

# South Australian Operating Requirements for Electronic Conveyancing

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Version 6.1

Determined by the Registrar-General with regard to Australian Registrars' National Electronic Conveyancing Council's (ARNECC) Model Operating Requirements Version 6.1 published 16 May 2022.



Government  
of South Australia

*Electronic Conveyancing National Law (South Australia) Act 2013*

*Section 22*

*These are the Operating Requirements for Electronic Conveyancing in SA determined pursuant to section 22 of the Electronic Conveyancing National Law (SA) 2013. These Operating Requirements will take effect on and from the 17 June 2022.*

*In determining the Operating Requirements, I have adopted the Model Operating Requirements developed and approved by the Australian Registrars' National Electronic Conveyancing Council (ARNECC).*



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*Jenny Cottnam*

*Registrar-General*

*16 May 2022*

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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 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** means the report referred to in Operating Requirement 18.2.

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

**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 a general insurer within the meaning of the *Insurance Act 1973* (Cth).

**ASIC** means the Australian Securities & Investments Commission or its successor.

**Australian Legal Practitioner** has the meaning given to it in the relevant legislation of the Jurisdiction in which the land the subject of the Conveyancing Transaction is situated and in

South Australia is a legal practitioner for the purposes of the *Legal Practitioners Act 1981* (SA).

**Back End Infrastructure Connection** means a connection between an ELNO and a:

- (a) Land Registry; or
- (b) Duty Authority; or
- (c) Certification Authority; or
- (d) Person that provides financial settlement services to an ELNO, other than in that Person's capacity as a Subscriber; or
- (e) Cloud Service Provider; or
- (f) Commonwealth, State or Territory government agency, Local Government Organisation or Statutory Body, other than in that Person's capacity as a Subscriber or Identity Agent.

**Business Continuity and Disaster Recovery Management Program** means the program referred to in Operating Requirement 12.1.

**Business Continuity and Disaster Recovery Plan** 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 Plan** means a Document setting out a detailed description of the ELNO's business as it relates to the operation of the ELN, including its:

- (a) products and/or services and delivery schedule; and
- (b) financial, marketing and operational objectives and how these objectives will be achieved; and
- (c) an assessment of the likely costs for development and ongoing expansion of the ELNO System including costs to meet regulatory requirements and costs associated with Back End Infrastructure Connections.

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

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

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

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

**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.

**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** means a comprehensive, documented framework of policies, practices and procedures to ensure that the changes referred to in Operating Requirement 13.1 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; and
- (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.

**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 Notice, extension of Priority Notice and withdrawal of Priority Notice who have appointed a Subscriber as their Representative but have not provided a Client Authorisation.

**Client Authorisation**, as amended from time to time, has the meaning given to it in the ECNL.

**Cloud Service** means an on-demand service providing network access to a shared pool of configurable computing resources (for example networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction.

**Cloud Service Provider** means a provider of a Cloud Service.



**Commonwealth** 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 Australian Eastern Standard Time or Australian Eastern Daylight Time as applicable 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.

**CPI** means the all groups consumer price index for all capital cities in original terms published by the Australian Bureau of Statistics or its successor.

**Data Breach** means, in respect of the ELN, any of the following:

- (a) that the information is or may have been lost, misused, interfered with, corrupted or been subject to unauthorised access, modification or disclosure; or
- (b) that there has been unauthorised access to the system, storage device or computer network in which such information is stored; or
- (c) that the information, or the storage device or computer system on which such information is stored, is stolen, lost or misplaced.

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

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

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

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

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

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

**Downstream or Upstream Service** means a service supplied or offered to a Person (including a Related Entity), which directly or indirectly:

- (a) accesses or uses an ELN; or
- (b) integrates with an ELN; or
- (c) utilises information accessible through or generated by an ELN,

but does not include services supplied or offered through a Back End Infrastructure Connection.

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

**Duty Authority** means the State Revenue Office of 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, electronic Registry Instruments and Information Reports are Electronic Workspace Documents.

**Eligibility Criteria** means the rules set out in Participation Rule 4, as amended from time to time.

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

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

**ELNO Service Fees** means fees charged by the ELNO to a Subscriber for access to, and use of, the ELN.

**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 Registry Instruments or other electronic Documents at a Land Registry, and includes the ELN.

**Equivalent Basis** means equivalence:

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

**Essential Recommendations** means recommendations which are expressed to be essential and which an ELNO must implement.

**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; and
- (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 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 Digital Officer, Digital Transformation Agency.

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

**Hardship Notice** has the meaning given to it in section 72(1) of the National Credit Code.

**Incident** means:

- (a) any event which causes, or may cause, the provision 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; or
- (b) a Data Breach.

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

- (a) signed by the Independent Expert; and
- (b) on the letterhead of the Independent Expert; and
- (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 or Potential ELNO has complied with the requirement of these Operating Requirements to which the certification relates.

**Incident Response Plan** means a plan or set of instructions used to assist the ELNO to respond to, recover from and limit adverse ongoing impacts of an Incident.

**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 or Potential ELNO, or an Officer or employee of the ELNO or Potential ELNO; or
- (b) a contractor or agent of the ELNO or Potential 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 or Potential 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 Operating Requirement 7.1.

**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, excluding a Hardship Notice; or

- (b) the entrance into an arrangement, composition or compromise with, or assignment for the benefit of, all or any class of the Person's creditors or members or a moratorium involving any of them, excluding any changes made to a credit contract as a result of a Hardship Notice or a temporary arrangement to postpone a debt; or
- (c) the appointment of a receiver, receiver and manager, controller, administrator, provisional liquidator or liquidator or the taking of any action to make such an appointment; or
- (d) an order is made for the winding up or dissolution of the Person or a resolution is passed or any steps are taken to pass a resolution for its winding up or dissolution; or
- (e) something having a substantially similar effect to (a) to (d) happens in connection with the Person under the law of any Jurisdiction.

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

**Integration** means system to system communication between the ELN and the system of a Person Wishing to Integrate or a Person who has Integrated, but does not include system to system communication through a Back End Infrastructure Connection.

**Intellectual Property Rights** includes any:

- (a) copyright; and
- (b) design, patent, trademark, semiconductor, or circuit layout (whether registered, unregistered or applied for); and
- (c) trade, business, company or domain name; and
- (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 Registry Instruments or other 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 and, where the responsibility has been delegated, it includes the delegate.

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

**Land Registry System** means the Land Registry's system for accepting and processing electronic Registry Instruments or other electronic Documents presented for Lodgment using an ELN.

**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.

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

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

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

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

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

**Lodgment Fees** means fees due to a Land Registry for an electronic Registry Instrument or other electronic Document Lodged 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 or other electronic Document will be accepted for Lodgment by the Registrar or Land Registry if the Registry Instrument or other electronic Document data remains unchanged.

**Monthly Report** means the report referred to in Operating Requirement 18.1.

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

**National Credit Code** has the meaning given to it in section 3 of the NCCP Act.

**No Change Certification** means:

- (a) where an ELNO or Potential ELNO was required to produce to the Registrar a Specified Document to demonstrate compliance with an Operating Requirement, a written certification made by the ELNO or Potential 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; or
- (b) where an ELNO or Potential ELNO was required to give to the Registrar a Self-Certification to demonstrate compliance with an Operating Requirement, a written certification made by the ELNO or Potential 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 or Potential ELNO was required to obtain and provide to the Registrar an Independent Certification to demonstrate compliance with an Operating Requirement, a written certification made by the ELNO or Potential 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.

**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.

**Officer** means an Officer of a corporation as defined in the Corporations Act or an Officer of an entity as defined in the Corporations Act or a Person who makes, or participates in making, decisions that affect the whole, or a substantial part, of a government entity of the Commonwealth, a State or Territory, a Local Government Organisation or a Statutory Body.

**Operating Requirements**, as amended from time to time, has the meaning given to it in the ECNL.

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

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

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

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

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

**Person Wishing To Integrate** means a Person who wishes to Integrate its system with the ELN.

**Person Who Has Integrated** means a Person who has Integrated its system with the ELN.

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

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

**Potential ELNO** means a Person who has applied for Approval.

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

**Pricing Table** means the table of ELNO Service Fees prepared by the ELNO in accordance with the requirements set out in Operating Requirements 5.3(e) and 5.4, as amended from time to time.

**Priority 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.

**Promptly** means without delay in light of the facts and circumstances.

**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.

**Related Body Corporate** has the meaning given to it in the Corporations Act.

**Related Downstream or Upstream Service Provider** means a Related Entity or Downstream or Upstream Service business unit established under Operating Requirement 5.6.2 which supplies or proposes to supply a Downstream or Upstream Service.

**Related Entity** means a Related Body Corporate of the ELNO, a Related Party or a Related Body Corporate of a Related Party.

**Related Party** means the ELNO's principals, shareholders, Officers, employees or agents.

**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.

**Risk Assessment** means a Document identifying, analysing and evaluating risks to an ELNO in its operation of the ELN, including any risks associated with using a Cloud Service.

**Risk Management Framework (RMF)** means the framework referred to in Operating Requirement 9.1 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.

**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 or Potential ELNO for the benefit of the Registrar certifying that the ELNO or Potential ELNO has complied with the Operating Requirement to which the certification relates and including a description of what the ELNO or Potential ELNO has done to enable it to give the Self-Certification.

**Separation Plan** means a Document setting out a detailed description of how the ELNO complies with, or intends to comply with, Operating Requirement 5.6.

**Service Organisation Controls 2 Type 2 Report (Soc 2 Type 2 Report)** means a report, by which an organisation's security controls are independently assessed by an accredited assessor, for assurance regarding any stored data's security, availability, processing integrity, confidentiality, and privacy.

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

**Signer** means a User authorised by the Subscriber to Digitally Sign electronic 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", as amended from time to time.

**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).

**Statutory Body** means a statutory authority, body or corporation including a State or Territory owned corporation (however described) established under any Commonwealth, State or Territory law.

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

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

**Subscriber Administrator** has the meaning given to it in the Participation Rules.

**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.

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

**Subscriber Review Process** means a documented process for reviewing the compliance of Subscribers with the Participation Rules except:

- (a) where the Registrar has waived compliance with any Participation Rule in accordance with section 27 of the ECNL; or
- (b) the Participation Rules for which certifications are given,

including, without limitation, Subscribers' continuing satisfaction of the Eligibility Criteria.

**Supplier** means a Person that provides services to the ELNO in relation to the development, operation, maintenance and security of the ELN. This includes a Cloud Service Provider and any other Person that handles, stores or processes Land Information, but does not include a Land Registry, Duty Authority or the Australian Taxation Office.

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

**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; and
- (b) administrative action taken by or for a Subscriber in relation to its use of the ELN; and
- (c) other actions of Subscribers in an Electronic Workspace; and
- (d) changes in the status of an Electronic Workspace, electronic 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 Document that transfers an estate or interest in land.

**Transition Plan** means the plan referred to in Operating Requirement 21.1.

**Usage Anomaly Detection** means the identification of events, items or actions that do not conform to the expected pattern of usage.

**User** means an Individual who:

- (a) is a principal, Officer, employee, agent or contractor of the Subscriber and is authorised by a Subscriber to access and use the ELN on behalf of the Subscriber; or
- (b) has been appointed as the manager (however described) of the business of a Subscriber that is an Australian Legal Practitioner, Law Practice or Licensed Conveyancer, under any State or Territory law.

**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 requirement or schedule is a reference to a requirement of, or a schedule to, these Operating Requirements.
- 2.2.8 A reference to an Operating Requirement includes a reference to all of its sub-requirements.
- 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 Operating Requirement 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 an Operating Requirement and in a schedule to these Operating Requirements, the Operating Requirement will prevail to the extent of the inconsistency.

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

The ELNO or Potential ELNO must:

- (a) as a qualification for approval, be able to comply with these Operating Requirements at the time the ELNO or Potential ELNO applies for Approval; and
- (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 Operating Requirements 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; and
- (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 is not and has not been subject to any of the matters listed below:

- (i) an Insolvency Event within the last five years; or
  - (ii) a conviction for fraud or an indictable offence or any offence for dishonesty against any law in connection with business, professional or commercial activities; or
  - (iii) disqualification from managing a body corporate under the Corporations Act; or
  - (iv) any fine, banning, suspension or other disciplinary measure for financial or professional misconduct; or
  - (v) any determination of a disciplinary action of any government or governmental authority or agency, or any regulatory authority of a financial market or a profession, which may impact on the ELNO's ability to operate an ELN, or the integrity of the Titles Register; or
  - (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; or
  - (vii) any refusal of an application to provide an electronic Lodgment service; or
  - (viii) any current suspension of an Approval under Operating Requirement 20.1(a) (i), (ii) or (v) in any Jurisdiction; or
  - (ix) any revocation of an Approval under Operating Requirement 20.1(a) (i), (ii) or (v) in any Jurisdiction; and
- (b) take reasonable steps to ensure that the ELNO's principals, Officers, employees, agents or contractors are not and have not been subject to any of the matters listed below:
- (i) an Insolvency Event within the last five years; or
  - (ii) a conviction for fraud or an indictable offence or any offence for dishonesty against any law in connection with business, professional or commercial activities; or
  - (iii) disqualification from managing a body corporate under the Corporations Act; or
  - (iv) any fine, banning, suspension or other disciplinary measure for financial or professional misconduct; or
  - (v) any determination of a disciplinary action of any government or governmental authority or agency, or any regulatory authority of a financial market or a

profession, which may impact on the ELNO's ability to operate an ELN, or the integrity of the Titles Register; or

- (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; or
- (vii) any refusal of an application to provide an electronic Lodgment service; and
- (c) take reasonable steps to ensure that the ELNO's principals, or Officers are not and have not been a principal, or an Officer of an ELNO that is or has been subject to any of the matters listed below:
  - (i) any refusal of an application to provide an electronic Lodgment service, unless that principal or Officer did not materially contribute to the refusal of the application; or
  - (ii) any current suspension of an Approval under Operating Requirement 20.1(a) (i), (ii) or (v) in any Jurisdiction, unless that principal or Officer did not materially contribute to the suspension of the Approval; or
  - (iii) any revocation of an Approval under Operating Requirement 20.1 (a) (i), (ii) or (v) in any Jurisdiction, unless that Officer did not materially contribute to the revocation of the Approval.

4.3.2 The ELNO must maintain contemporary best practice governance arrangements that are Fit for Purpose and 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 this Operating Requirement.



- 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; and
  - (b) fidelity insurance in an annual aggregate amount of not less than that set out in Item 2 in Schedule 1; and
  - (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 from an Approved Insurer 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 encourage widespread industry use of the ELN. As a minimum, the Business Plan must set out the ELNO's:

- (a) specific plans to encourage the use of the ELN nationally and in the Jurisdiction; and
- (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 electronic Registry Instrument and other electronic Document capability**

Recognising that the implementation of Operating Requirements 5.2(a), (b), (c) and (d) may be reasonably staged in accordance with the Business Plan, the ELNO must ensure that:

- (a) the ELN is available to each Land Registry in Australia capable of receiving electronic Registry Instruments and other electronic Documents from an ELN and to Subscribers in all States and Territories in Australia; and
- (b) the ELN enables, as a priority, the Lodgment of those of the following electronic Registry Instruments and other electronic Documents which are capable of Lodgment in the Jurisdiction:
  - (i) Transfer; and
  - (ii) Mortgage; and
  - (iii) Discharge/Release of Mortgage; and
  - (iv) Caveat; and
  - (v) Withdrawal of Caveat; and
  - (vi) Priority Notice; and
  - (vii) Extension of Priority Notice; and
  - (viii) Withdrawal of Priority Notice; and
  - (ix) associated Duty Authority notices; and
  - (x) administrative notices required to manage certificates of title; and
- (c) the ELN enables the Lodgment of any electronic Registry Instruments and other electronic Documents not listed in Operating Requirement 5.2(b), which are capable of Lodgment in the Jurisdiction; and
- (d) any additional functionality reasonably required by the Registrar is implemented in the ELN.

## **5.3 General obligations**

The ELNO must:

- (a) have adequate arrangements for operating the ELN in a proper, competent, sustainable and efficient manner and maintain primary responsibility for the provision and operation of the ELN; and
- (b) exercise due skill, care and diligence in operating the ELN and in meeting its obligations under these Operating Requirements; and

- (c) minimise any disruption of or interference to any systems connected to the ELN for the purpose of conducting Conveyancing Transactions; and
- (d) obtain, maintain and comply with all necessary licences and regulatory approvals required by any appropriate authority to provide and operate the ELNO System; and
- (e) determine any ELNO Service Fees, according to a publicly available, equitable and transparent pricing policy and publish a Pricing Table in accordance with Operating Requirement 5.4; and
- (f) ensure that all of the ELNO's principals, Officers, 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; and
- (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; and
- (h) maintain confidentiality of all information provided to the ELNO in which the provider of the information would reasonably expect confidentiality to be maintained; and
- (i) comply with any reasonable direction given by the Registrar for the purpose of these Operating Requirements; and
- (j) Promptly notify the Registrar of all events relating to the ELNO or the ELN which have the potential to:
  - (i) affect the integrity of the Titles Register; or
  - (ii) pose a reputational risk to the ELN, the Titles Register or the Registrar; 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; and
- (l) establish, implement, review and keep current a Business Plan.

## **5.4 ELNO Service Fees**

5.4.1 The ELNO may charge ELNO Service Fees in accordance with its pricing policy.

- 5.4.2 If the ELNO charges ELNO Service Fees, the ELNO must:
- (a) for each Financial Year, prepare and publish on its website its Pricing Table; and
  - (b) not charge a fee greater than the amount specified in the published Pricing Table.
- 5.4.3 From 1 July 2019 to 30 June 2023, the ELNO may increase the ELNO Service Fees as listed in its Pricing Table, once every Financial Year on 1 July, provided that the percentage increase in the revised ELNO Service Fees does not exceed the percentage increase in the CPI for the immediately preceding March quarter when compared with the CPI for the March quarter of the previous year.
- 5.4.4 Notwithstanding Operating Requirement 5.4.3, the ELNO may, at any time, request the Registrar's approval, which may not be unreasonably withheld, for proposed changes to its Pricing Table, including, but not limited to, in the event:
- (a) of any change to the amount of any insurance premium payable by the ELNO in respect of any insurance policy the ELNO is required to hold under Operating Requirement 4.7.2; or
  - (b) that a change in any law gives rise to a change in the ELNO's operating Costs; or
  - (c) that additional fees, charges or Costs are imposed on the ELNO by the Registrar, Land Registry or any other government agency.
- 5.4.5 Notwithstanding Operating Requirement 5.4.3 and 5.4.4, if the ELNO Service Fees include Information Fees, following a change in Information Fees, the ELNO may recalculate the ELNO Service Fees and change the Pricing Table to reflect the recalculated ELNO Service Fees.
- 5.4.6 The Pricing Table and any changes to it, must be published at least 20 Business Days, or as soon as reasonably practicable, before the Pricing Table, or the changes to it, take effect.

## **5.5 Integration**

- 5.5.1 If the ELNO offers or intends to offer Integration, the ELNO must:
- (a) prepare, implement, monitor, review and keep current:
    - (i) a set of Integration terms and conditions, which set out the requirements for a Person Wishing To Integrate; and/or
    - (ii) where it is not reasonably possible to develop a set of Integration terms and conditions for a particular type, level or class of Integration, a set of principles upon which the Integration terms and conditions will be negotiated; and

- (b) publish on its website details of the process for a Person Wishing To Integrate to obtain a copy of the ELNO's Integration terms and conditions and/or principles; and
- (c) provide a copy of the ELNO's Integration terms and conditions and/or principles to any bona fide Person Wishing To Integrate who requests a copy and complies with the process published under Operating Requirement 5.5.1(b); and
- (d) maintain records of any requests made:
  - (i) for a copy of the ELNO's Integration terms and conditions and/or principles; and
  - (ii) to facilitate Integration,
    - including who made the request, whether each request was approved or refused, and the basis for refusal, where applicable.

5.5.2 Any Integration terms and conditions prepared or negotiated, and/or any principles prepared by the ELNO under Operating Requirement 5.5.1(a), must not contain any express or implied terms that could qualify, derogate from or otherwise prejudicially affect compliance with any of the ELNO's obligations under these Operating Requirements.

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

## **5.6 Separation**

5.6.1 If a Related Entity supplies or proposes to supply a Downstream or Upstream Service, the ELNO must not be involved in the supply or development of the Downstream or Upstream Service other than to the extent of providing access to, or use of, the ELN in accordance with Operating Requirement 5.5.

5.6.2 If the ELNO supplies or proposes to supply a Downstream or Upstream Service, the ELNO must establish a Related Entity or:

- (a) establish an ELN business unit that is separate from a Downstream or Upstream Service business unit; and
- (b) ensure the ELN business unit has control over and responsibility for:
  - (i) the provision and operation of the ELN; and
  - (ii) the performance of the functions and responsibilities of an ELNO under the ECNL and these Operating Requirements; and

- (iii) the ELNO's relationship with Subscribers and persons properly authorised by Subscribers to have access to, and use of, the ELN; and
  - (iv) the ELNO's relationship with a Person Wishing To Integrate or a Person Who Has Integrated; and
- (c) ensure the Downstream or Upstream Service business unit has control over and responsibility for:
- (i) promoting and supplying a Downstream or Upstream Service; and
  - (ii) customer support for a Downstream or Upstream Service; and
  - (iii) the ELNO's relationship with customers of a Downstream or Upstream Service; and
- (d) ensure the Downstream or Upstream Service business unit does not perform any of the required functions of the ELN business unit or vice versa.

5.6.3 If either Operating Requirement 5.6.1 or 5.6.2 applies, the ELNO must:

- (a) not give, or operate in a manner which gives, an unfair commercial advantage to the Related Downstream or Upstream Service Provider; and
- (b) deal with the Related Downstream or Upstream Service Provider on an arm's length basis; and
- (c) prepare, publish, implement, review and keep current a Separation Plan which outlines how the ELNO will comply with this Operating Requirement, including how the ELNO will:
  - (i) manage the ELNO or ELN business unit independently from the Related Downstream or Upstream Service Provider; and
  - (ii) deal with confidential or commercially sensitive information of a Person Wishing To Integrate or a Person Who Has Integrated with the ELN to ensure that information is not available to, or able to be used by or for the benefit of, the Related Downstream or Upstream Service Provider; and
  - (iii) share personnel, systems and services, with the Related Downstream or Upstream Service Provider; and
  - (iv) implement suitable governance frameworks.

## **6 TESTING**

### **6.1 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.

### **6.2 Further Testing**

The ELNO must not implement any new functionality, which affects the Land Registry System, including implementing a new electronic Registry Instrument or other electronic Document, without first undertaking testing of the new functionality or new electronic Registry Instrument or other electronic Document 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; and
- (b) ensure that its Information Security Management System:
  - (i) takes into account the obligations of the ELNO in these Operating Requirements; including, where applicable and without limitation, the obligations in Operating Requirements, 7.11, 7.12, 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; and
    - B. the specification of virus protection software required to be installed on a Subscriber's computers; and
    - C. protection of Security Items; and
    - D. training and monitoring of Users in relation to a Subscriber's security obligations including, but not limited to, cyber security awareness training covering, as a minimum, secure use of the ELN and secure use of email and other electronic communication; and

- E. the process by which the ELNO will assist Subscribers and Users to understand the Subscriber security policy and their obligations in relation to the security of the ELN; and
- (iii) includes a set of Incident Response Plans; and
- (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 Operating Requirements 7.2.2 and 7.2.3, 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 An ELNO will not breach Operating Requirement 7.2.1 if the ELNO permits a Subscriber to use application to application technology for accessing the ELN and data entry provided that the Subscriber does not use application to application technology for the function of Digital Signing or for Subscriber Administrator functions.

7.2.3 The ELNO must ensure that only Persons authorised by the ELNO have access to the ELN for administrative purposes.

7.2.4 The ELNO must provide access to the ELN on an Equivalent Basis to:

- (a) Subscribers; and
- (b) Users,

subject only to differences which are attributable to the type, level or class of Integration with the ELN, provided that each Subscriber or User has an equivalent opportunity to choose between those options compared with each other Subscriber or User.

## **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 System or any other



- systems connected to the ELN for the purposes of carrying out Conveyancing Transactions; and
- (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; and
  - (c) prevent unauthorised system use, intrusion and service denial and detect and remove unauthorised system additions or modifications, including by using Usage Anomaly Detection capability to detect and track unauthorised actions in the ELN; and
  - (d) monitor, and take appropriate action after receiving security alerts from the Land Registry; and
  - (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; and
  - (g) ensure the ELNO has a legally binding agreement with any Supplier, which includes the following provisions:
    - (i) an undertaking by the Supplier to Promptly notify the ELNO if the Supplier becomes aware of any Incident that affects or may affect the ELN; and
    - (ii) an undertaking by the Supplier to carry out a cyber security due diligence review at least once a year, and to Promptly rectify any identified weaknesses; and
  - (h) test any Incident Response Plans at least annually; and
  - (i) Promptly follow the defined steps set out in any applicable Incident Response Plan in the event of an Incident.

## **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; and
- (b) does not change data received from a Land Registry other than in accordance with an approval granted under Operating Requirement 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 an electronic Registry Instrument or other electronic Document, the Certification Authority is independent.

7.6.2 Without limiting Operating Requirement 7.6.1, the ELNO must:

- (a) ensure that Digital Certificates used in the ELN:
  - (i) accord with the Gatekeeper PKI framework; and
  - (ii) are supplied by a Gatekeeper Accredited Service Provider; and
  - (iii) are issued under a Certificate Policy which:
    - A. identifies the Subscriber and its ABN; and
    - B. binds the Subscriber's Signer as Key Holder to the Subscriber including, without limitation, by naming the Subscriber's Signer in the Certificate Profile; and
- (b) take reasonable steps to ensure that the ELNO System does not include any functionality which enables Subscribers or Users to breach Participation Rule 7.5.5; and
- (c) take reasonable steps to implement functionality which prevents Subscribers and Users breaching Participation Rule 7.5.5, where reasonably possible.

7.6.3 Without limiting Operating Requirements 7.6.1 and 7.6.2, the ELNO must ensure that Subscribers can use Digital Certificates that are not restricted to closed environments or communities of interest to Digitally Sign electronic Registry Instruments or other electronic Documents, subject to any reasonable requirements in the ELNO's Subscriber security policy.

## **7.7 Verifying Digital Signing**

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

- (a) verifying that any electronic Registry Instruments or other electronic Document required to be Digitally Signed has been executed using a Valid Digital Certificate of the Subscriber authorised to execute the electronic Registry Instruments or other electronic Document; and
- (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; and
- (c) verifying that when an electronic Registry Instrument or other electronic Document is Digitally Signed, the Signer:
  - (i) has the signing rights being exercised; and
  - (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 Operating Requirements 7.7(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 Registry Instrument or other 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 electronic Registry Instruments or other electronic Documents without its authorisation or the authorisation of any Client on whose behalf the electronic Registry Instruments or other electronic Documents are purported to be Digitally Signed,

the ELNO must:

- (c) prevent the presentation for Lodgment with the Registrar or Land Registry of those electronic 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 Operating Requirement 7.10(b);  
or

- (d) if it is not possible to prevent the presentation for Lodgment, immediately notify the Registrar.

## **7.11 Data Breach Notification**

7.11.1 The ELNO must implement appropriate procedures and controls (including training) to detect Data Breaches and possible Data Breaches.

7.11.2 If the ELNO becomes aware of a Data Breach, or reasonably suspects that a Data Breach has occurred, the ELNO must:

- (a) Promptly provide the Registrar and any affected Subscriber all details in respect of that event; and
- (b) take all reasonable steps to investigate the event, contain the breach (if the event is a Data Breach) and mitigate against the adverse effect and harm arising from the event; and
- (c) allow the Registrar to participate in any investigation and mitigation steps under Operating Requirement 7.11.2(b); and
- (d) provide all assistance and support required by the Registrar to assess the risk of harm arising from the event, and to recover from the event; and
- (e) implement such additional measures as are required to protect against a similar Data Breach in the future; and
- (f) Promptly follow the defined steps set out in any applicable Incident Response Plan.

## **7.12 Cloud Service**

7.12.1 The ELNO may use a Cloud Service for its ELN or to provision its ELN if all of the following are satisfied:

- (a) the ELNO uses its reasonable endeavours to continuously mitigate any risks associated with using a Cloud Service as they are identified; and
- (b) the Cloud Service only stores and processes Land Information in a secure computer infrastructure located within the Commonwealth of Australia; and
- (c) the premises and systems used in connection with the provision and use of the Cloud Service are secure, having regard to the sensitive nature of the ELN and Land Information; and

- (d) the ELNO implements and uses security and encryption features and any complementary user entity controls that are appropriate to protect Land Information (including access control, encryption in transit and encryption at rest); and
- (e) the ELNO has a legally binding agreement with the Cloud Service Provider which includes an undertaking by the Cloud Service Provider to:
  - (i) maintain an information security program that complies with the ISO 27001 Standard (or such successor Standards) or such other alternative Standards as are substantially equivalent to ISO 27001; and
  - (ii) carry out an independent audit assessment of its controls and processes and their effectiveness at least once a year; and
  - (iii) provide a SOC2 Type 2 Report to the ELNO; and
  - (iv) carry out a vulnerability assessment and penetration testing of its systems and online services at least once a year; and
  - (v) Promptly take any action required to ensure the Cloud Service Provider's controls and processes are effective and rectify any identified weaknesses; and
- (f) the ELNO receives the SOC 2 Type 2 Report referred to in Operating Requirement 7.12.1(e)(iii).

7.12.2 The ELNO must notify the Registrar if the ELNO is using, intends to use, commences to use a Cloud Service, changes Cloud Service Provider or ceases to use a Cloud Service.

### **7.13 Vulnerability assessment and penetration testing**

The ELNO must ensure that:

- (a) at least once a year, an appropriately qualified independent security professional undertakes a vulnerability assessment and penetration testing of its ELNO System and any other systems and networks that store or process Land Information; and
- (b) where the independent security professional makes recommendations, those recommendations are expressed in writing as either Essential Recommendations or Desirable Recommendations; and
- (c) any Essential Recommendations are implemented Promptly.

## **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 Operating Requirement.

### **10.1 Functionality**

The ELNO must ensure that the ELN:

- (a) provides sufficient functionality to enable:
  - (i) Subscribers to comply with the ECNL, Land Titles Legislation and 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
  - (iii) the ELNO to comply with the ECNL, Land Titles Legislation and these Operating Requirements; and
- (b) is designed and provisioned:
  - (i) to be reliable, scalable and flexible; and

- (ii) to use software that is fully supported by the provider of that software; and
- (iii) so that it is architecturally sound with its 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 Registry Instruments or other 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 electronic Registry Instrument or other electronic Document 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 Registry Instrument or other 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 Registry Instrument or other Document templates**

The ELNO must ensure that the correct Registry Instrument or other Document template supplied and determined by the Registrar is used by Subscribers.

## **10.8 Presentation once financial settlement is irrevocable**

The ELNO must ensure that no electronic Registry Instrument or other electronic Document 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 or other electronic Document is presented to the Registrar for Lodgment unless the electronic Registry Instrument or other electronic Document 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 or other electronic Document 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; and
- (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.

### **13.3 Implementation plan**

13.3.1 The ELNO must provide the Registrar with an implementation plan covering, as a minimum, a two year period and setting out:

- (a) proposed future releases of the ELN, including to expand its functionality, improve its performance or introduce new electronic Registry Instruments or other electronic Documents; and
  - (b) details of when Back End Infrastructure Connections are scheduled; and
  - (c) the time at which each of those releases are scheduled for implementation; and
  - (d) the changes proposed to be introduced as part of each of those releases,
- and must provide the Registrar with an updated version of the implementation plan Promptly after making any changes to the information set out in the plan.

13.3.2 The ELNO must implement and observe any changes to the implementation plan related to the ELN or the Back End Infrastructure Connection between the ELNO and the Land

Registry, reasonably requested by the Registrar in writing following good faith consultation between the Registrar and the ELNO.

## **14 SUBSCRIBERS**

### **14.1 Subscriber registration**

14.1.1 The ELNO must establish, implement, review and keep current a Subscriber Registration Process.

14.1.2 The ELNO must only register a Subscriber:

- (a) if the Potential Subscriber meets the Eligibility Criteria except where the Registrar has waived compliance with any Eligibility Criteria in accordance with section 27 of the ECNL; and
- (b) if the ELNO has verified:
  - (i) the identity of the Potential Subscriber, and any Person(s) representing the Potential Subscriber in accordance with the Subscriber Identity Verification Standard; and
  - (ii) the authority of the Potential Subscriber, and any Person(s) representing the Potential Subscriber, to sign the Participation Agreement; and
- (c) if the Potential Subscriber has entered into a Participation Agreement with the ELNO which includes an obligation on the Subscriber to comply with the Participation Rules; and
- (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 to conduct Conveyancing Transactions.

14.1.3 The ELNO need not verify the identity of the Potential Subscriber, or any Person(s) representing the Potential Subscriber, in accordance with the Subscriber Identity Verification Standard if the ELNO:

- (a) has complied with Operating Requirement 14.1.2(b)(i) within the previous two years; and
- (b) takes reasonable steps to ensure it is dealing with the Potential Subscriber, or the Person(s) representing the Potential Subscriber.

## **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 identify**

The ELNO must obtain and retain:

- (a) evidence to confirm that each Subscriber meets the Insurance Rules except where the Registrar has waived compliance with any Insurance Rule in accordance with section 27 of the ECNL; 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:

- (a) readily learn and understand how to use the ELN; and

- (b) understand their security obligations including, but not limited to, cyber security awareness training covering, as a minimum, secure use of the ELN and secure use of email and other electronic communication.

## **14.7 Review of Subscribers and suspension or termination**

The ELNO must:

- (a) establish, implement, review and keep current a Subscriber Review Process; and
- (b) if a review 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; and
- (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; and
- (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; and
  - (ii) the details of the material breach or impending material breach; and
  - (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 (including when a Subscriber resigns) 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, Promptly 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; and
- (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.

## **14.10 ELNO must not be a Subscriber**

14.10.1 The ELNO must not be a Subscriber to the ELNO's ELN except for the purposes of testing the functionality of the ELN.

14.10.2 If a Related Entity of the ELNO intends to become a Subscriber or is a Subscriber to the ELNO's ELN, the ELNO must use an Independent Expert to:

- (a) assess the Related Entity's application to become a Subscriber; and
- (b) undertake the Subscriber Review Process of the Related Entity.

## **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 Operating Requirement 15.5, the ELNO or Potential ELNO must demonstrate to the Registrar its compliance with an Operating Requirement by:

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

as specified for an Operating Requirement in Schedule 3.

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

If an ELNO or Potential ELNO is unable to give a No Change Certification to demonstrate to the Registrar its compliance with an Operating Requirement 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 or Potential ELNO must instead:

- (a) produce to the Registrar the Specified Document; or
- (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 Operating Requirement under the relevant preceding category in Schedule 3.

### **15.4 When to demonstrate compliance**

Without limiting Operating Requirement 15.5, the ELNO or Potential ELNO must demonstrate to the Registrar its compliance with the Operating Requirements set out in:

- (a) Category One in Schedule 3, at the time the Potential ELNO applies for Approval or the ELNO applies for renewal of Approval; and
- (b) Category Two in Schedule 3:
  - (i) at least six months prior to the date notified by the ELNO or Potential ELNO to the Registrar as the date on which the ELNO or Potential ELNO intends commencing operation of the ELN, but not more than one year after the date that the Registrar notifies the ELNO or Potential ELNO that the ELNO or Potential ELNO has satisfactorily demonstrated compliance with the Operating Requirements set out in Category One in Schedule 3; and
  - (ii) at the time the ELNO applies for renewal of Approval except for compliance demonstrated under Operating Requirement 15.4(a); and
- (c) Category Three in Schedule 3:

- (i) annually as part of the ELNO's Annual Report; and
  - (ii) at the time the ELNO applies for renewal of Approval except for compliance demonstrated under Operating Requirements 15.4(a) and 15.4(b)(ii); and
- (d) Category Four in Schedule 3, 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 or Potential 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; and
- (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 Operating Requirement 15.9, if the ELNO fails to demonstrate compliance with matters dealt with in Operating Requirement 15.4(d) on two consecutive occasions, the

ELNO must prepare and provide to the Registrar a remediation action plan 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 prepare and provide to the Registrar, within the time specified in the notice, a remediation 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 an Operating Requirement 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 or Officer of the ELNO.

## **16 INDEPENDENT CERTIFICATION**

### **16.1 Approval of Independent Expert**

The ELNO or Potential ELNO must ensure that:

- (a) before an Independent Certification is given by an Independent Expert, the ELNO or Potential 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 or Potential 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 or Potential ELNO must give all reasonable assistance required by the Independent Expert referred to in Operating Requirement 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 where it is required under these Operating Requirements to have something regularly reviewed by an Independent Expert:



- (a) the Independent Expert makes recommendations which are expressed in writing as either Essential Recommendations or Desirable Recommendations; and
- (b) any Essential Recommendations are implemented.

## **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 an Operating Requirement 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:

- (a) within 10 Business Days of the expiration of each month in which the ELNO operates the ELN, publish on its website and provide to the Registrar a Monthly Report relating to the ELNO's compliance with the Operating Requirements set out in Category Four in Schedule 3; and
- (b) ensure that the ELNO's Monthly Reports remain on the ELNO's website for a period of at least one year.

### **18.2 Annual Report**

18.2.1 Subject to Operating Requirement 18.2.2, an ELNO must, within three months after the end of the Financial Year, give the Registrar an Annual Report for that Financial Year 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 three months before the end of a Financial Year, an ELNO must, within three months after the end of the next Financial Year, give the Registrar an Annual Report for that Financial Year 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 includes:

- (a) where Operating Requirement 18.2.1 applies, a description of the activities that ELNO has undertaken in the Financial Year; and
- (b) where Operating Requirement 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; and
- (c) the Specified Documents, Self-Certifications, No Change Certifications and Independent Certifications required to demonstrate the ELNO's compliance with the Operating Requirements set out in Category Three in Schedule 3; and
- (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; and
- (b) all Electronic Workspace Documents, whether:
  - (i) Digitally Signed or not; or
  - (ii) Lodged or not with the Registrar or the Land Registry; and
- (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 an electronic Registry Instrument or other electronic Document with the Land Registry or complying with Operating Requirement 19.1 and 19.2; or
- (b) modify or alter any Land Information for a Conveyancing Transaction; or
- (c) do anything that allows or causes another Person to modify or alter any part of Land Information provided by the Land Registry; or
- (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; and
- (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; and
- (c) notice of any direction given by the Registrar to the ELNO relating to a Subscriber or Subscribers; and
- (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; and
- (b) acknowledges that nothing in these Operating Requirements creates in or transfers to an ELNO any Intellectual Property Rights in the Land Information; and
- (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; and
- (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

- (a) suspend (for a period determined by the Registrar) or revoke an ELNO's Approval:
  - (i) if the ELNO is in material breach of these Operating Requirements; or
  - (ii) 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; or
  - (iii) if an Insolvency Event occurs in respect of the ELNO; or
  - (iv) if any 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; or

- (v) 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
- (vi) if the ELNO ceases or threatens to cease operating the ELN or a substantial part of the ELN; or
- (vii) if an ELNO fails, without reasonable excuse, to comply with a notice served under the Compliance Examination Procedure; or
- (viii) if an ELNO fails, without reasonable excuse, to enable the electronic Registry Instruments and other electronic Documents set out in Operating Requirement 5.2(b) within either:
  - A. five years of the date the ELNO commences operation of the ELN in any Jurisdiction; or
  - B. two years of the date that a Jurisdiction becomes capable of receiving those electronic Registry Instruments or other electronic Documents, whichever is the later; and
- (b) revoke an ELNO's Approval:
  - (i) if the ELN is not operating, without reasonable excuse, within two years of the grant of the ELNO's Approval; or
  - (ii) if the ELNO's Approval is not reinstated within a reasonable time following a suspension of the Approval.

## **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 Registrar or 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; and
- (b) the orderly winding down of the ELNO System, facilities and services; and

- (c) the manner of finalising any incomplete Conveyancing Transactions; and
- (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 Rights to the Registrar or at the direction of the Registrar.

### **21.3 (Deleted)**

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

The ELNO must implement the Transition Plan:

- (a) One year 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; or
- (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**

1	Professional indemnity insurance	\$20,000,000
2	Fidelity insurance	\$20,000,000
3	Public and product liability insurance	\$10,000,000
4	Asset insurance	Replacement Cost Value

## SCHEDULE 2 – PERFORMANCE LEVELS

Performance Level	Performance target
<b>Operational performance measures</b>	
Service availability	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, seven days per week and 52 weeks per year, exclusive of Scheduled Maintenance, to be assessed monthly.
Service reliability	The ELNO System must be available for: (a) not less than 99.8% during Core Hours; and (b) not less than 99% during Non-Core Hours, assessed monthly.
<b>System performance measures</b>	
System responsiveness	The time taken by the ELNO System to respond to a user-initiated request must be less than three seconds on average over a month, exclusive of external communications and systems, under all reasonably expected load conditions.
System resilience	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.
<b>Management performance measures</b>	
Incident resolution	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 four hours.  Where a service disruption occurs in a non-disaster recovery situation, the ELNO System must be restored to service availability within 40 minutes.
Problem identification	The root cause of each service disruption must be identified within three Business Days.



## SCHEDULE 3 – REPORTING REQUIREMENTS

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

Operating Requirement	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	Company search not more than 30 days old		
4.2(c)	Properly empowered		Constituting documents empower ELNO	
4.3.1	Good corporate character and reputation		Good character and reputation	
4.3.1(a)	Principals and Officers of good character		Principals 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	Evidence of sufficient financial resources	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		
5.2	National system and minimum Documents	Business Plan		
5.3(d)	Licences and regulatory approvals		Licences and regulatory approvals specified, obtained and current	
5.3(l)	Business Plan	Business Plan		
5.6.3(c)	Separation Plan (if applicable)			Compliance with the requirements

Operating Requirement	Subject	Document to be produced	Self-Certification to be provided	Independent Certification to be obtained and supplied
10.1(a)	Functionality	Application to become an ELNO		

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

Operating Requirement	Subject	Document to be produced	Self-Certification to be provided	Independent Certification to be obtained and supplied
4.1	ABN and GST		No Change Certification or updated Document as required under Category One	
4.2(a) or (b)	Corporate registration	Company search not more than 30 days old		
4.2(c)	Properly empowered		No Change Certification or updated Self-Certification as required under Category One	
4.3.1	Good corporate character and reputation		Good character and reputation	
4.3.1(a)	Principals and Officers of good character		Principals 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		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	

Operating Requirement	Subject	Document to be produced	Self-Certification to be provided	Independent Certification to be obtained and supplied
4.6	Organisational resources		No Change Certification or updated Document and Self-Certification as required under Category One	
4.7.1, 4.7.2 & 4.7.3	Insurance	Certificate of currency for the insurance required under Operating Requirement 4.7.2		
4.7.4 & 4.7.5	Insurance		Compliance with requirements in Operating Requirements 4.7.4 & 4.7.5	
5.1	Widespread use		No Change Certification or updated Document as required under Category One	
5.2	National system and minimum Documents		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	Pricing policy		
5.3(l)	Business Plan		No Change Certification or updated Document as required under Category One	
5.5	Integration (if applicable)		Compliance with the requirements	
5.6.3(c)	Separation Plan (if applicable)			Compliance with the requirements
6.1	Initial testing	Test Plan		
7	System security and integrity	Information Security Management System (ISMS)		ISMS Fit for Purpose
7.12	Cloud Service (if applicable)		Compliance with the requirements	
9.1	Mitigate risk	Risk Management Framework (RMF)		RMF Fit for Purpose
10.1(b)	Minimum system requirements: Adaptability			Compliance with requirements in Operating Requirement 10.1(b)

Operating Requirement	Subject	Document to be produced	Self-Certification to be provided	Independent Certification to be obtained and supplied
12	Business continuity and disaster recovery	Business Continuity and Disaster Recovery Management Program		Business Continuity and Disaster Recovery Management Program Fit for Purpose
13	Change management	Change Management Framework		
13.3	Implementation plan	Implementation plan		
14.1	Subscriber registration	Subscriber Registration Process		
14.4	Subscriber insurance	Documented process to ensure current Subscriber insurance obtained and retained		
14.5	Participation agreement	Participation Agreement		
14.7	Subscriber review	Subscriber Review Process		
21	Transition	Transition Plan		

### Category Three – as part of the Annual Report and on renewal of Approval

Operating Requirement	Subject	Document to be produced	Self-Certification to be provided	Independent Certification to be obtained and supplied
4.1	ABN and GST		No Change Certification or updated Document as required under Category One	
4.2(a) or (b)	Corporate registration	Company search not more than 30 days old		
4.2(c)	Properly empowered		No Change Certification or updated Self-Certification as required under Category One	
4.3.1	Good corporate character and reputation		Good character and reputation	

<b>Operating Requirement</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>
<b>4.3.1(a)</b>	Principals and Officers of good character		Principals and Officers of good character	
<b>4.3.1(b)</b>	Employees, agents and contractors of good character		Employees, agents and contractors of good character	
<b>4.3.2</b>	Governance		No Change Certification or updated Document and Self-Certification as required under Category One	
<b>4.4</b>	Financial resources	Audited financial statements and reports for the last Financial Year	Sufficient financial resources	
<b>4.5</b>	Technical resources		Sufficient technical resources	
<b>4.6</b>	Organisational resources		No Change Certification or updated Document and Self-Certification as required under Category One	
<b>4.7.1, 4.7.2 &amp; 4.7.3</b>	Insurance	Certificate of currency for the insurance required under Operating Requirement 4.7.2		
<b>4.7.4 &amp; 4.7.5</b>	Insurance		Compliance with requirements in Operating Requirements 4.7.4 & 4.7.5	
<b>5.1</b>	Widespread use		No Change Certification or updated Document as required under Category One	
<b>5.2</b>	National system and minimum Documents		No Change Certification or updated Document as required under Category One	
<b>5.3(d)</b>	Licences and regulatory approvals		Licences and regulatory approvals specified, obtained and current	
<b>5.3(e)</b>	Pricing policy		No Change Certification or updated Document as required under Category Two	

<b>Operating Requirement</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>
<b>5.3(f)</b>	Training and awareness		Training and awareness programs up to date and adequate	
<b>5.3(g)</b>	Law and policy compliance		Compliance with laws and policies	
<b>5.3(l)</b>	Business Plan		No Change Certification or updated Document as required under Category One	
<b>5.5</b>	Integration (if applicable)		Compliance with the requirements	
<b>5.6.3(c)</b>	Separation Plan (if applicable)			Compliance with the requirements
<b>7</b>	System security and integrity		ISMS: No Change Certification or updated Document as required under Category Two	ISMS Fit for Purpose
<b>7.12</b>	Cloud Service (if applicable)		Compliance with the requirements	
<b>7.13</b>	Vulnerability assessment and penetration testing		Compliance with the requirements	
<b>8</b>	Public confidence in Titles Register		Nothing done to diminish public confidence in Titles Register	
<b>9.1</b>	Mitigate risk		RMF: No Change Certification or updated Document as required under Category Two	RMF Fit for Purpose
<b>9.2</b>	Risk of fraud or error		Use of ELN does not result in greater fraud or error	
<b>10.1(b)</b>	Minimum system requirements: Adaptability		No Change Certification	Where a No Change Certification cannot be given, an Independent Certification as required under Category Two
<b>11</b>	Minimum Performance Levels		Performance to measures in Schedule 2	
<b>12</b>	Business continuity and disaster recovery		No Change Certification or updated Document as required under Category Two	Business Continuity and Disaster Recovery Management Program Fit for Purpose

Operating Requirement	Subject	Document to be produced	Self-Certification to be provided	Independent Certification to be obtained and supplied
13	Change management		No Change Certification or updated Document as required under Category Two	
13.3	Implementation plan		No Change Certification or updated Document as required under Category Two	
14.1, 14.2 & 14.3	Subscriber registration		Compliance with the requirements	
14.4	Subscriber insurance		No Change Certification or updated Document as required under Category Two	
14.5	Participation agreement		No Change Certification or table of material amendments to Document required under Category Two	
14.6	Subscriber training		Compliance with the requirements	
14.7	Subscriber review		No Change Certification or updated Document as required under Category Two	
15.1	General compliance		Compliance with all requirements	
15.7, 15.8 & 15.9	Non-compliance remediation	Consolidated and categorised compliance failure notifications together with remediation action plans and their outcomes		
18.2	Annual Report	Annual Report		
19.3	Information use		Compliance with restrictions	
21	Transition		No Change Certification or updated Document as required under Category Two	

## Category Four – as the Monthly Report

Operating Requirement	Subject	Documents to be published
5	Operation of an ELN	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 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 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 must comply with the requirements set out in the notice within the period specified in the notice.
- 1.5 (Deleted)

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

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

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

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

## **4 Access to retained Documents**

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

## **5 Costs**

- 5.1 If the 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 and, where relevant, Potential ELNOs, a representative group of Subscribers, Subscribers' local and national professional associations, regulators, insurers or any other Person (as reasonably determined by the Registrar) 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 – SUBSCRIBER IDENTITY VERIFICATION STANDARD

### 1 Definitions

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

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

**Approved Insurer** means:

- (a) a general insurer within the meaning of the Insurance Act; or
- (b) a Lloyd's underwriter within the meaning of the Insurance Act and to which section 93 of the Insurance Act continues to have effect; or
- (c) a person to whom a determination is in force under section 7(1) of the Insurance Act that sections 9(1) or 10(1) or 10(2) of the Insurance Act do not apply.

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

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

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

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

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

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

**Identity Agent** means a Person appointed in writing by an ELNO to act as the ELNO's agent, 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 a certification in substantial compliance with the certification set out in paragraph 9 of this Subscriber Identity Verification Standard, as amended from time to time.

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

**Insurance Act** means the *Insurance Act 1973* (Cth).

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

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

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

**Person Being Identified** means any of the Persons required to be identified under Operating Requirement 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.

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

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

## 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 authorised 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 authorised Person or Persons signing the Participation Agreement or witnessing the affixing of the seal on the Participation Agreement 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 two years.

Category	Minimum Document Requirements
1	Australian Passport or foreign passport or Australian Evidence of Immigration Status ImmiCard or Australian Migration Status ImmiCard <u>plus</u> Australian drivers licence or Photo Card <u>plus</u> change of name or marriage certificate (if necessary)
2	Australian Passport or foreign passport or Australian Evidence of Immigration Status ImmiCard or Australian Migration Status ImmiCard <u>plus</u> full birth certificate or citizenship certificate or descent certificate <u>plus</u> Medicare or Centrelink or Department of Veterans' Affairs card <u>plus</u> change of name or marriage certificate if necessary
3	Australian drivers licence or Photo Card <u>plus</u> full birth certificate or citizenship certificate or descent certificate <u>plus</u> Medicare or Centrelink or Department of Veterans' Affairs card <u>plus</u> change of name or marriage certificate if necessary
4	(a) Australian Passport or foreign passport or Australian Evidence of Immigration Status ImmiCard or Australian Migration Status ImmiCard <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 or Australian Evidence of Immigration Status ImmiCard or Australian Migration Status ImmiCard <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**

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**

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**

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**

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 Person undertaking the verification of identity], of [full name of Identity Agent] of [address of the Identity Agent] being a [occupation of the Identity Agent] and having been appointed in writing and 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 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
E.g. Australian Passport

## 9.2 Professional indemnity insurance

Each Identity Agent must maintain professional indemnity insurance:

- (a) which specifically names the Identity Agent as being insured; and
- (b) with an Approved Insurer; and
- (c) for an insured amount of at least \$1,500,000 per claim (including legal Costs); and
- (d) having an excess per claim of no greater than \$20,000; and
- (e) having an annual aggregate amount of not less than \$20,000,000; and
- (f) which includes coverage for verification of identity for the purposes of this Subscriber Identity Verification Standard; and
- (g) the terms of which do not limit compliance with paragraphs 9.2(a) to (f) of this Subscriber Identity Verification Standard.

## 9.3 Fidelity insurance

Each Identity Agent must maintain fidelity insurance:

- (a) which specifically names the Identity Agent as being insured; and
- (b) with an Approved Insurer; and
- (c) for an insured amount of at least \$1,500,000 per claim (including legal Costs); and
- (d) having an excess per claim of no greater than \$20,000; and
- (e) having an annual aggregate amount of not less than \$20,000,000; and
- (f) which provides coverage for third party claims arising from dishonest and fraudulent acts; and
- (g) which includes coverage for verification of identity for the purposes of this Subscriber Identity Verification Standard; and
- (h) the terms of which do not limit compliance with paragraphs 9.3(a) to (g) 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, the Identity Agent must maintain professional indemnity insurance:

- (a) which specifically names the Identity Agent as being insured; and
- (b) with an Approved Insurer; and
- (c) for an insured amount of at least \$1,500,000 per claim (including legal Costs); and
- (d) having an excess per claim of no greater than \$20,000; and
- (e) having an annual aggregate amount of not less than \$20,000,000; and
- (f) which provides coverage for third party claims arising from dishonest and fraudulent acts; and
- (g) which includes coverage for verification of identity for the purposes of this Subscriber Identity Verification Standard; and
- (h) the terms of which do not limit compliance with paragraphs 9.4(a) to (g) 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.