



## Electronic Conveyancing National Law (NSW)

### Section 23

# NSW PARTICIPATION RULES for ELECTRONIC CONVEYANCING

Determined by the  
Registrar General

**Version 1**

6 September 2013

# Electronic Conveyancing National Law (NSW)

## Section 23

These are the Participation Rules for Electronic Conveyancing in NSW determined pursuant to the section 23 of the Electronic Conveyancing National Law (NSW).

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



.....  
Des Mooney  
**Registrar General**

6 August 2013

# Participation Rules

## Table of Contents

|   |    |
|---|----|
| <b>1. Preliminary</b>   | 4  |
| <b>2. Definitions and Interpretation</b>                      | 4  |
| 2.1. Definitions  | 4  |
| 2.2. Interpretation   | 9  |
| <b>3. Compliance with Participation Rules</b>                 | 10 |
| <b>4. Eligibility Criteria</b>                                | 10 |
| 4.1. ABN  | 10 |
| 4.2. Status   | 11 |
| 4.3. Character  | 11 |
| 4.4. Insurance  | 12 |
| <b>5. The Role of Subscribers</b>                             | 12 |
| 5.1. Subscriber's roles                                       | 12 |
| 5.2. Subscriber who acts as principal                         | 12 |
| 5.3. Subscriber who acts as Representative                    | 12 |
| 5.4. Responsible Subscribers                                  | 12 |
| 5.5. Subscriber as trustee and partnerships                   | 12 |
| <b>6. General Obligations</b>                                 | 13 |
| 6.1. Ensure User compliance                                   | 13 |
| 6.2. Keep Subscriber System Details complete and up-to-date   | 13 |
| 6.3. Client Authorisation                                     | 13 |
| 6.4. Right to Deal  | 13 |
| 6.5. Verification of Identity                                 | 13 |
| 6.6. Supporting Evidence and Document Retention               | 14 |
| 6.7. Compliance with laws and Participation Rules             | 14 |
| 6.8. Compliance with directions                               | 14 |
| 6.9. Assistance   | 15 |
| 6.10. Protection of information                               | 15 |
| 6.11. Information   | 15 |
| 6.12. No Assignment   | 15 |
| 6.13. Mortgages   | 15 |
| <b>7. Obligations Regarding System Security and Integrity</b> | 15 |
| 7.1. Protection Measures                                      | 15 |
| 7.2. Users  | 16 |
| 7.3. User Access  | 16 |
| 7.4. Signers  | 16 |
| 7.5. Digital Certificates                                     | 17 |
| 7.6. Certification Authority                                  | 17 |
| 7.7. Notification of Jeopardised Conveyancing Transactions    | 17 |
| 7.8. Revoking Authority                                       | 17 |
| 7.9. Compromised Security Items                               | 18 |
| 7.10. Certifications  | 18 |
| <b>8. Amendment of Participation Rules</b>                    | 18 |

|  |    |
|--|----|
| <b>9. Restriction, Suspension and Termination</b> .....  | 18 |
| 9.1. Comply with directions relating to restriction of access or use .....                                   | 18 |
| 9.2. Suspension at direction of Registrar .....  | 19 |
| 9.3. Termination at direction of Registrar.....  | 19 |
| 9.4. Rights and obligations on suspension, termination or resignation .....                                  | 19 |
| 9.5. Further steps by Subscriber.....  | 19 |
| <b>10. Compliance</b> .....  | 19 |
| <b>11. Prohibitions</b> .....  | 20 |
| <b>12. Additional Participation Rules</b> .....  | 20 |
| <b>Schedule 1 - Additional Participation Rules</b> .....   | 21 |
| <b>Schedule 2 – Amendment to Participation Rules Procedure</b> .....   | 22 |
| <b>Schedule 3 – Certification Rules</b> .....  | 23 |
| <b>Schedule 4 – Client Authorisation Form</b> .....  | 24 |
| <b>Schedule 5 – Compliance Examination Procedure</b> .....   | 27 |
| <b>Schedule 6 – Insurance Rules</b> .....  | 29 |
| <b>Schedule 7 – Suspension Events, Termination Events and Suspension and<br/>Termination Procedure</b> ..... | 31 |
| <b>Schedule 8 – Verification of Identity</b> .....   | 34 |

# Participation Rules

## 1. Preliminary

These Participation Rules constitute the Participation Rules determined by the Registrar pursuant to section 23 of the ECNL.

## 2. Definitions and Interpretation

### 2.1. Definitions

2.1.1. A term used in these Participation Rules and also in the ECNL has the same meaning in these Participation Rules as it has in that legislation (unless the term is defined in these Participation Rules). Terms defined in the ECNL have been capitalised in these Participation Rules.

2.1.2. In these Participation Rules capitalised terms have the meanings set out below:

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

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

**Additional Participation Rules** means the additional Participation Rules specific to the Registrar's Jurisdiction, if any, set out in Schedule 1, as amended from time to time.

**ADI or authorised deposit-taking institution** has the meaning given to it in the *Banking Act 1959 (Cth)*.

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

**Amendment to Participation Rules Procedure** means the procedure set out in Schedule 2, as amended from time to time.

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

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

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

**Australian Legal Practitioner** has the meaning given to it in the [*insert Jurisdiction's legislation*].

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

**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.

**Certification Rules** means the rules set out in Schedule 3, as amended from time to time.

**Claim** means any allegation, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

**Client** means a Person who has or Persons who have appointed a Subscriber as their Representative pursuant to a Client Authorisation.

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

**Client Authorisation Form** means the form set out in Schedule 4, as amended from time to time.

**Client Party** means a Person making up all or part of the Client.

**Client Party Agent** means a Person authorised to act on behalf of a Client Party.

**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.

**Contact Details** means a Subscriber's:

- (a) physical address, registered office or principal place of business (as applicable); and
  - (b) postal address, fax number and email address,
- as recorded by the ELNO.

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

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

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

**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.

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

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

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

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

**Duty Authority** means the State Revenue Office of [Jurisdiction].

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

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

**ELN Administrator** means the Person appointed by the ELNO from time to time to perform administrative functions within the ELN.

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

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

**Foreign Country** has the meaning given to it in the ECNL.

**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 Information Officer, Australian Government Information Management Office, Department of Finance and Deregulation.

**Identifier Declaration** means the declaration set out in Verification of Identity Standard paragraph 4.

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

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

**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 from their own money their debts when they fall due for payment; 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; 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, as amended from time to time.

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

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

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

**Law Practice** has the meaning given to it in the [*insert Jurisdiction's legislation*].

**Licensed Conveyancer** means a Person licensed under the [*insert Jurisdiction's legislation*].

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

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

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

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

**Outstanding Conveyancing Transaction** means a Conveyancing Transaction for which an Electronic Workspace has been created in the ELN but the Lodgment Case for which has not been Lodged.

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

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

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

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

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



**Prescribed Requirement** means any Published requirement of the Registrar that Subscribers are required to comply with.

**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-based privacy legislation such as [*insert Jurisdiction's legislation*].

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

**Public Servant** means an officer of any Commonwealth, State or Territory public service.

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

**Publish** means, for any information, to publish the information on the Registrar's Website.

**RBA** means the Reserve Bank of Australia.

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

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

**Registration Authority** means a Gatekeeper Accredited Service Provider that:

- (a) is responsible for the registration of applicants for Digital Certificates by checking evidence of identity Documentation submitted by the applicant;
- (b) is responsible for the provision of a completed and authorised application form including copies of the submitted evidence of identity Documents to the relevant Certification Authority; and
- (c) may be responsible for the secure distribution of signed Digital Certificates to Subscribers.

**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.

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

**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.

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

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

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

**Subscriber Administrator** means a User authorised by the Subscriber to make the changes permitted under Participation Rule 7.3.3 on behalf of the Subscriber.

**Subscriber Agent** means a Person authorised by a Subscriber to act as the Subscriber's agent.

**Suspension Event** means any ground pursuant to which a Subscriber may be suspended as set out in Schedule 7, as amended from time to time.

**Suspension and Termination Procedure** means the procedure set out in Schedule 7, as amended from time to time.

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

**Statutory Declaration** has the meaning given to it in the ECNL.

**System Details** means, for a Subscriber, its System Name, Contact Details and any other information relating to the Subscriber held in the ELN.

**System Name** means, for a Subscriber, the name selected by the Subscriber to identify it in the ELN, for example, its name or its trading name.

**Termination Event** means any ground pursuant to which a Subscriber may be terminated as set out in Schedule 7, as amended from time to time.

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

**Title Activity Check** means, for a Conveyancing Transaction, a check conducted to determine whether the information in the Titles Register relating to the land the subject of the Conveyancing Transaction has changed since the Pre-Population Data was supplied.

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

**Unrelated Third Party** means, for a Subscriber, a Person who is not a principal, an officer, director, employee, agent or contractor of the Subscriber.

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

**Verification of Identity Standard** means the standard set out in Schedule 8, as amended from time to time.

**Website** means the website located at [web address] or as notified by the Registrar from time to time.

## 2.2. Interpretation

In these Participation Rules, unless a contrary intention is evident:

- 2.2.1. A reference to these Participation Rules is a reference to these Participation Rules 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;

- (b) the plural includes the singular; and
  - (c) a gender includes every other gender.
- 2.2.4. A reference to a party includes that party's administrators, successors and permitted assigns.
- 2.2.5. If any act pursuant to these Participation Rules 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.
- 2.2.6. 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.
- 2.2.7. A reference to two or more Persons is a reference to those Persons jointly and severally.
- 2.2.8. A reference to a rule or schedule is a reference to a rule of, or a schedule to, these Participation Rules.
- 2.2.9. A reference to a Participation Rule includes a reference to all of its sub-rules.
- 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 rule headings are for convenience only and they do not form part of these Participation Rules.
- 2.2.12. The word "or" is not exclusive.

### **3. Compliance with Participation Rules**

The Subscriber must:

- (a) be able to comply with these Participation Rules at the time of applying to be a Subscriber; and
- (b) comply with these Participation Rules whilst being a Subscriber; and
- (c) continue to comply with Participation Rules 6.1.2, 6.6, 6.7 (where compliance with the Participation Rules is limited to this sub-rule), 6.9, 6.10, 6.11, 6.13.1(a), 7.7, 9.4, 9.5, 10 and 11 after ceasing to be a Subscriber,

unless the Registrar, in his or her absolute discretion, waives compliance by the Subscriber with any part of the Participation Rules in accordance with section 27 of the ECNL.

### **4. Eligibility Criteria**

#### **4.1. ABN**

The Subscriber must have an ABN.

## **4.2. Status**

- 4.2.1. The Subscriber must be a Person or a partnership.
- 4.2.2. If the Subscriber is a body corporate, the Subscriber must:
  - (a) be a corporation registered under the Corporations Act 2001 or under any other legislation; and
  - (b) ensure that the constituting Documents of the Subscriber empower the Subscriber to assume the obligations set out in these Participation Rules and to do all things that it can reasonably contemplate will be required by these Participation Rules.

## **4.3. Character**

- 4.3.1. The Subscriber must be of good character and reputation and, without limitation, must:
  - (a) ensure that the Subscriber is not and has not been subject to any of the matters listed in (b)(i) to (v) below; and
  - (b) take reasonable steps to ensure that the Subscriber's principals, directors, partners, officers and Users are not and have not been subject to any of the matters listed in (i) to (v) below;
    - (i) an Insolvency Event; 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 disciplinary action or adverse mention in a report made by, or at the request of, any government or governmental authority or agency, or any regulatory authority of a financial market or a profession, which may impact on that Person's conduct of a Conveyancing Transaction; or
    - (v) any refusal of an application to subscribe to an electronic Lodgment service.
- 4.3.2. Any Subscriber or Subscriber's principal, director, partner, officer or User who is:
  - (a) an ADI; or
  - (b) an Australian Legal Practitioner or a Law Practice; or
  - (c) a Licensed Conveyancer; or
  - (d) a government department or statutory body that is the agent of the Crown; or
  - (e) a Public Servantis deemed to comply with Participation Rule 4.3.1.

#### **4.4. Insurance**

The Subscriber must comply with the Insurance Rules.

### **5. The Role of Subscribers**

#### **5.1. Subscriber's roles**

5.1.1. The Subscriber may act on its own behalf or, subject to Participation Rule 5.3, on behalf of Clients when accessing and using the ELN.

5.1.2. To the extent that the Subscriber Digitally Signs electronic Documents on behalf of a Client, the Subscriber does so as agent for the Client.

#### **5.2. Subscriber who acts as principal**

Subject to Participation Rule 5.1.2, the Subscriber incurs rights and obligations under these Participation Rules as principal despite any Client Authorisation or other agency relationship entered into by the Subscriber outside the ELN.

#### **5.3. Subscriber who acts as Representative**

A Representative must:

- (a) comply with the laws of the Jurisdiction in which the land the subject of the Conveyancing Transaction is situated regarding who can conduct a Conveyancing Transaction; and
- (b) take reasonable steps to ensure that a Signer complies with the laws of the Jurisdiction in which the land the subject of the Conveyancing Transaction is situated regarding who can conduct a Conveyancing Transaction and Digitally Sign Registry Instruments.

#### **5.4. Responsible Subscribers**

5.4.1. The Participating Subscribers must agree on the selection of a Responsible Subscriber for every Lodgment Case.

5.4.2. A Responsible Subscriber must take reasonable steps to ensure that it does not pass on information to the Registrar obtained from another Participating Subscriber that it knows or suspects is incorrect, incomplete, false or misleading.

#### **5.5. Subscriber as trustee and partnerships**

5.5.1. If the Subscriber acts at any time in the capacity of a trustee, these Participation Rules bind the Subscriber in their personal capacity and in their capacity as trustee.

5.5.2. If the Subscriber is a partnership:

- (a) these Participation Rules bind the partnership; and
- (b) these Participation Rules bind the Subscriber and each Person who is a partner of the partnership at any time despite any changes to the partners and any reconstitution of the partnership (whether by the death, incapacity or retirement of any partner or the admission of any new partner or otherwise); and

- (c) the Subscriber must do anything the ELNO or Registrar requires (such as obtaining consents, signing and producing Documents and getting Documents completed and signed) to give full effect to this Participation Rule.

## **6. General Obligations**

### **6.1. Ensure User compliance**

6.1.1. The Subscriber must ensure that all of its Users are aware of these Participation Rules.

6.1.2. The Subscriber is responsible for all use of an ELN by any of its Users.

### **6.2. Keep Subscriber System Details complete and up-to-date**

If any of the information which forms part of a Subscriber's System Details changes, the Subscriber must:

- (a) promptly update its System Details accordingly; or
- (b) if the Subscriber does not have the level of access to the ELN required to make the necessary updates to the System Details, promptly notify the ELN Administrator of the changes required.

### **6.3. Client Authorisation**

If a Subscriber is a Representative:

- (a) the Subscriber must use the Client Authorisation Form for any Client Authorisation it enters into; and
- (b) the Subscriber must enter into a Client Authorisation with its Client before the Subscriber Digitally Signs any Document in the ELN; and
- (c) the Subscriber must comply with the Client Authorisation and act in accordance with its terms; and
- (d) the Subscriber must take reasonable steps to verify the authority of each Person entering into a Client Authorisation on behalf of a Client Party to both bind the Client Party to the Client Authorisation and to the Conveyancing Transaction or Conveyancing Transactions the subject of the Client Authorisation.

### **6.4. Right to Deal**

The Subscriber must take reasonable steps to establish that its Client is entitled to enter into the Conveyancing Transaction(s) identified in the Client Authorisation.

### **6.5. Verification of Identity**

6.5.1. The Subscriber must take reasonable steps to verify the identity of:

- (a) each of its Signers, prior to the initial allocation of a Digital Certificate to a Signer; and
- (b) where the Subscriber is a mortgagee, and the mortgagor (in its capacity as mortgagor) does not have a Representative, each mortgagor or their agent at or before the signing of the mortgage; and

- (c) where the Subscriber represents a mortgagee, and the mortgagor (in its capacity as mortgagor) does not have a Representative, each mortgagor or their agent at or before the signing of the mortgage - however, the Subscriber need not take reasonable steps to verify the identity of each mortgagor or their agent if the mortgagee has already taken reasonable steps to verify the identity of each mortgagor or their agent; and
- (d) each Client Party it intends to represent in the ELN or each of their Client Party Agents at or before the signing of the Client Authorisation; and
- (e) where the Subscriber gives a (duplicate/paper) Certificate of Title to any other Person, that Person prior to providing the (duplicate/paper) Certificate of Title; and
- (f) where the Verification of Identity Standard is used, any Person providing an Identifier Declaration at the face-to-face in-person interview with the Subscriber.

6.5.2. Compliance with the Verification of Identity Standard will be deemed to constitute taking reasonable steps for the purposes of Participation Rule 6.5.1.

## **6.6. Supporting Evidence and Document Retention**

The Subscriber must retain any Documentation, or a copy where appropriate, supporting or authenticating an electronic Registry Instrument or other electronic Document for at least 7 years from the date of Lodgment of the Registry Instrument or other electronic Document that is registered or recorded including:

- (a) any forms required by the Duty Authority; and
- (b) any Client Authorisation and any material supporting that Client Authorisation; and
- (c) any material supporting the Subscriber's Client's entitlement to enter into the Conveyancing Transaction; and
- (d) any material supporting verification of identity; and

any other material demonstrating compliance with Prescribed Requirements.

## **6.7. Compliance with laws and Participation Rules**

The Subscriber must comply with any applicable laws (including any applicable Privacy Laws) for the Jurisdiction in which the land the subject of the Conveyancing Transaction is situated and these Participation Rules.

## **6.8. Compliance with directions**

6.8.1. The Subscriber must comply with any reasonable direction of the Registrar.

6.8.2. The Subscriber must comply with any direction of the Registrar, or of the ELNO at the Registrar's direction, given in response to an emergency situation as referred to in the ECNL, in the manner and timing set out in the direction.

## **6.9. Assistance**

The Subscriber must provide reasonable assistance to the Registrar, the ELNO and each other Subscriber to enable those parties to comply with the ECNL and the Land Titles Legislation in relation to a particular Conveyancing Transaction.

## **6.10. Protection of information**

The Subscriber must take reasonable steps to ensure that information provided to the Subscriber by any other Subscriber, the Registrar or by the ELNO is protected from unauthorised use, reproduction or disclosure.

## **6.11. Information**

The Subscriber must take reasonable steps to ensure that all the information it supplies in relation to a Conveyancing Transaction is to the Subscriber's knowledge, information and belief correct, complete and not false or misleading.

## **6.12. No Assignment**

The Subscriber must not assign, novate, transfer or otherwise deal with its subscription to the ELN.

## **6.13. Mortgages**

6.13.1. Where a mortgagor (in its capacity as mortgagor) is not a Subscriber or represented by a Subscriber, the mortgagee must:

- (a) ensure that it obtains and retains a mortgage, on the same terms as the electronic mortgage, signed by the mortgagor; and
- (b) provide Certification 5 of the Certification Rules.

6.13.2. Where the mortgagee or its Representative Digitally Signs the mortgagee's electronic counterpart of the mortgage, it does so only on its own behalf and not on behalf of the mortgagor.

## **7. Obligations Regarding System Security and Integrity**

### **7.1. Protection Measures**

The Subscriber must take reasonable steps to:

- (a) comply with an ELNO's security policy, including without any limitation, in relation to:
  - (i) the technology required to enable the Subscriber to access the ELN;
  - (ii) the specification of virus protection software required to be installed on the Subscriber's computers; and
  - (iii) protection of Security Items; and
  - (iv) training and monitoring of its Users in relation to the Subscriber's security obligations; and
- (b) not do anything that it knows or ought reasonably to know is likely to have an adverse effect on the operation, security, integrity, stability or the overall efficiency of the ELN; and



- (c) not fail to do anything within its reasonable control, the omission of which, it knows or ought reasonably to know is likely to have an adverse effect on the operation, security, integrity, stability or the overall efficiency of the ELN.

## **7.2. Users**

The Subscriber must:

- (a) take reasonable steps to ensure that only Users access the ELN; and
- (b) ensure that each of its Users has received training appropriate to their use of the ELN.

## **7.3. User Access**

7.3.1. The Subscriber must keep up to date within the ELN:

- (a) its Users' Access Credentials; and
- (b) signing rights linked to those Access Credentials; and
- (c) administrative rights linked to those Access Credentials.

7.3.2. The Subscriber must ensure that, at all times, it has at least one Subscriber Administrator.

7.3.3. The Subscriber:

- (a) is taken to have made any change to the items described in Participation Rule 7.3.1 made by any Person (other than an Unrelated Third Party of the Subscriber) using Access Credentials that, at the time the change is requested, have linked to them the necessary signing rights and administrative rights to make the change; and
- (b) irrevocably and unconditionally waives any right it might otherwise have to Claim that the Person does not have authority to make the change (other than any claim the Subscriber has against the Person).

## **7.4. Signers**

7.4.1. The Subscriber must:

- (a) comply with Participation Rule 6.5.1(a); and
- (b) take reasonable steps to ensure that the Signer is not or has not been subject to:
  - (i) an Insolvency Event; or
  - (ii) a conviction of 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 disciplinary action or adverse mention in a report made by, or at the request of, any government or governmental authority or agency, or any regulatory authority of a financial market or a profession, which may impact on a Signer's conduct of a Conveyancing Transaction.

- 7.4.2. A Signer who is:
- (a) an Australian Legal Practitioner; or
  - (b) a Licensed Conveyancer; or
  - (c) a Public Servant
- is deemed to comply with Participation Rule 7.4.1(b).

## **7.5. Digital Certificates**

- 7.5.1. Electronic Documents to be Lodged through the ELN must be Digitally Signed, where the electronic Document requires a Digital Signature, using a Private Key to create the Subscriber's Digital Signature.
- 7.5.2. The Subscriber must obtain and maintain valid at least one Digital Certificate.
- 7.5.3. The Subscriber must take reasonable steps to ensure that only Signers Digitally Sign electronic Registry Instruments or other electronic Documents.

## **7.6. Certification Authority**

The Subscriber must ensure that all information provided to any Certification Authority, or to any Registration Authority, is correct, complete and not false or misleading.

## **7.7. Notification of Jeopardised Conveyancing Transactions**

- 7.7.1. Where to the Subscriber's knowledge, information or belief a Conveyancing Transaction has been Jeopardised:
- (a) where it is possible to do so, the Subscriber must unsign any electronic Documents relating to the Conveyancing Transaction immediately; or
  - (b) where it is not possible to unsign any electronic Document, the Subscriber must immediately notify the ELNO of the situation.
- 7.7.2. The Subscriber must bring to the attention of the other Participating Subscribers any information about the Conveyancing Transaction that it believes to be incorrect, incomplete, false or misleading or that the Conveyancing Transaction has been Jeopardised.

## **7.8. Revoking Authority**

- 7.8.1. If a Subscriber no longer intends:
- (a) a Person to be a User, the Subscriber must promptly revoke the User's access to and use of the ELN; or
  - (b) a Person to be a Signer, the Subscriber must promptly revoke the User's signing rights within the ELN and request the Certification Authority to revoke the Signer's Digital Certificate; or
  - (c) a Person to be a Subscriber Administrator, the Subscriber must promptly revoke the User's administrative rights within the ELN.

- 7.8.2. The Subscriber must immediately withdraw its authorisation to Digitally Sign electronic Documents from any Person who ceases to be the employee, agent or contractor of the Subscriber.
- 7.8.3. If a Subscriber is restricted in its use of the ELN by the Registrar or the ELNO, the Subscriber must promptly prevent any of its Users from accessing and using the ELN other than in accordance with the restriction.

## **7.9. Compromised Security Items**

- 7.9.1. If a Subscriber becomes aware that any of the Security Items of any of its Users has been or is likely to be Compromised, the Subscriber must:
- (a) immediately revoke the User's authority to access and use the ELN and prevent the User from accessing and using the ELN; and
  - (b) for a Digital Certificate:
    - (i) immediately check all Electronic Workspaces in which the Private Key has been used to Digitally Sign any electronic Documents and unsign any electronic Documents in accordance with Participation Rule 7.9.2; and
    - (ii) promptly notify the Certification Authority and revoke or cancel the Digital Certificate (including doing everything reasonably necessary to cause the Certification Authority to revoke or cancel it); and
    - (iii) promptly notify the ELNO.
- 7.9.2. If a Subscriber becomes aware or suspects that any of its Private Keys have been used to Digitally Sign any electronic Documents without its authorisation or the authorisation of any Client on whose behalf the electronic Documents are purported to be Digitally Signed:
- (a) where it is possible to do so, the Subscriber must unsign the electronic Documents immediately; or
  - (b) where it is not possible to unsign the electronic Documents, the Subscriber must immediately notify the ELNO of the situation.

## **7.10. Certifications**

The Subscriber must comply with the Certification Rules.

## **8. Amendment of Participation Rules**

The Subscriber must comply with any amendment made to these Participation Rules by the Registrar pursuant to the Amendment to Participation Rules Procedure.

## **9. Restriction, Suspension and Termination**

### **9.1. Comply with directions relating to restriction of access or use**

The Subscriber must comply with any direction of the Registrar, or of the ELNO at the Registrar's direction, restricting access and use of the ELN.

## **9.2. Suspension at direction of Registrar**

The Subscriber may be suspended by the Registrar, or by the ELNO at the direction of the Registrar, at any time if a Suspension Event occurs.

## **9.3. Termination at direction of Registrar**

The Subscriber may be terminated by the Registrar, or by the ELNO at the direction of the Registrar, at any time if a Termination Event occurs.

## **9.4. Rights and obligations on suspension, termination or resignation**

Suspension or termination of a Subscriber, or its resignation as a Subscriber, does not affect any right or liability of any party which:

- (a) has accrued at the time the suspension, termination or resignation takes effect; or
- (b) may arise, accrue or crystallise after that time out of, or by reason of, any facts or circumstances occurring or in existence at or before the time the suspension, termination or resignation takes effect.

## **9.5. Further steps by Subscriber**

If the Subscriber is restricted, suspended or terminated or the Subscriber resigns, the Subscriber must, at its own expense:

- (a) take reasonable steps to ensure that any Outstanding Conveyancing Transaction for which the Subscriber is a Participating Subscriber is completed (such as facilitating another Subscriber taking over the Subscriber's role in the Outstanding Conveyancing Transaction) and do anything else in connection with the ELN which it could reasonably be expected to do in order to minimise inconvenience to any other Person; and
- (b) do anything the ELNO or Registrar considers reasonable to achieve the outcomes described in paragraph (a), such as entering into arrangements, obtaining consents, submitting electronic Documents, Digitally Signing electronic Documents where required, and producing Documents; and
- (c) notify its Client (if any), and each other Participating Subscriber, in each Outstanding Conveyancing Transaction for which the Subscriber is a Participating Subscriber, of the restriction, suspension, termination or resignation.

## **10. Compliance**

The Subscriber must:

- (a) comply with Section 34 of the ECNL and the Compliance Examination Procedure; and
- (b) give written notice to the ELNO, 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 Participation Rules; and
- (c) remedy any non-compliance with these Participation Rules within 10 Business Days (or such longer time determined by the Registrar in his or her absolute discretion having regard to the nature of the breach) from when it becomes aware that it has breached these Participation Rules; and
- (d) take such action as is necessary in order to avoid a breach in circumstances where the Subscriber becomes aware that it may in the future be no longer able to comply with these Participation Rules.

## **11. Prohibitions**

The Subscriber must not:

- (a) modify or alter any Registry Information Supply data or Title Activity Check data for a Conveyancing Transaction or do anything that allows or causes another Person to do any of these things; or
- (b) use, reproduce or disclose, or allow another Person to use, reproduce or disclose, Registry Information Supply data or Title Activity Check data for a Conveyancing Transaction, other than for the purpose of participating in the Electronic Workspace in which the data appears or where required by law to do so; or
- (c) use or participate in the ELN other than in accordance with these Participation Rules; or
- (d) other than information which the Subscriber enters into the ELN, use, reproduce or disclose any information passing into or out of the ELN in connection with a Conveyancing Transaction except for the purpose of Lodging Registry Instruments or any purpose which is ancillary to that purpose.

## **12. Additional Participation Rules**

The Subscriber must comply with the Additional Participation Rules, if any.

## Schedule 1 - Additional Participation Rules

[If any]

## **Schedule 2 – Amendment to Participation Rules Procedure**

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

- 1.1. Any amendment to these Participation Rules must be the subject of good faith consultation by the Registrar with a representative group of Subscribers and, where relevant, Subscribers' local and national professional associations, regulators and insurers (as reasonably determined by the Registrar) before the amendment comes into effect.
- 1.2. Each amendment must be notified to all Subscribers 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 Participation Rules 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 all Subscribers as soon as reasonably practicable before the amendment comes into effect. The notification must contain the date the amendment comes into effect.

### **Schedule 3 – Certification Rules**

The Subscriber must provide those of the following certifications that are required when Digitally Signing each electronic Registry Instrument or electronic Document:

1. The Subscriber has taken reasonable steps to verify the identity of the [transferor/ transferee/ mortgagee/ mortgagor/caveator/applicant].
2. The Subscriber holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
3. The Subscriber has obtained, considered and securely retained originals or copies of all supporting evidence for this Registry Instrument or Document.
4. The Subscriber has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.
5. The Subscriber or the mortgagee it represents:
  - (a) has taken reasonable steps to verify the identity of the mortgagor; and
  - (b) holds a mortgage on the same terms as this Registry Instrument signed by the mortgagor.
6. The Subscriber certifies that the (duplicate) certificate(s) of title for the folio(s) of the Register listed in this Document have been:
  - (a) retrieved; and
  - (b) either securely destroyed by the Subscriber or made invalid and retained by the Subscriber in a secure location.



## **Schedule 4 – Client Authorisation Form**

The Client Authorisation form appears on the following 2 pages.

# CLIENT AUTHORISATION

When this form is signed, an agency agreement is created which authorises the Subscriber to act for the Client in a Conveyancing Transaction or Conveyancing Transactions being completed using the Electronic Lodgement Network (ELN) as required by the Electronic Conveyancing National Law (ECNL)

Subscriber Reference: \_\_\_\_\_

|                       | CLIENT PARTY 1       | CLIENT PARTY 2       |
|-----------------------|----------------------|----------------------|
| <b>CLIENT DETAILS</b> | NAME _____           | NAME _____           |
|                       | ABN/ACN/ARBN _____   | ABN/ACN/ARBN _____   |
|                       | ADDRESS _____        | ADDRESS _____        |
|                       | PHONE _____          | PHONE _____          |
|                       | CONTACT PERSON _____ | CONTACT PERSON _____ |
|                       | EMAIL _____          | EMAIL _____          |
|                       | CAPACITY _____       | CAPACITY _____       |

|                            |   |   |
|----------------------------|---|---|
| <b>TRANSACTION DETAILS</b> | AUTHORITY TYPE <input type="checkbox"/> SPECIFIC AUTHORITY (details of transactions to be provided below) <input type="checkbox"/> STANDING AUTHORITY (details to be attached when available)    AUTHORITY EXPIRATION DATE: ___/___/___ <input type="checkbox"/> BATCH AUTHORITY (details to be attached) |   |
|                            | <b>CONVEYANCING TRANSACTION(S) 1</b>  | <b>CONVEYANCING TRANSACTION(S) 2</b>  |
|                            | PROPERTY ADDRESS _____  | PROPERTY ADDRESS _____  |
|                            | LAND TITLE REFERENCE(S) (and/or property description) _____   | LAND TITLE REFERENCE(S) (and/or property description) _____   |
|                            | TRANSACTION TYPE(S) <input type="checkbox"/> SALE <input type="checkbox"/> PURCHASE <input type="checkbox"/> MORTGAGE <input type="checkbox"/> DISCHARGE <input type="checkbox"/> CAVEAT <input type="checkbox"/> WITHDRAW CAVEAT   | TRANSACTION TYPE(S) <input type="checkbox"/> SALE <input type="checkbox"/> PURCHASE <input type="checkbox"/> MORTGAGE <input type="checkbox"/> DISCHARGE <input type="checkbox"/> CAVEAT <input type="checkbox"/> WITHDRAW CAVEAT |
|                            | SPECIAL INSTRUCTIONS (use for describing other transaction types) _____   |   |

|   | CLIENT PARTY 1 / CLIENT PARTY AGENT 1   | CLIENT PARTY 2 / CLIENT PARTY AGENT 2     |
|---|---|---|
| <b>CLIENT AUTHORISATION AND EXECUTION</b> | CAPACITY: _____ DATE / / <b>SIGN HERE</b>   | CAPACITY: _____ DATE / / <b>SIGN HERE</b> |
|   | PRINT NAME _____  | PRINT NAME _____                          |
|   | <b>I CERTIFY that:</b><br>(a) I am the Person named above as a Client Party or Client Party Agent; and<br>(b) I have the legal authority to instruct the Subscriber in relation to the Conveyancing Transaction; and<br>(c) If I am acting as a Client Party Agent that I have no notice of the revocation of my authority to act on behalf of the Client Party.                          |   |
|   | <b>I AUTHORISE</b> the Subscriber to act as my agent in the ELN in accordance with the terms of this Agreement and the Participation Rules to:  |   |
|   | (a) electronically sign Documents on my behalf as required for the Conveyancing Transaction Type; and<br>(b) submit or authorise submission of Documents for Lodgement with the relevant Land Registry; and<br>(c) authorise any financial settlement involved in the Conveyancing Transaction; and<br>(d) do anything else necessary in the ELN to complete the Conveyancing Transaction |   |

|   | SUBSCRIBER  | SUBSCRIBER AGENT (if used)                |
|---|---|---|
| <b>SUBSCRIBER DETAILS AND EXECUTION</b> | NAME _____  | NAME _____                                |
|   | ABN/ACN/ARBN _____  | ABN/ACN/ARBN _____                        |
|   | PHONE _____   | PHONE _____                               |
|   | EMAIL _____   | EMAIL _____                               |
|   | ADDRESS _____   | ADDRESS _____                             |
|   | CAPACITY: _____ DATE / / <b>SIGN HERE</b>   | CAPACITY: _____ DATE / / <b>SIGN HERE</b> |
|   | PRINT NAME _____  | PRINT NAME _____                          |
|   | <b>I CERTIFY that:</b><br><input type="checkbox"/> reasonable steps have been taken to verify the identity and authority of the Persons whose signature(s) appear(s) in the Client Authorisation and Execution panel above in accordance with the Participation Rules; and<br><input type="checkbox"/> this Agreement was signed by the Person(s) whose signature(s) appear(s) in the Client Authorisation and Execution panel above in my presence |   |

# Terms of this Agreement

## 1. What is Authorised

The Client authorises the Subscriber to act as the Client's agent in the ELN in accordance with the terms of this Agreement and the Participation Rules to:

- (a) electronically sign Documents on the Client's behalf as required for the Conveyancing Transaction Type; and
- (b) submit or authorise submission of Documents for Lodgement with the relevant Registrar; and
- (c) authorise any financial settlement involved in the Conveyancing Transaction; and
- (d) do anything else necessary in the ELN to complete the Conveyancing Transaction.

The Client acknowledges that the Client is bound by any electronic Documents required in connection with a Conveyancing Transaction that the Subscriber signs digitally on the Client's behalf in accordance with this Agreement.

## 2. Changing instructions

The Client may change the Client's instructions to the Subscriber in connection with a Conveyancing Transaction (including by terminating them) at any time before the Subscriber is no longer able to change information entered by the Subscriber into the ELN in connection with a Conveyancing Transaction. However, if the Subscriber receives inconsistent instructions from any two or more Client Parties before that time, the Subscriber is not to proceed further with the Conveyancing Transaction until the Subscriber receives in writing consistent instructions from all of the Client Parties.

## 3. Execution Under power of attorney or Written Delegation

If this Agreement is executed by an attorney or other Person acting under a power of attorney or Written Delegation from the Client then, by executing this Agreement, the attorney or Person states that the attorney or Person has received no notice of revocation of the power of attorney or Written Delegation.

## 4. Mortgagees

The Client indemnifies the Subscriber for any loss resulting from the Client's failure to take reasonable steps to verify the identity of the mortgagor where the Subscriber represents the Client in the Client's capacity as mortgagee and the Client represents to the Subscriber that the Client has taken reasonable steps to verify the identity of the mortgagor,

## 5. Termination

This Agreement ends on the earlier of:

- (a) the Client or the Subscriber giving notice in writing to the other that they wish to end this Agreement; or
- (b) the completion or termination of the Conveyancing Transaction described in a Specific Authority or of the Conveyancing Transactions described in a Batch Authority; or
- (c) the expiration of any Standing Authority.

## 6. Privacy and Client Information

The Client acknowledges that the Subscriber may disclose Client information to the ELNO and to the Registrar.

## 7. Applicable Law

This Agreement is governed by the law in force in the Jurisdiction in which the Property is situated. The Client and the Subscriber submit to the non-exclusive jurisdiction of the courts of that place.

## 8. Meaning of Words Used in the Client Authorisation & Completion Guide

8.1. A term used in this Agreement and also in the ECNL has the same meaning in this Agreement as it has in the ECNL. Terms defined in the ECNL have been capitalised in this Agreement.

8.2. In this Agreement, capitalised terms have the meaning set out below:

**Agreement** means this Client Authorisation for use in completing Conveyancing Transactions using the ELN.

**Authority Type** means a Specific Authority, a Standing Authority or a Batch Authority.

**Batch Authority** means an authority for the Subscriber to act for the Client in a batch of Conveyancing Transactions described in a schedule attached to this Agreement.

**Capacity** means the role being taken by a Signatory in signing this Agreement (for example an attorney or a director of a company).

**Client** means a Person or Persons who has or have appointed a Subscriber as its Representative in accordance with the Participation Rules.

**Client Party** means a Person making up all or part of the Client.

**Client Party Agent** means a Person authorised to act on behalf of a Client Party.

**Conveyancing Transaction Type** means the nature of the Conveyancing Transaction being completed, described in this Agreement.

**Director** means a Person appointed as a director of a corporation.

**Discharge of Mortgage** includes an instrument of release as defined in section 81 of the Land Title Act 1994 (QLD).

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

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

**Prescribed Requirement** means any requirement of the Registrar that Subscribers are required to comply with.

**Property** means the land and its improvements described by the Title Reference(s) set out in the Conveyancing Transaction details.

**Property Address** means the street address of the Property.

**Purchase**, in relation to a Transaction Type, includes the preparation of all documents required to effect a purchase of land and the liaison with, where relevant, any proposed mortgagee.

**Sale**, in relation to a Transaction Type, includes the preparation of all documents required to effect a sale of land and the liaison with, where relevant, any mortgagee.

**Secretary** means a Person appointed as a secretary of a corporation.

**Signatory** means the legal Person signing this Agreement.

**Sole Director and Secretary** means a Person who is both the sole Director and the sole Secretary of a corporation.

**Special Instructions** means any instructions by the Client to the Subscriber not specifically provided for in this Agreement.

**Specific Authority** means an authority for the Subscriber to act for the Client in completing the Conveyancing Transactions described in this Agreement.

**Standing Authority** means an authority for the Subscriber to act for the Client for a period of time set out in the Special Instructions of this Agreement.

**Subscriber** has the meaning given to it in the ECNL. The Subscriber is the Person named in this Agreement.

**Subscriber Agent** means a Person authorised by a Subscriber to act as the Subscriber's agent.

**Title Reference** means the relevant Land Registry's unique identifier(s) for the Property.

**Written Delegation** means an authorisation in writing to represent a corporation or other organisation.

## **Schedule 5 – Compliance Examination Procedure**

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

- 1.1. For the purposes of Section 34(2) of the ECNL, the Registrar or the Registrar's delegate must provide notice to the Subscriber.
- 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 be not 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. The Subscriber 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. If the Subscriber fails, without reasonable excuse, to comply with a notice given under paragraph 1.2, the Registrar may do one or more of the following as the Registrar considers appropriate:
  - (a) restrict the Subscriber's use of the ELN; or
  - (b) suspend the Subscriber; or
  - (c) terminate the Subscriber.

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

- 2.1. If a 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. 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 the Document to the Subscriber, 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 a Document where the Document has been provided to any police authority or anyone else entitled to the Document pursuant to any law or court order.

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

- 4.1. Until a Document retained under paragraph 2.1 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 Subscriber is found to be in material breach of the Participation Rules, the Subscriber 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 Subscriber is not found to be in material breach, such fees and Costs will not be recoverable from the Subscriber.
- 5.2. The Cost of all actions required to be taken by the Subscriber to remedy any breach of these Participation Rules identified by the Registrar or the Registrar's delegate is to be paid by the Subscriber.

## **Schedule 6 – Insurance Rules**

### **1. Professional indemnity insurance**

- 1.1. Each Subscriber must maintain professional indemnity insurance:
  - (a) with an Approved Insurer; and
  - (b) for an insured amount of at least \$1.5 million per claim (including legal Costs); and
  - (c) having an excess per claim of no greater than \$5,000; and
  - (d) which includes coverage for Conveyancing Transactions; and
  - (e) which otherwise is on terms satisfactory to the Registrar.
- 1.2. Each Subscriber Agent must maintain professional indemnity insurance:
  - (a) with an Approved Insurer; and
  - (b) for an insured amount of at least \$1.5 million per claim (including legal Costs); and
  - (c) having an excess per claim of no greater than \$5,000.

### **2. Fidelity insurance**

- 2.1. Each Subscriber must maintain fidelity insurance:
  - (a) with an Approved Insurer; and
  - (b) for an insured amount of at least \$1.5 million per claim (including legal Costs); and
  - (c) having an excess per claim of no greater than \$5,000; and
  - (d) which includes coverage for Conveyancing Transactions; and
  - (e) which otherwise is on terms satisfactory to the Registrar.
- 2.2. Each Subscriber Agent must maintain fidelity insurance:
  - (a) with an Approved Insurer; and
  - (b) for an insured amount of at least \$1.5 million per claim (including legal Costs); and
  - (c) having an excess per claim of no greater than \$5,000;
- 2.3. A Subscriber or Subscriber Agent may maintain fidelity insurance held through a mutual fund by paying a levy or contribution rather than an annual insurance premium. The insurance must otherwise comply with Insurance Rule 2.1.

### **3. Self insuring Subscribers**

Despite Insurance Rules 1 and 2, the following Persons need not take out any insurance to become or remain a Subscriber:

- (a) a Person who, at that time, is an ADI; or
- (b) a government department or statutory body that is the agent of the Crown.

#### **4. Deemed compliance with these Insurance Rules**

The following are deemed to comply with Insurance Rules 1 and 2:

- (a) an Australian Legal Practitioner or a Law Practice who holds professional indemnity insurance and either holds fidelity insurance or contributes to or on whose behalf a contribution is made to a fidelity fund operated pursuant to legislative requirements; and
- (b) a Licensed Conveyancer who holds professional indemnity insurance and either holds fidelity insurance or contributes to or on whose behalf a contribution is made to a fidelity fund operated pursuant to legislative requirements.

#### **5. Compliance**

The Subscriber or Subscriber Agent must comply with the requirements set by its insurer relating to the Subscriber's access and use of an ELN, if any.

#### **6. Proof of insurance**

The Subscriber must provide evidence of insurance to the ELNO as required by the ELNO.

## **Schedule 7 – Suspension Events, Termination Events and Suspension and Termination Procedure**

### **1. Suspension Events**

The following are Suspension Events:

- (a) the Registrar knows or has reasonable grounds to suspect 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's purported payment of any Land Registry Fee is unpaid or dishonoured and the Subscriber fails to remedy the non-payment promptly; or
- (c) the Subscriber fails, without reasonable excuse, to comply with a notice served under the Compliance Examination Procedure.

### **2. Termination Events**

The following are Termination Events:

- (a) the Registrar 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 fails, without reasonable excuse, to produce Documents within a time specified in a written request from the Registrar; or
- (c) the Subscriber fails, without reasonable excuse, to comply with a written direction of the Registrar given to the Subscriber or to a class of Subscribers to which the Subscriber belongs including but not limited to a notice served under the Compliance Examination Procedure; or



- (d) the Subscriber's purported payment of any Land Registry Fees is unpaid or dishonoured and the Subscriber fails to remedy the non-payment within a reasonable period of time; or
- (e) 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.

### **3. Suspension and Termination Procedure**

#### **3.1. Show Cause Notice procedure**

- (a) Subject to paragraph 3.2, the Registrar may suspend or terminate, or direct an ELNO to suspend or terminate, the Subscriber only if the Registrar first gives the Subscriber a "Show Cause Notice". A "Show Cause Notice" must:
  - (i) be in writing; and
  - (ii) request the Subscriber to show cause, within 15 Business Days of the date of the Show Cause Notice, why the Subscriber should not be suspended or terminated, as the case may be; and
  - (iii) set out in detail the Registrar's reasons for issuing the request.
- (b) After the expiry of the 15 Business Days from the date of the Show Cause Notice, the Registrar, after considering any further information or steps taken by the Subscriber, must, within a reasonable time, determine whether to suspend or terminate, or direct an ELNO to suspend or terminate, the Subscriber.

#### **3.2. Urgent decisions to suspend or terminate**

- (a) If the Registrar becomes aware that a Suspension Event or Termination Event has or may have occurred in respect of the Subscriber and believes that it is necessary to take urgent action to protect the operation, security, integrity or stability of the ELN, the Registrar may immediately suspend or terminate, or direct an ELNO to immediately suspend or terminate, the Subscriber without first providing a Show Cause Notice under paragraph 3.1.
- (b) However, the Registrar must then issue to the Subscriber a "Show Cause Notice" within 15 Business Days. A "Show Cause Notice" must:
  - (i) be in writing; and
  - (ii) request the Subscriber to show cause, within 15 Business Days of the date of the Show Cause Notice, why the Subscriber should be reinstated; and
  - (iii) specify the reasons for the suspension or termination.
- (c) If the Registrar does not issue a Show Cause Notice in accordance with this paragraph 3.2 within 15 Business Days of a suspension or termination taking effect following a determination by the Registrar to suspend or terminate the Subscriber under this paragraph 3.2, the Registrar must reinstate, or direct the ELNO to reinstate, the Subscriber.
- (d) After the expiry of the 15 Business Days following the date of the Show Cause Notice under this paragraph 3.2, the Registrar, after considering any further information or steps taken by the Subscriber must, within a reasonable time, determine whether to reinstate the Subscriber or direct the ELNO to reinstate the Subscriber.

### **3.3. Notice of suspension and termination decisions**

After making a final determination under paragraph 3.1 or paragraph 3.2, the Registrar must notify the Subscriber promptly of the determination. If the determination:

- (a) is made under paragraph 3.1, the notice must specify the reasons for the determination and the time and date the suspension or termination is to take effect;
- (b) is made under paragraph 3.2, the notice must specify the reasons for the determination and the time and date the suspension or termination took effect.

### **3.4. Suspension or termination - reinstatement**

If the Registrar suspends or terminates the Subscriber, or directs an ELNO to suspend or terminate the Subscriber, the Registrar may reinstate, or direct an ELNO to reinstate, the Subscriber at any time if the Registrar determines that the Subscriber's access to the ELN does not pose a threat to the operation, security, integrity or stability of the ELN.

### **3.5. Registrar's determinations**

A determination by the Registrar to suspend or terminate a Subscriber, or to direct an ELNO to suspend or terminate a Subscriber, does not affect any other determination the Registrar has made previously or may make subsequently.

## Schedule 8 – Verification of Identity

### Background

Under Participation Rule 6.5.1, the Subscriber or the Subscriber Agent must take reasonable steps to verify the identity of:

- (a) each of the Subscriber's Signers, prior to the initial allocation of a Digital Certificate to a Signer; and
- (b) where the Subscriber is a mortgagee, and the mortgagor (in its capacity as mortgagor) does not have a Representative, each mortgagor or their agent at or before the signing of the mortgage; and
- (c) where the Subscriber represents a mortgagee, and the mortgagor (in its capacity as mortgagor) does not have a Representative, each mortgagor or their agent at or before the signing of the mortgage - however, the Subscriber or the Subscriber Agent need not take reasonable steps to verify the identity of each mortgagor or their agent if the mortgagee has already taken reasonable steps to verify the identity of each mortgagor or their agent; and
- (d) each Client Party the Subscriber intends to represent in the ELN or each of their Client Party Agents at or before the signing of the Client Authorisation; and
- (e) where the Subscriber gives a (duplicate/paper) certificate of title to any other Person, that Person prior to providing the (duplicate/paper) certificate of title; and
- (f) where the Verification of Identity Standard is used, any person providing an Identifier Declaration at the face-to-face in-person interview with the Subscriber or the Subscriber Agent .

Under Participation Rules 6.5.2 compliance with the following Verification of Identity Standard will be deemed to constitute taking reasonable steps for the purposes of Rule 6.5.1.

### Verification of Identity Standard

#### 1. Definitions

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

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

**Australian Consular Officer** has the meaning given to it in the *Consular Fees Act 1955 (Cth)*

**Australian Diplomatic Officer** has the meaning given to it in the *Consular Fees Act 1955 (Cth)*.

**Australian Legal Practitioner** has the meaning given to it in the [insert Jurisdiction's legislation].

**Australian Passport** means a passport issued by the Australian Federal Government.

**Bank Manager** means a Person appointed to be in charge of the head office or any branch office of an ADI carrying on business in Australia under the *Banking Act 1959 (Cth)*.

**Category** means the categories of identification Documents set out in Verification of Identity Standard paragraph 3, as amended from time to time.

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

**Community Leader** means, in relation to an Aboriginal or Torres Strait Islander community:

- (a) a Person who is recognised by the members of the community to be a community elder; or
- (b) if there is an Aboriginal council that represents the community, an elected member of the council; or
- (c) a member, or a member of staff, of a Torres Strait Regional Authority established under the *Aboriginal and Torres Strait Islander Commission Act 2005 (Cth)*; or
- (d) a member of the board, or a member of staff, of Indigenous Business Australia established under the *Aboriginal and Torres Strait Islander Commission Act 2005 (Cth)*; or
- (e) a member of the board, or a member of staff, of an Indigenous Land Corporation established under the *Aboriginal and Torres Strait Islander Commission Act 2005 (Cth)*; or
- (f) a member, or a member of the staff, of an Aboriginal Land Council established under the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)*.

**Competent Officer** has the meaning given to it in the *Defence Force Regulations 1952 (Cth)*.

**Court Officer** means a judge, master, magistrate, registrar or clerk, or the chief executive officer, of any court in Australia.

**Declarant** means a Person providing an Identifier Declaration.

**Defence Force** has the meaning given to it in the *Defence Act 1903 (Cth)*.

**Doctor** means a Person who is registered under any Commonwealth, State or Territory law as a practitioner in the medical profession.

**Foreign Country** has the meaning given to it in the ECNL.

**Identifier Declaration** means the declaration set out in Verification of Identity Standard paragraph 4.

**Land Council Officeholder** means a chairperson or deputy chairperson of an Australian land council or land and sea council established under any Commonwealth, State or Territory law.

**Licenced Conveyancer** means a Person licensed under the [*insert Jurisdiction's legislation*].

**Local Government Officeholder** means a chief executive officer or deputy chief executive officer of a local government.

**Member of the Defence Force** has the meaning given to it in the *Defence Force Regulations 1952 (Cth)*.

**Nurse** means a Person registered under any Commonwealth, State or Territory law as a practitioner in the nursing and midwifery profession.

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

**Person Being Identified** means any of the Persons required to be identified under Participation Rule 6.5.1 (a) to (f).

**Police Officer** means an officer of any Commonwealth, State or Territory police service.

**Proof of Age Card** is a card issued by any State or Territory to enable the holder to evidence their age, named variously: Card 18+ (Qld); Evidence of Age Card (NT); Personal Information Card (Tas); Photo Card (NSW) and Proof of Age Card (ACT, SA, Vic and WA), as amended from time to time.

**Public Servant** means an officer of any Commonwealth, State or Territory public service.

**Relative** means a Person's spouse or domestic partner or a child, grandchild, sibling, parent or grandparent of the Person or of the Person's spouse or domestic partner.

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

**Statutory Declaration** has the meaning given to it in the ECNL.

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

**Subscriber Agent** means a Person authorised by a Subscriber to act as the Subscriber's agent.

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

## **2. Face-to-face regime**

- 2.1. The verification of identity must be conducted during a face-to-face in-person interview between the Subscriber or the Subscriber Agent and the Person Being Identified.
- 2.2. Where Documents containing photographs are produced by the Person Being Identified, the Subscriber or the Subscriber 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.

### 3. Categories of identification Documents

- 3.1. The Subscriber or the Subscriber Agent must ensure that the Person Being Identified produces original Documents in one of the following Categories, starting with Category 1.
- 3.2. The Subscriber or the Subscriber Agent must be reasonably satisfied that a prior Category cannot be met before using a subsequent Category.
- 3.3. The Subscriber or the Subscriber Agent must sight the originals of all Documents from Categories 1, 2, 3, 4, or 5 produced by the Person Being Identified.
- 3.4. The Documents produced must be current.

| Category | Minimum Document Requirements  |
|----------|--|
|          | <b>For Persons who are Australian citizens or residents:</b>   |
| 1        | Australian Passport or foreign passport including an Australian resident visa label <u>plus</u> Australian drivers licence or Proof of Age Card <u>plus</u> change of name or marriage certificate if necessary  |
| 2        | Australian Passport or foreign passport including an Australian resident visa label plus full birth certificate, citizenship certificate or descent certificate plus Medicare, Centrelink or Department of Veterans' Affairs card plus change of name or marriage certificate if necessary   |
| 3        | Australian drivers licence or Proof of Age Card plus full birth certificate, citizenship certificate or descent certificate plus Medicare, Centrelink or Department of Veterans' Affairs card plus change of name or marriage certificate if necessary   |
| 4        | (a). Identifier Declaration plus full birth certificate, citizenship certificate, descent certificate plus Medicare, Centrelink or Department of Veterans' Affairs card plus change of name or marriage certificate if necessary.<br><br>(b). Identifier Declaration by a Person specified in Verification of Identity Standard paragraph 4.4(i) plus Medicare, Centrelink or Department of Veterans' Affairs card plus change of name or marriage certificate if necessary.<br><br>Note: refer to Verification of Identity Standard paragraph 4 |
|          | <b>For Persons who are not Australian citizens or residents:</b>   |
| 5        | (a). Foreign passport plus another form of government issued photographic identity Document plus change of name or marriage certificate if necessary<br><br>(b). Foreign passport plus full birth certificate plus another form of government issued identity Document plus change of name or marriage certificate if necessary  |

### 4. The Identifier Declaration

- 4.1. Where the requirements of:
- (a) Categories 1 to 3 cannot be met, Category 4(a) may be used; and

(b) Category 4(a) cannot be met, Category 4(b) may be used,

including the provision of an Identifier Declaration in accordance with this paragraph.

- 4.2. The Subscriber or the Subscriber Agent must ensure that both the Person Being Identified and the Declarant attends the same face-to-face in-person interview with the Subscriber or the Subscriber Agent.
- 4.3. The Subscriber or the Subscriber Agent must verify the identity of the Declarant in accordance with this Verification of Identity Standard except that the Identifier cannot utilise Category 4 as set out in Verification of Identity Standard paragraph 3.
- 4.4. The Subscriber or the Subscriber Agent must undertake reasonable enquiries to satisfy themselves that the Declarant is:
  - (a) an Adult; and
  - (b) an individual who has known the Person Being Identified for more than 12 months; and
  - (c) not a Relative of the Person Being Identified; and
  - (d) not a party to the Conveyancing Transaction the Person Being Identified has or is entering into; and
  - (e) where Category 4(b) is used, an Australian Legal Practitioner, a Bank Manager, Community Leader, Court Officer, Doctor, Land Council Officeholder, Licenced Conveyancer, Local Government Officeholder, Nurse, Public Servant or Police Officer.
- 4.5. The Subscriber or the Subscriber Agent must ensure that the Declarant provides a Statutory Declaration detailing the following:
  - (a) the Declarant's name and address; and
  - (b) the Declarant's occupation; and
  - (c) the Declarant's date of birth; and
  - (d) the nature of the Declarant's relationship with the Person Being Identified; and
  - (e) that the Declarant is not a relative of the Person Being Identified; and
  - (f) that the Declarant is not a party to the Conveyancing Transaction the Person Being Identified has or is entering into; and
  - (g) the length of time that the Declarant has known the Person Being Identified; and
  - (h) that to the Declarant's knowledge, information and belief the Person Being Identified is who they purport to be; and
  - (i) where Category 4(b) is used, that the Declarant is an Australian Legal Practitioner, a Bank Manager, Community Leader, Court Officer, Doctor, Land Council Officeholder, Licenced Conveyancer, Local Government Officeholder, Nurse, Public Servant or Police Officer.

## **5. Execution by Body Corporate**

Where a Client Authorisation or mortgage is to be executed by a body corporate, the Subscriber or the Subscriber 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; and
- (c) verify the identity of the individual or individuals signing or affixing the seal on behalf of the body corporate in accordance with this Verification of Identity Standard.

[Note: *body corporate* includes an incorporated association.]

## **6. Execution by an Individual as attorney**

Where a Client Authorisation or mortgage is to be executed by an Individual as attorney under a power of attorney, the Subscriber or the Subscriber Agent must:

- (a) confirm from the [registered] power of attorney the details of the attorney and the Client Party; and
- (b) take reasonable steps to establish that the Conveyancing Transaction(s) is authorised by the power of attorney; and
- (c) verify the identity of the attorney in accordance with this Verification of Identity Standard.

## **7. Execution by Body Corporate as attorney**

Where a Client Authorisation or mortgage is to be executed by a body corporate as attorney under a power of attorney, the Subscriber or the Subscriber Agent must:

- (a) confirm from the [registered] power of attorney the details of the attorney and the Client Party; and
- (b) take reasonable steps to establish that the Conveyancing Transaction(s) is authorised by the power of attorney; and
- (c) comply with Verification of Identity Standard paragraph 5.

[Note: *body corporate* includes an incorporated association.]

## **8. Verification of identity conducted in a Foreign Country**

8.1. A verification of identity conducted in a Foreign Country must be conducted by either:

- (a) an Australian Consular Officer or an Australian Diplomatic Officer; or
- (b) where the Person Being Identified is a Member of the Australian Defence Force, a Competent Officer.

8.2. Category 4 cannot be used for verifications of identity conducted in a Foreign Country.



**9. Use of Subscriber Agent**

Where the Subscriber engages a Subscriber Agent to verify the identity of a Person Being Identified and any Declarant and witness the signing of the properly completed Client Authorisation where applicable, the Subscriber must:

- (a) appoint a Subscriber Agent who the Subscriber reasonably believes is reputable, competent and insured in compliance with the Insurance Rules; and
- (b) direct the Subscriber Agent to conduct the verification of identity in accordance with this Verification of Identity Standard; and
- (c) where a Client Authorisation is required, receive from the Subscriber Agent the completed Client Authorisation signed in the presence of the Subscriber Agent; and
- (d) receive from the Subscriber Agent copies of the Documents produced to verify the identity of the Person Being Identified and any Declarant signed, dated and endorsed as a true copy of the original by the Subscriber Agent, and a certification in the following form:

"I, [full name of the Subscriber Agent], of [address of the Subscriber Agent] being a [occupation of the Subscriber Agent] hereby certify that:

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

[I witnessed [full name of the Person] execute the completed Client Authorisation].

Date:.....

Subscriber Agent

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

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

## **10. Further checks**

The Subscriber or the Subscriber Agent must undertake further steps to verify the identity of the Person Being Identified or the Declarant where the Subscriber or the Subscriber Agent knows or ought reasonably to know that:

- (a) any identity Document produced by the Person Being Identified or the Declarant is not genuine; or
- (b) any photograph on an identity Document produced by the Person Being Identified or the Declarant is not a reasonable likeness of the Person Being Identified or the Declarant; or
- (c) if it would otherwise be reasonable to do so.

## **11. Previous verification of identity**

The Subscriber or the Subscriber Agent need not verify the identity of the Person Being Identified in accordance with this Verification of Identity Standard if the Subscriber or the Subscriber Agent has a face-to-face in-person interview with the Person Being Identified and has within the previous 24 months verified the identity of the Person Being Identified in accordance with this Verification of Identity Standard.



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