



AUSTRALIAN REGISTRARS NATIONAL ELECTRONIC CONVEYANCING COUNCIL

# **MODEL OPERATING REQUIREMENTS**

**Version 3**

Australian Registrars National Electronic Conveyancing Council

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# OPERATING REQUIREMENTS

## 1 PRELIMINARY

These Operating Requirements constitute the Operating Requirements determined by the Registrar pursuant to section 22 of the ECNL.

## 2 DEFINITIONS AND INTERPRETATION

### 2.1 Definitions

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

2.1.2 In these Operating Requirements capitalised terms have the meanings set out below:

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

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

**Additional Operating Requirements** means the additional Operating Requirements specific to the Registrar's Jurisdiction, if any, set out in Schedule 4, as amended from time to time.

**Amendment to Operating Requirements Procedure** means the procedure set out in Schedule 6, as amended from time to time.

**Annual Report to the Registrar** means the report referred to in clause 18.2 of these Operating Requirements.

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

**Approval** means, in respect of an ELNO, the ELNO's approval by the Registrar pursuant to section 15 of the ECNL to provide and operate an ELN.

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

**APRA** means the Australian Prudential Regulatory Authority.

**Australian Business Register** means the register established under the *A New Tax System (Australian Business Number) Act 1999 (Cth)*.

**Business Continuity and Disaster Recovery Management Program** means the program referred to in clause 12.1 of these Operating Requirements.

**Business Continuity and Disaster Recovery Plan (BCDRP)** means a documented plan forming part of the Business Continuity and Disaster Recovery Management Program setting out how an ELNO will respond to an Incident to restore continuity and enable recovery.

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

**Business Rules** means the documented statements of a Land Registry's business requirements and practices that define or constrain:

- (a) the preparation of Registry Instruments, Information Reports and other Documents or information provided to a Land Registry; and
- (b) the presentation for Lodgment or providing of Registry Instruments, Information Reports and other Documents or information with or to a Land Registry;

provided by the Registrar to the ELNO from time to time.

**Category One** means the clauses of these Operating Requirements set out under the heading "Category One" in Schedule 3.

**Category Two** means the clauses of these Operating Requirements set out under the heading "Category Two" in Schedule 3.

**Category Three** means the clauses of these Operating Requirements set out under the heading "Category Three" in Schedule 3.

**Category Four** means the clauses of these Operating Requirements set out under the heading "Category Four" in Schedule 3.

**Caveat** means a Document under the Land Titles Legislation giving notice of a purported claim to an interest in land that may have the effect of an injunction to stop the registration of a Registry Instrument in the Titles Register.

**Certificate Profile** means the specification of the fields to be included in a Digital Certificate and the contents of each.

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

**Change Management Framework (CMF)** means a comprehensive, documented framework of policies, practices and procedures to ensure that the changes referred to in clause 13.1 of these Operating Requirements are made in a planned and managed way and that, for each instance of change, a specific change management plan can be prepared to, without limitation,;

- (a) communicate and consult on proposed changes with parties affected by the change;
- (b) enable parties affected by the change to fully assess the proposed change, including the reasons for the proposed change, impacts, costs, benefits and risks of the proposed change; and
- (c) have regard to the feedback received from parties affected by the change in determining the tasks to be undertaken and their implementation should the change be implemented.

**Certificate Policy** means a named set of rules that indicates the applicability of a Digital Certificate to a particular community and/or class of applications with common security requirements, approved or reviewed by the Gatekeeper Competent Authority.

**Client** means a Person who has or Persons who have appointed a Subscriber as their Representative pursuant to a Client Authorisation and caveators and applicants in a Priority/Settlement Notice who have appointed a Subscriber as their Representative but have not provided a Client Authorisation.

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

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

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

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

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

**Core Hours** means the time from 6:00am to 10:00pm on each Business Day.

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

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

**Data Standard** means the data standard specified by the Registrar.

**Desirable Recommendations** means those written recommendations of an Independent Expert which are not Essential Recommendations and which an ELNO may choose to implement.

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

- (a) identifies either a Key Holder and/or the business entity that he/she represents; or a device or application owned, operated or controlled by the business entity;

- (b) binds the Key Holder to a Key Pair by specifying the Public Key of that Key Pair; and
- (c) contains the specification of the fields to be included in a Digital Certificate and the contents of each.

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

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

**Discharge/Release of Mortgage** means a Registry Instrument that discharges or releases a Mortgage.

**Document** has the meaning given to it in the ECNL.

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

**Duty Authority** means the State Revenue Office of the Jurisdiction in which the land the subject of the Conveyancing Transaction is situated.

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

**Electronic Workspace** means a shared electronic workspace generated by the ELN.

**Electronic Workspace Document** means a defined data set and if necessary, associated text, assembled from the information collected in an Electronic Workspace. Without limitation, Lodgment Instructions, Registry Instruments and Information Reports are Electronic Workspace Documents.

**ELN** has the meaning given to it in the ECNL.

**ELNO** has the meaning given to it in the ECNL.

**ELNO System** means the ELNO's systems for facilitating the preparation of Electronic Workspace Documents relevant to a Conveyancing Transaction, the financial settlement of a Conveyancing Transaction (if any) and the presentation for Lodgment of electronic Documents at a Land Registry, and includes the ELN.

**Essential Recommendations** means those written recommendations of an Independent Expert the implementation of which are expressed to be essential by the Independent Expert and which an ELNO is required to implement under these Operating Requirements.

**Financial Year** has the meaning given to it in the ECNL.

**Fit for Purpose** means the ELNO has:



- (a) adopted a Standard that is appropriate for the operation of an ELN in accordance with the Operating Requirements;
- (b) developed frameworks that are in accordance with the adopted Standards and which achieve the underlying objectives of those Standards; and
- (c) implemented all of the necessary processes and procedures that align with the adopted Standard.

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

**Gatekeeper Accreditation Certificate** means the electronic Digital Certificate issued by the Gatekeeper Competent Authority to Gatekeeper Accredited Service Providers.

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

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

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

**Incident** means any event which causes, or may cause, the providing or operation of the ELN by the ELNO to cease, be interrupted, or which causes or may cause a reduction in the service or the quality of the services provided by the ELNO.

**Independent Certification** means a written certification by an Independent Expert:

- (a) signed by the Independent Expert;
- (b) on the letterhead of the Independent Expert;
- (c) given for the benefit of the Registrar; and
- (d) annexing a report of the Independent Expert into the matters the subject of the Independent Certification

certifying that the ELNO has complied with the requirement of these Operating Requirements to which the certification relates.

**Independent Expert** means a Person who is appropriately qualified, competent and insured and is:

- (a) not, or is not related to or associated with, the ELNO, a director, officer or employee of the ELNO; or

- (b) a contractor or agent of the ELNO 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 the ELNO.

**Individual** has the meaning given to it in the ECNL.

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

**Information Report** means ancillary information about a Conveyancing Transaction delivered to a Land Registry or Duty Authority, or other government taxing, valuing or rating authority.

**Information Security Management System (ISMS)** means the System referred to in clause 7.1 of these Operating Requirements.

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

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

**Intellectual Property Rights** includes any:

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

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

**Jeopardised** means put at risk the integrity of the Titles Register by fraud or other means.

**Jurisdiction** has the meaning given to it in the ECNL.

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

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

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

**Land Information** means information provided by the Land Registry or information used to complete electronic Documents to be Lodged at the Land Registry.

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

**Land Registry Fees** means Information Fees and Lodgment Fees.

**Land Registry System** means the Land Registry system for accepting and processing electronic Documents presented for Lodgment using an ELN.

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

**Land Title Reference Verification** means a service to verify that a certificate of title or folio of the Titles Register (as applicable) the subject of a Conveyancing Transaction is valid and can be dealt with electronically through the ELN.

**Lodge** has the meaning given to it in the ECNL.

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

**Lodgment Fees** means fees due to a Land Registry for Registry Instruments or other electronic Documents presented for Lodgment with the Land Registry by the ELNO on behalf of the Participating Subscribers.

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

**Lodgment Verification** means a service to verify that an electronic Registry Instrument will be accepted for Lodgment by the Registrar or Land Registry if the Registry Instrument data remains unchanged.

**Monthly Report** means the report referred to in clause 18.1 of these Operating Requirements.

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

**Notifications** means:

- (a) all alerts, notifications and information received by the ELNO from the Registrar, the Land Registry, Subscriber or any other Person; and
- (b) all alerts, notifications and information sent by the ELNO to the Registrar, the Land Registry, Subscriber or any other Person,

in connection with a Conveyancing Transaction.

**No Change Certification** means:

- (a) where an ELNO was required to produce to the Registrar a Specified Document to demonstrate compliance with a requirement of these Operating Requirements, a written certification made by the ELNO for the benefit of the Registrar that there has been no change to the Specified Document since the date it was produced to the Registrar and no occurrence or anything that would render the Specified Document incorrect, incomplete, false or misleading;
- (b) where an ELNO was required to give to the Registrar a Self-Certification to demonstrate compliance with a requirement of these Operating Requirements, a written certification made by the ELNO for the benefit of the Registrar that there has been no occurrence since the date the Self-Certification was made that would render the Self-Certification incorrect, incomplete, false or misleading; or
- (c) where an ELNO was required to obtain and provide to the Registrar an Independent Certification to demonstrate compliance with a requirement of these Operating Requirements, a written certification made by the ELNO for the benefit of the Registrar that there has been no occurrence since the date the Independent Certification was made that would render the Independent Certification incorrect, incomplete, false or misleading.

**Non-Core Hours** means any time outside of Core Hours.

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

**Participation Agreement** has the meaning given to it in the ECNL.

**Participation Rules** has the meaning given to it in the ECNL.

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

**Performance Levels** means the performance levels the ELNO is required to meet as set out in Schedule 2.

**Person** has the meaning given to it in the ECNL.

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

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

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

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

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

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

**Record** has the meaning given to it in the ECNL.

**Registrar** has the meaning given to it in the ECNL.

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

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

**Replacement Cost Value** means an amount calculated annually as the actual cost to replace the total assets of an ELNO, disclosed in the ELNO's audited financial statements and reports for the last Financial Year, at their pre-loss condition.

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

**Responsible Subscriber** means a Subscriber that, following Lodgment, is liable for Lodgment Fees incurred and is responsible for the resolution of requisitions issued by the Registrar for a Lodgment Case.

**Risk Assessment** means a Document identifying, analysing and evaluating risks to an ELNO in its operation of the ELN.

**Risk Management Framework (RMF)** means the framework referred to in clause 9.1 of these Operating Requirements and includes, without limitation, a Risk Assessment and a Risk Treatment Plan.

**Risk Treatment Plan** means a Document setting out the process by which an ELNO will mitigate the risks identified in the Risk Assessment.

**Schedule 1** means the table headed “Schedule 1 – Insurance” attached to these Operating Requirements.

**Schedule 2** means the table headed “Schedule 2 – Performance Levels” attached to these Operating Requirements.

**Schedule 3** means the table headed “Schedule 3 – Reporting Requirements” attached to these Operating Requirements.

**Scheduled Maintenance** means those scheduled periods of time during Non- Core Hours during which an ELNO can perform maintenance to the ELNO’s System.

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

**Self-Certification** means a written certification made by the ELNO for the benefit of the Registrar certifying that the ELNO has complied with the requirement of these Operating Requirements to which the certification relates and including a description of what the ELNO has done to enable it to give the Self-Certification.

**Settlement Transaction** means a Conveyancing Transaction that involves a financial settlement.

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

**Specified Document** means a Document set out in Schedule 3 under the column heading “Document to be Produced”.

**Standard** means:

- (a) a current standard, (or in the absence of a standard, a handbook) published by Standards Australia Ltd, its successor or any national body having a similar function; or
- (b) where there is no current relevant standard published by Standards Australia Ltd, a current standard published by the International Organisation for Standardisation (ISO).

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

**Subscriber** has the meaning given to it in the ECNL.

**Subscriber Registration Process** means a documented process for creating and managing the registration of Subscribers, including, without limitation, processes relating to:

- (a) a Subscriber's registration;
- (b) a Subscriber's ongoing eligibility to be a Subscriber; and
- (c) any restriction, suspension, termination and resignation of a Subscriber.

**Subscriber Identity Verification Standard** means the standard for the verification of identity of potential Subscribers set out in Schedule 7, as amended from time to time.

**Suspension Event** means where the ELNO knows or has reasonable grounds to suspect that the Subscriber:

- (a) is in material breach of any of the Subscriber's obligations under the Participation Rules; or
- (b) has or may have acted fraudulently in a way which may impact on a Conveyancing Transaction; or
- (c) has or may have acted negligently in a way which may impact on a Conveyancing Transaction; or
- (d) poses a threat to the operation, security, integrity or stability of the ELN; or
- (e) has otherwise engaged in conduct contrary to the interests of other Subscribers or the Registrar, which may impact on a Conveyancing Transaction.

**Termination Event** means where:

- (a) the ELNO knows or has reasonable grounds to believe that the Subscriber:
  - (i) is in material breach of any of the Subscriber's obligations under the Participation Rules; or
  - (ii) has or may have acted fraudulently in a way which may impact on a Conveyancing Transaction; or
  - (iii) has or may have acted negligently in a way which may impact on a Conveyancing Transaction; or
  - (iv) poses a threat to the operation, security, integrity or stability of the ELN; or

- (v) has otherwise engaged in conduct contrary to the interests of other Subscribers or the Registrar, which may impact on a Conveyancing Transaction; or
- (b) the Subscriber is subject to an order or directions of a court, tribunal, professional regulator or disciplinary body, which may impact on a Conveyancing Transaction.

**Territory** has the meaning given to it in the ECNL.

**Test Plan** means a plan acceptable to the Registrar for the testing of the ELN.

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

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

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

- (a) changes made in an Electronic Workspace and which Subscriber made which changes to an Electronic Workspace;
- (b) administrative action taken by or for a Subscriber in relation to its use of the ELN;
- (c) other actions of Subscribers in an Electronic Workspace;
- (d) changes in the status of an Electronic Workspace, Registry Instruments or other electronic Documents within the Electronic Workspace; and
- (e) events relating to the security and integrity of the ELN.

**Transfer** means a Registry Instrument that transfers an estate or interest in land.

**Transition Plan (TP)** means the Plan referred to in clause 21.1 of these Operating Requirements.

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

**Valid Digital Certificate** means a Digital Certificate issued by a Certification Authority that has not been revoked or suspended by the Certification Authority and remains operational.

**Withdrawal of Caveat** means a Document under the Land Titles Legislation which removes a Caveat.

**Workspace Data** means data in an Electronic Workspace.



## 2.2 Interpretation

In these Operating Requirements, unless a contrary intention is evident:

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

- 2.2.13 Where there is any inconsistency between the description of an ELNO's obligations in a clause of these Operating Requirements and in an annexure attached to these Operating Requirements, the clause will prevail to the extent of the inconsistency.

### **3 COMPLIANCE WITH OPERATING REQUIREMENTS**

The ELNO must:

- (a) as a qualification for approval, be able to comply with these Operating Requirements at the time the ELNO applies for Approval;
- (b) comply with these Operating Requirements and any conditions on the Approval whilst an Approval is held by the ELNO; and
- (c) continue to comply with clauses 19 and 21 after the ELNO ceases to hold an Approval,

unless the Registrar, in his or her absolute discretion, waives compliance by the ELNO with any Operating Requirement in accordance with section 27 of the ECNL.

## **4 ELNO ELIGIBILITY CRITERIA**

### **4.1 ABN**

The ELNO must have an ABN and be registered for GST.

### **4.2 Status**

The ELNO must:

- (a) be a corporation registered under the Corporations Act;
- (b) if it is a foreign body corporate, be registered under Division 2 of Part 5B.2 of the Corporations Act and obtain any necessary approvals under the *Foreign Acquisitions and Takeovers Act 1975 (Cth)*; and
- (c) ensure that the constituting Documents of the ELNO empower the ELNO to assume the obligations set out in these Operating Requirements and to do all things that it can reasonably contemplate will be required by these Operating Requirements.

### **4.3 Character**

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

- (a) ensure that the ELNO and the ELNO's principals, directors or officers are not and have not been subject to any of the matters listed in 4.3.1(b)(i) to (vii) below; and
- (b) take reasonable steps to ensure that the ELNO's employees, agents or contractors are not and have not been subject to any of the matters listed in (i) to (vii) below:
  - (i) an Insolvency Event within the last 5 years;
  - (ii) a conviction for fraud or an indictable offence or any offence for dishonesty against any law in connection with business, professional or commercial activities;
  - (iii) disqualification from managing a body corporate under the Corporations Act;
  - (iv) any fine, banning, suspension or other disciplinary measure for financial or professional misconduct;
  - (v) any disciplinary action of any government or governmental authority or agency, or any regulatory authority of a financial market or a profession;
  - (vi) 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; and
  - (vii) any refusal of an application to provide an electronic Lodgment service.

4.3.2 The ELNO must maintain contemporary best practice governance arrangements that are regularly reviewed.

### **4.4 Financial Resources**

The ELNO must demonstrate sufficient financial resources to meet its obligations under these Operating Requirements.

### **4.5 Technical Resources**

The ELNO must demonstrate sufficient technical resources to meet its obligations under these Operating Requirements.

### **4.6 Organisational Resources**

The ELNO must demonstrate sufficient organisational resources to meet its obligations under these Operating Requirements.

## **4.7 Insurance**

- 4.7.1 The ELNO must obtain the insurance policies required under these Operating Requirements on terms satisfactory to the Registrar in accordance with the following sub-clauses.
- 4.7.2 The ELNO must maintain a policy of:
- (a) professional indemnity insurance in an annual aggregate amount of not less than that set out in Item 1 in Schedule 1;
  - (b) fidelity insurance in an annual aggregate amount of not less than that set out in Item 2 in Schedule 1;
  - (c) public and product liability insurance in an annual aggregate amount of not less than that set out in Item 3 in Schedule 1; and
  - (d) asset insurance in an amount of not less than that set out in Item 4 in Schedule 1.
- 4.7.3 The ELNO must obtain its insurance policies from an Approved Insurer.
- 4.7.4 The ELNO must obtain policies of professional indemnity and fidelity insurance that cover the acts and omissions of its principals, officers and employees.
- 4.7.5 The ELNO must ensure that any contractors to the ELNO maintain relevant and appropriate policies of insurance to adequately cover the services provided by the contractor.
- 4.7.6 The ELNO must, as soon as practicable, inform the Registrar in writing of the occurrence of an event that may give rise to a claim under a policy of insurance required to be maintained under these Operating Requirements and must ensure that the Registrar is kept fully informed of subsequent action and developments concerning the claim.

## **5 OPERATION OF ELN**

### **5.1 Encourage Widespread Industry Use**

The ELNO must have in place and implement a plan to encourage widespread industry use of the ELN and to achieve economic efficiencies for Subscribers. As a minimum, the plan must set out the ELNO's:

- (a) specific plans to encourage the use of the ELN nationally and in the Jurisdiction;
- (b) proposed service delivery model, including the proposed or actual customer base and anticipated market penetration; and

- (c) timings for the commencement of operations and the anticipated level of service, including matters such as ease of connection and access for different classes of users.

## **5.2 National System and Minimum Document Capability**

Recognising that the implementation of the requirements in (a) and (b) below may be staged in accordance with the plan referred to in clause 5.1, the ELNO must ensure that:

- (a) the ELN is available to each Land Registry in Australia and to Subscribers in all States and Territories in Australia; and
- (b) the ELN enables, as a minimum, the Lodgment of those of the following Registry Instruments and other Documents which are capable of Lodgment under the Land Titles Legislation of the Jurisdiction in which the ELN is available:
  - (i) Transfer;
  - (ii) Mortgage;
  - (iii) Discharge/Release of Mortgage;
  - (iv) Caveat;
  - (v) Withdrawal of Caveat; and
  - (vi) Priority/Settlement Notice.

## **5.3 General Obligations**

The ELNO must:

- (a) have adequate arrangements for operating the ELN in a proper, competent, sustainable and efficient manner;
- (b) exercise due skill, care and diligence in operating the ELN and in meeting its obligations under these Operating Requirements;
- (c) minimise any disruption of or interference to any systems connected to the ELN for the purpose of conducting Conveyancing Transactions;
- (d) obtain and maintain all necessary licences and regulatory approvals required by any appropriate authority to provide and operate the ELNO System;
- (e) determine its fees according to a publicly available, equitable and transparent pricing policy which is kept current by the ELNO and includes the manner in and frequency of which prices will be reviewed by the ELNO;
- (f) ensure that all of the ELNO's officers, principals, employees, agents and contractors are:

- (i) adequately trained to operate or access the ELN to the extent relevant in the manner authorised; and
  - (ii) aware of the ELNO's obligations under these Operating Requirements to the extent relevant;
- (g) comply with all:
- (i) applicable laws (including any applicable Privacy Laws and laws relating to Document and information collection, storage and retention); and
  - (ii) government policies as notified to the ELNO in writing;
- (h) maintain confidentiality of all information provided to the ELNO in which the provider of the information would reasonably expect confidentiality to be maintained;
- (i) comply with any reasonable direction given by the Registrar for the purpose of these Operating Requirements;
- (j) notify the Registrar of all events relating to the ELNO or the ELN which have the potential to affect the integrity of the Titles Register; and
- (k) give such assistance to the Registrar, or a Person authorised by the Registrar, as the Registrar or the authorised Person reasonably requests in relation to the performance of the Registrar's functions and powers under the ECNL including, without limitation, reasonable access to the ELN and to the records of the ELNO.

## **6 INITIAL TESTING**

The ELNO must not commence operating the ELN without first undertaking testing of the ELN in accordance with the Test Plan and otherwise to the satisfaction of the Registrar.

## **7 OBLIGATIONS REGARDING SYSTEM SECURITY AND INTEGRITY**

### **7.1 Information Security Management System**

The ELNO must:

- (a) establish, implement, operate, monitor, review, maintain and keep current a documented Information Security Management System that is Fit for Purpose in relation to the ELNO's operations to ensure the security of the ELN;
- (b) ensure that its Information Security Management System:

- (i) takes into account the obligations of the ELNO in these Operating Requirements; including without limitation the obligations in clauses 19.1 and 19.2; and
- (ii) includes a comprehensive Subscriber security policy with which Subscribers and Users must comply, the purpose of which is to assist Subscribers and Users to understand their obligations in relation to the security of the ELN and which addresses, without limitation:
  - A. the technology required to enable Subscribers to access the ELN;
  - B. the specification of virus protection software required to be installed on a Subscriber's computers;
  - C. protection of Security Items; and
  - D. training and monitoring of Users in relation to a Subscriber's security obligations;
- (c) have its Information Security Management System regularly reviewed by an Independent Expert and implement, as a minimum, any Essential Recommendations of that Independent Expert; and
- (d) before implementing any material change to its Information Security Management System, obtain an Independent Certification relating to the change that the Information Security Management System will, after the making of the change, continue to be suitable, adequate and effective and otherwise Fit for Purpose, and provide it to the Registrar.

## **7.2 Access to ELN**

- 7.2.1 Subject to clause 7.2.2, the ELNO must ensure that only Subscribers registered in accordance with these Operating Requirements and the Participation Rules or Persons properly authorised by Subscribers are able to access and use the ELN.
- 7.2.2 The ELNO must ensure that only Persons authorised by the ELNO have access to the ELN for administrative purposes.

## **7.3 Security of ELN**

The ELNO must take reasonable steps to:

- (a) ensure that data supplied to any system connected to the ELN is free from viruses, corruption and any other condition that may compromise any of those systems or any data stored by, or passing into or out of, the Land Registry's System or any other systems connected to the ELN for the purposes of carrying out Conveyancing Transactions;

- (b) prevent, trap, detect and remove any viruses, corruption and any other condition from its systems and data that may damage the Land Registry System, damage any systems connected to the ELN for the purposes of carrying out Conveyancing Transactions, or damage any data stored by the Land Registry;
- (c) prevent unauthorised system use, intrusion and service denial and detect and remove unauthorised system additions or modifications;
- (d) monitor, and take appropriate action after receiving security alerts from the Land Registry;
- (e) do all things reasonably necessary to reduce systemic risk in the ELN and promote the overall stability of each system connected to the ELN for the purposes of carrying out Conveyancing Transactions; and
- (f) ensure that it does not do or omit to do anything that is likely to have an adverse effect on the operation, security, integrity or stability of the Land Registry System.

## **7.4 Data**

The ELNO must ensure that the ELN:

- (a) accurately presents and uses data received from a Land Registry or any other source;
- (b) does not change data received from a Land Registry other than in accordance with an approval granted under clause 19.3(b); and
- (c) where the ELN checks, collates or processes data from a Land Registry, accurately checks, collates or processes that data.

## **7.5 Protection of Land Information**

The ELNO must ensure that any computer infrastructure forming part of the ELNO System and in which Land Information is entered, stored or processed is located within the Commonwealth of Australia.

## **7.6 Digital Certificate Regime**

- 7.6.1 The ELNO must ensure that, where a Digital Certificate is used to Digitally Sign a Document, the Certification Authority is independent.
- 7.6.2 Without limiting clause 7.6.1 above, the ELNO must ensure that Digital Certificates used in the ELN:
  - (a) accord with the Gatekeeper PKI framework;
  - (b) are supplied by a Gatekeeper Accredited Service Provider;



- (c) are issued under a Certificate Policy which:
  - (i) identifies the Subscriber and its ABN; and
  - (ii) binds the Subscriber's Signer as Key Holder to the Subscriber including, without limitation, by naming the Subscriber's Signer in the Certificate Profile.

## **7.7 Verifying Digital Signing**

The ELNO must ensure that the ELN has an effective means of:

- (a) verifying that any Document required to be Digitally Signed has been executed using a Valid Digital Certificate of the Subscriber authorised to execute the Document;
- (b) verifying that at the time of Digitally Signing the Subscriber's registration as a Subscriber has not expired or been restricted, suspended or terminated;
- (c) verifying that when a Document is Digitally Signed, the Signer:
  - (i) has the signing rights being exercised;
  - (ii) has not had their use of the ELN suspended or terminated or their signing rights suspended or terminated; and
- (d) providing the Registrar with data to verify the matters in paragraphs (a), (b) and (c) and the identity of the Signer.

## **7.8 Verifying No Alteration**

The ELNO must ensure that the ELN has an effective means of enabling the Registrar to verify that each Digitally Signed electronic Document presented to the Registrar has not been altered in any way since it was executed.

## **7.9 Notification of Jeopardised Conveyancing Transactions**

The ELNO must immediately notify the Registrar and those of its Subscribers involved in any Conveyancing Transaction which it has reason to believe has been Jeopardised.

## **7.10 Obligations in relation to Notification of Compromised Security Items**

Where a Subscriber notifies the ELNO that:

- (a) any of the Security Items of its Users have been or are likely to have been Compromised; or
- (b) the Subscriber is aware or suspects that any of its Private Keys have been used to Digitally Sign any Registry Instruments or other electronic Documents without its

authorisation or the authorisation of any Client on whose behalf the Registry Instruments or other electronic Documents are purported to be Digitally Signed,

the ELNO must:

- (a) prevent the presentation for Lodgment with the Registrar or Land Registry of those Registry Instruments or other electronic Documents which the Subscriber advises the ELNO may be affected by the Compromise of the Security Items or Digitally Signed without the authority referred to in paragraph (b) above; or
- (b) if it is not possible to prevent the presentation for Lodgment, immediately notify the Registrar.

## **8 SECURITY AND INTEGRITY OF TITLES REGISTER**

The ELNO must ensure that it does not do anything that is likely to diminish the overall security and integrity of the Titles Register or public confidence in the Titles Register.

## **9 RISK MANAGEMENT**

### **9.1 Mitigate Risk**

The ELNO must:

- (a) establish, implement, operate, monitor, review, maintain and keep current a documented Risk Management Framework that is Fit for Purpose to enable the identification, mitigation and management of risks in its operation of the ELN; and
- (b) have its Risk Management Framework regularly reviewed by an Independent Expert and implement, as a minimum, any Essential Recommendations of that Independent Expert.

### **9.2 No Increased Risk of Fraud or Error**

Without limiting any other obligation under these Operating Requirements, the ELNO must use reasonable endeavours to ensure that the use of the ELN for the presentation for Lodgment of Conveyancing Transactions with the Registrar does not result in a greater risk of fraud or error in those Conveyancing Transactions compared to the risk of fraud or error for comparable Conveyancing Transactions Lodged in a paper medium.

## **10 MINIMUM SYSTEM REQUIREMENTS**

The ELNO must ensure that the ELN meets the minimum requirements determined by the Registrar, which must include as a minimum the requirements set out in this clause.

### **10.1 Functionality**

The ELNO must ensure that the ELN:

- (a) provides sufficient functionality to enable:
  - (i) Subscribers to comply with the Participation Rules; and
  - (ii) the Registrar to comply with legislative obligations relevant to the service provided by the ELNO and policy requirements notified to the ELNO relevant to the service provided by the ELNO; and
- (b) is designed and provisioned:
  - (i) to be reliable, scalable and flexible;
  - (ii) to use software that is fully supported by the provider of that software;
  - (iii) so that it is architecturally sound with code design compliant with relevant industry standards; and
  - (iv) so that it is compliant with any relevant industry standards relating to usability and accessibility.

### **10.2 (Deleted)**

### **10.3 Data Standard**

The ELN must use the Data Standard to present:

- (a) electronic Documents, including all component data items, for Lodgment; and
- (b) all system messages exchanged with a Land Registry.

### **10.4 Apply Registrar's Business Rules**

The ELN must apply the Business Rules and must have an orderly means of implementing and testing the Business Rules.

### **10.5 Services to Enable Assessment of Integrity**

The ELNO must make available to its Subscribers services which assist Subscribers to assess each Conveyancing Transaction's integrity including, but not limited to, Land Title Reference Verification, Registry Information Supply, Lodgment Verification, Title Activity

Check and a facility to enable the determination of the applicable Lodgment Fees for each Registry Instrument in a Conveyancing Transaction.

## **10.6 Ability to Unsign Digitally Signed Documents**

The ELNO must ensure that the ELN provides the functionality for an electronic Document Digitally Signed by a Subscriber to be unsigned by the Subscriber or its Signer up until the time the Electronic Workspace for the Conveyancing Transaction is locked in the ELN.

## **10.7 Document Templates**

The ELNO must ensure that the correct document template supplied and determined by the Registrar is used by Subscribers.

## **10.8 Presentation Following Completion of Financial Settlement**

The ELNO must ensure that no Registry Instrument forming part of a Settlement Transaction is presented to the Registrar for Lodgment unless the financial settlement is irrevocable.

## **10.9 Presentation Following Duty Payment or Commitment**

The ELNO must ensure that no electronic Registry Instrument is presented to the Registrar for Lodgment unless the electronic Registry Instrument has been assessed for Duty and the Duty Authority is satisfied that, where applicable, the Duty has been paid or an irrevocable commitment to pay has been made to the Duty Authority.

## **10.10 Land Registry Fees**

The ELNO must:

- (a) ensure that no electronic Registry Instrument is presented to the Registrar for Lodgment unless the Lodgment Fees have been collected by the ELNO or an irrevocable commitment to pay has been made to the ELNO;
- (b) in the manner agreed with the Registrar, pay to the Registrar all Information Fees and remit to the Registrar all Lodgment Fees collected; and
- (c) provide all information required by the Registrar for the identification and reconciliation of all Land Registry Fees.

# **11 MINIMUM PERFORMANCE LEVELS**

## **11.1 Performance Levels**

The ELNO must:

- (a) ensure that the ELNO System meets, as a minimum, the Performance Levels; and
- (b) monitor its performance against the Performance Levels and maintain records of that monitoring.

## **12 BUSINESS CONTINUITY AND DISASTER RECOVERY MANAGEMENT**

### **12.1 Business Continuity and Disaster Recovery Management Program**

The ELNO must establish, implement, operate, monitor, review, maintain, test and keep current a documented, detailed and comprehensive Business Continuity and Disaster Recovery Management Program that is Fit for Purpose to ensure that in the event of an Incident the ELNO can continue to provide and operate the ELN, or so that disruption to the provision of or operation of the ELN will be minimised.

### **12.2 Review**

The ELNO must have its Business Continuity and Disaster Recovery Management Program regularly reviewed by an Independent Expert and implement, as a minimum, any Essential Recommendations of that Independent Expert.

## **13 CHANGE MANAGEMENT**

### **13.1 Change Management Framework**

The ELNO must establish, implement, use, monitor, review, maintain and keep current a documented, detailed and comprehensive Change Management Framework to manage the making of any changes:

- (a) relevant to the ELNO's obligations under these Operating Requirements or a Subscriber's obligations under the Participation Rules in relation to the Subscriber's use of the ELN; or
  - (b) to the operation of the ELNO System,
- in a planned and managed or systematic fashion.

### **13.2 No Changes other than in accordance with Change Management Framework**

The ELNO must not make any changes other than in accordance with the Change Management Framework.

## **14 SUBSCRIBERS**

### **14.1 Subscriber Registration**

The ELNO must establish, review, implement and keep current a Subscriber Registration Process. The ELNO must only register a Subscriber:

- (a) if the applicant to become a Subscriber meets the eligibility criteria set out in the Participation Rules;
- (b) if the ELNO has verified:
  - (i) the identity of the applicant, or the Person(s) representing the applicant, to become a Subscriber in accordance with the Subscriber Identity Verification Standard; and
  - (ii) the authority of the applicant, or the Person(s) representing the applicant, to sign the Participation Agreement;
- (c) if the applicant to become a Subscriber has entered into a Participation Agreement with the ELNO which includes an obligation on the Subscriber to comply with the Participation Rules;
- (d) if the ELNO has established that the Person(s) signing the Participation Agreement are one and the same as the Person(s) who have had their identity, and authority to act, verified; and
- (e) who complies with the laws of the Jurisdiction in which the Subscriber intends conducting Conveyancing Transactions.

### **14.2 Unreasonable Barriers or Refusal to Accept Subscriber**

The ELNO must not:

- (a) impose any unreasonable barriers to applying to become a Subscriber or to making use of the ELN; or
- (b) unreasonably refuse to accept any applicant who is capable of meeting the Registrar's eligibility criteria for Subscribers set out in the Participation Rules.

### **14.3 Maintain Subscriber and User Register**

The ELNO must retain a register of all Persons registered as Subscribers (including a copy of each Participation Agreement) and Users. The register must include Subscribers whose registration has expired or been restricted, suspended or terminated (and details of when their registration expired or was restricted, suspended or terminated).

#### **14.4 Evidence of Subscriber Insurance and Verification of Identity**

The ELNO must obtain and retain:

- (a) evidence to confirm that each Subscriber holds the insurance they are required to hold in accordance with the Participation Rules; and
- (b) any material supporting verification of the:
  - (i) identity of the Subscriber or the Person(s) representing the Subscriber who signs the Participation Agreement; and
  - (ii) authority of the Person(s) representing the Subscriber to sign the Participation Agreement for the Subscriber.

#### **14.5 Participation Agreement and Participation Rules**

The ELNO must ensure that its Participation Agreement with each Subscriber does not contain any express or implied term that could qualify, derogate from or otherwise prejudicially affect any Subscriber obligation set out in the Participation Rules.

#### **14.6 Training**

The ELNO must make adequate training resources and information available to Subscribers and Users in relation to their use of the ELN with the intention that Subscribers and Users may readily learn and understand how to use the ELN.

#### **14.7 Monitoring of Subscribers and Suspension or Termination**

The ELNO must:

- (a) have in place appropriate arrangements to monitor the compliance of Subscribers with the Participation Rules except where the Registrar has waived compliance with any Participation Rule in accordance with section 27 of the ECNL (including, without limitation, Subscribers' continuing satisfaction of the eligibility criteria for Subscribers set out in the Participation Rules);
- (b) if the monitoring indicates a breach of the Participation Rules, actively assess and consider whether a Subscriber should be restricted, suspended or terminated or if a Subscriber's User's access to or use of the ELN should be restricted, suspended or terminated in light of the then current circumstances;
- (c) take appropriate action in relation to the breach of the Participation Rules by a Subscriber including, where a Suspension Event or Termination Event occurs, the restriction, suspension or termination of the Subscriber's ability to act as a Subscriber in the Jurisdiction or a Subscriber's User's access to or use of the ELN;

- (d) immediately notify the Registrar in writing if the ELNO knows or has reasonable grounds to suspect that a Subscriber has committed, is committing or is about to commit a Suspension Event or Termination Event or a breach of any of the obligations imposed on the Subscriber in respect of the ELN. The notification must include:
  - (i) the name of the Subscriber;
  - (ii) the details of the material breach or impending material breach;
  - (iii) the ELNO's reason for that belief; and
  - (iv) the nature of any action the ELNO has taken or intends to take; and
- (e) where it restricts, suspends, terminates or reinstates a Subscriber's ability to act as a Subscriber in the Jurisdiction or a Subscriber's User's access to or use of the ELN, immediately notify the Registrar of that restriction, suspension, termination or reinstatement.

#### **14.8 ELNO must Restrict, Suspend or Terminate Subscriber if Directed by Registrar**

The ELNO must immediately restrict, suspend or terminate (as the case may be) the right of a Subscriber to participate as a Subscriber in a Jurisdiction if the ELNO receives a direction from the Registrar to do so.

#### **14.9 Consequences of Restriction, Suspension or Termination**

If a Subscriber's registration or access to or use of the ELN (or that of its User) expires or is restricted, suspended or terminated by the ELNO, the ELNO:

- (a) must ensure that the Subscriber (including any of its Users), from the time of the expiration, restriction, suspension or termination, cannot:
  - (i) in the case of restriction, access the ELN other than in accordance with the restriction; and
  - (ii) in the case of expiration, suspension or termination, access the ELN;
- (b) may, if the ELNO is satisfied that no Party would be disadvantaged and that the Conveyancing Transaction should proceed, allow electronic presentation of any Electronic Workspace Documents that were Digitally Signed by the Subscriber before the expiration, restriction, suspension or termination (assuming that the Subscriber does not need to do anything more in order for electronic presentation to occur); and



- (c) may allow another Subscriber authorised by the relevant Party to take over the role of the Subscriber whose registration or access to or use of the ELN has expired or been restricted, suspended or terminated in any Conveyancing Transaction in which the Subscriber is a Participating Subscriber.

## **15 COMPLIANCE MONITORING AND REPORTING**

### **15.1 Monitor Compliance**

The ELNO must continually monitor its compliance with these Operating Requirements.

### **15.2 Demonstrate Compliance**

Without limiting clause 15.5, the ELNO must demonstrate to the Registrar its compliance with a clause of these Operating Requirements by:

- (a) producing to the Registrar a Specified Document;
- (b) providing to the Registrar a Self-Certification;
- (c) obtaining and providing to the Registrar an Independent Certification;
- (d) providing to the Registrar a No Change Certification; or
- (e) publishing a Monthly Report

as specified for a clause in Schedule 3.

### **15.3 Inability to give a No Change Certification**

If an ELNO is unable to give a No Change Certification to demonstrate to the Registrar its compliance with a clause of these Operating Requirements due to a change, occurrence or anything that would render a Specified Document, Self-Certification or Independent Certification incorrect, incomplete, false or misleading, the ELNO must instead:

- (a) produce to the Registrar the Specified Document;
- (b) provide to the Registrar the Self-Certification; or
- (c) obtain and provide to the Registrar the Independent Certification

that would otherwise have been required to demonstrate compliance with the clause under a preceding category of Schedule 3.

### **15.4 When to Demonstrate Compliance**

Without limiting clause 15.5, the ELNO must demonstrate to the Registrar its compliance with the clauses of these Operating Requirements:

- (a) set out in Category One, at the time the ELNO applies for Approval or a renewal of Approval;
- (b) set out in Category Two:
  - (i) at least eight weeks prior to the date notified by the ELNO to the Registrar as the date on which the ELNO intends commencing operation of the ELN; and
  - (ii) at the time the ELNO applies for renewal of Approval;
- (c) set out in Category Three, annually as part of the ELNO's Annual Report to the Registrar; and
- (d) set out in Category Four, monthly in a Monthly Report.

### **15.5 Demonstrate Compliance at any Time**

At any time on the written request of the Registrar, the ELNO must produce to the Registrar within 10 Business Days of that request, documented substantiation of its compliance with these Operating Requirements to the satisfaction of the Registrar.

### **15.6 Provision of Further Information**

The ELNO must, at any time on the written request of the Registrar where the Registrar considers that the information contained in a Specified Document, a Self-Certification, an Independent Certification, a No Change Certification, a Monthly Report or an Annual Report warrants further investigation:

- (a) give to the Registrar further information; or
- (b) submit a further certification addressing the matter raised by the Registrar (the further certification being either a Self-Certification, No Change Certification or Independent Certification)

to the satisfaction of the Registrar by a reasonable date and time specified by the Registrar.

### **15.7 Notice of Non-Compliance and Remedy**

The ELNO must:

- (a) give written notice to the Registrar, as soon as practicable, if it becomes aware that it has breached or may in the future be no longer able to comply with these Operating Requirements;
- (b) remedy any non-compliance with these Operating Requirements within 10 Business Days (or such other longer time determined in the absolute discretion of

the Registrar having regard to the nature of the breach) from when it becomes aware that it has breached these Operating Requirements; and

- (c) take such action as is necessary in order to avoid a breach in circumstances where the ELNO becomes aware that it may in the future be no longer able to comply with these Operating Requirements.

## **15.8 Remediation of Non Compliance**

Subject to clause 15.9, the ELNO must prepare and provide to the Registrar a remediation action plan for any requirement under these Operating Requirements for which it fails to demonstrate compliance as required by clause 15.4(d) on two consecutive occasions and implement the action plan forthwith.

## **15.9 Remediation of Serious Non Compliance**

Where the Registrar gives written notice to the ELNO that the Registrar considers that non-compliance by the ELNO with any requirement under these Operating Requirements is of a serious nature, the ELNO must immediately prepare and provide to the Registrar, within the time specified in the notice, a remedial action plan and implement that action plan.

## **15.10 ELNO may provide certified copies of original documents**

Where an ELNO is required to provide a document to the Registrar to evidence compliance with a clause of these Operating Requirements and is unable to provide the original of the document, the ELNO may provide a copy of the original document certified as a true copy by a principal, director or officer of the ELNO.

# **16 INDEPENDENT CERTIFICATION**

## **16.1 Approval of Independent Expert**

The ELNO must ensure that:

- (a) before an Independent Certification is given by an Independent Expert, the ELNO obtains the written approval of the Registrar to the proposed Independent Expert; and
- (b) sufficient information regarding the qualifications and competence and insurance coverage of the proposed Independent Expert is provided by the ELNO to the Registrar at least three months prior to the time at which the Independent Certification must be given to enable the Registrar to determine the Independent Expert's suitability or otherwise to provide the Independent Certification.

## **16.2 Assistance**

The ELNO must give all reasonable assistance required by the Independent Expert referred to in clause 16.1 to prepare the certification and must at the request of the Independent Expert direct third parties to make available all information the Independent Expert requires in order to prepare the certification.

## **16.3 Essential and Desirable Recommendations**

The ELNO must ensure that:

- (a) where it is required under these Operating Requirements to have something regularly reviewed by an Independent Expert; and
- (b) the Independent Expert makes recommendations in relation to that thing,

the recommendations are expressed in writing as either Essential Recommendations or Desirable Recommendations.

## **16.4 Inclusion of Essential Recommendations in Independent Expert's Certification**

The ELNO must ensure that where it is required to obtain and provide an Independent Certification to demonstrate compliance with a clause of these Operating Requirements any Essential Recommendations are disclosed in the relevant Independent Expert's Certification.

# **17 COMPLIANCE EXAMINATION**

The ELNO must, where the Registrar conducts under the ECNL a compliance examination in relation to the ELNO, comply with section 33 of the ECNL and the Compliance Examination Procedure.

# **18 REPORTS**

## **18.1 Monthly Report**

The ELNO must, within 10 Business Days of the expiration of each month in which the ELNO operates the ELN, make publicly available and provide to the Registrar a report relating to the ELNO's compliance with the clauses of these Operating Requirements set out in Category Four.

## **18.2 Annual Report to the Registrar**

- 18.2.1 Subject to clause 18.2.2, an ELNO must, within 3 months after the end of the Financial Year, give the Registrar an annual report on the extent to which the ELNO complied with its obligations as an ELNO under these Operating Requirements.
- 18.2.2 Where an ELNO commences operation of the ELN on or within 3 months before the end of a Financial Year, an ELNO must, within 3 months after the end of the next Financial Year, give the Registrar an annual report on the extent to which the ELNO complied with its obligations as an ELNO under these Operating Requirements.
- 18.2.3 The ELNO must ensure that the Annual Report to the Registrar includes:
- (a) where clause 18.2.1 applies, a description of the activities that ELNO has undertaken in the Financial Year;
  - (b) where clause 18.2.2 applies, a description of the activities that ELNO has undertaken in the Financial Year and the period from which the ELNO commenced operation of the ELN;
  - (c) the Specified Documents, Self-Certifications, No Change Certifications and Independent Certifications required to demonstrate the ELNO's compliance with the clauses of these Operating Requirements set out in Category Three;
  - (d) a description of what action the ELNO has taken or intends to take and the timeframe within which the action is intended to be taken to implement the Essential Recommendations of the Independent Expert; and
  - (e) an analysis of the extent to which the ELNO considers its activities have not resulted in full compliance with all its obligations under these Operating Requirements.

## **19 DATA AND INFORMATION OBLIGATIONS**

### **19.1 Retention**

The ELNO must indefinitely retain and retrieve and provide to the Registrar within 10 Business Days of the Registrar's request to provide:

- (a) all Workspace Data;
- (b) all Electronic Workspace Documents, whether:
  - (i) Digitally Signed or not; or
  - (ii) Lodged or not with the Registrar or the Land Registry;

- (c) all Notifications; and
- (d) for each Subscriber, each Document and Record received or created by the ELNO in connection with the Subscriber's or User's registration in the ELN.

## **19.2 Generation and Retention of Transaction Audit Records**

The ELNO must generate and indefinitely retain Transaction Audit Records and retrieve and 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.

## **19.3 Use**

The ELNO must not, without the prior approval of the Registrar, which may not be unreasonably withheld:

- (a) store any Land Information (or any part of any Land Information) on the ELN or on any other database, except for the purpose of facilitating the presentation for Lodgment of a Registry Instrument or other electronic Document with the Land Registry or complying with clause 19.1 and 19.2;
- (b) modify or alter any Land Information for a Conveyancing Transaction;
- (c) do anything that allows or causes another Person to modify or alter any part of Land Information provided by the Land Registry;
- (d) use, reproduce or disclose (or do anything that allows or causes another Person to do any of these things) any Land Information for a Conveyancing Transaction, other than that required or requested by Subscribers to the Electronic Workspace in which the Land Information appears; or
- (e) create data or other products which are the same as or substantially similar to the Land Information or include the Land Information, or reverse assemble, reverse compile, reverse engineer or recreate or rework the Land Information in any way or otherwise re-use the Land Information for the benefit of the ELNO, Subscribers or third parties.

## **19.4 Provide Information to Subscribers**

The ELNO must provide to Subscribers the following alerts and notices issued by a Land Registry or Registrar to the ELNO:

- (a) those relating to an amendment of the ECNL, Participation Rules or these Operating Requirements;

- (b) those given in response to an emergency situation as referred to in the ECNL or relating to the security, integrity or stability of the Titles Register;
- (c) notice of any direction given by the Registrar to the ELNO relating to the Subscriber;
- (d) those relating to the provision and operation of the ELN by the ELNO where the alerts or notices are marked by the Land Registry or the Registrar as “For Communication to Subscribers”; and
- (e) other alerts and notices as reasonably required by the Registrar and where the alerts or notices are marked by the Land Registry or the Registrar as “For Communication to Subscribers”.

## **19.5 Intellectual Property Rights**

The ELNO:

- (a) acknowledges that Intellectual Property Rights in all data and information contained in the Titles Register or supplied by the Registrar is owned either by the Registrar, Land Registry or the State or Territory;
- (b) acknowledges that nothing in these Operating Requirements creates in or transfers to an ELNO any Intellectual Property Rights in the Land Information;
- (c) must not do or omit to do anything which might invalidate or be inconsistent with the Intellectual Property Rights of the Registrar, Land Registry or the State or Territory;
- (d) must, to the extent permitted by law, promptly notify the Registrar if the ELNO knows or has reasonable grounds to suspect that there has been an infringement of the Intellectual Property Rights of the Registrar, Land Registry or the State or Territory and, where possible, take any action in relation to the ELN to prevent the infringement from reoccurring; and
- (e) must, at the expense of the Registrar, take all steps the Registrar reasonably requires to assist the Registrar in maintaining the validity and enforceability of the Intellectual Property Rights of the Registrar, Land Registry or the State or Territory.

## **20 REGISTRAR’S POWERS**

### **20.1 Suspension or Revocation of ELNO’s Approval**

The Registrar may suspend (for a period determined by the Registrar) or revoke an ELNO’s Approval:

- (a) if the ELNO is in material breach of these Operating Requirements;

- (b) if any representation or warranty made by the ELNO relating to the operation of the ELN, compliance with these Operating Requirements or otherwise made to the Registrar is proved to be false, misleading, deceptive, incomplete or inaccurate in any material respect;
- (c) if an Insolvency Event occurs in respect of the ELNO;
- (d) if any director, secretary or officer of the ELNO involved in the operation of the ELN is convicted of a criminal offence or is disqualified under the Corporations Act from managing a corporation and the ELNO fails to remove that Person from his or her office immediately after the conviction is made, delivered or recorded;
- (e) if the Registrar considers that there is an ongoing threat to the integrity of the Titles Register that requires the suspension or revocation of the ELNO's Approval; or
- (f) if the ELNO ceases or threatens to cease operating the ELN or a substantial part of the ELN.

## **21 BUSINESS AND SERVICES TRANSITION**

### **21.1 Transition Plan**

The ELNO must establish, operate, monitor, review, maintain and keep current a documented, detailed and comprehensive Transition Plan relating to the ELNO's cessation of the providing of and operation of the ELN in place at all times to ensure that the ELN can continue to operate at all times with minimal disruption to the Land Registry or Subscribers in the circumstances where the Transition Plan is implemented.

### **21.2 Minimum Requirements of a Transition Plan**

The ELNO must ensure that its Transition Plan provides, as a minimum, for:

- (a) notice to the Registrar and all Subscribers of the timing and reason for disengagement;
- (b) the orderly winding down of the ELNO System, facilities and services;
- (c) the manner of finalising any incomplete Conveyancing Transactions;
- (d) the transfer of all retained records to the Registrar or at the direction of the Registrar; and
- (e) the transfer of all licences and intellectual property to a third party or the Registrar.



### **21.3 (Deleted)**

### **21.4 Implementation of Transition Plan**

The ELNO must implement the Transition Plan:

- (a) 12 months prior to cessation, if the ELNO intends to cease or ceases to operate:
  - (i) the ELN for any reason; or
  - (ii) any service or services provided by the ELNO which is, in the Registrar's opinion, material to the operation of the ELN;
- (b) immediately, if the ELNO's Approval is revoked by the Registrar; or
- (c) from the date the Registrar gives written notice to the ELNO that the Registrar does not intend renewing the ELNO's Approval, if the Approval is not renewed by the Registrar.

## **22 AMENDMENT OF OPERATING REQUIREMENTS**

The ELNO must comply with any amendment made to these Operating Requirements by the Registrar pursuant to the Amendment to Operating Requirements Procedure.

## **23 ADDITIONAL OPERATING REQUIREMENTS**

The ELNO must comply with the Additional Operating Requirements, if any.

**SCHEDULE 1 – INSURANCE**

<b>1</b>	Professional Indemnity Insurance	\$20,000,000
<b>2</b>	Fidelity Insurance	\$20,000,000
<b>3</b>	Public and Product Liability Insurance	\$10,000,000
<b>4</b>	Asset Insurance	Replacement Cost Value

## SCHEDULE 2 – PERFORMANCE LEVELS

Performance Level	Performance Target
<b>Operational Performance Measures</b>	
Service Availability	<p>The ELNO System must be available to its Subscribers (including those services dependent on functionality needing external communications and systems except when those external communications or systems are not available) for 24 hours per day, 7 days per week and 52 weeks per year, exclusive of Scheduled Maintenance assessed monthly.</p> <p>Scheduled Maintenance must occur during Non-Core Hours.</p> <p>“Non-Core Hours” means any time outside of Core Hours.</p> <p>“Core Hours” means the time from 6:00am to 10:00pm Australian Eastern Standard Time or Australian Eastern Daylight Time as applicable on each Business Day.</p> <p>“Business Day” means a day that is not:</p> <ul style="list-style-type: none"> <li>(a) a Saturday or Sunday; or</li> <li>(b) a public holiday, special holiday or bank holiday in a State or Territory.</li> </ul>
Service Reliability	<p>The ELNO System must be available for:</p> <ul style="list-style-type: none"> <li>(a) not less than 99.8% during Core Hours; and</li> <li>(b) not less than 99% during Non-Core Hours,</li> </ul> <p>assessed monthly.</p>
<b>System Performance Measures</b>	
System Responsiveness	<p>The time taken by the ELNO System to respond to a user-initiated request must be less than 3 seconds on average over a month, exclusive of external communications and systems, under all reasonably expected load conditions.</p>
System Resilience	<p>The ELNO service must not be disrupted for the same root cause (excluding service disruptions caused by external communications and systems) more than twice in a six month period.</p>
<b>Management Performance Measures</b>	
Incident Resolution	<p>In a disaster recovery situation where the ELNO’s Business Continuity and Disaster Recovery Plan is invoked, the ELNO System must be restored to Service Availability within 4 hours.</p> <p>Where a service disruption occurs in a non-disaster recovery situation, the ELNO System must be restored to Service Availability within 40 minutes.</p>
Problem Identification	<p>The root cause of each service disruption must be identified within 3 Business Days.</p>

## SCHEDULE 3 – REPORTING REQUIREMENTS

### Category One – when applying for Approval and on renewal of Approval

MOR Clause	Subject	Document to be Produced	Self-Certification to be Provided	Independent Certification to be Obtained and Supplied
4.1	ABN and GST	ABN and GST registration		
4.2(a) or (b)	Corporate registration	ASIC registration certificate plus company search not more than 30 days old		
4.2(c)	Properly empowered	Constitution and other constituting documents		
4.3.1	Good corporate character and reputation		Good character and reputation	
4.3.1(a)	Principals, directors and officers of good character		Principals, directors and officers of good character	
4.3.1(b)	Employees, agents and contractors of good character		Employees, agents and contractors of good character	
4.3.2	Governance	Corporate governance model	Best practice governance	
4.4	Financial resources	Audited financial statements and reports for the last two Financial Years	Sufficient financial resources	
4.5	Technical resources	Technical capability document	Sufficient technical resources	
4.6	Organisational resources	Organisational structure	Sufficient organisational resources	
5.1	Widespread use	Business plan		
5.3(d)	Licences and regulatory approvals		Licences and regulatory approvals specified, obtained and current	

**Category Two – before commencing operation of the ELN and on renewal of Approval**

<b>MOR Clause</b>	<b>Subject</b>	<b>Document to be Produced</b>	<b>Self-Certification to be Provided</b>	<b>Independent Certification to be Obtained and Supplied</b>
4.1	ABN and GST		No Change Certification or updated Document as required under Category One	
4.2(a) or (b)	Corporate registration		No Change Certification or updated Document as required under Category One	
4.2(c)	Properly empowered		No Change Certification or updated Document as required under Category One	
4.3.1	Good corporate character and reputation		No Change Certification or updated Self- Certification as required under Category One	
4.3.1(a)	Principals, directors and officers of good character		No Change Certification or updated Self-Certification as required under Category One	
4.3.1(b)	Employees, agents and contractors of good character		No Change Certification or updated Self-Certification as required under Category One	
4.3.2	Governance		No Change Certification or updated Document and Self-Certification as required under Category One	
4.4	Financial resources		No Change Certification or updated Document and Self-Certification as required under Category One	
4.5	Technical resources		No Change Certification or updated Document and Self-Certification as required under Category One	

<b>MOR Clause</b>	<b>Subject</b>	<b>Document to be Produced</b>	<b>Self-Certification to be Provided</b>	<b>Independent Certification to be Obtained and Supplied</b>
4.6	Organisational resources		No Change Certification or updated Document and Self-Certification as required under Category One	
4.7.1, 4.7.3 & 4.7.4	Insurance conditions	Insurance policies		
4.7.2 & 4.7.5	Insurer and insurance levels		Compliance with requirements in clauses 4.7.2 & 4.7.5	
5.1	Widespread use		No Change Certification or updated Document as required under Category One	
5.3(d)	Licences and regulatory approvals		No Change Certification or updated Self-Certification as required under Category One	
5.3(e)	Pricing policy	Pricing Policy		
6	Initial testing	Test Plan		
7	System security and integrity	Information Security Management System (ISMS)		ISMS Fit for Purpose
9.1	Mitigate risk	Risk Management Framework (RMF)		RMF Fit for Purpose
10.1(b)	Minimum system requirements: Adaptability			Compliance with requirements in clause 10.1(b)
12	Business Continuity & Disaster Recovery	Business Continuity and Disaster Recovery Program (BCDRP)		BCDRP Fit for Purpose
13	Change Management	Change Management Framework (CMF)		
14.1	Subscriber registration	Subscriber Registration Process		
14.4	Subscriber insurance	Documented process to ensure current Subscriber insurance obtained and retained		

<b>MOR Clause</b>	<b>Subject</b>	<b>Document to be Produced</b>	<b>Self-Certification to be Provided</b>	<b>Independent Certification to be Obtained and Supplied</b>
14.5	Participation agreement	Participation Agreement		
21	Transition	Transition Plan		

### Category Three – as part of the Annual Report to the Registrar

<b>MOR Clause</b>	<b>Subject</b>	<b>Document to be Produced</b>	<b>Self-Certification to Be Provided</b>	<b>Independent Certification to be Obtained and Supplied</b>
4.1	ABN and GST		No Change Certification or updated Document as required under Category One	
4.2(a) or (b)	Corporate registration		No Change Certification or updated Document as required under Category One	
4.2.(c)	Properly empowered		No Change Certification or updated Document as required under Category One	
4.3.1	Good corporate character and reputation		No Change Certification or updated Self- Certification as required under Category One	
4.3.1(a)	Principals, directors and officers of good character		No Change Certification or updated Self-Certification as required under Category One	
4.3.1(b)	Employees, agents and contractors of good character		No Change Certification or updated Self- Certification as required under Category One	
4.3.2	Governance		No Change Certification or updated Document and Self-Certification as required under Category One	

<b>MOR Clause</b>	<b>Subject</b>	<b>Document to be Produced</b>	<b>Self-Certification to Be Provided</b>	<b>Independent Certification to be Obtained and Supplied</b>
4.4	Financial resources	Audited financial statements and reports for the last Financial Year	Sufficient financial resources	
4.5	Technical resources		Sufficient technical resources	
4.6	Organisational resources		No Change Certification or updated Document and Self-Certification as required under Category One	
4.7.1, 4.7.3 & 4.7.4	Insurance conditions	Insurance policies	No Change Certification or updated Document as required under Category Two	
4.7.2 & 4.7.5	Insurer and insurance levels		Compliance with requirements in clauses 4.7.2 & 4.7.5	
5.1	Widespread use	Details of industry usage	No Change Certification or updated Document as required under Category One	
5.3(d)	Licences and regulatory approvals		Licences and regulatory approvals specified, obtained and current	
5.3(e)	Pricing policy		No Change Certification or updated Document as required under Category Two	
5.3(f)	Training and awareness		Training and awareness programs up to date and adequate	
5.3(g)	Law and policy compliance		Compliance with laws and policies	
7	System security and integrity		ISMS: No Change Certification or updated Document as required under Category Two	ISMS Fit for Purpose
8	Public confidence in Titles Register		Nothing done to diminish public confidence in Titles Register	



<b>MOR Clause</b>	<b>Subject</b>	<b>Document to be Produced</b>	<b>Self-Certification to Be Provided</b>	<b>Independent Certification to be Obtained and Supplied</b>
9.1	Mitigate risk		RMF: No Change Certification or updated Document as required under Category Two	RMF Fit for Purpose
9.2	Risk of fraud or error		Use of ELN does not result in greater fraud or error	
10.1(b)	Minimum system requirements: Adaptability		No Change Certification	Where a No Change Certification cannot be given, an Independent Certification as required under Category Two
11	Minimum performance levels		Performance to measures in Schedule 2	
12	Business Continuity & Disaster Recovery		BCDRP: No Change Certification or updated Document as required under Category Two	BCDRMP Fit for Purpose
13	Change Management		No Change Certification or updated Document as required under Category Two	
14.1	Subscriber registration		Subscriber Registration Process compliant with clause 14.1	
14.4	Subscriber insurance		No Change Certification or updated Document as required under Category Two	
14.5	Participation agreement		No Change Certification or updated Document as required under Category Two	
15.1	General compliance		Compliance with all requirements	

<b>MOR Clause</b>	<b>Subject</b>	<b>Document to be Produced</b>	<b>Self-Certification to Be Provided</b>	<b>Independent Certification to be Obtained and Supplied</b>
15.7	Non-compliance remediation	Consolidated and categorised compliance failure notifications together with remediation action plans and their outcomes		
18.2	Annual report	Annual Report to the Registrar		
19.3	Information use		Compliance with restrictions	
21.1	Transition		No Change Certification or updated Document as required under Category 2	

#### Category Four – as the Monthly Report

<b>MOR Clause</b>	<b>Subject</b>	<b>Documents to be Published</b>
5.3	General obligations	Categorised complaints received, justified, resolved and outstanding.
11	Minimum performance levels	Compilation of performance against targets set out in Schedule 2.
14.2	Refusal to accept Subscriber	Complaints received, justified, resolved and outstanding.
14.6	Subscriber training	Complaints received, justified, resolved and outstanding.

## **SCHEDULE 4 – ADDITIONAL OPERATING REQUIREMENTS**

None.

## **SCHEDULE 5 – COMPLIANCE EXAMINATION PROCEDURE**

### **1 Power to request information and Documents**

- 1.1 For the purposes of Section 34(2) of the ECNL, the Registrar or the Registrar's delegate must provide notice to the ELNO.
- 1.2 The notice must state:
- (a) the time within which the information must be furnished and/or the Document must be produced (which must not be less than 10 Business Days after the giving of the notice); and
  - (b) how information is to be furnished and/or the Document is to be produced.
- 1.3 A notice under paragraph 1.2 of this Schedule may be given in writing or by any electronic means that the Registrar or the Registrar's delegate considers appropriate.
- 1.4 An ELNO to whom a notice is given under paragraph 1.2 of this Schedule must comply with the requirements set out in the notice within the period specified in the notice.
- 1.5 If an ELNO fails, without reasonable excuse, to comply with a notice given under paragraph 1.2 of this Schedule, the Registrar may do one or more of the following as the Registrar considers appropriate:
- (a) suspend an ELNO's Approval; or
  - (b) revoke the ELNO's Approval.

### **2 Inspection and retention of Documents**

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

### **3 Return of retained Documents**

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

### **4 Access to retained Documents**

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

### **5 Costs**

- 5.1 If the ELNO is found to be in material breach of the Operating Requirements, the ELNO must, if required by the Registrar, pay all reasonable fees and Costs incurred as a direct result of the Registrar or the Registrar's delegate carrying out the Compliance Examination. If the ELNO is not found to be in material breach, such fees and Costs will not be recoverable from the ELNO.
- 5.2 The Cost of all actions required to be taken by the ELNO to remedy any breach of these Operating Requirements identified by the Registrar or the Registrar's delegate is to be paid by the ELNO.

## **SCHEDULE 6 – AMENDMENT TO OPERATING REQUIREMENTS PROCEDURE**

### **1 Amendments with prior consultation**

- 1.1 Any amendment to these Operating Requirements must be the subject of good faith consultation by the Registrar with the ELNO before the amendment comes into effect.
- 1.2 Each amendment must be notified to the ELNO at least 20 Business Days before the amendment comes into effect. The notification must contain the date the amendment comes into effect.

### **2 Amendments without prior consultation**

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

# SCHEDULE 7 – STANDARD FOR THE VERIFICATION OF IDENTITY OF POTENTIAL SUBSCRIBERS

## (Subscriber Identity Verification Standard)

### 1 Definitions

In this Subscriber Identity Verification Standard, capitalised terms have the meanings set out in clause 2.1 of these Operating Requirements or set out below:

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

**APRA** means the Australian Prudential Regulation Authority.

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

**Category** means the categories of identification Documents set out in the table in Subscriber Identity Verification Standard paragraph 4, as amended from time to time.

**ELNO** has the meaning given to it in the ECNL.

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

- (a) the ELNO reasonably believes is reputable, competent and insured in compliance with the insurance requirements set out in paragraph 9 of this Subscriber Identity Verification Standard; and
- (b) is authorised by the ELNO to conduct verification of identity on behalf of the ELNO in accordance with this Subscriber Identity Verification Standard.

**Identity Agent Certification** means the certification set out in paragraph 9 of this Subscriber Identity Verification Standard, as amended from time to time.

**Person Being Identified** means any of the Persons required to be identified under Operating Requirement clause 14.1 and this Subscriber Identity Verification Standard.

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

**Potential Subscriber** means a Person who has applied to be a Subscriber.

### 2 Who must be identified

The identity of the following Persons must be verified by an ELNO in accordance with this Subscriber Identity Verification Standard:

- (a) where a Potential Subscriber is an individual, that individual;
- (b) without limiting paragraph 5, where the Potential Subscriber is a partnership, the Person or Persons signing the Participation Agreement on behalf of the partnership;
- (c) without limiting paragraph 6, where the Potential Subscriber is a body corporate, the Person or Persons signing or witnessing the affixing of the seal on behalf of the body corporate;
- (d) without limiting paragraphs 7 and 8, where the Potential Subscriber appoints an attorney to sign the Participation Agreement, the attorney.

### **3 Face-to-face regime**

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

### **4 Categories of identification Documents and evidence retention**

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



<b>Category</b>	<b>Minimum Document Requirements</b>
<b>1</b>	Australian Passport or foreign passport <u>plus</u> Australian drivers licence or Photo Card <u>plus</u> change of name or marriage certificate (if necessary)
<b>2</b>	Australian Passport or foreign passport <u>plus</u> full birth certificate or citizenship certificate or descent certificate <u>plus</u> Medicare or Centrelink or Department of Veterans' Affairs card <u>plus</u> change of name or marriage certificate if necessary
<b>3</b>	Australian drivers licence or Photo Card <u>plus</u> full birth certificate or citizenship certificate or descent certificate <u>plus</u> Medicare or Centrelink or Department of Veterans' Affairs card <u>plus</u> change of name or marriage certificate if necessary
<b>4</b>	(a) Australian Passport or foreign passport <u>plus</u> another form of government issued photographic identity Document <u>plus</u> change of name or marriage certificate if necessary  (b) Australian Passport or foreign passport <u>plus</u> full birth certificate <u>plus</u> another form of government issued identity Document <u>plus</u> change of name or marriage certificate if necessary.

## **5 Partnership**

Where a Participation Agreement is to be executed by a partnership, the ELNO or the Identity Agent must take reasonable steps to establish who is authorised to sign the Participation Agreement on behalf of the partnership.

## **6 Body corporate**

Where a Participation Agreement is to be executed by a body corporate, the ELNO or the Identity Agent must:

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

## **7 Individual as attorney**

Where a Participation Agreement is to be executed by an Individual as attorney under a power of attorney, the ELNO or the Identity Agent must:

- (a) confirm from the [registered] power of attorney the details of the attorney and the Potential Subscriber; and
- (b) take reasonable steps to establish that executing the Participation Agreement is authorised by the power of attorney.

**8 Body corporate as attorney**

Where a Participation Agreement is to be executed by a body corporate as attorney under a power of attorney, the ELNO or the Identity Agent must:

- (a) confirm from the [registered] power of attorney the details of the attorney and the Potential Subscriber; and
- (b) take reasonable steps to establish that executing the Participation Agreement is authorised by the power of attorney.

**9 Identity Agents**

**9.1 Use of an Identity Agent**

- (a) The ELNO may use an Identity Agent.
- (b) Where an Identity Agent is used, the ELNO must direct the Identity Agent to use this Subscriber Identity Verification Standard.
- (c) (Deleted)
- (d) The ELNO must receive from any Identity Agent:
  - (i) copies of the Documents produced to verify the identity of the Person Being Identified signed, dated and endorsed as a true copy of the original by the Identity Agent, and

(ii) an Identity Agent Certification in the following form:

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

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

\_\_\_\_\_
Date

\_\_\_\_\_
Signature of Identity Agent

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

Description of identity Documents produced and endorsed	Page number in set of copies
E.g. Australian Passport	1

## 9.2 Professional indemnity insurance

Each Identity Agent must maintain professional indemnity insurance:

- (a) with an Approved Insurer; and
- (b) for an insured amount of at least \$1.5 million per claim (including legal Costs); and
- (c) having an excess per claim of no greater than \$20,000; and
- (d) having an annual aggregate amount of not less than \$20,000,000; and
- (e) which includes coverage for verification of identity for the purposes of these Operating Requirements; and
- (f) the terms of which do not limit compliance with paragraphs 9.2(a) to (e) of this Subscriber Identity Verification Standard.

## 9.3 Fidelity insurance

Each Identity Agent must maintain fidelity insurance:

- (a) with an Approved Insurer; and
- (b) for an insured amount of at least \$1.5 million per claim (including legal Costs); and
- (c) having an excess per claim of no greater than \$20,000; and
- (d) having an annual aggregate amount of not less than \$20,000,000; and
- (e) which provides coverage for third party claims arising from dishonest and fraudulent acts; and
- (f) which includes coverage for verification of identity for the purposes of these Operating Requirements; and
- (g) the terms of which do not limit compliance with paragraphs 9.3(a) to (f) of this Subscriber Identity Verification Standard.

#### **9.4 Professional indemnity insurance with extension**

If an Identity Agent does not comply with paragraphs 9.2 and 9.3 of this Subscriber Identity Verification Standard, the Identity Agent must maintain professional indemnity insurance:

- (a) with an Approved Insurer; and
- (b) for an insured amount of at least \$1.5 million per claim (including legal Costs); and
- (c) having an excess per claim of no greater than \$20,000; and
- (d) having an annual aggregate amount of not less than \$20,000,000; and
- (e) which provides coverage for third party claims arising from dishonest and fraudulent acts; and
- (f) which includes coverage for verification of identity for the purposes of these Operating Requirements; and
- (g) the terms of which do not limit compliance with paragraphs 9.4(a) to (f) of this Subscriber Identity Verification Standard.

#### **10 Further checks**

The ELNO or the Identity Agent must undertake further steps to verify the identity of the Person Being Identified where:

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