



AUSTRALIAN REGISTRARS NATIONAL ELECTRONIC CONVEYANCING COUNCIL

# MODEL OPERATING REQUIREMENTS

Version 7.~~1~~2

**Australian Registrars' National Electronic Conveyancing Council**

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# OPERATING REQUIREMENTS

## 1 PRELIMINARY

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

## 2 DEFINITIONS AND INTERPRETATION

### 2.1 Definitions

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

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

**ABN** means an Australian Business Number and has the 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 an 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.

**Affected Parties** means:

(a) Customers;

(b) any affected individuals required to be notified under any Privacy Laws; and

(c) any other individual, corporation, government entity or other third party affected or potentially affected by any action or omission of the ELNO, the ELNO's Personnel or any third party for whom the ELNO is responsible or is associated with the ELNO.

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

**Annual Plans** means the plans referred to in Operating Requirement 18.3.

**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)*.

**Area of Concern** has the meaning given to it in Operating Requirement 15.13.

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

**ARNECC Roadmap** means a collective document created by ARNECC outlining all Jurisdictions' order of priority for the deployment of electronic Registry Instruments, other electronic Documents and other functionality as amended from time to time.

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

**Associated Financial Transaction** has the meaning given to it in the ECNL.

**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)*.

Available means all components of the ELNO System required to complete a Conveyancing Transaction end to end are performing their usual and ordinary function without failure, interruption or Degradation.

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

(b)(a) a Land Registry; or

(e)(b) a Duty Authority; or

(d)(c) a Certification Authority; or

(e)(d) a Person that provides financial settlement services to an ELNO, other than in that Person's capacity as a Subscriber; or

(f)(e) a Cloud Service Provider; or

(g)(f) a 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; or

(h)(g) another ELNO for the purpose of Interoperability.

**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:

- (a) its products and/or services and delivery schedule; and
- (b) its 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.

Capital Investment means expenditure in the ELN to directly and demonstrably provide Continuous Improvement pursuant to the Continuous Improvement Plan approved by the Registrar 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.

**Code Operator Member** has the meaning given to it in the Industry Code for e-Conveyancing Payments.

**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.

**Continuous Improvement** means the ongoing development of a reliable, scalable, adaptable and agile ELN, including by the adoption of international and domestic industry developments and new technology, methodologies and processes advantageous to the Registrar, the Land Registry, Subscribers, Users or their Clients, or entities included in the definition of Back End Infrastructure Connections including best-in-class technologies and technologies licensed, delivered or sold by third parties, that a reasonable and prudent corporation of a similar size and type as the ELNO would ordinarily make to support the ongoing integrity of the Land Registry System and the ELN to a high standard in alignment with the ECNL and the Operating Requirements, so as to continuously improve:

- (a) the security, resilience, performance and functionality of the ELN including Back End Infrastructure Connections; and
- (b) the rollout of electronic Registry Instruments and other electronic documents which are capable of Lodgment in the Jurisdiction and other functionality; and
- (c) the ELN's quality, efficiency and effectiveness in the provision of services to all Customers, Subscribers, Users and their Clients, including addressing Subscriber feedback.

**Continuous Improvement Plan** means the plan referred to in Operating Requirement 4.9.1(b).

**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.

**Customer** means any recipient that makes use of or integrates with the services, products or otherwise provided by an ELNO and includes Subscribers and Users but does not include another ELNO.

**Data** means:

- (a) Land Information and Personal Information;
- (b) all data used or created by the ELNO System;
- (c) information that is stored in databases connected to or used by the ELN, including Land Information and Personal Information; and
- (d) all back-ups of the foregoing,

where and to the extent that the ELNO or its Personnel are in the possession of, control, or are able to control, such data or database.

**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.

**Default Responsible ELNO Surcharge** means a fee payable to the Responsible ELNO by a Participating ELNO for an Interoperable Lodgment Case where at Lodgment, the Participating ELNO should have been the Responsible ELNO but does not perform the Responsible ELNO role.

**Degraded or Degradation** means the ELNO System remains operational but is functioning below the usual level of operation. This may include, without limitation Conveyancing Transactions being prevented from being Lodged, slower response times, certain features or

functions being inaccessible or unusable, or other issues impacting Subscribers or Users from using the ELNO System in the usual manner.

**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.

**Document Format** means the fixed components of a Document or Registry Instrument providing the context and locations for data items and a Digital Signature.

**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 an ELN, and includes an Interoperable Electronic Workspace.

**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; or
- (f) for the purpose of Operating Requirement 5.7:
  - (i) by using the same terms and conditions relating to price or the same method of ascertaining price; and
  - (ii) by using the same processes and systems in implementing Interoperability; and

- (iii) in relation to the terms and conditions on which Interoperability is implemented.

**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.

**Implementation Plan** means the plan referred to in Operating Requirement 13.3.

**Implementation Plan Requirements** means the requirements referred to in Operating Requirement 13.3.4.

**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; or
- (c) a Security Incident.

There may be more than one Incident at any given time, and the Operating Requirements apply to each Incident independently.

**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, including but not limited to, the steps an ELNO will take to promptly notify any actual or potential Affected Parties of the Incident and it's expected impact.

**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.

**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.

**Industry Code for e-Conveyancing Payments** has the meaning given to it in the industry code for electronic conveyancing payments prepared by Australian Payments Network Limited, as amended from time to time.

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

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

**Interoperability Agreement** means an agreement between two or more ELNOs or Potential Interoperable ELNOs to facilitate Interoperability between them.

**Interoperability Agreement Matters** means the matters that must be dealt with in an Interoperability Agreement as set out in Schedule 8, as amended from time to time.

**Interoperability Fees** means a Responsible ELNO Fee or a Default Responsible ELNO Surcharge.

**Interoperability Fees Pricing Table** means the table of Interoperability Fees prepared by the ELNO in accordance with the requirements set out in Operating Requirement 5.9, as amended from time to time.

**Interoperable Electronic Workspace** means an Electronic Workspace containing at least one Interoperable Lodgment Case.

**Interoperable Lodgment Case** means an electronic Registry Instrument or other electronic Document or related electronic Registry Instruments or other electronic Documents, conducted by means of Interoperability, which are or will be presented for Lodgment at the same time, together with the relevant Lodgment Instructions.

**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** (however described) 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 includes a real estate settlement agent under 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 Case** means an electronic Registry Instrument or other electronic Document or related electronic Registry Instruments or other electronic Documents which are or will be presented for Lodgment at the same time, together with the relevant Lodgment Instructions, and may include an Interoperable Lodgment Case.

**Lodgment Case Error** means a given Lodgment Case that, as presented for Lodgment, does not accurately reflect all data forming part of that Lodgment Case, including data entered by Subscribers and data pre-populated or generated by the ELNO, to the extent that such data is submitted to the Registrar for Lodgment.

**Lodgment Fees** means fees due to a Land Registry for an electronic Registry Instrument or other electronic Document Lodged with the Land Registry by an 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.

**NECDS** means the data standard specified by the Registrar and known as the National Electronic Conveyancing Data Standard, as amended from time to time.

**NECIDS** means the data standard known as the National Electronic Conveyancing Interoperability Data Standard, as amended from time to time.

**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 ELNO** means an ELNO involved in an Interoperable Electronic Workspace that is not the Responsible ELNO.

**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.

Performance Level Failure means a failure by the ELNO to meet the same Performance Level on at least three occasions in any six-month period.

**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).

Personnel of an entity means the directors, secretaries or other officers, employees, secondees, agents, contractors (including subcontractors and professional advisers, such as lawyers, accountants and financial advisers) of that entity, including any directors, secretaries or other officers, employees, secondees, agents and contractors (including subcontractors and professional advisers, such as lawyers, accountants and financial advisers) of any of that entity's contractors where relevant.

**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.

Post Incident Report (PIR Report) means a report that includes:

- (a) details of the size and scale of the Incident and its impact, including impacts on Affected Parties, the Land Registry and the Titles Register;
- (b) a copy of the Root Cause Analysis Report;
- (c) a description of all steps taken to mitigate and resolve the Incident or anything arising out of the Root Cause Analysis Report, including in relation to any Affected Parties;

- (d) a remediation plan addressing the rectification of, and the prevention of the future recurrence of the facts and circumstances giving rise to, the Incident;
- (e) an assessment of the efficacy of the ELNO's response to the Incident, including actions taken by the ELNO to notify any Affected Parties and whether the ELNO's response complied with its legal and regulatory obligations;
- (f) identified action items (with timeframes to complete the items) for improvement and uplift in relation to the ELNO's ISMS and Incident Response Plans; and
- (g) any other matter reasonably requested by the Registrar.

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

**Potential Interoperable ELNO** means a Person who has complied with Operating Requirement 15.4(b).

**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.

Regulatory Authority means any court or government body, including any political subdivision of them, including any ministry, department, commission, board, tribunal, bureau, agency, or other regulatory, administrative, monetary, fiscal, judicial or governmental

authority or instrumentality, and further including any semi-governmental or quasi-governmental person or entity exercising the functions of any of these.

**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.

**Resolution Institute Arbitration Rules** means the arbitration rules determined and published by the Resolution Institute as updated from time to time.

**Response Time** means the elapsed time between an Incident being logged (or detected) and meaningful action starting on it, such as assignment to a support resource or initial engagement with the user.

**Responsible ELNO** means the ELNO involved in an Interoperable Electronic Workspace that is responsible for presentation for Lodgment of the Interoperable Lodgment Case and facilitating completion of any Associated Financial Transaction.

**Responsible ELNO Fee** means the fee payable to the Responsible ELNO by a Participating ELNO for each Subscriber that used the ELN of the Participating ELNO in a Lodged Interoperable Electronic Workspace.

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

**Restore Time** means the elapsed time from when the Incident starts (or is logged) until the service is restored, even if the underlying root cause is fixed later.

**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 and Interoperability.

**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.

**Root Cause Analysis (RCA)** means analysis to determine the root cause of an Incident, Performance Level Failure, non-compliance, issue or other problem.

**Root Cause Analysis Report (RCA Report)** means the report containing the Root Cause Analysis.

**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 Incident** means any suspected, likely or actual information security or Data event, incident, problem, weakness or vulnerability which does, or which could, result in:

- (a) a compromise of the confidentiality, integrity, reliability, operation or availability of any Data (including any Personal Information);
- (b) a compromise of the confidentiality, integrity, reliability, operation or availability of any ELNO System, infrastructure or facilities;
- (c) a security breach or cyber security incident impacting the ELNO System, including denial of service attacks or relating to malicious code;
- (d) the unauthorised disclosure, use, modification, access or damage to, or misuse, loss, destruction or corruption of Data (including Personal Information);
- (e) non-compliance with Operating Requirement 7 or breach of the Privacy Laws; or
- (f) an information security or data event or an incident that is required to be notified to any Regulatory Authority or supervisory body in Australia.

**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.

**Strategic Outlook Plan** means the plan referred to in Operating Requirement 4.9.1(a).

**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, the Australian Taxation Office or an ELNO with which it Interoperates.

**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.

**System Error** means an error, failure, malfunction or defect in the ELN which results in the ELN not performing in accordance with the Document Formats or Business Rules.

**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.

**Third-Party Incident** means an Incident which the ELNO, having completed a Root Cause Analysis or investigation has ascertained that a party other than the ELNO or any of its Personnel caused the Incident.

**Third-Party Incident Report** means a report which includes, to the extent known by the ELNO, or to which the ELNO can ascertain by making reasonable enquiries:

- (a) the basis on which the ELNO determined a Third-Party Incident was not caused by the ELNO or its Personnel and details of the third party the ELNO determined did cause the Third-Party Incident;
- (b) details of the size and scale of the Third-Party Incident and its impact, including impacts on Affected Parties, the Land Registry, the Land Registry System and the Titles Register;
- (c) the outcome of the Root Cause Analysis or investigation;
- (d) a description of all steps taken to mitigate and resolve the Third-Party Incident or anything arising out of the Root Cause Analysis or investigation, including in relation to any third parties affected;
- (e) an assessment of the efficacy of the ELNO's response to the Third-Party Incident, including actions taken by the ELNO to notify any third parties affected and whether the ELNO's response complied with its legal and regulatory obligations;
- (f) any updates or variations to the ELNO's agreements or protocols with any third party proposed by the ELNO to be made as a result of the Third-Party Incident; and
- (g) any other matter reasonably requested by the Registrar.

The ELNO will not be in breach of the Operating Requirements if the ELNO includes incomplete or inaccurate information in a Third-Party Incident Report if that information was provided to the ELNO by a third-party and the ELNO had no reason to question the completeness or accuracy of that information.

**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 or ELNO 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 or ELNOs 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 an 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 or for a renewal of Approval, be able to comply with these Operating Requirements at the time the ELNO or Potential ELNO applies for Approval or for a renewal of 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 ~~R~~Regulatory ~~A~~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 ~~R~~Regulatory ~~A~~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 the ECNL and these Operating Requirements.

#### **4.5 Technical resources**

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

#### **4.6 Organisational resources**

The ELNO must demonstrate sufficient organisational resources to meet its obligations under the ECNL and 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.

## **4.8 Continuous Improvement**

### **4.8.1 The ELNO must:**

- (a) proactively manage the provision and operation of the ELN;
- (b) work in good faith with the Registrar and the Land Registry (if requested by the Registrar) to monitor the changing business, regulatory, risk and technology requirements of the eConveyancing industry domestically and internationally, which may result in the need for Continuous Improvement;
- (c) maintain a level of currency, knowledge and technology that allows the ELNO to identify and understand opportunities offered by Continuous Improvement;
- (d) on a regular basis (at least annually) consult in good faith with a representative range of Customers (including differing classes of Customers), with a view to obtaining feedback on where the ELNO might best effect Continuous Improvement;
- (e) regularly review, and effect Continuous Improvement of, the ELN;
- (f) meet with the Registrar periodically to inform them of any new processes or methodologies, technologies, or technology trends and directions that the ELNO is developing or is otherwise aware of that could reasonably be expected to form part of Continuous Improvement; and
- (g) employ and train its Personnel in new processes and technologies (including, where appropriate, by obtaining relevant certifications) as relevant to the Continuous Improvement of the ELN.

### **4.8.2 In effecting Continuous Improvement, the ELNO must not discriminate between or give preference to:**

- (a) one class of Subscriber or Client over any other; or

(b) Subscribers or Clients who deal with interests in land in one Jurisdiction in Australia over Subscribers or Clients who deal with interests in land in another Jurisdiction;

however, the ELNO may differentiate between classes of Subscribers or Clients solely to address an operational requirement specific to a particular class of Subscriber or Client.

4.8.3 The ELNO must act in good faith and exercise due skill, care, and diligence in effecting Continuous Improvement, ensuring that any Continuous Improvement:

(a) is carried out to a high standard and in alignment with the ECNL and the Operating Requirements;

(b) does not decrease or remove or allow to Degrade any security, resilience, performance and functionality of the ELN; and

(c) must be capable of working with systems and interfaces with which the ELN connects (including those effected by any Back End Infrastructure Connection), unless otherwise notified by the ELNO and approved by the Registrar before the ELNO implements the Continuous Improvement.

4.8.4 Nothing in this Operating Requirement affects the ELNO's obligations to obtain an approval or consent from the Registrar before making any changes or taking any steps to effect Continuous Improvement.

## 4.9 Strategic Outlook Plan and Continuous Improvement Plan

4.9.1 The ELNO must:

(a) develop an indicative, high-level, strategic outlook plan focussed on the themes, directions, strategies and emerging technologies which will guide how the ELNO will meet its obligations under Operating Requirement 4.8 for a minimum of the next five years (the **Strategic Outlook Plan**); and

(b) establish a detailed and actionable plan setting how the ELNO will meet its obligations under Operating Requirement 4.8 for the next two years (the **Continuous Improvement Plan**). The Continuous Improvement Plan must be based on the Strategic Outlook Plan, and include:

(i) details of the Continuous Improvement initiatives the ELNO will undertake and when during the period covered by the Continuous Improvement Plan, including the timing and sequence of initiatives, any dependencies and expected impacts and which Customers the ELNO anticipates will benefit from the Continuous Improvement Plan;

- (ii) a detailed description of how, in developing the Continuous Improvement Plan, the ELNO has consulted with and considered feedback from Customers in accordance with Operating Requirement 4.8.1(d); and
- (iii) a technology roadmap outlining an assessment of the ELNO's current technology environment, and plans to safeguard or uplift the ELNO's technology environment (where applicable); and
- (c) provide the Registrar with a copy of the Strategic Outlook Plan and the Continuous Improvement Plan for approval.

4.9.2 The ELNO must at least three months prior to the start of each Financial Year and whenever reasonably requested by the Registrar to do so:

- (a) undertake a review of the Strategic Outlook Plan and the Continuous Improvement Plan including:
  - (i) whether the Strategic Outlook Plan and the Continuous Improvement Plan remain adequate to enable the ELNO to comply with Operating Requirement 4.8;
  - (ii) any feedback from Customers and the Registrar on Continuous Improvements; and
  - (iii) any new or emerging technologies or other developments which potentially may be implemented by the ELNO to deliver future Continuous Improvement; and
- (b) update the Strategic Outlook Plan and the Continuous Improvement Plan and provide them to the Registrar for approval.

4.9.3 In these Operating Requirements a reference to the Strategic Outlook Plan and to the Continuous Improvement Plan includes a reference to those plans as updated or varied.

4.9.4 Upon receiving the Continuous Improvement Plan pursuant to Operating Requirement 4.9.1(a) or Operating Requirement 4.9.1(b) the Registrar may request the ELNO in writing to provide additional information in relation to the ELNO's consultation with Customers in accordance with Operating Requirement 4.8, the feedback of those persons and how the ELNO has taken that feedback into consideration in developing the Continuous Improvement Plan. If the Registrar makes such a request, the ELNO must provide the requested information Promptly to the Registrar.

4.9.5 Upon receiving the Strategic Outlook Plan and the Continuous Improvement Plan pursuant to Operating Requirement 4.9.1(c) or Operating Requirement 4.9.1(b), or the additional information requested pursuant to Operating Requirement 4.9.4:

- (a) the Registrar may request the ELNO in writing to make changes to those plans. In requesting changes to the Strategic Outlook Plan or the Continuous Improvement Plan (or any update or revision of those plans) the Registrar may consider a Jurisdiction's need to enable additional electronic Registry Instruments and other electronic Documents or other functionality;
- (b) following good faith consultation between the Registrar and the ELNO, the ELNO must Promptly notify the Registrar if (acting reasonably) the ELNO will adopt, partly adopt or reject any changes requested by the Registrar; and
- (c) Promptly provide a copy of the revised Strategic Outlook Plan and the revised Continuous Improvement Plan to the Registrar for record keeping purposes.

#### **4.10 Implementation of the Continuous Improvement Plan**

##### 4.10.1 The ELNO must:

- (a) implement the Continuous Improvement Plan approved by the Registrar; and
- (b) ensure that any update on the Implementation Plan provided to the Registrar in accordance with Operating Requirement 13.3.11(b), incorporates an update from the ELNO on the ELNO's implementation of the Continuous Improvement Plan.

#### **4.11 Capital Investment**

##### 4.11.1 ELNOs must make ongoing Capital Investments sufficient to deliver the Continuous Improvement Plan, approved by the Registrar from time to time.

##### 4.11.2 ELNOs must:

- (a) ensure the report on the ELNO's compliance with the Continuous Improvement Plan provided under Operating Requirement 4.9.1 details the monetary value of the Capital Investments made by the ELNO in delivering the Continuous Improvement Plan in the previous Financial Year;
- (b) keep and maintain proper and complete records so that the Capital Investment made at any time may be calculated;
- (c) make those records available for inspection by the Registrar as required by or on behalf of the Registrar after reasonable notice from the Registrar; and
- (d) cooperate fully with any such inspection.

## **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**

5.2.1 Recognising that the implementation of Operating Requirements 5.2.1(a), (b), (c) and (d) may ~~must~~ be ~~reasonably~~-staged in accordance with the ~~Business~~-Implementation Plan and the Continuous Improvement 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 5.2.1(b), which are capable of Lodgment in the Jurisdiction; and

- (d) any additional functionality reasonably required by the Registrar is implemented in the ELN.

5.2.2 Subject to the Interoperable Lodgment Case being capable of Lodgment in the Jurisdiction, an ELNO that obtained Approval prior to Operating Requirements Version 7 taking effect must:

- (a) on or before 31 July 2025, design, build and test all technical and functional capability for, and implement:

**Release 1** – being Lodgment of an Interoperable Lodgment Case that includes a Mortgage and Discharge of Mortgage by a limited group of ADIs acting on their own behalf as approved by the Registrar; and

- (b) on or before 31 December 2025, design, build and test all technical and functional capability for:

**Release 2** – being Lodgment of an Interoperable Lodgment Case that includes a Mortgage and Discharge of Mortgage by any Subscriber; and

**Release 3** – being Lodgment of all available electronic Registry Instruments and other electronic Documents required under Operating Requirement 5.2.1 as part of an Interoperable Lodgment Case by any Subscriber.

5.2.3 If an event occurs, which is determined by the Registrar (acting reasonably) to be outside an ELNO's control and which prevents that ELNO from complying with Operating Requirement 5.2.2, the Registrar may by written notice extend the date for compliance with any part of Operating Requirement 5.2.2.

5.2.4 Recognising that the implementation of this Operating Requirement 5.2.4 may be ~~reasonably~~ staged in accordance with the Business Implementation Plan and the Continuous Improvement Plan, subject to the Interoperable Lodgment Case being capable of Lodgment in the Jurisdiction, an ELNO that obtained Approval on or after Operating Requirements Version 7 taking effect, must ensure that it enables the Lodgment of any electronic Registry Instrument and other electronic Document required under Operating Requirement 5.2.1(b) as part of an Interoperable Lodgment Case.

*Note: The implementation of Operating Requirement 5.2 in relation to Interoperability is subject to the Registrar being reasonably satisfied that independent system readiness reviews recommend that Interoperability is ready to commence in the Jurisdiction for the types of Registry Instruments referenced.*

### 5.3 General obligations

The ELNO must:

- (a) have adequate arrangements for operating its ELN in a proper, competent, sustainable and efficient manner and maintain primary responsibility for the provision and operation of its ELN; and
- (b) exercise due skill, care and diligence in operating its ELN and in interworking with the ELNs of any ELNOs with which it Interoperates and in meeting its obligations under these Operating Requirements; and
- (c) minimise any disruption of or interference to any systems connected to its ELN and the ELNs of any ELNOs with which it Interoperates 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 its 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 and any affected ELNOs with which it Interoperates of all events relating to the ELNO or its ELN which have the potential to:
  - (i) affect the integrity of the Titles Register; or
  - (ii) pose a reputational risk to its 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 its ELN and to the records of the ELNO; and
- (l) establish, implement, review and keep current a Business Plan; and
- (m) obtain and maintain approval as a Code Operator Member, and comply with the Industry Code for e-Conveyancing Payments, once it has taken effect.

## 5.4 ELNO Service Fees

5.4.1 An 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 2026<sup>7</sup>, an ELNO may increase ~~the~~ each individual ELNO Service Fees as listed in its Pricing Table, once every Financial Year on 1 July, provided that the percentage increase in ~~the~~ each revised ELNO Service Fee ~~s~~ 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 government agency; or
- (d) that additional fees, charges or Costs are imposed on the ELNO in order to operate an ELN.

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 re-calculate the ELNO Service Fees and change the Pricing Table to reflect the re-calculated 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.

5.4.7 In charging ELNO Service Fees, an ELNO must ensure that the ELNO Service Fees for an Interoperable Electronic Workspace are not greater than the ELNO Service Fees for an Electronic Workspace that is not an Interoperable Electronic Workspace.

## 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
    - (v) the provision and operation of Interoperability; 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 eCustomers 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.

## **5.7 Interoperability framework**

5.7.1 An ELNO or Potential Interoperable ELNO must publish on its website details of the process for any other ELNO or Potential Interoperable ELNO to make a request to Interoperate, including the information reasonably required to be provided in a request to Interoperate.

5.7.2 Where an ELNO or Potential Interoperable ELNO receives a request from, or makes a request to another ELNO or Potential Interoperable ELNO to Interoperate, it must:

- (a) Promptly enter into good faith negotiations with the other ELNO or Potential Interoperable ELNO to prepare and execute an Interoperability Agreement; and
- (b) Promptly provide to the other ELNO or Potential Interoperable ELNO all information reasonably required to enable the other ELNO or Potential Interoperable ELNO to understand the basis on which the ELNO or Potential Interoperable ELNO is prepared to Interoperate, including any proposed terms; and
- (c) ensure the Interoperability Agreement entered into with each ELNO or Potential Interoperable ELNO is entered into on an Equivalent Basis.

5.7.3 Once an Interoperability Agreement (or any variation to it) is executed or has been determined by arbitration, an ELNO or a Potential Interoperable ELNO must:

- (a) Promptly publish on its website a copy of the Interoperability Agreement with any commercially sensitive information redacted as agreed with the ELNO with which it has entered into the Interoperability Agreement; and
- (b) take all steps reasonably necessary and within its control to implement Interoperability with the other ELNO.

5.7.4 An Interoperability Agreement to which the ELNO or Potential Interoperable ELNO is a party must:

- (a) not include any express or implied terms that could qualify, derogate from or otherwise prejudicially affect the ELNO or Potential Interoperable ELNO's compliance with any of the obligations under the ECNL and these Operating Requirements; and
  - (b) include terms that deal with the Interoperability Agreement Matters.
- 5.7.5 If an ELNO or Potential Interoperable ELNO is unable to agree on the terms of an Interoperability Agreement with another ELNO or Potential Interoperable ELNO and the ELNOs or Potential Interoperable ELNOs have not agreed to a binding dispute resolution process by which the dispute can be resolved:
- (a) either ELNO or Potential Interoperable ELNO may provide notice in writing to the other ELNO or Potential Interoperable ELNO detailing the particulars of the dispute between them and requesting mediation; and
  - (b) if the ELNOs or Potential Interoperable ELNOs are unable to agree on a mediator within 20 Business Days of a notice being issued under Operating Requirement 5.7.4(a), either ELNO or Potential Interoperable ELNO may request the chair of the Resolution Institute, or the chair's designated representative, to appoint a mediator; and
  - (c) each ELNO or Potential Interoperable ELNO must be represented in the mediation by a Person having authority to settle the dispute; and
  - (d) each ELNO or Potential Interoperable ELNO must participate in the mediation process in good faith and comply with any rules and procedures determined by the mediator to resolve the dispute; and
  - (e) each ELNO or Potential Interoperable ELNO must meet its own costs of and in connection with the mediation, irrespective of the outcome of the mediation.
- 5.7.6 If a dispute or difference arising under Operating Requirement 5.7.5 is not settled within 20 Business Days of referral to mediation (unless such period is extended by agreement of the parties), then:
- (a) either ELNO or Potential Interoperable ELNO may submit the dispute to arbitration in accordance with, and subject to, Resolution Institute Arbitration Rules; and
  - (b) if the ELNOs or Potential Interoperable ELNOs are unable to agree upon an arbitrator, either ELNO or Potential Interoperable ELNO may request the chair of the Resolution Institute to appoint one.
  - (c) the arbitrator must take into account the following matters in determining a dispute:
    - (i) the object of the ECNL; and
    - (ii) the requirements of the ECNL and Operating Requirements; and

- (iii) the legitimate business interests of each ELNO or Potential Interoperable ELNO; and
- (iv) the operational and technical requirements necessary for the safe and reliable operation of each ELN in the course of Interoperability; and
- (v) the direct costs of providing Interoperability.

5.7.7 The ELNO must:

- (a) Interoperate with all ELNOs on an Equivalent Basis; and
- (b) ensure that the standard of performance of its ELN in an Interoperable Electronic Workspace is equivalent to the performance of its ELN in an Electronic Workspace that is not an Interoperable Electronic Workspace.

## 5.8 Interoperability roles

5.8.1 Where the ELNO is the Responsible ELNO, it must:

- (a) Promptly send and respond to all messages and calls relating to the Interoperable Lodgment Case and any Associated Financial Transaction; and
- (b) Lodge all the electronic Registry Instruments or other electronic Documents in the Interoperable Lodgment Case; and
- (c) Promptly notify all other Participating ELNOs of any Incident that affects the Interoperable Lodgment Case, including the details of the Incident.

5.8.2 Where the ELNO is a Participating ELNO, it must Promptly:

- (a) send and respond to all messages and calls relating to the Interoperable Lodgment Case and any Associated Financial Transaction; and
- (b) notify the Responsible ELNO and all other Participating ELNOs of any Incident that affects the Interoperable Lodgment Case, including the details of the Incident.

## 5.9 Interoperability Fees

5.9.1 From 1 July 2024 to 30 June 2025, if an ELNO charges an Interoperability Fee, the ELNO must not charge a fee greater than for the:

- (a) Responsible ELNO Fee - \$0.78 (excluding GST); and
- (b) Default Responsible ELNO Surcharge - \$6.42 (excluding GST).

5.9.2 If the ELNO charges Interoperability Fees, the ELNO must:

- (a) For each Financial Year, prepare and publish on its website an Interoperability Fees Pricing Table; and

- (b) Not charge a fee greater than the amount specified in the published Interoperability Fees Pricing Table.

5.9.3 From 1 July 202~~5~~6 to 30 June 202~~7~~6, an ELNO may increase its Interoperability Fees on 1 July, provided that the percentage increase in the reviewed Interoperability 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.

5.9.4 The Interoperability Fees Pricing Table and any changes to it, must be published at least 20 Business Days, or as soon as reasonably practicable, before the Interoperability Fees Pricing Table, or the changes to it, take effect.

## **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, or implementing Interoperability 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 it has registered in accordance with these Operating Requirements and the Participation Rules, or Persons properly authorised by Subscribers, or ELNOs with which it Interoperates, 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 its 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

7.3.1 The ELNO must take reasonable steps to:

- (a) ensure that data supplied to any system connected to its 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, any ELN with which it Interoperates or any other systems connected to its 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 or any ELN with which it Interoperates, damage any systems connected to its 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 its ELN; and
- (d) monitor, and take appropriate action after receiving security alerts from the Land Registry or any ELNO with which it Interoperates; and
- (e) do all things reasonably necessary to reduce systemic risk in its ELN and promote the overall stability of each system connected to its 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 or any ELN with which it Interoperates; 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 its 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; and
- (j) Promptly provide a detailed description and sufficient evidence, as required by the Registrar, to explain an ELNO's assessment of the severity level of an Incident as set out in Schedule 2.

7.3.2 The ELNO must:

- (a) at least once a year, obtain a SOC 2 Type 2 report or such other report approved by the Registrar in writing, which approval may not be unreasonably withheld; and
- (b) Promptly take any action required to ensure the ELNO's controls and processes are effective and rectify any identified weaknesses in the SOC 2 Type 2 report or such other report approved by the Registrar in writing.

## 7.4 Data

7.4.1 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.

7.4.2 In an Interoperable Electronic Workspace, information that the ELNO receives from another ELNO involved in the Interoperable Electronic Workspace, except for information it supplied, may only be disclosed, stored or used:

- (a) for the purpose of performing any function in the Interoperable Electronic Workspace; or
- (b) in accordance with these Operating Requirements; or
- (c) as required by law.

## 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 its 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 its 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 Digitally Signed.

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

The ELNO must immediately notify the Registrar and those of its Subscribers and in an Interoperable Lodgment Case, those ELNOs 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; and

- (e) in an Interoperable Lodgment Case, immediately notify the other ELNOs involved in the Interoperable Lodgment Case.

## 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, any of its affected Subscribers and any ELNOs with which it Interoperates, 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, if superseded, comply with the ISO Standard that has superseded it, 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, interfaces and networks that store, communicate 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 Interoperability interfaces; 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:

- (a) 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; ~~and~~
- (b) use reasonable endeavours to ensure that the ELNO's implementation of Interoperability does not result in a greater risk of fraud or error for Interoperable Lodgment Cases compared to the risk of fraud or error for comparable Conveyancing Transactions conducted:
  - (i) solely on its own ELN; or
  - (ii) lodged in a paper medium;
- (c) prevent Lodgment Case Errors; and
- (d) if a Lodgment Case Error occurs:
  - (i) immediately notify the Registrar or the Registrar's nominee by email;
  - (ii) expeditiously assess, investigate, diagnose and remediate the cause of any Lodgment Case Error; and
  - (ii)(iii) provide all reasonable assistance to the Registrar and comply with all reasonable directions of the Registrar, which may include requiring the ELNO to notify Users and Subscribers affected or potentially affected by the Lodgment Case Error.

## 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 standards

10.3.1 The ELN must use the NECDS 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.

10.3.2 The ELN must:

- (a) use the NECIDS to participate in an Interoperable Lodgment Case to complete a Conveyancing Transaction, including to exchange all system messages; and
- (b) comply with the business rules and any requirements in the NECIDS.

*Note: Even though the Operating Requirements require use of the NECDS, which include data standards relating to Associated Financial Transactions, the Registrar is not responsible for the regulation of Associated Financial Transactions.*

10.3.3 Whenever the Registrar specifies a date and time that a version of the NECDS must be used, an ELNO must ensure that that version of the NECDS is used for all Electronic Workspaces generated on or after that date and time.

10.3.4 An ELNO may only start using the version of the NECDS for which a date and time has been specified under Operating Requirement 10.3.3 at a date and time earlier than that specified under Operating Requirement 10.3.3, with the agreement of all ELNOs with which it Interoperates and the approval of the Registrar which may not be unreasonably withheld.

10.3.5 An ELNO must ensure that an existing Electronic Workspace continues to use the NECDS version on which it was generated unless:

- (a) the NECDS version will no longer be supported by the Land Registry; or
- (b) for an Electronic Workspace that is not an Interoperable Electronic Workspace, an ELNO chooses to use a more recent NECDS version supported by the Land Registry; or
- (c) for an Interoperable Electronic Workspace, all Participating ELNOs agree to use a more recent NECDS version supported by the 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**

10.5.1 The ELN must make available 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 the circumstances specified in Operating Requirement 10.5.2.

10.5.2 The ELNO must make available the services specified in Operating Requirement 10.5.1, where the Electronic Workspace is:

- (a) not an Interoperable Electronic Workspace, to its Subscribers;

- (b) an Interoperable Electronic Workspace and the ELNO is the Responsible ELNO, to its Subscribers and to Participating ELNOs in the Interoperable Electronic Workspace; and
- (c) an Interoperable Electronic Workspace and the ELNO is a Participating ELNO, to its Subscribers through the Responsible ELNO.

## **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**

Except when acting as a Participating ELNO, 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 not present for Lodgment any electronic Registry Instrument or other electronic Document forming part of a Settlement Transaction unless the financial settlement is irrevocable.

## **10.9 Presentation following Duty payment or commitment**

The ELNO must not present for Lodgment any electronic Registry Instrument or other electronic Document 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) not present for Lodgment any electronic Registry Instrument or other electronic Document unless the Lodgment Fees have been collected by the ELNO whose ELN is being used by the Responsible Subscriber or an irrevocable commitment to pay the ELNO, or the ELNO whose ELN is being used by the Responsible Subscriber, has been made to that 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

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; and
- (c) publish details and provide notifications and reporting as specified in Schedule 2.

## 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~~

~~13.4.0 The ELNO must provide the Registrar with an implementation plan covering, as a minimum, a two year period and setting out:~~

- ~~(-) proposed future releases of the ELN, including to expand its functionality, improve its performance, introduce new electronic Registry Instruments or other electronic Documents or relating to Interoperability; and~~
- ~~(-) details of when Back-End Infrastructure Connections are scheduled; and~~
- ~~(-) the time at which each of those releases are scheduled for implementation; and~~
- ~~(-) 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.~~

### 13.3 Implementation Plan

13.3.1 The ELNO must establish an Implementation Plan covering at least the next two Financial Years and provide the Registrar with a copy of the Implementation Plan for approval.

13.3.2 The ELNO must at least three months prior to the start of each Financial Year (and whenever reasonably requested by the Registrar to do so):

- (a) update the Implementation Plan, so that it applies for at least the next two Financial Years; and
- (b) provide the updated Implementation Plan to the Registrar for approval.

13.3.3 In these Operating Requirements, a reference to the Implementation Plan includes the Implementation Plan as updated or amended.

13.3.4 An Implementation Plan must:

- (a) detail proposed future releases of the ELN, including to expand the ELN's functionality, to improve the ELN's performance, to introduce new electronic Registry Instruments or other electronic Documents, or relating to Interoperability;
- (b) specify when new Back End Infrastructure Connections or changes to existing Back End Infrastructure Connections are scheduled;
- (c) specify the time at which each of those releases is scheduled for implementation;
- (d) detail the changes proposed to be introduced as part of each of those releases; and
- (e) align with Operating Requirement 5.2 and the ARNECC Roadmap notified to the ELNO.

(the **Implementation Plan Requirements**).

13.3.5 When an ELNO submits an Implementation Plan for approval by the Registrar, the ELNO must:

- (a) support the ELNO's submission with evidence of how the Implementation Plan aligns with the Implementation Plan Requirements;
- (b) provide any additional information required by the Registrar;
- (c) continue to comply with any preceding approved Implementation Plan until the ELNO receives the Registrar's written approval of the updated Implementation Plan; and
- (d) where the ELNO seeks the Registrar's approval to an Implementation Plan which does not meet the Implementation Plan Requirements:
  - (i) support the ELNO's request with evidence as to why the amendment is required or the ELNO cannot meet the Implementation Plan Requirements; and
  - (ii) provide any additional information required by the Registrar.

13.3.6 If the ELNO seeks the Registrar's approval of an Implementation Plan which does not meet the Implementation Plan Requirements, the Registrar may, by notice to the ELNO require the ELNO to obtain at the ELNO's Cost and within the time frame nominated by the Registrar, an assessment by an Independent Expert on terms satisfactory to the Registrar, justifying the reasons for non-compliance with the Implementation Plan Requirements.

13.3.7 In considering a request for approval by an ELNO, the Registrar may take into account any matters the Registrar considers appropriate, including without limitation:

- (a) the length of time the ELNO has been operating, the status of the ELNO's rollout under Operating Requirement 5.1 and 5.2 and the uptake of use of the ELNO's ELN; and

(b) the ARNECC Roadmap.

13.3.8 Upon receiving an Implementation Plan from an ELNO, and if applicable the Independent Expert's assessment under Operating Requirement 13.3.6, the Registrar may, by notice to the ELNO:

(a) approve the Implementation Plan; or

(b) require the ELNO to amend the Implementation Plan, including to require new electronic Registry Instruments, other electronic Documents or other functionality to be enabled as included in the ARNECC Roadmap.

13.3.9 Within 10 Business Days of a written request by the Registrar to do so under Operating Requirement 13.3.8(b), the ELNO must:

(a) following good faith consultation between the Registrar and the ELNO, make all changes to the Implementation Plan required by the Registrar; and

(b) resubmit the Implementation Plan to the Registrar for approval.

13.3.10 If the Registrar notifies the ELNO that the Registrar or the Land Registry intend to make changes to the timeframe for deployment of changes to the Land Registry System notified in the ARNECC Roadmap, the ELNO must within the time specified by the Registrar:

(a) engage in good faith discussions with the Registrar and the Land Registry to determine how the Implementation Plan should be amended; and

(b) submit an amended Implementation Plan to the Registrar for approval.

13.3.11 The ELNO must:

(a) take all steps reasonably necessary to comply with the Implementation Plan last approved by the Registrar; and

(b) within six months of the Registrar approving an Implementation Plan, provide the Registrar with a written update as to the ELNO's progress on implementing the Implementation Plan.

13.3.12 If the ELNO is of the reasonable opinion that it cannot comply with the Implementation Plan, the ELNO may submit an amended Implementation Plan to the Registrar for approval.

## **~~13.11~~ 13.4 Release Management**

The ELNO must comply with any reasonable release management requirements specified by the Registrar following reasonable consultation with 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 identity**

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 its 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 its 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 its 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 its 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 its ELN, Promptly notify the Registrar of that restriction, suspension, termination or reinstatement; and
- (f) Promptly notify any ELNO with which it Interoperates 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. 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
- (g) where it suspends or terminates a Subscriber as a result of a Suspension Event or Termination Event or reinstates a Subscriber's ability to act as a Subscriber in the Jurisdiction, Promptly notify any ELNO with which it Interoperates of that 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

15.2.1 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.

15.2.2 Without limiting Operating Requirement 15.5, the ELNO or Potential ELNO must demonstrate to the Registrar its compliance with Operating Requirement 11(c) by:

- (a) providing notifications with respect to Incidents;
- (b) providing to the Registrar a report; and
- (c) publishing details of Scheduled Maintenance;

as specified in Schedule 2.

## 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; and

- (b) Category Two in Schedule 3, 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
- (c) Category Three in Schedule 3, annually as part of the ELNO's Annual Report; and
- (d) Category Four in Schedule 3, monthly in a Monthly Report; and
- (e) Category Five in Schedule 3, at the time the ELNO applies for renewal of its Approval;  
and
- (e)(f) Category Six in Schedule 3, annually as part of the ELNO's Annual Plan.

## 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 or an Annual Plan 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.

## **15.11 Complying with directions and cooperation**

The ELNO must co-operate with and provide reasonable assistance to the Registrar, with respect to any matter in connection with the ECNL, Land Titles Legislation and Operating Requirements. This includes:

- (a) complying with Operating Requirement 5.3(i);
- (b) providing the Registrar with relevant information as reasonably requested by the Registrar;
- (c) complying with any reasonable direction given by the Registrar for the purpose of the ECNL, Land Titles Legislation Requirements and the Operating Requirements;
- (d) engaging in good faith multi-supplier or multi-Jurisdictional discussions or industry forums in respect of relevant matters, including to determine the cause of any complaints, problems or issues and the course of action to resolve such complaint, problem or issue;

- (e) inviting the Registrar (and if requested by the Registrar, the Land Registry) to participate in, facilitate or observe the discussions or forums engaged in pursuant to this Operating Requirement; and
- (f) where the Registrar has provided feedback to the ELNO in relation to any of the Operating Requirements, considering the Registrar's feedback in good faith and promptly responding in writing with reasons for the ELNO's response.

## **15.12 General information requests**

The ELNO or Potential ELNO must provide the Registrar with information relating to any matter in connection with these Operating Requirements or the Registrar's powers and functions relating to electronic conveyancing to the satisfaction of the Registrar by a date and time specified by the Registrar, which must not be less than 10 Business Days.

## **15.13 Observation**

15.13.1 If the Registrar, acting reasonably, identifies an area of concern in connection with:

- (a) the provision or operation of the ELNO System; or
  - (b) the operation of or compliance with the Operating Requirements,
- (an **Area of Concern**), the Registrar may notify the ELNO of:
- (c) the relevant Area of Concern;
  - (d) the Registrar's reasons for issuing the Notice;
  - (e) the time within which the ELNO must comply with the Notice, which must not be less than five Business Days from when the Notice is issued; and
  - (f) what the Registrar requires the ELNO to provide to enable the Registrar to understand and observe the Area of Concern, which may include:
    - (i) information and copies of Documents and records regarding the Area of Concern;
    - (ii) access to any Personnel of the ELNO involved with the Area of Concern;
    - (iii) access to all locations of the ELNO and its contractors involved with the Area of Concern;
    - (iv) copies of any practices and procedures of the ELNO and its contractors relating to the Area of Concern;
    - (v) copies of any other resources used by the ELNO or its contractors in connection with the Area of Concern;

- (vi) access to such other information and things as the Registrar may from time to time reasonably require access to in connection with the Area of Concern; and
- (vii) any such reasonable assistance required by the Registrar in connection with the Area of Concern,

15.13.2 Except to the extent that the ELNO is prohibited by Law from doing so, the ELNO must provide the materials, access and assistance requested by the Registrar within the time Notified by the Registrar in Operating Requirement 15.13.1.

15.13.3 If the ELNO is prohibited by law from complying with a notice by the Registrar under this Operating Requirement 15.13.1, the ELNO must Promptly (but in any event before the ELNO would otherwise have been required to comply), provide written notice to the Registrar of the nature, extent and basis at law of the prohibition, and comply with the Notice to the extent that the ELNO is not prohibited by Law from so complying.

## **15.14 ELNO must not provide false or misleading information**

15.14.1 The ELNO or Potential ELNO must not:

- (a) give to the Registrar false or misleading information; or
- (b) produce to the Registrar Documents that contain false or misleading information.

15.14.2 This requirement does not apply to information that the ELNO or Potential ELNO could not reasonably have known is or was false or misleading at the time it was given or produced.

15.14.3 If requested by the Registrar, the ELNO must provide a written attestation from a director or appropriately senior officer of the ELNO which attests that any information or Document provided by the ELNO to the Registrar (under the Operating Requirements or otherwise), is true and correct.

15.14.4 If at any time after giving information or producing a Document to the Registrar an ELNO or Potential ELNO becomes aware that the information or information in that Document is or was false or misleading the ELNO or Potential ELNO must Promptly provide a statement to the Registrar advising:

- (a) that the information is or was false or misleading;
- (b) the correct and amended information that will replace the information provided in Operating Requirement 15.14.4(a);
- (c) any instance(s) where the ELNO or Potential ELNO relied on, or purported to rely on, the information that is or was false or misleading, including without limitation when making any No Change Certification or Self-Certification; and

(d) the reasonable steps the ELNO or Potential ELNO has taken and/or will take to remediate any reliance or purported reliance under Operating Requirement 15.14.4(b).

## **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 except for ELNOs with which it Interoperates 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.

### **18.3 Annual Plans**

An ELNO must, at least three months prior to the start of each Financial Year, provide the Registrar with the Annual Plans set out in Category Six in Schedule 3.

## **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 approval 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 5.2.1(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; and
- (f) if the ELNO has established Interoperability between its ELN and another ELN, notice to that other ELNO and the orderly winding down of Interoperability between its ELN and the other ELN.

### **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.

### 1 Operational performance measures:

<u>1.1 Service Availability</u>		
<u>Performance Level</u>	<u>Requirement</u>	<u>Minimum performance</u>
<u>1.1.1</u>	<u>The ELNO System must be Available to all Subscribers for 24 hours per day, seven days per week and 52 weeks per year.</u>  <u>The minimum performance required by this paragraph 1.1.1:</u>  <u>A. includes those services dependent on communication with a Back End Infrastructure Connection (but not when</u>	<u>99.9% during Core Hours</u>  <u>98% in Non-Core Hours</u>  <u>In each case, to be assessed monthly</u>

	<p><u>that Back End Infrastructure Connection is not Available);</u></p> <p><u>B. includes where the ELNO System is not Available because there has been a Severity 1 Incident or a Severity 2 Incident;</u></p> <p><u>C. excludes where the ELNO System is not Available because there has been a Severity 3 Incident or Severity 4 Incident;</u> <u>and</u></p> <p><u>D. excludes Scheduled Maintenance.</u></p>	
<u>1.1.2</u>	<p><u>The ELNO System must be Available to all Subscribers for 24 hours per day, seven days per week and 52 weeks per year.</u></p> <p><u>The minimum performance required by this paragraph 1.1.2:</u></p> <p><u>A. includes those services dependent on communication with a Back End Infrastructure Connection (but not when that Back End Infrastructure Connection is not Available);</u></p> <p><u>B. includes where the ELNO System is not Available because there has been an Incident of any Severity level, including Severity 1 Incidents, Severity 2 Incidents, Severity 3 Incidents and Severity 4 Incidents; and</u></p> <p><u>C. excludes Scheduled Maintenance.</u></p>	<p><u>99% in Core Hours</u></p> <p><u>98% in Non-Core Hours</u></p> <p><u>In each case, to be assessed monthly</u></p>

**1.2 Scheduled Maintenance**

The ELNO must:

a. publish details of Scheduled Maintenance on the ELNO’s website including details of impacted services; and

b. provide at least five Business Days’ notice to impacted parties informing them of any upcoming Scheduled Maintenance

Notwithstanding paragraph b.:

c. the ELNO need not provide notice to impacted parties where the ELNO reasonably anticipates that routine, low-impact Scheduled Maintenance activities will not affect those components of the ELNO System required to complete a Conveyancing Transaction end-to-end, so that they will perform their usual and ordinary function without material failure, interruption or Degradation.

## **2 System performance measures:**

### **2.1 System responsiveness**

#### Requirement

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.

### **2.2 System resilience**

#### Requirement

The ELNO System -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

## **3 Incidents**

### **3.1 Recovery point objective**

<u>Performance Level</u>	<u>Requirement</u>	<u>Maximum period</u>
<u>3.1.1</u>	<u>The maximum period in which any Data can be lost.</u>	<u>30 minutes</u>



### 3.2 Incident Response

<u>Performance Level</u>	<u>Description</u>	<u>Response Time</u>	<u>Restore Time</u>	<u>Notification timeframe</u>	<u>Notification requirements</u>
3.2.1	<p><b><u>Severity 1 Incident</u></b></p> <p><u>A. An Incident occurs that results in all Subscribers and Users being unable to use the ELNO System;</u> <u>or</u></p> <p><u>B. An Incident occurs that results in all Subscribers and Users in one or more Jurisdictions being unable to use the ELNO System;</u> <u>or</u></p> <p><u>C. A Security Incident occurs.</u></p> <p><u>In all cases, a Security Incident is a Severity 1 Incident, irrespective of whether the Incident might otherwise have been categorised as a Severity 2, 3 or 4 Incident.</u></p>	30 minutes	40 minutes	As soon as possible and no later than one hour of becoming aware of the Incident.	Notification by telephone and email to the Registrar’s nominee or alternative notification method as otherwise agreed by the Registrar.

<u>3.2.2</u>	<p><b><u>Severity 2 Incident</u></b></p> <p><u>An Incident which causes one or more components of the ELNO System to be Degraded, resulting in limited functionality being available to any Subscriber (including the prevention of lodgment or settlement).</u></p>	<u>30 minutes</u>	<u>40 minutes</u>	<p><u>As soon as possible and no later than four hours of becoming aware of the Incident.</u></p>	<p><u>Email to the Registrar's nominee or alternative notification method as otherwise agreed by the Registrar.</u></p>
<u>3.2.3</u>	<p><b><u>Severity 3 Incident</u></b></p> <p><u>An Incident which causes one or more components of the ELNO System to be Degraded, resulting in intermittent issues or a slower than usual service but does not prevent lodgment or settlement.</u></p>	<u>60 minutes</u>	<p><u>Two Business Days</u></p>	<p><u>As soon as possible and no later than 12 hours of becoming aware of the Incident.</u></p>	<p><u>Notification by email to the Registrar's nominee or alternative notification method as otherwise agreed by the Registrar.</u></p>
<u>3.2.4</u>	<p><b><u>Severity 4 Incident</u></b></p> <p><u>An Incident that does not meet the criteria for Severity 1, 2 or 3.</u></p>	<u>Four hours</u>	<p><u>Five Business Days</u></p>	<p><u>As soon as possible and no later than 24 hours of becoming aware of the Incident.</u></p>	<p><u>Notification by email to the Registrar's nominee or alternative notification method as otherwise agreed by the Registrar.</u></p>

<b>3.3 PIR Report</b>		
<u>Performance Level</u>	<u>Incident Severity (see Performance Level 3.2)</u>	<u>Requirement</u>
<u>3.3.1</u>	<u>Severity 1 or 2 Incident</u>	<u>Provide the Registrar with a PIR Report within 10 Business Days of the Incident occurring or such other timeframe as agreed with the Registrar.</u>
<u>3.3.2</u>	<u>Severity 3 or 4 Incident</u>	<u>Provide the Registrar with a PIR Report within 10 Business Days of a request by the Registrar, or such other timeframe as agreed with the Registrar.</u>

<b>3.4 Third-Party Incident Reports</b>		
<u>Service Level</u>	<u>Incident Severity (see Performance Level 3.2)</u>	<u>Requirement</u>
<u>3.4.1</u>	<u>Severity 1 or 2 Incident</u>	<u>Provide the Registrar with a Third-Party Incident Report within 10 Business Days of the Incident occurring.</u>
<u>3.4.2</u>	<u>Severity 3 or 4 Incident</u>	<u>Provide the Registrar with a Third-Party Incident Report within 10 Business Days of a request by the Registrar.</u>

#### **4 System performance measures:**

<b>4.1 Change management</b>	
<u>Requirement</u>	<u>Minimum Performance</u>
<u>Scheduled changes to the ELNO System must not result in a Severity 1 or 2 Incident.</u>	<u>99%</u>

## 5 Enquiries:

### Definitions

For the purposes of this section 5 of Schedule 2:

**Timeliness %** = (successfully Actioned enquiries / total Enquiries) x 100

where:

- a. **Actioned** means when an Enquiry has been completed or resolved by the ELNO in accordance with the relevant requirements for that category of Enquiry set out in the Performance Levels below.
- b. **Enquiry** means any enquiry from a Subscriber or other Customer of the ELNO (including complaints and disputes) in relation to the operation of and services provided by the ELNO in connection with the ELN. It includes Verbal Enquiries and Written Enquiries.

**Measurement Period** means:

- a. for the first Measurement Period, the period from the start of a Financial Year until the end of the month;
- b. for each Measurement Period except for the first and last, each successive period of one month from the end of the period referred to in sub-paragraph (a) (being each successive month); and
- c. for the last Measurement Period, the end of the last period under sub-paragraph (b) until the end of the month.

**Required Timeframe** means:

- a. the required timeframe specified in the 'Description' section below; or
- b. an alternative timeframe agreed with the Registrar.

**Successfully Actioned Enquiries** means, for each category of Enquiry, the number of those Enquiries that are Actioned in the Measurement Period within the Required Timeframe or other parameter specified in the 'Description' section below.

**Total Enquiries** means the total number of a category of Enquiries received in the Measurement Period.

**Verbal Enquiry** means any communication delivered orally, whether in person, by telephone, video conference, or any other technology that enables real-time voice interaction between parties.

Written Enquiry means any communication delivered in written form, including emails, electronic messages, website submissions, chat functions, instant messaging or any other digital platform or application used for the exchange of information between parties.

<u>5.1 Timeliness</u>			
<u>Performance Level</u>	<u>Category</u>	<u>Description</u>	<u>Target timeliness %</u>
<u>5.1.1</u>	<u>Verbal Enquiry wait times</u>	<u>A Verbal Enquiry has been answered and not placed on hold or in a queue within 2 minutes (excluding one that has been abandoned within 15 seconds after the Verbal Enquiry has been placed).</u>	<u>75% Verbal Enquiry answered</u>
<u>5.1.2</u>	<u>Verbal Enquiry abandoned</u>	<u>A Verbal Enquiry has been abandoned (whether before the call is answered or whilst the call is on hold or in a queue, excluding one that has been abandoned within 15 seconds after the Verbal Enquiry has been placed).</u>	<u>&lt;5% of all Verbal Enquiry</u>
<u>5.2.3</u>	<u>Verbal Enquiry escalated</u>	<u>A Verbal Enquiry is referred to the ELNO's Personnel with specialist knowledge due to the complexity of the Enquiry.</u>	<u>&lt;10% of all Verbal Enquiry</u>
<u>5.2.4</u>	<u>Written enquiries Actioned - not requiring escalation</u>	<u>A bespoke response is provided by return email (or telephone call) by ELNO Personnel providing an answer to a Written Enquiry within three Business Days.</u>	<u>90% of Written Enquiries Actioned</u>
<u>5.2.5</u>	<u>Written Enquiries Actioned – requiring escalation</u>	<u>A Written Enquiry is referred to the ELNO's Personnel with specialist knowledge due to the complexity of the Enquiry, and a bespoke answer to the Enquiry is provided by return email (or</u>	<u>85% of Written Enquiries Actioned</u>

		(telephone call) by such Personnel within five Business Days of the Written Enquiry.	
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## SCHEDULE 3 – REPORTING REQUIREMENTS

### Category One – when applying for 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
10.1(a)	Functionality	Application to become an ELNO		

## Category Two – before commencing operation of the ELN

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	
4.6	Organisational resources		No Change Certification or updated Document and Self-Certification as required under Category One	

<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>4.7.1, 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(m)</b>	Industry Code for e-Conveyancing Payments	Code Operator Member approval	Compliance with the requirements	
<b>5.3(e)</b>	Pricing policy	Pricing policy		
<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>6.1</b>	Initial testing	Test Plan		
<b>7</b>	System security and integrity	Information Security Management System (ISMS)		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>9.1</b>	Mitigate risk	Risk Management Framework (RMF)		RMF Fit for Purpose

Operating Requirement	Subject	Document to be produced	Self-Certification to be provided	Independent Certification to be obtained and supplied
10.1(a)	Functionality		Compliance with the requirements	
10.1(b)	Minimum system requirements: Adaptability			Compliance with requirements in Operating Requirement 10.1(b)
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 <del>p</del> Plan	Implementation <del>p</del> Plan		
14.1. 14.2 & 14.3	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

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	

Operating Requirement	Subject	Document to be produced	Self-Certification to be provided	Independent Certification to be obtained and supplied
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	Audited financial statements and reports for the last Financial Year	Sufficient financial resources	
4.5	Technical resources		Sufficient technical resources	
4.6	Organisational resources		No Change Certification or updated Document and Self-Certification as required under Category One	
4.7.1, 4.7.2 & 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	
<u>4.8-4.11</u>	<u>Continuous Improvement Plan and Capital Investment</u>	<u>Description of Continuous Improvement activities undertaken during the Financial Year and Capital Investment made. Description must include details of how the Capital Investment was applied to specific Continuous Improvement activities in the last Financial Year.</u>	<u>Compliance with Operating Requirements 4.8 – 4.11</u>	

<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>
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(m)	Industry Code for e-Conveyancing Payments		No Change Certification or updated Document and Self-Certification as required under Category Two	
5.3(e)	Pricing policy		No Change Certification or updated Document as required under Category Two	
5.3(f)	Training and awareness		Training and awareness programs up to date and adequate	
5.3(g)	Law and policy compliance		Compliance with laws and policies	
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
5.7	Interoperability Framework		Compliance with the requirements	
7	System security and integrity		ISMS: No Change Certification or updated Document as required under Category Two	ISMS Fit for Purpose
7.3.2	SOC 2 Type 2 report or other approved report		Compliance with the requirements	
7.12	Cloud Service (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
7.13	Vulnerability assessment and penetration testing		Compliance with the requirements	
8	Public confidence in Titles Register		Nothing done to diminish public confidence in Titles Register	
9.1	Mitigate risk		RMF: No Change Certification or updated Document as required under Category Two	RMF Fit for Purpose
9.2	Risk of fraud or error		Use of ELN does not result in greater fraud or error	
10.1(a)	Functionality		Compliance with the requirements	
10.1(b)	Minimum system requirements: Adaptability		No Change Certification	Where a No Change Certification cannot be given, an Independent Certification as required under Category Two
10.3	Data standards		Compliance with the requirements	
11	Minimum Performance Levels		Performance to measures in Schedule 2	
12	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
13	Change management		No Change Certification or updated Document as required under Category Two	
13.3	Implementation Plan	<a href="#">Description of activities undertaken during the Financial Year in accordance with the Implementation Plan.</a>	No Change Certification or updated Document as required under Category Two	
14.1, 14.2 & 14.3	Subscriber registration		Compliance with the requirements	

Operating Requirement	Subject	Document to be produced	Self-Certification to be provided	Independent Certification to be obtained and supplied
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 <a href="#">requirements and</a> 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.

## Category Five – when applying for 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	
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	Audited financial statements and reports for the last Financial Year	Sufficient financial resources	
4.5	Technical resources		Sufficient technical resources	
4.6	Organisational resources		No Change Certification or updated Document and Self-Certification as required under Category One	
4.7.1, 4.7.2 & 4.7.3	Insurance	Certificate of currency for the insurance required under Operating Requirement 4.7.2		

Operating Requirement	Subject	Document to be produced	Self-Certification to be provided	Independent Certification to be obtained and supplied
4.7.4 & 4.7.5	Insurance		Compliance with requirements in Operating Requirements 4.7.4 & 4.7.5	
<u>4.8 - 4.11</u>	<u>Continuous Improvement Plan &amp; Capital Investment</u>	<u>Description of Continuous Improvement activities undertaken during the last Financial Year and Capital Investment made. Description must include details of how the Capital Investment was applied to specific Continuous Improvement activities in the last Financial Year.</u>	<u>Compliance with Operating Requirements 4.8 – 4.11</u>	
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		No Change Certification or updated Document as required under Category Two	
5.3(f)	Training and awareness		Training and awareness programs up to date and adequate	
5.3(g)	Law and policy compliance		Compliance with laws and policies	
5.3(l)	Business Plan		No Change Certification or updated Document as required under Category One	
5.3(m)	Industry Code for e-Conveyancing Payments		Self-Certification 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>
5.5	Integration (if applicable)		Compliance with the requirements	
5.6.3(c)	Separation Plan (if applicable)			Compliance with the requirements
5.7	Interoperability Framework		Compliance with the requirements	
7	System security and integrity		ISMS: No Change Certification or updated Document as required under Category Two	ISMS Fit for Purpose
7.3.2	SOC 2 Type 2 report or other approved report		Compliance with the requirements	
7.12	Cloud Service (if applicable)		Compliance with the requirements	
7.13	Vulnerability assessment and penetration testing		Compliance with the requirements	
8	Public confidence in Titles Register		Nothing done to diminish public confidence in Titles Register	
9.1	Mitigate risk		Risk Management Framework (RMF): No Change Certification or updated Document as required under Category Two	RMF Fit for Purpose
9.2	Risk of fraud or error		Use of ELN does not result in greater fraud or error	
10.1(a)	Functionality		Compliance with the requirements	
10.1(b)	Minimum system requirements; Adaptability		No Change Certification	Where a No Change Certification cannot be given, an Independent Certification as required under Category Two
10.3	Data standards		Compliance with the requirements	
11	Minimum Performance Levels		Performance to measures in Schedule 2	

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		No Change Certification or updated Document as required under Category Two	Business Continuity and Disaster Recovery Management Program Fit for Purpose
13	Change management		No Change Certification or updated Document as required under Category Two	
13.3	Implementation pPlan	<u>Description of activities undertaken during the Approval in accordance with the Implementation Plan.</u>	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		
19.3	Information use		Compliance with restrictions	

Operating Requirement	Subject	Document to be produced	Self-Certification to be provided	Independent Certification to be obtained and supplied
21	Transition		No Change Certification or updated Document as required under Category Two	

**Category Six – Annual Plans**

<u>Operating Requirement</u>	<u>Subject</u>	<u>Document to be produced</u>	<u>Self-Certification to be provided</u>	<u>Independent Certification to be obtained and supplied</u>
<u>4.8 – 4.10 &amp; 4.11</u>	<u>Continuous Improvement Plan and Strategic Outlook Plan</u>	<u>Proposed plans in compliance with the requirements.</u>		
<u>13.3</u>	<u>Implementation Plan</u>	<u>Proposed plan in compliance with the requirements.</u>		

## 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.

## SCHEDULE 8 – INTEROPERABILITY AGREEMENT MATTERS

A reference to ELNO in this schedule includes a Potential Interoperable ELNO.

Topic	Description
Assistance	A mutual obligation for ELNOs to provide reasonable assistance to one another to enable each ELNO to comply with the ECNL and the Operating Requirements.
Change management	A process for the timely and effective management of changes between the Interoperable ELNOs, including implementation of changes related to Interoperability required by another Person, such as a Land Registry, Duty Authority or financial institution (other than in its capacity as a Subscriber).
Claims management	A process for the timely and equitable management of Subscriber, Client and third-party claims arising in relation to Interoperability, including obligations on Interoperating ELNOs to: <ul style="list-style-type: none"> <li>(a) Promptly and cooperatively investigate and resolve claims; and</li> <li>(b) share information where reasonably required.</li> </ul>
Dispute resolution	A process for the timely resolution of disputes arising under the Interoperability Agreement, including a process for mediation and arbitration.
Interoperability Fees	Any necessary process for the timely and effective payment of Interoperability Fees.
Land Registry Fees	Any necessary process for the timely and effective payment of Land Registry Fees.
Privacy	An acknowledgment by each ELNO that it will comply with the Privacy Laws in relation to any Personal Information sent or received in relation to Interoperable Electronic Workspaces and cooperate in the investigation and resolution of any privacy complaints relating to any Interoperable Lodgment Cases.
<u>Interoperability</u> Root cause analysis	A process for the timely and effective identification and rectification of any fault, issue or failure (including, but not limited to, an Incident) affecting Interoperability or the provision of any Interoperability service, including: <ul style="list-style-type: none"> <li>(a) a mutual obligation for ELNOs to conduct root cause analysis so as to minimise disruption to Subscribers and ELNs and mitigate systemic risks in electronic conveyancing; and</li> <li>(b) the appointment of an independent expert to identify the cause of any such fault, issue or failure where the ELNOs are unable to do so, and the making and implementation of recommendations for rectification.</li> </ul>
Security	A process for the timely and effective management of security risks that may impact Interoperable Electronic Workspaces, including, but not limited to, cyber security risks, including: <ul style="list-style-type: none"> <li>(a) the implementation, maintenance, monitoring, reviewing and updating of effective security controls to prevent and detect such risks; and</li> </ul>

Topic	Description
	(b) the communication between ELNOs where the risk may impact on Interoperable Electronic Workspaces.
Service Levels	Any necessary service performance levels and response times for Interoperability not included in the NECIDS.
Testing	<p>A process for the timely and effective testing of functional and non-functional requirements that may impact Interoperability, including a mutual obligation for each ELNO, in order to enable the other Interoperating ELNO to comply with its testing obligations, to:</p> <ul style="list-style-type: none"> <li>(a) cooperate and provide reasonable assistance to the other Interoperating ELNO; and</li> <li>(b) notify the other Interoperating ELNO of changes or enhancements to its systems that may impact Interoperability; and</li> </ul> <p>use reasonable endeavours to meet timelines agreed upon between the ELNOs for the performance and completion of testing.</p>
Training resources and information	A process for the provision and communication of any training resources and information necessary to inform Subscribers of both Responsible ELNOs and Participating ELNOs about differences in service offering, business rules and user experience between an Interoperable Electronic Workspace and an Electronic Workspace conducted on a single ELN.