentation for compliance with relevant industry standards
- assess your BCDRMP as documented against similar programs in comparable situations
- make any Essential and Desirable Recommendations as a result of these assessments
- provide an Independent Certification as to your BCDRMP, as documented being Fit for Purpose in the circumstances of your ELN.

Additionally, once you have commenced operations, the Independent Expert will be expected to:

- assess the implementation and operation of your BCDRMP against your documentation
- assess the awareness, knowledge and understanding of your principals, directors, agents, employees and contractors of your BCDRMP and their respective responsibilities in it
- assess the effectiveness of your BCDRMP in practice by reference to compliance failures, incident statistics, performance measures, test exercises and available industry benchmarks
- consult with key affected, relying and co-regulatory parties on the suitability of your BCDRMP and each of its key characteristics and implementation features
- provide an Independent Certification as to your BCDRMP, as documented, implemented and managed, being Fit for Purpose in the circumstances of your ELN.

The Independent Expert will be expected to review its findings and recommendations with you and with key affected, relying and co-regulatory parties before finalisation of its report, certification and any recommendations.

12.2 Review

Requirement

You have an obligation to have your Business Continuity and Disaster Recovery Management Program (BCDRMP) regularly reviewed by an Independent Expert. You also have an obligation to implement any Essential Recommendations made by the Independent Expert as a result of such a review.

Purpose

The purpose of this requirement is to ensure your BCDRMP remains Fit for Purpose.

Scope

This requirement applies to the operation of your ELN only.

Compliance

You are to provide the Registrar annually with an Independent Expert report and certification that your BCDRMP is Fit for Purpose.

It is expected that the Independent Expert conducting the review will at least:

- assess the quality, appropriateness and extent of your BCDRMP documentation
- assess the quality and extent of your implementation of your BCDRMP
- assess your Records of test exercises and real invocations of your BCDRMP during the period
- research and assess contemporary best practice in BCDRMP documentation and implementation
- review and assess the development of Australian and International Standards for BCDRMP
- consult with you and with key affected, relying and co-regulatory parties on relevant issues to do with your BCDRMP
- make appropriate Essential and Desirable Recommendations for enhancing the compliance and effectiveness of your BCDRMP
- present you with a written report setting out all findings, conclusions and recommendations from the review

- provide an Independent Certification and Independent Expert's review report of your BCDRMP, as documented, implemented and managed, being Fit for Purpose in the circumstances of your ELN.

Compliance Demonstration

Your compliance with this requirements is to be demonstrated in each Annual Report or within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO..

13 Change Management

13.1 Change Management Framework

Requirement

You have an obligation to establish, implement, operate, monitor, review, maintain and keep current a documented, detailed and comprehensive Change Management Framework (CMF).

Purpose

The purpose of the requirement is to ensure that changes made to your ELNO System and procedures are planned and implemented in an orderly manner.

Scope

This requirement applies to the operation of your ELNO System, including your ELN.

Compliance

Your CMF is to be a comprehensive, documented framework of policies, practices and procedures from which specific Change Management Plans (CMPs) can be readily prepared for making specific system, procedural and service changes relevant to:

- your obligations under the Operating Requirements
- the use of your ELNO System by your Subscribers
- the operation of your ELNO System, including your ELN.

Your CMF is to be used as the consistent and comprehensive basis for your preparation of a situation-specific CMP in each instance of a:

- system or software release
- functionality or service change
- significant maintenance activity.

In each instance, your CMF is to provide a framework for addressing the particular context, characteristics, requirements and implications of the proposed change to ensure effective planning, management and control of all of the actions required by all parties irrespective of the reason for or source of the change.

Your CMF is to cover both changes initiated by the Registrar and changes initiated by you or other relying parties in response to demands from your Subscribers or market conditions. In this regard, your CMF is expected to provide for at least:

- new system and software module releases
- changes to service infrastructure
- changes to Data Standards and communications protocols
- changes to data requirements, document templates and/or transaction assurance services
- changes requested by the Registrar in response to legislative obligations and notified policy requirements
- changes arising from legislative change generally
- changes delivering functionality and service enhancements to Subscribers and their Users
- changes arising in relation to system maintenance activities
- emergency changes responding to specific incidents such as a security breach
- changes required to implement a direction of the Registrar under the Operating Requirements or in all Jurisdictions other than NSW, your Operating Agreement with the Registrar and in NSW, the conditions attached to your Approval, if any.

The preparation of each situation-specific CMP consistent with your CMF is to involve all affected and relying parties collaboratively in assessing impacts, Costs, risks and tasks to be completed. In this regard, it is expected that your CMF will make provision for each CMP to include at least:

- notice to all affected and relying parties of the proposed change providing details of:
 - (a) the reason for the change and its significance to all parties
 - (b) the tasks expected to be required to effect the proposed change including comprehensive testing and certification of correct operation
 - (c) the risks associated with the proposed change and how they are to be mitigated and/or allocated
 - (d) alternative strategies for mitigating risks associated with the proposed change
 - (e) Costs and fees associated with the proposed change and who is to bear them
 - (f) a preliminary schedule for implementing the proposed change
 - (g) a timetable for agreeing a final version of the CMP to be implemented
- a mechanism for all affected and relying parties to agree matters related to the proposed change

- thorough testing of the change to the satisfaction of all affected and relying parties before implementation and commissioning
- reasonable notice to all affected and relying parties of when the change is to be implemented and commissioned
- implementation and commissioning of the change in a manner that minimises disruption to all affected and relying parties and interference with any systems connected to your ELNO System for the purposes of carrying out Conveyancing Transactions.

In the definition and documentation of your CMF, ISO20000.3:2014 provides relevant guidance.

Specific Inclusions

Your CMF is expected to specifically provide standard and proven methodologies for:

- assessing the business impacts of a proposed change and their significance
- assessing the Costs involved in a proposed change and how they will be funded
- assessing the risks involved in a proposed change and how they will be mitigated
- communicating and consulting with all affected and relying parties and key stakeholder groups about a proposed change
- agreeing the scope and content of a proposed change with all affected and relying parties and key stakeholder groups
- planning and documenting the steps necessary to implement, test and commission a proposed change.

Compliance Demonstration

Your CMF documentation is to be provided to the Registrar prior to commencing operations and, annually thereafter while you remain approved as an ELNO, you are to provide the Registrar with a certification or revised documentation.

Pre-commencement Documentation

Prior to commencing operations, you are to provide the Registrar with your CMF documentation.

Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a No-Change Certification that your CMF, as documented and implemented, is unchanged and remains suitable for the intended use.

To support your certification, it is expected that you will maintain Records of:

- the number, nature and content of all CMPs prepared in accordance with your CMF during the previous twelve (12) months
- the number, nature and content of any CMPs prepared at variance from your CMF during the previous twelve (12) months together with the reasons for each variation.

It is expected that you will be able to provide these Records within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO.

In the event that you are unable to provide a certification, you are to provide revised documentation of your CMF to the Registrar with details of:

- the nature and content of any material changes made to your CMF during the period
- the circumstances and rationale for each material change made to your CMF during the period
- any inadequacies identified in your CMF during the period and how each was addressed or is intended to be addressed
- your assessment of the general suitability of your CMF for the ongoing management of your obligations under the Operating Requirements.

13.2 No Changes other than in accordance with Change Management Framework

Requirement

You have an obligation not to make changes to your ELNO System unless they are made in accordance with a specific Change Management Plan (CMP) prepared in compliance with your Compliance Management Framework (CMF).

Purpose

The purpose of this requirement is to ensure that the only changes made to your ELNO System are in compliance with your CMF.

Scope

This requirement applies to the operation of your ELNO System, including your ELN.

Compliance

You are required to make all changes to your ELNO System, including significant maintenance, in accordance with a CMP complying with your CMF.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO.

14 Subscribers

14.1 Subscriber Registration

Requirement

You have an obligation to establish, implement, review and keep current a Subscriber Registration Process.

Purpose

The purpose of this requirement is to ensure that:

- only eligible Persons are registered and remain registered as Subscribers to your ELNO System, and
- only those Subscribers legally entitled to carry out conveyancing work represent transacting parties in using your ELNO System.

Scope

This requirement applies to the operation of your ELN only.

Compliance

Your SRP is expected to be a comprehensive, documented process that:

- covers the entire lifecycle of a Subscriber registration to use your ELN, from first applying to be registered as a Subscriber to after ceasing to be a Subscriber to your ELN
- is your principal tool for managing entitlement to use your ELN
- includes provisions for mitigating the risks of registering an ineligible Subscriber and in allowing an unentitled Subscriber to represent a transacting Party in using your ELN.

Your Subscriber Registration Process is to ensure you only register Subscribers to use your ELN that:

- satisfy the Subscriber Eligibility Criteria except where the Registrar has waived compliance with any Eligibility Criteria in accordance with section 27 of the ECNL
- have had their identity verified according to the Subscriber Identity Verification Standard in the Operating Requirements

- enter into a Participation Agreement with you that includes a commitment to comply with the Participation Rules
- are legally entitled, if necessary, to represent transacting parties in the jurisdiction where the land involved in the transaction is located.

Your Subscriber Registration Process is expected to provide for:

- publishing the processes for applying to be a Subscriber to your ELN and for your assessing those applications
- applying and recording each applicant's (and if necessary the Person representing them) compliance with the Subscriber Verification of Identity Standard set out in Schedule 7 of the Operating Requirements
- verifying the authority of an applicant (or of the Person representing the applicant) to sign your Participation Agreement
- verifying that the Person signing the Participation Agreement is the same Person whose identity and authority to sign has been verified
- applying the Eligibility Criteria for Subscribers set out in the Participation Rules
- creating and maintaining a register or registers of your Subscribers
- obtaining and verifying all data necessary to assess initial and ongoing compliance with the Eligibility Criteria for Subscribers set out in the Participation Rules
- receiving notifications from credentialing authorities, including legal and conveyancing profession regulators and statutory and market insurers, of non-renewals, suspensions or cancellations of required credentials
- making adequate training resources and information available to successful applicants
- implementing your Subscriber Review Process
- applying restriction, suspension or termination of your Subscriber registrations at the request of the Registrar or otherwise in accordance with the Participation Rules and notifying the Registrar accordingly
- permanently recording in your registers of Subscribers at least the following data items and documents:
 - (a) the application to be a Subscriber
 - (b) discrete data items contained in the application
 - (c) applicant's signature
 - (d) signed Participation Agreement
- applicant's identity documents sighted and verified in accordance with the Subscriber Identity Verification Standard in the Operating Requirements

- evidence of the applicant's identity and authority to sign the Participation Agreement where the applicant signs for the Subscriber
- applicant's eligibility credentials verified, including where necessary evidence of the insurance required to be held
- advices and notifications obtained from third parties as to the applicant's character and reputation
- notifications received from credentialing authorities
- current status of the Subscriber
- administrative actions taken affecting the Subscriber's registration status.

Specific Inclusions

Your Subscriber Registration Process is to specifically provide for:

- treating all applicants seeking to be registered as Subscribers to your ELN fairly and transparently
- maintaining a register of all of your Subscribers including those whose registration has expired or been restricted, suspended, terminated or re-instated, and when those events occurred
- offering successful applicants a Participation Agreement that does not in any way conflict with or adversely affect the Participation Rules
- making training resources and information available to successful applicants in how to use your ELN
- implementing your Subscriber Review Process assessing instances of Subscriber non-compliance or likely non-compliance with the Participation Rules, taking action as justified and notifying the Registrar of what has happened and why
- implementing directions from the Registrar to restrict, suspend or terminate a Subscriber's registration or use of your ELN
- including in your register of Subscribers reference to the Participation Agreement entered into with the Subscriber and any amendments made subsequently together with the dates of those events
- including in your register of Subscribers the details of each User entitled to use your ELN on behalf of the Subscriber
- complying with Privacy Laws on the collection, storage and use of Personal Information.

Compliance Demonstration

You are to provide your Subscriber Registration Process documentation to the Registrar prior to commencing operations and annually thereafter while you remain approved as an ELNO you are to provide the Registrar with a certification.

Pre-commencement Documentation

Prior to commencing operations, you are to provide your Subscriber Registration Process documentation to the Registrar.

Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a Self-Certification that your Subscriber Registration Process remains compliant with the Operating Requirements. It is expected that to provide this certification, you will make and retain comprehensive Records of:

- the number of Subscriber applications received during the period and the number and percentage approved
- the number of Subscriber applications rejected during the period and the reasons by category for the rejections
- the nature and content of any material changes made to your Subscriber Registration Process during the period
- the circumstances and rationale for each material change made to your Subscriber Registration Process during the period
- any inadequacies identified in your Subscriber Registration Process during the period and how each was addressed or is intended to be addressed
- your assessment of the general and continuing suitability of your Subscriber Registration Process for ongoing management of your obligations in regard to Subscriber registrations.

It is expected that you will be able to provide the Registrar with these Records in support of a certification within ten (10) Business Days of a request to do so.

14.2 Unreasonable Barriers or Refusal to Accept Subscriber

Requirement

You have obligations not to:

- impose any unreasonable barriers to applying to become a Subscriber to your ELN
- unreasonably refuse to accept any applicant to be a Subscriber to your ELN who is capable of meeting the Eligibility Criteria for Subscribers in the Participation Rules
- impose any unreasonable barriers on a Subscriber using your ELN.

Purpose

The purpose of this requirement is to maximise the use of your ELN.

Scope

This requirement applies to the operation of your ELN only.

Compliance

It is expected that your Subscriber Registration Process will include practices, procedures and controls directed at ensuring fair and transparent processes for receiving and assessing Subscriber applications and for providing access to your ELN, and that you will implement a comprehensive and contemporary customer satisfaction and complaints handling processes to continually monitor your compliance with this requirement. In this regard, ISO10002:2018 provides guidance on the establishment of such processes.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated in the documentation of your Subscriber Registration Process provided prior to your commencing operations and thereafter monthly in the publication of complaints received and annually in the certification provided while you remain approved as an ELNO.

Pre-commencement Documentation

Prior to commencing operations, you are to provide your Subscriber Registration Process documentation to the Registrar.

Monthly Documentation

Each month you are to publish in your Monthly Report the numbers of complaints you received in the prior period concerning refusal to register an applicant as a Subscriber or to provide a Subscriber access to your ELN in accordance with Category Four of Schedule 3 of the Operating Requirements.

Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a Self-Certification that your Subscriber Registration Process remains in compliance with the Operating Requirements.

To provide your certification it is expected that you will conduct a review of the relevant practices, procedures and controls in your Subscriber Registration Process and of the incidence of relevant complaints received during the period and be able to provide the documentation of your review within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO.

14.3 Maintain Subscriber and User Register

Requirement

You have an obligation to maintain a register of all Persons entitled to use your ELN, including those Persons whose registration has expired or been restricted, suspended, terminated or re-instated.

Purpose

The purpose of this requirement is to ensure confidence in the use of and reliance on your ELN.

Scope

This requirement applies to the operation of your ELN only.

Compliance

It is expected that your compliance with this requirement will be part of your Subscriber Registration Process.

Compliance Demonstration

Your Subscriber Registration Process documentation, including your processes for complying with this requirement, is to be provided to the Registrar prior to your commencing operations and annually thereafter while you remain approved as an ELNO you are to provide the Registrar with a certification.

Pre-commencement Documentation

Prior to commencing operations, you are to provide your Subscriber Registration Process documentation to the Registrar

Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a No-Change Certification that your Subscriber Registration Process including your processes and procedures for maintaining a register of all Persons entitled to use your ELN remain unchanged.

To provide your certification it is expected that you will conduct a review of the relevant practices, procedures and controls in your Subscriber Registration Process and be able to provide the documentation of your review within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO.

In the event that you are not able to provide a No-Change Certification, you are to provide revised documentation of your Subscriber Registration Process to the Registrar in the form of a marked up copy showing the changes.

14.4 Evidence of Subscriber Insurance and Verification of Identity

Requirement

You have an obligation to obtain and retain evidence:

- to confirm that each Subscriber meets the Insurance Rules except where the Registrar has waived compliance with any Insurance Rule in accordance with section 27 of the ECNL
- of your verification of the identity of each of your Subscribers or of the Person representing them and their authority to sign your Participation Agreement on the Subscriber's behalf.

Purpose

The purpose of this requirement is to ensure confidence in the use of and reliance on your ELN.

Scope

This requirement applies to the operation of your ELN only.

Compliance

It is expected that your processes for compliance with this requirement, including both verification of each Subscriber's identity, authority and insurance adequacy and ongoing monitoring of their continuing insurance adequacy, will be documented as part of your Subscriber Registration Process.

Compliance Demonstration

Your Subscriber Registration Process documentation, including your processes for complying with this requirement, is to be provided to the Registrar prior to your commencing operations and annually thereafter while you remain approved as an ELNO you are to provide the Registrar with a certification.

Pre-commencement Documentation

Prior to commencing operations, you are to provide your Subscriber Registration Process documentation to the Registrar.

Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a No-Change Certification that your processes for ensuring your Subscribers obtain and retain their required insurances and for your recording of evidence supporting your verification of the identity of your Subscribers or of the Person representing them and their authority to sign your Participation Agreement on the Subscriber's behalf remain unchanged.

To provide your certification it is expected that you will conduct a review of the relevant practices, procedures and controls in your Subscriber Registration Process and provide the documentation of your review within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO. In the event that you are not able to provide a No-Change Certification, you are to provide revised documentation of your Subscriber Registration Process in the form of a marked up copy showing the changes.

14.5 Participation Agreement and Participation Rules

Requirement

You have an obligation to ensure your Participation Agreement does not in any way conflict with the Participation Rules each of your Subscribers are required to comply with under the ECNL.

Purpose

The purpose of this requirement is to ensure confidence in the use of your ELN.

Scope

This requirement applies to the operation of your ELN only.

Compliance

Your Participation Agreement is not to contain any express or implied term that could qualify, derogate from or otherwise prejudicially affect any Subscriber obligation set out in the Participation Rules.

Compliance Demonstration

You are to provide your Participation Agreement to the Registrar prior to commencing operations and, annually thereafter while you remain approved as an ELNO, you are to provide a certification.

Pre-Commencement Documentation

You are to provide your Participation Agreement (or Agreements if you intend to use more than one) to the Registrar prior to commencing operations.

Annual Documentation

You are to provide the Registrar, as part of your Annual Report to the Registrar, with a No-Change Certification that your Participation Agreement or Agreements remain unchanged.

It is expected that to support your certification you will maintain a Record of the creation and amendment of your Participation Agreement or Agreements that can be provided to the Registrar within ten (10) Business Days of a request.

If you are not able to provide a No-Change Certification, you are to provide the Registrar with your revised Agreement or Agreements in the form of a marked up copy showing the changes.

14.6 Training

Requirement

You have an obligation to make adequate training resources and information available to your Subscribers, including their Users, in relation to their use of your ELN so that they can become proficient in its use.

Purpose

The purpose of this requirement is to ensure confidence in the use of and reliance on your ELN and to maximise its use.

Scope

This requirement applies to the operation of your ELN only.

Compliance

It is expected that your Subscriber Registration Process will include the training resources and information made available to your Subscribers and their Users and that you will implement a comprehensive and contemporary customer satisfaction and complaints handling processes to continually monitor your compliance with this requirement. In this regard, ISO10002:2018 provides guidance on the establishment of such processes.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated in the documentation of your SRP provided prior to your commencing operations and thereafter, monthly in the incidence of complaints received and annually in the certification of continuing compliance provided, while you remain approved as an ELNO.

Pre-commencement Documentation

Prior to commencing operations, you are to provide your Subscriber Registration Process documentation to the Registrar.

Monthly Documentation

Each month you are to publish in your Monthly Report the numbers of complaints you received in the prior period concerning the training resources and information made

available to Subscribers in accordance with Category Four of Schedule 3 of the Operating Requirements.

Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a Self-Certification that your Subscriber Registration Process, including the adequacy of the training resources and information made available to your Subscribers, remains in compliance with the Operating Requirements.

To provide this certification it is expected that you will have conducted a review of the training resources and information made available to your Subscribers and of the incidence of relevant complaints received during the period and be able to provide the documentation of your review within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO.

If you are not able to provide a No-Change Certification, you are to provide the Registrar with your revised Subscriber Registration Process documentation.

14.7 Review of Subscribers and suspension or termination

Requirement

You have an obligation to establish, implement, review and keep current a Subscriber Review Process for reviewing the compliance of Subscribers with the Participation Rules except where the Registrar has waived compliance with a Participation Rule in accordance with s.27 of the ECNL, and when necessary to notify the Registrar of any action you take to restrict, suspend, terminate (including when a Subscriber resigns) or reinstate access to your ELN.

Purpose

The purpose of this requirement is to ensure confidence in the use of your ELN.

Scope

This requirement applies to the operation of your ELN only.

Compliance

Your Subscriber Review Process is to be a comprehensive, implementable and robust documented process for reviewing the compliance of Subscribers with the Participation Rules, other than where the Registrar has waived compliance with any Participation Rule in accordance with section 27 of the ECNL or the Participation Rules for which certifications are given.

It is expected that your compliance with this requirement will otherwise be part of your Subscriber Registration Process. If your review your Subscribers indicates any actual or potential breach of the Participation Rules that constitute a Suspension or Termination Event, you are to assess whether any action is justified to restrict, suspend or terminate the Subscriber's registration or access to your ELN in accordance with your Subscriber Registration Process and if necessary take the action and Promptly notify the Registrar in writing.

When notifying the Registrar of a Subscriber's registration or access to your ELN having been restricted, suspended, terminated or reinstated, you are to advise the Registrar of the:

- legal name of the Subscriber
- details of the actual or potential Suspension or Termination Event

- reason for your belief that the relevant event has occurred or is likely to occur
- action you have taken or intend to take.

Specific Inclusions

Your Subscriber Review Process is expected to include, as a minimum a comprehensive description of:

- the method you will use to review the compliance of Subscribers with the Participation Rules, including a description of the information Subscribers will be required to produce to you to demonstrate compliance
- the basis for selection of Subscribers for review including sampling methodologies
- the timeframes in which you will review the compliance of each Subscriber to your ELN
- how you will review the information provided by Subscribers to demonstrate compliance and procedures for follow ups with Subscribers where the information provided by Subscribers is incomplete
- quality assurance processes to ensure the employees conducting the review have accurately applied your Subscriber Review Process.

Compliance Demonstration

Your Subscriber Review Process documentation is to be provided to the Registrar prior to you commencing operations. Annually thereafter while you remain approved as an ELNO, you are to provide the Registrar with certifications or revised documentation.

Your compliance with this requirement is otherwise is to be demonstrated by your timely, notifications to the Registrar and timely completion of the actions you are required to take if a review indicates a breach of the Participation Rules. Your compliance with this part of the requirement is to be demonstrated in the documentation of your Subscriber Registration Process provided prior to commencing operations.

Your compliance with this requirement is also to be demonstrated within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO.

Pre-commencement Documentation

Prior to commencing operations, you are to provide to the Registrar your:

- Subscriber Review Process documentation

- Subscriber Registration Process documentation, including the processes and procedures to take appropriate action where a review indicates a breach of the Participation Rules.

Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with Self-Certifications that:

- your Subscriber Registration Process remains in compliance with the Operating Requirements
- your Subscriber Review Process as documented, implemented and managed, remains unchanged.

To provide your certifications it is expected that you will:

- conduct a review of the relevant practices, procedures and controls in your Subscriber Registration Process and of the incidence of relevant complaints received during the period
- maintain Records including:
 - (a) statistics on the number of Subscribers you have reviewed and the number of reviews that resulted in satisfactory or unsatisfactory results
 - (b) records of the results of reviews conducted in accordance with your Subscriber Review Process and actions taken by you where the review results in an unsatisfactory result

and be able to provide the Records and documentation of your review within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO.

14.8 ELNO must Restrict, Suspend or Terminate Subscriber if Directed by Registrar

Requirement

You have an obligation to restrict, suspend or terminate a Subscriber's registration and use of your ELN if directed to do so by the Registrar.

Purpose

The purpose of this requirement is to ensure confidence in your ELN and to protect the integrity of the Titles Register.

Scope

This requirement applies to the operation of your ELN only.

Compliance

It is expected that your compliance with this requirement will be part of your Subscriber Registration Process.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated in the documentation of your Subscriber Registration Process provided prior to commencing operations.

Pre-commencement Documentation

Prior to commencing operations, you are to provide your Subscriber Registration Process documentation, including the processes and procedures used to implement a direction from the Registrar to restrict, suspend or terminate a Subscriber, to the Registrar.

It is expected that you will be able to provide the Registrar with details of the actions taken to comply with this requirement within ten (10) Business Days of a request to do so.

14.9 Consequences of Restriction, Suspension or Termination

Requirement

You have an obligation to ensure any Subscriber whose registration or use of your ELN has expired or been restricted, suspended or terminated cannot use your ELN otherwise than in accordance with their status.

You also have obligations to:

- allow any documents already signed by the Subscriber prior to their registration or use of your ELN having expired or been restricted, suspended or terminated to be presented to the Registrar for Lodgment if you are satisfied no Party would be disadvantaged
- allow another Subscriber authorised by the relevant transacting Party to take over the role of the Subscriber whose registration status has been changed for the purposes of completing an incomplete transaction.

Purpose

The purpose of this requirement is to ensure confidence in the use of and reliance on your ELN.

Scope

This requirement applies to the operation of your ELN only.

Compliance

It is expected that your compliance with this requirement will be part of your Subscriber Registration Process.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated in the documentation of your Subscriber Registration Process provided prior to commencing operations.

Pre-commencement Documentation

Prior to commencing operations, you are to provide your Subscriber Registration Process documentation, including the processes and procedures used to provide your Subscribers

with access to your ELN and to enable completion of any transactions affected by restriction, suspension or termination of a Subscriber, to the Registrar.

It is expected that you will be able to provide the Registrar with details of the actions taken to comply with this requirement within ten (10) Business Days of a request to do so.

14.10 ELNO must not be a Subscriber

Requirement

You have obligations not to be a Subscriber to your ELN except for the purposes of testing the functionality of your ELN.

In the event that your Related Entity intends to become a Subscriber or is a Subscriber to your ELN you have an obligation to engage an Independent Expert to:

- assess that Related Entity's application to become a Subscriber
- undertake the Subscriber Review Process of the Related Entity.

A Related Entity includes:

- your principals, shareholders, directors, officers, employees or agents
- your subsidiary or holding company
- a body corporate of which you are the subsidiary or holding company

Purpose

The purpose of this requirement is to ensure that public confidence in your role as an ELNO is not diminished by any actual or potential conflict between your functions and responsibilities as an ELNO and the services of a Subscriber.

Scope

The requirement applies to you and the operation of your ELN.

Compliance

It is expected that you, being the legal entity Approved as an ELNO, will not also be a Subscriber to your ELN. You are permitted to be a Subscriber to another ELNO's ELN.

You are permitted to be a Subscriber to your ELN only for the purposes of testing the functionality of your ELN. If you become a Subscriber to your ELN for the purposes of testing the functionality of your ELN you will not be permitted to conduct a real Conveyancing Transaction.

In the event that your Related Entity intends to become a Subscriber or is a Subscriber to your ELN it is expected you will:

- engage an Independent Expert (refer to Section 16.1)
- use that Independent Expert to:
 - (a) assess that Related Entity's application to become a Subscriber in accordance with your Subscriber Registration Process (refer to Section 14.1)
 - (b) undertake the Subscriber Review Process of the Related Entity (refer to Section 14.7)
 and obtain an Independent Expert's report recording their assessment and review
- not attempt to influence or be involved with the Independent Expert's assessment and review other than to provide information or other assistance to the Independent Expert
- not register your Related Entity as a Subscriber unless the Independent Expert's report indicates that they have met the requirements outlined in Operating Requirement 14.1
- comply with the requirements in Operating Requirement 14.7 in the event that the Independent Expert's review indicates that your Related Entity has breached the Participation Rules.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO, including by providing a copy of the Independent Expert's report if the Registrar requests that you provide the Registrar with a copy.

15 Compliance Monitoring and Reporting

15.1 Monitor Compliance

Requirement

You have an obligation to continually monitor your compliance with the Operating Requirements.

Purpose

The purpose of this requirement is to ensure confidence in you and your ELNO System, including your ELN.

Scope

This requirement applies to you and to the operation of your ELNO System, including your ELN.

Compliance

You are to have processes in place for continually monitoring your compliance with the Operating Requirements.

It is expected you will have documented processes in place for:

- ensuring you have a Compliance Management System for your obligations under the Operating Requirements
- including a performance monitoring function in your Compliance Management System
- maintaining Records of the performance of your Compliance Management System
- regularly reviewing the performance of your Compliance Management System
- regularly assessing the risk of your Compliance Management System not adequately mitigating non-compliance.

AS19600:2015 provides guidance on establishing and managing an effective Compliance Management System, including regular risk assessment of its effectiveness.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated by a certification annually while you remain approved as an ELNO.

Annual Documentation

You are to provide the Registrar, as part of your Annual Report to the Registrar, with a Self-Certification of your having continually monitored your compliance with the Operating Requirements.

To support your certification, it is expected you will have conducted a review of your relevant processes and be able to provide the documentation of your review within ten (10) Business Days of a request from the Registrar.

If you are not able to provide the certification, it is expected you will provide an explanation for the non-compliance and details of the remedial action you have taken.

15.2 Demonstrate Compliance

Requirement

You have an obligation to demonstrate your compliance by:

- producing Specified Documents, including an Annual Report to the Registrar, and publishing Monthly Reports
- providing Self-Certifications, including No-Change Certifications
- obtaining and supplying Independent Certifications, including Independent Expert review reports and recommendations
- supplying any other information requested by the Registrar.

Purpose

The purpose of this requirement is to ensure continuing confidence in you and your ELNO System, including your ELN.

Scope

This requirement applies to you and to the operation of your ELNO System, including your ELN.

Compliance

You are to provide the Registrar with documentation and certifications as set out in Schedule 3 of the Operating Requirements.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated by providing documentation and/or certifications to the Registrar when applying for approval, prior to commencing operations and monthly and annually thereafter while you remain approved as an ELNO.

Application Documentation

You are to provide the documentation and certifications set out in Category One of Schedule 3 of the Operating Requirements.

Pre-commencement Documentation

You are to provide the documentation and certifications set out in Category Two of Schedule 3 of the Operating Requirements at least eight (8) weeks prior to your nominated date for commencing operations.

Monthly Documentation

You are to publish and provide the documentation set out in Category Four of Schedule 3 of the Operating Requirements within ten (10) Business Days of the end of each month while you remain approved as an ELNO.

Annual Documentation

You are to provide the documentation and certifications set out in Category Three of Schedule 3 of the Operating Requirements as part of your Annual Report to the Registrar within three (3) months of the end of each Financial Year while you remain approved as an ELNO.

You are also to provide documentation and certifications substantiating your compliance within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO.

15.3 Inability to give a No-Change Certification

Requirement

You have an obligation to re-establish your compliance with the Operating Requirements if at any time you are unable to give a No-Change Certification.

Purpose

The purpose of this requirement is to ensure that any changes in your compliance arrangements are brought to the Registrar's notice and your compliance with the relevant requirement is promptly re-established.

Scope

This requirement applies to you and to the operation of your ELNO System, including your ELN.

Compliance

You are to re-establish your compliance whenever you are unable to provide a No-Change Certification as set out in Schedule 3 of the Operating Requirements.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated when necessary and within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO.

15.4 When to Demonstrate Compliance

Requirement

You have an obligation to demonstrate your compliance with particular requirements in the Operating Requirements at specified times.

Purpose

The purpose of this requirement is to ensure continuing confidence in you and your ELNO System, including your ELN.

Scope

This requirement applies to you and to the operation of your ELNO System, including your ELN.

Compliance

You are to provide the Registrar with documents and certifications at the times set out in Schedule 3 of the Operating Requirements.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated by the timely and complete provision of documentation and certifications at the times set out in Schedule 3 of the Operating Requirements.

You are also to provide documentation and certifications substantiating your compliance within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO.

15.5 Demonstrate Compliance at any Time

Requirement

You have an obligation to demonstrate your compliance with the Operating Requirements when requested by the Registrar within 10 Business Days of a written request.

Purpose

The purpose of this requirement is to ensure confidence in you and your ELNO System, including your ELN.

Scope

This requirement applies to you and to the operation of your ELNO System, including your ELN.

Compliance

You are to provide the Registrar with documented substantiation of your compliance within ten (10) Business Days of a request.

It is expected that your documented substantiation of a compliance matter requested by the Registrar will consist of a description of how you achieve compliance together with copies of all relevant supporting evidence.

It is not sufficient in complying with this requirement to simply assert your compliance. Your compliance must be demonstrated with relevant documentation and Records obtained or made by you and securely retained for the purposes of substantiating your compliance.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated by your timely, relevant and complete response to requests from the Registrar.

15.6 Provision of Further Information

Requirement

You have an obligation to satisfy any written request from the Registrar for further information, including documentation and certifications, to demonstrate your compliance with the Operating Requirements within a reasonable time determined by the Registrar.

Purpose

The purpose of this requirement is to ensure confidence in you and your ELNO System, including your ELN.

Scope

This requirement applies to you and to the operation of your ELNO System, including your ELN.

Compliance

You are to provide the further information requested by the Registrar within the time determined by the Registrar.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated by your timely and complete response to requests from the Registrar while you remain approved as an ELNO.

15.7 Notice of Non-Compliance and Remedy

Requirement

You have an obligation to advise the Registrar in writing of your failure at any time to comply with the Operating Requirements, or of your expected non-compliance in the future, and to either remedy any non-compliance within ten (10) Business Days or to take such action as necessary to avoid non-compliance in the future.

Purpose

The purpose of this requirement is to ensure the Registrar is made aware of all instances where there may be an unexpected risk to the proper completion of a Conveyancing Transaction and to the integrity of the Titles Register.

Scope

This requirement applies to you and to the operation of your ELNO System, including your ELN.

Compliance

You are to report actual and anticipated non-compliance with the Operating Requirements and include appropriate remedial or avoidance action plans.

Compliance Demonstration

You are to report non-compliances with the Operating Requirements immediately they occur or you first become aware of their having occurred or are expected to occur, and annually as a part of your Annual Report to the Registrar.

Immediate Documentation

It is expected that when reporting an actual or anticipated compliance breach to the Registrar, you will provide details in writing of the:

- nature of the breach and when and where it occurred or is expected to occur
- significance of the breach in terms of transactions, value, Subscribers and relying parties affected
- actions taken or intended to be taken to remedy or avoid the breach or to mitigate its impact

- actions taken to prevent the breach from recurring in the future.

Annual Documentation

You are to provide, in your Annual Report to the Registrar, consolidated categorised details of:

- your compliance breaches for the period
- your compliance breaches that would have occurred had you not taken preventive action and the nature of each preventive action taken
- the remediations you have put in place for each actual and anticipated compliance breach
- the outcomes you have achieved or expect to achieve from each remediation.

It is expected that you will categorise each of your actual and anticipated compliance breaches and their respective remediations by the nature and severity of the breach in terms of implications for relying parties.

In the event that no compliance failures have occurred or are anticipated during the reporting period, a nil report is to be given for the period.

15.8 Remediation of Non Compliance

Requirement

You have obligations to provide the Registrar with a remedial action plan for any obligation for which you fail to demonstrate compliance on two consecutive occasions and to implement the remedial action plan without delay.

Purpose

The purpose of this requirement is to ensure any repeated failure to demonstrate compliance is remedied without delay.

Scope

This requirement applies to you in the operation of your ELNO System, including your ELN.

Compliance

You are to provide the Registrar with a remedial action plan and implement that plan without delay on each of the second consecutive occasions when you are unable to demonstrate your compliance as required with a particular obligation in the Operating Requirements.

Compliance Demonstration

You are to demonstrate your compliance with this requirement by providing the Registrar with your remedial action plan and advice of its being or having been implemented whenever you advise the Registrar that you are unable for the second consecutive time to demonstrate your compliance as required with a particular obligation in the Operating Requirements.

15.9 Remediation of Serious Non Compliance

Requirement

You have an obligation to prepare and provide the Registrar with a remedial action plan, and to promptly implement that action plan, whenever the Registrar notifies you that your non-compliance is of a serious nature.

Purpose

The purpose of this requirement is to ensure any serious non-compliance with the Operating Requirements is remedied promptly.

Scope

This requirement applies to you in the operation of your ELNO System, including your ELN.

Compliance

You are to prepare a remedial action plan, provide the plan to the Registrar and promptly implement it.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated by your preparing, providing and implementing a remedial action plan upon receipt of a serious non-compliance notification from the Registrar.

15.10 ELNO may provide certified copies of original Documents

Requirement

You have an obligation to provide the Registrar with either original Documents or copies of Documents certified as true copies by one of your principals, directors or officers.

Purpose

The purpose of this requirement is to ensure the Registrar can rely on copies of original Documents provided to demonstrate your compliance with the Operating Requirements.

Scope

This requirement applies to you and to the operation of your ELNO System, including your ELN.

Compliance

Where you are required to provide a Document to the Registrar you may provide originals or certified copies. An original may include a print out of a computer generated Document where no original paper Document exists.

In providing a copy of an original document to the Registrar you are to have it certified as a true copy of the original by one of your principals, directors or officers.

Compliance Demonstration

Where you provide certified copies, your compliance with this requirement is to be demonstrated by including on the copy the full name and position of the Person certifying the copy and the date of certification.

16 Independent Certification

16.1 Approval of Independent Expert

Requirement

You have an obligation to ensure that each Independent Expert you engage to provide an Independent Certification:

- has the prior written approval of the Registrar
- is either:
 - (a) not related to, or in any way associated with, you or a director, officer or employee of yours, or
 - (b) a contractor or agent of yours who is able to demonstrate to the Registrar's satisfaction that any work to be undertaken as an Independent Expert is independent from any existing work being undertaken for you
- is qualified, competent and insured to the satisfaction of the Registrar.

Purpose

The purpose of this requirement is to ensure that the Registrar can have confidence in each Independent Certification and Independent Expert's recommendations.

Scope

This requirement applies to you in the operation of your ELNO System, including your ELN.

Compliance

The Registrar must give written approval of the appointment of each Independent Expert before they commence the work necessary to provide their certification.

Sufficient information regarding the qualifications, competence and insurance coverage of a proposed Independent Expert is to be provided to the Registrar at least three (3) months prior to the time at which the Independent Certification must be given to enable the Registrar to determine the Independent Expert's suitability to provide the certification.

The qualifications and competence required of an Independent Expert are dependent on the specific obligation about which the certification is to be given. Independent Experts will be expected wherever possible to:

- hold a recognised conformity certification accreditation such as that of the Joint Accreditation System of Australia and New Zealand (JAS-ANZ), and/or
- be experienced in the application and use of ISO17021.1:2015, and
- be experienced in the nature and context of your specific obligation in the Operating Requirements for which the certification of your compliance is to be given, including being able to access other similar contexts and industry benchmarks relevant to that obligation.

While each Registrar will need to approve your Independent Expert, for convenience, applications for approval of an Independent Expert must be made to the ARNECC at chair@arnecc.gov.au to coordinate the review of the request.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated by providing the details of each proposed Independent Expert to the Registrar at least three (3) months prior to the Independent Certification being required.

16.2 Assistance

Requirement

You have an obligation to provide each Independent Expert you engage to prepare an Independent Certification with all reasonable assistance to complete the work. Reasonable assistance includes directing third parties with whom you have contractual relationships to make relevant information available to the Independent Expert.

Purpose

The purpose of this requirement is to ensure that each Independent Certification and each Independent Expert's recommendations are thoroughly informed and can be relied upon by the Registrar.

Scope

This requirement applies to you in the operation of your ELNO System, including your ELN.

Compliance

You are to provide all reasonable assistance to the Independent Experts you engage, including directing third parties with whom you have contractual relationships to make all relevant information available to the Independent Expert.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated by including specific conditions in each contract you enter into with your suppliers and third parties.

16.3 Essential and Desirable Recommendations

Requirement

You have an obligation to ensure that, when an Independent Expert engaged by you to provide an Independent Certification makes recommendations concerning your compliance with the Operating Requirements, those recommendations are expressed as either Essential or Desirable Recommendations.

Purpose

The purpose of this requirement is to ensure clear identification of those recommendations that must be implemented to secure your compliance with the Operating Requirements.

Scope

This requirement applies to you in the operation of your ELNO System, including your ELN.

Compliance

You are to include in each statement of work you issue to an Independent Expert that any recommendations made by the Independent Expert are to be categorised as either Essential or Desirable in securing your compliance.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated when you provide details of each proposed Independent Expert engagement to the Registrar.

16.4 Inclusion of Essential Recommendations in Independent Expert's Certification

Requirement

You have an obligation to ensure that any Essential Recommendations made by an Independent Expert providing you with an Independent Certification are disclosed to the Registrar with the certification.

Purpose

The purpose of this requirement is to ensure the Registrar is made aware of all matters identified by an Independent Expert as essential to securing your compliance with the Operating Requirements.

Scope

This requirement applies to you in the operation of your ELNO System, including your ELN.

Compliance

You are to provide any Essential Recommendations made to you by an Independent Expert when you provide the Expert's Independent Certification and Independent Expert's report to the Registrar.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated when providing Independent Certifications and Independent Expert's reports to the Registrar in accordance with Schedule 3 of the Operating Requirements.

17 Compliance Examination

Requirement

You have an obligation to fully comply with any Compliance Examination conducted by the Registrar.

Purpose

The purpose of this requirement is to ensure Compliance Examinations can be carried out efficiently and where and when required by the Registrar.

Scope

This requirement applies to you in the operation of your ELNO System, including your ELN.

Compliance

You are to comply with Compliance Examination requirements set out in Section 33 of the ECNL and in the Compliance Examination Procedure in Schedule 5 of the Operating Requirements.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated when the Registrar undertakes a Compliance Examination.

18 Reports

18.1 Monthly Report

Requirement

You have an obligation to publish a Monthly Report of your performance as an ELNO.

Purpose

The purpose of this requirement is to ensure confidence in you as an ELNO.

Scope

The requirement applies to the operation of your ELNO System, including your ELN.

Compliance

You are to publish and provide a Monthly Report to the Registrar.

It is expected that your Monthly Report will:

- be clear and concise
- be published by a means that makes it readily and widely available without restriction
- be presented in a manner that enables ready determination of your compliance and any trends in your compliance
- remain publicly available for at least twelve (12) months while you remain approved as an ELNO.

It is expected that your reporting on complaints received will be part of the Compliance Management System you put in place to satisfy your obligation to operate your ELN in a proper, competent, sustainable and efficient manner. In this regard, ISO10002:2018 provides guidance on the design and implementation of contemporary customer satisfaction and complaints handling processes.

Specific Inclusions

Your Monthly Report is to include details of:

- the performance of your ELNO System against the Performance Levels set out in Schedule 2 of the Operating Requirements

- the complaints you have received and dealt with about your services and performance as set out in Category 4 of Schedule 3 of the Operating Requirements.

Your reporting on the performance of your ELNO System is to include at least your performance against the Performance Levels set out in Schedule 2 of the Operating Requirements for:

- Service Availability
- Service Reliability
- System Responsiveness
- System Resilience
- Incident Resolution
- Problem Identification.

Your reporting on complaints in accordance with Category Four of Schedule 3 of the Operating Requirements is to categorise the complaints you have received into at least:

- general complaints about your services and performance
- complaints about your refusal to register Subscriber applicants
- complaints about the training resources and information you make available to your Subscribers.

Within each complaint category, you are to report on at least:

- the number of complaints received during the preceding month
- the number found to be justified
- the number satisfactorily resolved with the complainant
- the number remaining unresolved at the end of the preceding month
- the number and age of all complaints remaining unresolved at the end of the preceding month.

Compliance Demonstration

You are to demonstrate your compliance with this requirement by publishing and providing a report to the Registrar monthly while you remain approved as an ELNO.

Monthly Documentation

You are to publish your Monthly Report and provide it to the Registrar within ten (10) Business Days of the end of each calendar month.

18.2 Annual Report to the Registrar

Requirement

You have an obligation to provide the Registrar with an Annual Report each year.

Purpose

The purpose of this requirement is to provide a regular demonstration to the Registrar of your continuing compliance with the Operating Requirements.

Scope

This requirement applies to you in the operation of your ELNO System, including your ELN.

Compliance

You are to provide an Annual Report to the Registrar.

It is expected that your Annual Report will be comprehensive setting out at least:

- a description of your activities for the period
- the extent of any non-compliance with the Operating Requirements
- the specific instances, if any, of your non-compliance during the period and the reasons for each instance of non-compliance
- the actions you have taken or intend to take to remedy each instance of non-compliance
- the actions, if any, you have taken or intend to take to mitigate the risk of your non-compliance in the future.

Specific Inclusions

Your Annual Report is to include at least:

- all Specified Documents, Self-Certifications, No-Change Certifications and Independent Certifications (including each Independent Expert's report and any Essential Recommendations) you are required to provide annually to the Registrar while approved as an ELNO
- the actions you have taken or intend to take to implement each of any Essential Recommendations accompanying each Independent Certification

- an analysis of each instance of your non-compliance with the Operating Requirements during the period.

Compliance Demonstration

Your Annual Report is to be provided within three (3) months of the end of each Financial Year.

Your first Annual Report is to be for the period from your commencing operations to the end of the Financial Year in which you commenced operations. If that period is three (3) months or less, your first Annual Report can be provided after your first full Financial Year of operations.

19 Data and Information Obligations

19.1 Retention

Requirement

You have an obligation to indefinitely retain, retrieve and provide to the Registrar when requested information and documents received and created by your ELN.

Purpose

The purpose of this requirement is to ensure all relevant information is available to any investigation or Compliance Examination by the Registrar.

Scope

This requirement applies to the operation of your ELNO System, including your ELN.

Compliance

Your compliance with this requirement is to be part of your ISMS (refer Section 7).

Specific Inclusions

The arrangements included in your ISMS are to cover:

- all Workspace Data created or received in connection with transactions
- all Electronic Workspace Documents, whether Digitally Signed or not and whether presented or not to the Registrar for Lodgment
- all alerts, Notifications and information received and sent in connection with transactions
- each document and Record received or created in connection with the registration of each of your Subscribers and their use of your ELN.

Compliance Demonstration

You are to demonstrate your compliance with this requirement by providing your ISMS documentation, together with a certification of its being Fit for Purpose, to the Registrar prior to commencing operations and at any time that it is materially changed thereafter while you are approved as an ELNO.

You are also to provide the Registrar with certifications of your ISMS being unchanged and Fit for Purpose annually while you remain approved as an ELNO.

Pre-commencement Documentation

Prior to commencing operations, you are to provide the Registrar with:

- the documentation of your ISMS
- an Independent Certification that your ISMS documentation is Fit for Purpose.

Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Register, with:

- a No-Change Certification that your ISMS, including its documentation, management and operation, is unchanged, and
- an Independent Certification that your ISMS is Fit for Purpose.

In the event that you are unable to provide a No-Change Certification, you are to submit revised documentation of your ISMS to the Registrar in the form of a marked up copy showing the changes, together with an Independent Certification of the revised documentation, management and operation of your ISMS being Fit for Purpose and any Essential Recommendations of the Independent Expert.

19.2 Generation and Retention of Transaction Audit Records

Requirement

You have an obligation to generate and indefinitely retain Transaction Audit Records and provide them to the Registrar when requested.

Purpose

The purpose of this requirement is to ensure all relevant information is available to any investigation or Compliance Examination by the Registrar.

Scope

This requirement applies to the operation of your ELNO System, including your ELN.

Compliance

Your compliance with this requirement is to be part of your ISMS (refer Section 7). You are also required to provide Transaction Audit Records or any part of Transaction Audit Records to the Registrar within 10 Business Days of the Registrar's request to provide Transaction Audit Records.

Specific Inclusions

The arrangements included in your ISMS are to cover the generation and indefinite retention of Records of the use of your ELNO System including:

- changes made in Electronic Workspaces and who made each change
- administrative actions taken in relation to use of your ELNO System and by whom
- other actions of you or your Subscribers and their Users in an Electronic Workspace and by whom
- changes in the status of an Electronic Workspace, or electronic Registry Instrument or other electronic document in an Electronic Workspace, and what action or event caused the change
- events relating to the security and integrity of your ELN and what action by whom gave rise to the event.

Compliance Demonstration

You are to demonstrate your compliance with this requirement by providing your ISMS documentation, together with a certification of its being Fit for Purpose, to the Registrar prior to commencing operations and at any time that it is materially changed thereafter while you are approved as an ELNO.

You are also to provide the Registrar with certifications of your ISMS being unchanged and Fit for Purpose annually while you remain approved as an ELNO.

Pre-commencement Documentation

Prior to commencing operations, you are to provide the Registrar with:

- the documentation of your ISMS
- an Independent Certification that your ISMS documentation is Fit for Purpose.

Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Register, with:

- a No-Change Certification that your ISMS, including its documentation, management and operation, is unchanged, and
- an Independent Certification that your ISMS is Fit for Purpose.

In the event that you are unable to provide a No-Change Certification, you are to submit revised documentation of your ISMS to the Registrar, together with an Independent Certification of the revised documentation, management and operation of your ISMS being Fit for Purpose and any Essential Recommendations of the Independent Expert.

19.3 Use of Land Information

Requirement

You have obligations restricting your use, storage, alteration, reproduction, disclosure, product development and resale of Land Information without approval from the Registrar.

Purpose

The purpose of this requirement is to ensure confidence in the supply of Land Information to your ELN by the Registrar and your Subscribers.

Scope

The requirement applies to the operation of your ELN only.

Compliance

You are to comply with this requirement in regard to all information you receive that is used in the preparation of electronic Registry Instruments or other electronic Documents and data to be lodged with the Registrar.

Specific Inclusions

You are to comply with this requirement in regards to:

- storage of Land Information for other than facilitating the preparation of electronic Registry Instruments to be lodged with the Registrar
- modification or alteration of Land Information
- anything that allows another Person to modify or alter Land Information
- use, reproduction or disclosure of Land Information other than as required or requested by a Subscriber participating in the relevant Conveyancing Transaction
- anything that allows another Person to use, reproduce or disclose Land Information other than as required or requested by a Subscriber participating in the relevant Conveyancing Transaction
- creation of products which include or are the same as or substantially similar to Land Information
- reverse assembly, reverse compilation, reverse engineering or recreation or rework of Land Information
- re-use of Land Information in any manner not approved by the Registrar.

Compliance Demonstration

You are to provide the Registrar annually while you remain approved as an ELNO with a certification of your compliance with this requirement.

Annual Documentation

You are to provide a Self-Certification in each Annual Report to the Registrar of your having complied with this requirement during the period.

To support your certification, it is expected that you will have determined and documented for the period:

- frequency and means of receiving Land Information
- total instances of receiving Land Information
- detected instances of unauthorised modification or alteration of Land Information
- detected instances of unauthorised use of Land Information
- detected instances of unauthorised reproduction or disclosure of Land Information
- sustained complaints received about unauthorised treatment of Land Information
- reviews, including risk assessments, undertaken of your Compliance Management System
- changes made, if any, to your Compliance Management System to address instances of non-compliance during the period and new compliance risks identified and compliance controls implemented.

It is expected that you will be able to provide this documentation within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO.

19.4 Provide Information to Subscribers

Requirement

You have an obligation to provide alerts and notifications to your Subscribers supplied to you by the Land Registry or the Registrar.

Purpose

The purpose of this requirement is to ensure that the Registrar has a means of getting relevant information to your Subscribers.

Scope

This requirement applies to you and the operation of your ELNO System, including your ELN.

Compliance

You are to provide any alerts and notifications for Subscribers received from the Land Registry or the Registrar to Subscribers.

It is expected that:

- your ELNO System will include a convenient and reliable means of providing alerts and notifications to your Subscribers, including alerts and notifications supplied to you by the Registrar
- you will have arrangements in place for:
 - (a) receiving, recording and verifying alerts and notifications supplied to you by the Registrar
 - (b) promptly communicating each alert and notification to the relevant Subscribers
 - (c) receiving and recording confirmation of the delivery of each alert and notification.

Specific Inclusions

Your arrangements are to provide for alerts and notifications that relate to:

- amendments to the ECNL, the Operating Requirements or the Participation Rules

- an emergency situation as referred to in the ECNL or the security, integrity or stability of the Titles Register
- a direction to you relating to any or all Subscribers
- matters generally about your operations to be communicated to Subscribers
- matters generally to be communicated to Subscribers.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO.

19.5 Intellectual Property Rights

Requirement

You have obligations to:

- not do or omit to do anything that might invalidate or be inconsistent with the Intellectual Property Rights of the Registrar, a Land Registry or a State or Territory
- Promptly notify the Registrar if you know or suspect that such rights have been infringed
- take what action you can to prevent the infringement from reoccurring
- take all steps the Registrar reasonably requires of you to maintain the validity and enforceability of such rights.

Purpose

The purpose of this requirement is to protect the Registrar's, the Land Registry's and the State or Territory's Intellectual Property Rights.

Scope

This requirement applies to you in the operation of your ELN only.

Compliance

It is expected that this obligation will be fully reflected in the design and implementation of the Compliance Management System you establish to satisfy your general obligation to comply with the Operating Requirements.

Compliance Demonstration

Your compliance with this requirement is to be demonstrated within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO.

20 Registrar's Powers

20.1 Suspension or Revocation of ELNO's Approval

This Operating Requirement does not place any obligation on you.

21 Business and Services Transition

21.1 Transition Plan

Requirement

You have an obligation to establish, operate, monitor, review, maintain and keep current a documented, detailed and comprehensive Transition Plan for invoking in the event of your ceasing to provide and operate your ELN or any of its services.

Purpose

The purpose of this requirement is to ensure that in the event of your needing to cease providing and operating your ELN or any of its services, you can disengage from the business in an orderly manner with the least possible disruption to affected parties including the Registrar.

Scope

This requirement applies to the operation of your ELN only.

Compliance

You are to comply with this requirement by having a Transition Plan.

It is expected that your Transition Plan will be a comprehensive, robust and documented plan of action that has regard for all foreseeable circumstances in which you may not be able to continue providing one or more of your ELN's services.

Specific Inclusions

It is expected that your Transition Plan will include at least the following:

- notifications to your Subscribers and relying parties, including the Registrar:
 - (a) that your Transition Plan has been invoked
 - (b) why it has been invoked
 - (c) what procedures you will be following
 - (d) what procedures they will need to follow
- orderly winding down of your affected systems, facilities and services
- controlled completion of all affected Conveyancing Transactions that have been started but not yet completed

- continued support for your Subscribers in finalising their incomplete Conveyancing Transactions
- transfer of licences and any intellectual property necessary for the continued operation of your systems, facilities and services at the direction of the Registrar
- migration of all Subscriber and transaction data and service agreements
- orderly shutdown of discontinued systems, facilities and services unable to be migrated
- safe custody of all retained records of Subscribers and completed Conveyancing Transactions
- time frames in which all matters are expected to be finalised.

Compliance Demonstration

You are to demonstrate your compliance with this requirement by providing your Transition Plan documentation to the Registrar prior to commencing operations and annually thereafter while you remain approved as an ELNO you are to provide the Registrar with a certification of your Transition Plan being unchanged and suitable for the intended use.

Pre-commencement Documentation

Prior to commencing operations, you are to provide your Transition Plan documentation to the Registrar.

Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a No-Change Certification that your Transition Plan remains unchanged and suitable for the intended use.

To support this certification, it is expected that you will have reviewed your Transition Plan for its:

- comprehensiveness and accuracy
- use of contemporary facilities and services
- continued relevance to the full extent of your operations and environment.

It is expected that you will be able to provide your documentation of this review within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO.

In the event that you are unable to provide a No-Change Certification, you are to provide revised documentation of your Transition Plan to the Registrar in the form of a marked up copy showing the changes.

21.2 Minimum requirements of a Transition Plan

Requirement

You have an obligation to include in your Transition Plan, provision for:

- notice to all of your Subscribers and the Registrar of the timing and reason for your disengagement
- process for orderly winding down of your affected systems, services and facilities, including your ELNO System
- manner in which any incomplete Conveyancing Transaction are to be finalised
- transfer of all retained Records to the Registrar or as directed by the Registrar
- transfer of all licenses and intellectual property to the Registrar or as directed by the Registrar.

Purpose

The purpose of this requirement is to minimise the disruption to affected parties of your having to discontinue any or all of your ELN's services and where appropriate, facilitate the continued operation of your ELN by the Registrar or a third party identified by the Registrar.

Scope

This requirement applies to the operation of your ELNO system including your ELN.

Compliance

You are to comply with this requirement by providing for it in your Transition Plan.

Compliance Demonstration

You are to demonstrate your compliance with this requirement by providing your Transition Plan documentation to the Registrar prior to commencing operations and annually thereafter while you remain approved as an ELNO you are to provide the Registrar with a certification of your Transition Plan being unchanged and suitable for the intended use.

Pre-commencement Documentation

Prior to commencing operations, you are to provide your Transition Plan documentation to the Registrar.

Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a No-Change Certification that your Transition Plan remains unchanged and suitable for the intended use.

To support this certification, it is expected that you will have reviewed your Transition Plan for its:

- comprehensiveness and accuracy
- use of contemporary facilities and services
- continued relevance to the full extent of your operations and environment.

It is expected that you will provide your documentation of this review within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO.

In the event that you are unable to provide a certification, you are to provide revised documentation of your Transition Plan to the Registrar in the form of a marked up copy showing the changes.

21.4 Implementation of Transition Plan

Requirement

You have an obligation to invoke your Transition Plan either:

- twelve (12) months prior to your intending to cease to provide your ELN or any services material to the operation of your ELN, or
- immediately if your Approval as an ELNO is revoked, or
- upon receipt of notification from the Registrar that your Approval as an ELNO is not to be renewed.

Purpose

The purpose of this requirement is to ensure that you can always disengage from the whole or part of the business in an orderly manner with the least possible disruption to affected parties including the Registrar.

Scope

This requirement applies to the operation of your ELN only.

Compliance

You are to comply with this requirement by providing for it in your Transition Plan.

Compliance Demonstration

You are to demonstrate your compliance with this requirement by providing your Transition Plan documentation to the Registrar prior to commencing operations and, annually thereafter while you remain approved as an ELNO, you are to provide the Registrar with a certification of your Transition Plan being unchanged and suitable for the intended use.

Pre-commencement Documentation

Prior to commencing operations, you are to provide your Transition Plan documentation to the Registrar.

Annual Documentation

You are to provide the Registrar annually, as part of your Annual Report to the Registrar, with a No-Change Certification that your Transition Plan remains unchanged and suitable for the intended use.

To support this certification, it is expected that you will have reviewed your Transition Plan for its:

- comprehensiveness and accuracy
- use of contemporary facilities and services
- continuing relevance to the full extent of your operations and environment.

It is expected that you will be able to provide your documentation of this review within ten (10) Business Days of a request from the Registrar while you remain approved as an ELNO.

In the event that you are unable to provide a No-Change Certification in any Annual Report to the Registrar, you are to provide the Registrar with revised documentation of your Transition Plan in the form of a marked up copy showing the changes.

22 Amendment of Operating Requirements

Requirement

You have an obligation to comply with any amendment made to the Operating Requirements.

Purpose

The purpose of this requirement is to ensure the Operating Requirements can be kept relevant and up to date.

Scope

This requirement applies to the operation of your ELNO System, including your ELN.

Compliance

You are to comply with any amendment made to the Operating Requirements in accordance with the procedure set out at Schedule 6 of the Operating Requirements.

It is expected that your compliance with your obligation to ensure that your ELN is soundly designed and provisioned, including being reliable, scalable and flexible, will enable your compliance with this requirement (refer Section 10.1).

Compliance Demonstration

Your compliance with this requirement is to be demonstrated when an amendment is made to the Operating Requirements.

It is expected you will:

- participate in good faith consultation with the Registrar when necessary about proposed amendments to the Operating Requirements
- assess the implications for you and for your Subscribers of any proposed amendment to the Operating Requirements
- provide the Registrar with relevant advice on any proposed amendment to the Operating Requirements
- use best endeavours to achieve compliance with any amendment to the Operating Requirements as soon as practicable.

23 Additional Operating Requirements

Requirement

You have an obligation to comply with any Additional Operating Requirements.

Purpose

The purpose of this requirement is to ensure the Operating Requirements can be added to by a Jurisdiction if circumstances reveal that the existing requirements are insufficient in that Jurisdiction.

Scope

This requirement applies to the operation of your ELNO System, including your ELN.

Compliance

You are to comply with any Additional Operating Requirements.

It is expected that your compliance with your obligation to ensure that your ELN is soundly designed and provisioned, including being reliable, scalable and flexible, will enable your compliance with this requirement (refer Section 10.1).

Compliance Demonstration

Your compliance with this requirement is to be demonstrated when an Additional Operating Requirement is determined by the Registrar and set out in Schedule 4.

It is expected you will:

- participate in good faith consultation with the Registrar when necessary about proposed Additional Operating Requirements
- assess the implications for you and for your Subscribers of any proposed Additional Operating Requirements provide the Registrar with relevant advice on any proposed Additional Operating Requirements
- use best endeavours to achieve compliance with any Additional Operating Requirements as soon as practicable.