

MODEL PARTICIPATION RULES – GUIDANCE QUERY

GUIDANCE FOR E-SETTLEMENT SUBSCRIBERS AND THEIR INSTRUCTING PRACTITIONERS

1. INTRODUCTION

A conveyancer or lawyer (Instructing Practitioner) may instruct a conveyancer or lawyer who is a Subscriber to act on behalf of the Instructing Practitioner's Client to undertake work in an Electronic Lodgment Network, including creating and Digitally Signing electronic Registry Instruments and other electronic Documents. The Subscriber instructed by the Instructing Practitioner is referred to in this guidance query as an 'e-settlement Subscriber'.

This guidance query aligns with Version 5 of the Model Participation Rules and explains the application of the Model Participation Rules where an e-settlement Subscriber is engaged regarding:

- verification of identity;
- proper completion of a Client Authorisation;
- verification of right to deal;
- certifications;
- retention of evidence; and
- compliance examinations.

Capitalised terms have the same meaning given to them in the Model Participation Rules, Model Operating Requirements or Electronic Conveyancing National Law.

This guidance query does not constitute legal advice, nor does it replace prudent conveyancing practice. Nothing written in this guide overrides the Electronic Conveyancing National Law, Participation Rules, any other relevant legislation of the Jurisdiction in which the property is situated (for example, legislation governing the conduct of conveyancers or lawyers) or Registrars' Prescribed Requirements.

2. VERIFICATION OF IDENTITY

The e-settlement Subscriber must take reasonable steps to verify the identity of the Client. The e-settlement Subscriber may specifically appoint the Instructing Practitioner to undertake the verification of identity by a written agency agreement, either as an agent or as an Identity Agent.

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

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

If the Instructing Practitioner is appointed as an Identity Agent, the e-settlement Subscriber must ensure that the Instructing Practitioner complies with the requirements for Identity Agents under the Model Participation Rules. This includes meeting the requirements to be an Identity Agent, applying the Verification of Identity Standard and providing an Identity Agent Certification as set out in Schedule 9 of the Model Participation Rules.

For further information see MPR Guidance Note #2 – Verification of Identity at:

https://www.arnecc.gov.au/publications/mpr_guidance_notes

3. PROPER COMPLETION OF A CLIENT AUTHORISATION

There must be a Client Authorisation directly between the e-settlement Subscriber and the Client. The e-settlement Subscriber is the Representative and should be noted on the Client Authorisation as such. It is not necessary for the Instructing Practitioner to sign the Client Authorisation.

Representative Agent means a person authorised by a Representative to act as the Representative's agent including to sign the Client Authorisation. The Instructing Practitioner is not the Representative Agent and should not sign the Client Authorisation as such, unless the e-settlement Subscriber specifically appoints the Instructing Practitioner as its Representative Agent by a written agency agreement. Where the Instructing Practitioner signs the Client Authorisation as Representative Agent, the e-settlement Subscriber's details should still be noted in the Representative section.

The Instructing Practitioner is not the Client Agent and should not sign the Client Authorisation as such, unless the Instructing Practitioner has been appointed as attorney for the Client under a power of attorney.

There must be a Client Authorisation directly between the e-settlement Subscriber and each Client(s), including where those Clients are referred to the e-settlement Subscriber by the same Instructing Practitioner.

Attachments A to D contain some examples of the front pages of properly completed Client Authorisations where the Subscriber is an e-settlement Subscriber. Note that these are just examples, and consideration should be given to the particular circumstances of each case.

For further information see MPR Guidance Note #1 – Client Authorisation at:

https://www.arnecc.gov.au/publications/mpr_guidance_notes

4. VERIFICATION OF THE RIGHT TO DEAL

It is the e-settlement Subscriber who must take reasonable steps to verify that the Client is a legal Person and has the right to enter into the Conveyancing Transaction.

For further information see MPR Guidance Note #4 – Right to Deal at:

https://www.arnecc.gov.au/publications/mpr_guidance_notes

5. CERTIFICATIONS

It is the e-settlement Subscriber who must provide the certifications as to Identity, Authority, Evidence and Correctness when Digitally Signing electronic Registry Instruments and other electronic Documents.

For further information see MPR Guidance Note #3 – Certifications at:

https://www.arnecc.gov.au/publications/mpr_guidance_notes

6. RETENTION OF EVIDENCE

It is the e-settlement Subscriber who must retain the supporting evidence for the transaction for at least seven years.

For further information see MPR Guidance Note #5 – Retention of Evidence at:

https://www.arnecc.gov.au/publications/mpr_guidance_notes

7. COMPLIANCE EXAMINATIONS

It is the e-settlement Subscriber who must comply with any Compliance Examination, including producing all the requested documentation.

For further information see MPR Guidance Note #6 – Compliance Examinations at:

https://www.arnecc.gov.au/publications/mpr_guidance_notes

A – ABC Pty Ltd (e-settlement Subscriber) completes the Client Authorisation which is signed by Frederick Albert Bloggs and Freda Amy Bloggs (Clients) in person and Eric Lodge, an employee of ABC Pty Ltd

CLIENT AUTHORISATION

Version 5.0

When this form is signed, the Representative is authorised to act for the Client in a Conveyancing Transaction(s).

Privacy Collection Statement: The information in this form is collected under statutory authority and used for the purpose of maintaining publicly searchable registers and indexes.

Representative Reference: **BLOGGS-16-4-15**

		CLIENT 1	CLIENT 2
CLIENT DETAILS	NAME	<u>FREDERICK ALBERT BLOGGS</u>	<u>FREDA AMY BLOGGS</u>
	ACN/ARBN		
	ADDRESS	<u>11/53 ALBERT ST, BRISBANE</u>	<u>11/53 ALBERT ST, BRISBANE</u>

		CONVEYANCING TRANSACTION(S) 1	CONVEYANCING TRANSACTION(S) 2
TRANSACTION DETAILS	AUTHORITY TYPE	<input checked="" type="checkbox"/> SPECIFIC AUTHORITY (set out conveyancing transaction details below)	<input type="checkbox"/> STANDING AUTHORITY ends on revocation or expiration date: ___/___/___ (tick relevant conveyancing transaction(s) below)
	PROPERTY ADDRESS	<u>11/53 ALBERT ST, BRISBANE</u>	<u>10/100 QUEEN ST, BRISBANE</u>
	LAND TITLE REFERENCE(S) (and/or property description)	<u>71011681</u> <u>LOT 1 ON RP 1569</u>	
	CONVEYANCING TRANSACTION(S)	<input checked="" type="checkbox"/> TRANSFER <input type="checkbox"/> PRIORITY NOTICE <input type="checkbox"/> MORTGAGE <input type="checkbox"/> DISCHARGE/RELEASE OF MORTGAGE <input type="checkbox"/> CAVEAT <input type="checkbox"/> WITHDRAWAL OF CAVEAT <input type="checkbox"/> OTHER	<input checked="" type="checkbox"/> TRANSFER <input type="checkbox"/> PRIORITY NOTICE <input type="checkbox"/> MORTGAGE <input type="checkbox"/> DISCHARGE/RELEASE OF MORTGAGE <input type="checkbox"/> CAVEAT <input type="checkbox"/> WITHDRAWAL OF CAVEAT <input type="checkbox"/> OTHER
	ADDITIONAL INSTRUCTIONS	<u>SALE OF THIS PROPERTY</u>	<u>PURCHASE OF THIS PROPERTY</u>

		CLIENT 1 / CLIENT AGENT 1	CLIENT 2 / CLIENT AGENT 2
CLIENT AUTHORISATION AND SIGNING	I CERTIFY that:		
	(a) I am the Client or Client Agent; and		
	(b) I have the legal authority to instruct the Representative in relation to the Conveyancing Transaction(s); and		
	(c) if I am acting as a Client Agent that I have no notice of the revocation of my authority to act on behalf of the Client.		
	I AUTHORISE the Representative to act on my behalf, or where I am a Client Agent to act on behalf of the Client, in accordance with the terms of this Client Authorisation and any Participation Rules and any Prescribed Requirement to:		
	(a) sign documents on my behalf as required for the Conveyancing Transaction(s); and		
	(b) submit or authorise submission of documents for lodgment with the relevant Land Registry; and		
	(c) authorise any financial settlement involved in the Conveyancing Transaction(s); and		
	(d) do anything else necessary to complete the Conveyancing Transaction(s).		
		<u>Frederick Albert Bloggs</u>	<u>Freda Amy Bloggs</u>
	DATE <u>16/11/19</u>	DATE <u>16/11/19</u>	
	CLIENT/CLIENT AGENT NAME <u>FREDERICK ALBERT BLOGGS</u>	CLIENT/CLIENT AGENT NAME <u>FREDA AMY BLOGGS</u>	
	CAPACITY _____	CAPACITY _____	
	If applicable AUSTRALIAN CONSULAR OFFICE WITNESS or IDENTITY AGENT (if not a Representative Agent) NAME _____ DATE _____	If applicable AUSTRALIAN CONSULAR OFFICE WITNESS or IDENTITY AGENT (if not a Representative Agent) NAME _____ DATE _____	

		REPRESENTATIVE	REPRESENTATIVE AGENT (if applicable)
REPRESENTATIVE DETAILS AND SIGNING	NAME	<u>ABC Pty Ltd</u>	
	ACN/ARBN	<u>101 469 148</u>	
	ADDRESS	<u>1/100 KING STREET, BRISBANE</u>	
	I/We CERTIFY that reasonable steps have been taken to ensure that this Client Authorisation was signed by each of the persons named above as Client or Client Agent.		
	SIGNATURE OF REPRESENTATIVE OR REPRESENTATIVE AGENT IF APPLICABLE:		
	<u>Eric Lodge</u>		
	DATE <u>16/11/19</u>	DATE / /	
	SIGNATORY NAME: <u>ERIC LODGE</u>	SIGNATORY NAME:	
	CAPACITY: _____	CAPACITY:	

B – ABC Pty Ltd (e-settlement Subscriber) appoints Lamb Lawyers (Instructing Practitioner) as its Identity Agent and Lawrence Lawyer, an employee of Lamb Lawyers, verifies the identity of Frederick Albert Bloggs and Freda Amy Bloggs (Clients) and ABC Pty Ltd completes the Client Authorisation which is signed by Frederick Albert Bloggs and Freda Amy Bloggs in person and Eric Lodge, an employee of ABC Pty Ltd

CLIENT AUTHORISATION

Version 5.0



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Representative Reference: **BLOGGS-16-4-15**

CLIENT DETAILS	CLIENT 1	CLIENT 2	
	NAME ACN/ARBN ADDRESS	FREDERICK ALBERT BLOGGS 11/53 ALBERT ST, BRISBANE	FREDA AMY BLOGGS 11/53 ALBERT ST, BRISBANE

TRANSACTION DETAILS	AUTHORITY TYPE	CONVEYANCING TRANSACTION(S) 1	CONVEYANCING TRANSACTION(S) 2
	<input checked="" type="checkbox"/> SPECIFIC AUTHORITY (set out conveyancing transaction details below) <input type="checkbox"/> STANDING AUTHORITY (ends on revocation or expiration date: __/__/__) (tick relevant conveyancing transaction(s) below) <input type="checkbox"/> BATCH AUTHORITY (attach details of conveyancing transaction(s))	PROPERTY ADDRESS: 11/53 ALBERT ST, BRISBANE LAND TITLE REFERENCE(S) (and/or property description): 71011681 LOT 1 ON RP 1569 CONVEYANCING TRANSACTION(S): <input checked="" type="checkbox"/> TRANSFER <input type="checkbox"/> MORTGAGE <input type="checkbox"/> CAVEAT <input type="checkbox"/> PRIORITY NOTICE <input type="checkbox"/> DISCHARGE/RELEASE OF MORTGAGE <input type="checkbox"/> WITHDRAWAL OF CAVEAT <input type="checkbox"/> OTHER	PROPERTY ADDRESS: 10/100 QUEEN ST, BRISBANE LAND TITLE REFERENCE(S) (and/or property description): CONVEYANCING TRANSACTION(S): <input checked="" type="checkbox"/> TRANSFER <input type="checkbox"/> MORTGAGE <input type="checkbox"/> CAVEAT <input type="checkbox"/> PRIORITY NOTICE <input type="checkbox"/> DISCHARGE/RELEASE OF MORTGAGE <input type="checkbox"/> WITHDRAWAL OF CAVEAT <input type="checkbox"/> OTHER
	ADDITIONAL INSTRUCTIONS	SALE OF THIS PROPERTY	PURCHASE OF THIS PROPERTY

CLIENT AUTHORISATION AND SIGNING	CLIENT 1 / CLIENT AGENT 1	CLIENT 2 / CLIENT AGENT 2
	<p>I CERTIFY that:</p> <p>(d) I am the Client or Client Agent; and</p> <p>(e) I have the legal authority to instruct the Representative in relation to the Conveyancing Transaction(s); and</p> <p>(f) if I am acting as a Client Agent that I have no notice of the revocation of my authority to act on behalf of the Client.</p> <p>I AUTHORISE the Representative to act on my behalf, or where I am a Client Agent to act on behalf of the Client, in accordance with the terms of this Client Authorisation and any Participation Rules and any Prescribed Requirement to:</p> <p>(e) sign documents on my behalf as required for the Conveyancing Transaction(s); and</p> <p>(f) submit or authorise submission of documents for lodgment with the relevant Land Registry; and</p> <p>(g) authorise any financial settlement involved in the Conveyancing Transaction(s); and</p> <p>(h) do anything else necessary to complete the Conveyancing Transaction(s).</p>	
	<p>Frederick Albert Bloggs  SIGN HERE</p> <p>DATE 16/11/19</p> <p>CLIENT/CLIENT AGENT NAME CAPACITY: FREDERICK ALBERT BLOGGS</p> <p>If applicable AUSTRALIAN CONSULAR OFFICE WITNESS or IDENTITY AGENT (if not a Representative Agent) NAME Lawrence Lawyer DATE 16/11/19</p>	<p>Freda Amy Bloggs  SIGN HERE</p> <p>DATE 16/11/19</p> <p>CLIENT/CLIENT AGENT NAME CAPACITY: FREDA AMY BLOGGS</p> <p>If applicable AUSTRALIAN CONSULAR OFFICE WITNESS or IDENTITY AGENT (if not a Representative Agent) NAME Lawrence Lawyer DATE 16/11/19</p>

REPRESENTATIVE DETAILS AND SIGNING	REPRESENTATIVE	REPRESENTATIVE AGENT (if applicable)	
	NAME: ABC Pty Ltd ACN/ARBN: 101 469 148 ADDRESS: 1/100 KING STREET, BRISBANE		
	<p>I/We CERTIFY that reasonable steps have been taken to ensure that this Client Authorisation was signed by each of the persons named above as Client or Client Agent.</p> <p>SIGNATURE OF REPRESENTATIVE OR REPRESENTATIVE AGENT IF APPLICABLE:</p> <p>Eric Lodge  SIGN HERE</p> <p>DATE 16/11/19</p> <p>SIGNATORY NAME: ERIC LODGE</p> <p>CAPACITY:</p>		

C – ABC Pty Ltd (e-settlement Subscriber) appoints Lamb Lawyers (Instructing Practitioner) as its Representative Agent and Lawrence Lawyer, an employee of Lamb Lawyers, completes the verification of identity and the Client Authorisation which is signed by Frederick Albert Bloggs and Freda Amy Bloggs (Clients) in person in the presence of Lawrence Lawyer and Lawrence Lawyer

CLIENT AUTHORISATION

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CLIENT DETAILS	CLIENT 1	CLIENT 2
NAME	FREDERICK ALBERT BLOGGS	FREDA AMY BLOGGS
ACN/ARBN		
ADDRESS	11/53 ALBERT ST, BRISBANE	11/53 ALBERT ST, BRISBANE

TRANSACTION DETAILS	AUTHORITY TYPE	
	<input checked="" type="checkbox"/> SPECIFIC AUTHORITY <small>(set out conveyancing transaction details below)</small> CONVEYANCING TRANSACTION(S) 1	<input type="checkbox"/> STANDING AUTHORITY <small>ends on revocation or expiration date: ___/___/___</small> <small>(tick relevant conveyancing transaction(s) below)</small> CONVEYANCING TRANSACTION(S) 2
PROPERTY ADDRESS	11/53 ALBERT ST, BRISBANE	10/100 QUEEN ST, BRISBANE
LAND TITLE REFERENCE(S) <small>(and/or property description)</small>	71011681 LOT 1 ON RP 1569	
CONVEYANCING TRANSACTION(S)	<input checked="" type="checkbox"/> TRANSFER <input type="checkbox"/> PRIORITY NOTICE <input type="checkbox"/> MORTGAGE <input type="checkbox"/> DISCHARGE/RELEASE OF MORTGAGE <input type="checkbox"/> CAVEAT <input type="checkbox"/> WITHDRAWAL OF CAVEAT <input type="checkbox"/> OTHER	<input checked="" type="checkbox"/> TRANSFER <input type="checkbox"/> PRIORITY NOTICE <input type="checkbox"/> MORTGAGE <input type="checkbox"/> DISCHARGE/RELEASE OF MORTGAGE <input type="checkbox"/> CAVEAT <input type="checkbox"/> WITHDRAWAL OF CAVEAT <input type="checkbox"/> OTHER
ADDITIONAL INSTRUCTIONS	SALE OF THIS PROPERTY	PURCHASE OF THIS PROPERTY

CLIENT AUTHORISATION AND SIGNING	CLIENT 1 / CLIENT AGENT 1	CLIENT 2 / CLIENT AGENT 2
	<p>I CERTIFY that:</p> <p>(g) I am the Client or Client Agent; and</p> <p>(h) I have the legal authority to instruct the Representative in relation to the Conveyancing Transaction(s); and</p> <p>(i) if I am acting as a Client Agent that I have no notice of the revocation of my authority to act on behalf of the Client.</p> <p>I AUTHORISE the Representative to act on my behalf, or where I am a Client Agent to act on behalf of the Client, in accordance with the terms of this Client Authorisation and any Participation Rules and any Prescribed Requirement to:</p> <p>(j) sign documents on my behalf as required for the Conveyancing Transaction(s); and</p> <p>(k) submit or authorise submission of documents for lodgment with the relevant Land Registry; and</p> <p>(l) authorise any financial settlement involved in the Conveyancing Transaction(s); and</p> <p>(m) do anything else necessary to complete the Conveyancing Transaction(s).</p>	
<p>Frederick Albert Bloggs</p> <p>DATE 16/11/19</p> <p>CLIENT/CLIENT AGENT NAME CAPACITY: FREDERICK ALBERT BLOGGS</p> <p>If applicable AUSTRALIAN CONSULAR OFFICE WITNESS or IDENTITY AGENT (if not a Representative Agent) NAME DATE</p>	<p>Freda Amy Bloggs</p> <p>DATE 16/11/19</p> <p>CLIENT/CLIENT AGENT NAME CAPACITY: FREDA AMY BLOGGS</p> <p>If applicable AUSTRALIAN CONSULAR OFFICE WITNESS or IDENTITY AGENT (if not a Representative Agent) NAME DATE</p>	<p style="text-align: right;">SIGN HERE</p> <p style="text-align: right;">SIGN HERE</p>

REPRESENTATIVE DETAILS AND SIGNING	REPRESENTATIVE	REPRESENTATIVE AGENT (if applicable)
	<p>NAME: ABC Pty Ltd</p> <p>ACN/ARBN: 101 469 148</p> <p>ADDRESS: 1/100 KING STREET, BRISBANE</p>	<p>NAME: Lamb Lawyers</p> <p>ACN/ARBN: 101 469 147</p> <p>ADDRESS: 1/100 QUEEN STREET, BRISBANE</p>
<p>I/We CERTIFY that reasonable steps have been taken to ensure that this Client Authorisation was signed by each of the persons named above as Client or Client Agent.</p> <p>SIGNATURE OF REPRESENTATIVE OR REPRESENTATIVE AGENT IF APPLICABLE:</p>		
<p>SIGNATORY NAME: _____</p> <p>DATE: / /</p> <p>CAPACITY: _____</p>	<p>Lawrence Lawyer</p> <p>SIGNATORY NAME: Lawrence Lawyer</p> <p>DATE: 16/11/19</p> <p>CAPACITY: _____</p>	<p style="text-align: right;">SIGN HERE</p> <p style="text-align: right;">SIGN HERE</p>

D – Frederick Albert Bloggs and Freda Amy Bloggs (Clients) appoint Lawrence Lawyer as a Client Agent through a power of attorney and ABC Pty Ltd (e-settlement Subscriber) verifies the identity of Lawrence Lawyer and completes the Client Authorisation which is signed by Lawrence Lawyer (Client Agent) and Eric Lodge, an employee of ABC Pty Ltd

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		CLIENT 1	CLIENT 2
CLIENT DETAILS	NAME	FREDERICK Albert BLOGGS	FREDA Amy BLOGGS
	ACN/ARBN		
	ADDRESS	11/53 ALBERT ST, BRISBANE	11/53 ALBERT ST, BRISBANE

		CONVEYANCING TRANSACTION(S) 1	CONVEYANCING TRANSACTION(S) 2
TRANSACTION DETAILS	AUTHORITY TYPE	<input checked="" type="checkbox"/> SPECIFIC AUTHORITY (set out conveyancing transaction details below)	<input type="checkbox"/> STANDING AUTHORITY ends on revocation or expiration date: ___/___/___ (tick relevant conveyancing transaction(s) below)
	PROPERTY ADDRESS	11/53 ALBERT ST, BRISBANE	10/100 QUEEN ST, BRISBANE
	LAND TITLE REFERENCE(S) (and/or property description)	71011681 LOT 1 ON RP 1569	
	CONVEYANCING TRANSACTION(S)	<input checked="" type="checkbox"/> TRANSFER <input type="checkbox"/> MORTGAGE <input type="checkbox"/> PRIORITY NOTICE <input type="checkbox"/> CAVEAT <input type="checkbox"/> DISCHARGE/RELEASE OF MORTGAGE <input type="checkbox"/> WITHDRAWAL OF CAVEAT <input type="checkbox"/> OTHER	<input checked="" type="checkbox"/> TRANSFER <input type="checkbox"/> MORTGAGE <input type="checkbox"/> PRIORITY NOTICE <input type="checkbox"/> CAVEAT <input type="checkbox"/> DISCHARGE/RELEASE OF MORTGAGE <input type="checkbox"/> WITHDRAWAL OF CAVEAT <input type="checkbox"/> OTHER
	ADDITIONAL INSTRUCTIONS	SALE OF THIS PROPERTY	PURCHASE OF THIS PROPERTY

		CLIENT 1 / CLIENT AGENT 1	CLIENT 2 / CLIENT AGENT 2
CLIENT AUTHORISATION AND SIGNING	I CERTIFY that:		
	(j) I am the Client or Client Agent; and		
	(k) I have the legal authority to instruct the Representative in relation to the Conveyancing Transaction(s); and		
	(l) if I am acting as a Client Agent that I have no notice of the revocation of my authority to act on behalf of the Client.		
	I AUTHORISE the Representative to act on my behalf, or where I am a Client Agent to act on behalf of the Client, in accordance with the terms of this Client Authorisation and any Participation Rules and any Prescribed Requirement to:		
	(m) sign documents on my behalf as required for the Conveyancing Transaction(s); and		
	(n) submit or authorise submission of documents for lodgment with the relevant Land Registry; and		
	(o) authorise any financial settlement involved in the Conveyancing Transaction(s); and		
	(p) do anything else necessary to complete the Conveyancing Transaction(s).		
		Lawrence Lawyer DATE 16/11/19 CLIENT/CLIENT AGENT NAME LAWRENCE LAWYER CAPACITY ATTORNEY	Lawrence Lawyer DATE 16/11/19 CLIENT/CLIENT AGENT NAME LAWRENCE LAWYER CAPACITY ATTORNEY

		REPRESENTATIVE	REPRESENTATIVE AGENT (if applicable)
REPRESENTATIVE DETAILS AND SIGNING	NAME	ABC Pty Ltd	
	ACN/ARBN	101 469 148	
	ADDRESS	1/100 KING STREET, BRISBANE	
	I/We CERTIFY that reasonable steps have been taken to ensure that this Client Authorisation was signed by each of the persons named above as Client or Client Agent.		
	SIGNATURE OF REPRESENTATIVE OR REPRESENTATIVE AGENT IF APPLICABLE: Eric Lodge DATE 16/11/19 SIGNATORY NAME: ERIC LODGE	DATE / / SIGNATORY NAME: CAPACITY:	