

Electronic Conveyancing National Law (Victoria)

Participation Rules

Determined by the Registrar of Titles

Version 3

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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).

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).

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 Credit Licence has the meaning given to it in the NCCP Act.

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).

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

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 in the Titles Register.

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.

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

Client Agent means a Person authorised to act as the Client's agent but does not include the Subscriber acting solely as the Client's Representative.

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.

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, phone number(s), 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.

Credit Representative has the meaning given to it in the NCCP Act.

Credit Service has the meaning given to it in the NCCP Act and extends to a service with respect to credit secured or to be secured by real property whether or not it is regulated by that Act.

Crown means the government, a Minister of the Crown, a statutory corporation representing the Crown or another entity representing the Crown.

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 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.

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.

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.

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

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

Identity Agent Certification means the certification set out in Schedule 9, as amended from time to time.

Identity Declarant means a Person providing an Identifier Declaration.

Identity Verifier means the Person conducting a verification of identity in accordance with the Verification of Identity Standard.

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 all the Person's debts, as and when they become due and payable; 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 relevant legislation of the Jurisdiction in which the land the subject of the Conveyancing Transaction is situated.

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

Lodge has the meaning given to it in the ECNL.

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

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

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

Mortgage Broker means an individual who is:

- (a) the holder of an Australian Credit Licence; or

(b) an employee or director of the holder of an Australian Credit Licence or of a related body corporate of a holder of an Australian Credit Licence engaging in the Credit Service on behalf of that licensee; or

(c) a Credit Representative of the holder of an Australian Credit Licence;

who provides a Credit Service which relates to credit secured or to be secured by real property owned or to be owned by the person to whom the Credit Service is provided.

NCCP Act means the National Consumer Credit Protection Act 2009 (Cth).

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, 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 in the Electronic Workspace for the Conveyancing Transaction, but does not include a Representative.

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.

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.

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

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

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

Public Servant means an employee or officer of the Commonwealth, a State or a Territory.

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.

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 means the data supplied in a Registry Information Supply.

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.

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 Registry Instruments and other electronic Documents on behalf of the Subscriber.

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

Subscriber has the meaning given to it in the ECNL.

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

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.

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 registered business 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, 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.

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.

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; and

- (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(b), 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 Participation Rule 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 under the Corporations Act 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 Subscriber Administrators are not and have not been subject to any of the matters listed in (i) to (v) below:
 - (i) an Insolvency Event within the last 5 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 disciplinary action of any government or governmental authority or agency, or any regulatory authority of a financial market or a profession, which may impact on 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 Where the Subscriber is:

- (a) an ADI; or
- (b) an Australian Legal Practitioner or a Law Practice; or

- (c) a Licensed Conveyancer; or
- (d) the Crown in right of the Commonwealth, a State or a Territory; or
- (e) a Public Servant acting on behalf of the Crown in right of the Commonwealth, a State or a Territory; or
- (f) a holder of an Australian Credit Licence,

the Subscriber is deemed to comply with Participation Rule 4.3.1(a).

4.3.3 Where the Subscriber's principal, director, partner, officer or Subscriber Administrator is:

- (a) an officer or employee of an ADI; or
- (b) an Australian Legal Practitioner; or
- (c) a Licensed Conveyancer; or
- (d) a Public Servant acting on behalf of the Crown in right of the Commonwealth, a State or a Territory; or
- (e) a fit and proper Person for the purpose of performing duties in relation to the credit activities authorised by an Australian Credit Licence,

the Subscriber is deemed to comply with Participation Rule 4.3.1(b) for that principal, director, partner, officer or Subscriber Administrator.

Note: For a body corporate registered under the Corporations Act, 'officer' has the meaning given to it in the Corporations Act.

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 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.

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 its personal capacity and in its 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 each of its Users is aware of the terms of these Participation Rules as appropriate to their use of the ELN.

6.1.2 The Subscriber is responsible for all use of the 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 the Subscriber is a Representative, the Subscriber must:

- (a) use the Client Authorisation Form for any Client Authorisation it enters into; and
- (b) except for Caveats and Priority/Settlement Notices, for which a Client Authorisation is optional, enter into a Client Authorisation with its Client before the Subscriber Digitally Signs any Document in the ELN; and
- (c) comply with the Client Authorisation and act in accordance with its terms; and
- (d) take reasonable steps to verify the authority of each Person entering into a Client Authorisation on behalf of a Client to both bind the Client to the Client Authorisation and to the Conveyancing Transaction(s) the subject of the Client Authorisation.

6.4 Right to Deal

- (a) Where the Subscriber is a Representative, for each Conveyancing Transaction the Subscriber must take reasonable steps to verify that its Client is a legal Person and has the right to enter into the Conveyancing Transaction.
- (b) Where the Subscriber is a mortgagee, or the Subscriber represents a mortgagee, for each mortgage the Subscriber must take reasonable steps to verify that the mortgagor is a legal Person and has the right to enter into the mortgage.

6.5 Verification of identity

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

- (a) **Clients:** each Client or each of their Client Agents; and
- (b) **Mortgagors:**

- (i) each mortgagor or each of their agents, where the Subscriber is a mortgagee, and the mortgagor (in its capacity as mortgagor) does not have a Representative; and
 - (ii) each mortgagor or each of their agents, where the Subscriber represents a mortgagee, and the mortgagor (in its capacity as mortgagor) does not have a Representative - however, the Subscriber need not take reasonable steps to verify the identity of each mortgagor or their agent if the Subscriber is reasonably satisfied that the mortgagee has taken reasonable steps to verify the identity of each mortgagor or their agent; and
- (c) **Persons to whom certificates of title are provided:**
- (i) any Client or Client Agent, prior to the Subscriber giving a (duplicate/paper) certificate of title to that Client or Client Agent; and
 - (ii) any existing mortgagor, former mortgagor or their agent, prior to the Subscriber giving a (duplicate/paper) certificate of title to that existing mortgagor, former mortgagor or their agent; and
- (d) **Signers:** each of its Signers, prior to the initial allocation of a Digital Certificate to the Signer; and
- (e) **Subscriber Administrators:** each of its Subscriber Administrators, prior to their appointment as a Subscriber Administrator.

6.5.2 For the purposes of complying with Participation Rule 6.5.1, the Subscriber, or a mortgagee represented by the Subscriber, can either:

- (a) apply the Verification of Identity Standard; or
- (b) verify the identity of a Person in some other way that constitutes the taking of reasonable steps.

6.5.3 The Subscriber, or a mortgagee represented by the Subscriber, must undertake further steps to verify the identity of a Person Being Identified and/or any Identity Declarant where:

- (a) the Subscriber or mortgagee knows or ought reasonably to know that:
 - (i) any identity Document produced by the Person Being Identified and/or any Identity Declarant is not genuine; or
 - (ii) any photograph on an identity Document produced by the Person Being Identified and/or any Identity Declarant is not a reasonable likeness of the Person Being Identified or the Identity Declarant; or

- (iii) the Person Being Identified and/or any Identity Declarant does not appear to be the Person to which the identity Document(s) relate; or
 - (b) it would otherwise be reasonable to do so.
- 6.5.4 The Subscriber need not re-verify the identity of the Person Being Identified if:
- (a) the Subscriber complied with Participation Rule 6.5.1 within the previous 2 years; and
 - (b) the Subscriber takes reasonable steps to ensure that it is dealing with the Person Being Identified.
- 6.5.5 If the Verification of Identity Standard is used:
- (a) the Subscriber, or a mortgagee represented by the Subscriber, may use an Identity Agent; and
 - (b) where an Identity Agent is used, the Subscriber or the mortgagee must direct the Identity Agent to use the Verification of Identity Standard; and
 - (c) the Identity Verifier must be:
 - (i) the Subscriber and/or the Subscriber's Identity Agent; or
 - (ii) where a Subscriber represents a mortgagee, that mortgagee and/or that mortgagee's Identity Agent; and
 - (d) the Subscriber or the mortgagee must receive from any Identity Agent:
 - (i) copies of the Documents produced to verify the identity of the Person Being Identified and/or any Identity Declarant signed, dated and endorsed as a true copy of the original by the Identity Agent; and
 - (ii) an Identity Agent Certification.
- 6.5.6 Subject to Rule 6.5.3, compliance with the Verification of Identity Standard by:
- (a) the Subscriber and/or its Identity Agent; or
 - (b) where the Subscriber represents a mortgagee, that mortgagee and/or that mortgagee's Identity Agent,
- will be deemed to constitute taking reasonable steps for the purposes of Participation Rule 6.5.1.

6.6 Supporting evidence

The Subscriber must retain the evidence supporting an electronic Registry Instrument or other electronic Document for at least seven years from the date of Lodgment of the Registry Instrument or other electronic Document that is registered or recorded including:

- (a) any evidence required by the Duty Authority; and
- (b) any Client Authorisation and any evidence supporting that Client Authorisation; and
- (c) any evidence supporting a Party's right to enter into the Conveyancing Transaction; and
- (d) any evidence supporting verification of identity; and
- (e) any other evidence 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, or the mortgagee's Representative, must:

- (a) ensure that the mortgagor grants a mortgage on the same terms as the mortgage signed by, or on behalf of, the mortgagee; and
- (b) ensure that it holds the mortgage granted by the mortgagor; and
- (c) provide Certification 5 of the Certification Rules.

6.13.2 Where the mortgagee or its Representative signs the mortgage, the mortgagee signs only on its own behalf and not on behalf of the mortgagor.

6.14 Signing of Client Authorisations

Where the Subscriber is a Representative, the Subscriber must take reasonable steps to ensure that any Client Authorisation is signed by the Subscriber's Client or their Client Agent.

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; and
 - (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 within the last 5 years; 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 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 Where a Signer is:

- (a) an Australian Legal Practitioner; or
- (b) a Licensed Conveyancer; or
- (c) a Public Servant acting on behalf of the Crown in right of the Commonwealth, a State or a Territory,

the Subscriber 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.

7.5.4 The Subscriber must ensure that all information provided to any Certification Authority, or to any Registration Authority, or to the ELNO for the purpose of obtaining a Digital Certificate, is correct, complete and not false or misleading.

7.6 (Deleted)

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, where appropriate, 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 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 or Title Activity Check data for a Conveyancing Transaction, except for the purpose of the Conveyancing Transaction 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 the Conveyancing Transaction or where required by law to do so.

12 ADDITIONAL PARTICIPATION RULES

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

SCHEDULE 1 – ADDITIONAL PARTICIPATION RULES

None.

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 retained the evidence supporting 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 Subscriber is reasonably satisfied that the mortgagee it represents,:
 - (a) has taken reasonable steps to verify the identity of the mortgagor; and
 - (b) holds a mortgage granted by the mortgagor on the same terms as this Registry Instrument.

- 6** The Subscriber has:
 - (a) retrieved; and
 - (b) either securely destroyed or made invalidthe (duplicate) certificate(s) of title for the folio(s) of the Register listed in this Registry Instrument or Document.

SCHEDULE 4 – CLIENT AUTHORISATION FORM

CLIENT AUTHORISATION

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

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

Subscriber Reference: _____



CLIENT DETAILS	CLIENT 1	CLIENT 2
NAME	_____	_____
ACN/ARBN	_____	_____
ADDRESS	_____	_____

TRANSACTION DETAILS	AUTHORITY TYPE		
	<input type="checkbox"/> SPECIFIC AUTHORITY <small>(transaction details below)</small>	<input type="checkbox"/> STANDING AUTHORITY <small>ends on revocation or expiration date: ___/___/___</small>	<input type="checkbox"/> BATCH AUTHORITY <small>(attach details)</small>
	CONVEYANCING TRANSACTION(S) 1	CONVEYANCING TRANSACTION(S) 2	
PROPERTY ADDRESS	_____	_____	
LAND TITLE REFERENCE(S) <small>(and/or property description)</small>	_____	_____	
CONVEYANCING TRANSACTION(S)	<input type="checkbox"/> TRANSFER <input type="checkbox"/> MORTGAGE <input type="checkbox"/> CAVEAT <input type="checkbox"/> PRIORITY/ SETTLEMENT NOTICE <input type="checkbox"/> DISCHARGE/ RELEASE OF MORTGAGE <input type="checkbox"/> WITHDRAW CAVEAT <input type="checkbox"/> OTHER	<input type="checkbox"/> TRANSFER <input type="checkbox"/> MORTGAGE <input type="checkbox"/> CAVEAT <input type="checkbox"/> PRIORITY/ SETTLEMENT NOTICE <input type="checkbox"/> DISCHARGE/ RELEASE OF MORTGAGE <input type="checkbox"/> WITHDRAW CAVEAT <input type="checkbox"/> OTHER	
ADDITIONAL INSTRUCTIONS	_____		

CLIENT AUTHORISATION AND SIGNING	CLIENT 1 / CLIENT AGENT 1	CLIENT 2 / CLIENT AGENT 2
	<p>I CERTIFY that:</p> <p>(a) I am the Client or Client Agent; and</p> <p>(b) I have the legal authority to instruct the Subscriber in relation to the Conveyancing Transaction(s); and</p> <p>(c) If I am acting as a Client Agent that I have no notice of the revocation of my authority to act on behalf of the Client.</p> <p>I AUTHORISE the Subscriber to act on my behalf, or where I am a Client Agent to act on behalf of the Client, in accordance with the terms of this Client Authorisation and any Participation Rules and any Prescribed Requirement to:</p> <p>(a) sign Documents on my behalf as required for the Conveyancing Transaction(s); and</p> <p>(b) submit or authorise submission of Documents for lodgment with the relevant Land Registry; and</p> <p>(c) authorise any financial settlement involved in the Conveyancing Transaction(s); and</p> <p>(d) do anything else necessary to complete the Conveyancing Transaction(s).</p>	
	_____ DATE / /	_____ DATE / /
	CLIENT/CLIENT AGENT NAME:	CLIENT/CLIENT AGENT NAME:

SIGN HERE

SIGN HERE

	CAPACITY:	CAPACITY:
SUBSCRIBER DETAILS AND SIGNING	SUBSCRIBER	AGENT (if applicable)
	NAME	
	ACN/ARBN	
	ADDRESS	
<p>I/We CERTIFY that reasonable steps have been taken to ensure that this Client Authorisation was signed by each of the Persons named above as Client or Client Agent.</p> <p>SIGNATURE OF SUBSCRIBER OR AGENT IF APPLICABLE:</p>		
	 _____ DATE / /	 _____ DATE / /
SIGNATORY NAME:	SIGNATORY NAME:	SIGNATORY NAME:
CAPACITY:	CAPACITY:	CAPACITY:

Terms of this Client Authorisation

1 What is Authorised

The Client authorises the Subscriber to act on behalf of the Client in accordance with the terms of this Client Authorisation and any Participation Rules and any Prescribed Requirement to:

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

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

2 Mortgagees

Where:

- (a) the Subscriber represents the Client in the Client's capacity as mortgagee; and
- (b) the Client represents to the Subscriber that the Client has taken reasonable steps to verify the identity of the mortgagor

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.

3 Revocation

This Client Authorisation may be revoked by either the Client or the Subscriber giving notice in writing to the other that they wish to end this Client Authorisation.

4 Privacy and Client Information

The Client acknowledges that information relating to the Client that is required to complete a Conveyancing Transaction, including the Client's Personal Information, may be collected by and disclosed to the Duty Authority, the ELNO, the Land Registry, the Registrar and third parties (who may be located overseas) involved in the completion of the Conveyancing Transaction or the processing of it, and consents to the collection and disclosure of that information to any of those recipients, including to those who are overseas. For further information about the collection and disclosure of your Personal Information, refer to the relevant party's privacy policy.

5 Applicable Law

This Client Authorisation 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.

6 Meaning of Words Used in this Client Authorisation

In this Client Authorisation, capitalised terms have the meaning set out below:

Agent means a Person authorised by a Subscriber to act as the Subscriber's agent. For the avoidance of doubt this can include an Identity Agent.

Australian Legal Practitioner has the meaning given to it in the relevant legislation of the Jurisdiction in which the property is situated and in South Australia is a legal practitioner for the purposes of the *Legal Practitioners Act 1981 (SA)*.

Batch Authority means an authority for the Subscriber to act for the Client in a batch of Conveyancing Transactions details of which are attached to this Client Authorisation.

Capacity means the role of the signatory (for example an attorney or a director of a company).

Caveat means a Document 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 in the Titles Register.

Client means the Person or Persons named in this Client Authorisation.

Client Agent means a Person authorised to act as the Client's agent but does not include the Subscriber acting solely as the Client's Representative.

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

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

Document has the meaning given to it in the ECNL.

Duty Authority means the State Revenue Office of the Jurisdiction in which the property 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.

ELNO means Electronic Lodgment Network Operator and has the meaning given to it in the ECNL.

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

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

Insurance Rules has the meaning given to it in the Participation Rules.

Jurisdiction means an Australian State or Territory.

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

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

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

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

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

Person has the meaning given to it in the ECNL.

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

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

Priority/Settlement Notice means a notice (other than a Caveat) which prevents (subject to specified exceptions) registration or recording in the Titles Register of a Registry Instrument or other Document affecting land or an interest in land until the notice lapses or is withdrawn, removed or cancelled.

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

Registrar has the meaning given to it in the ECNL.

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

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

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

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

Subscriber is the Person named in this Client Authorisation and has the meaning given to it in the ECNL or for a paper Conveyancing Transaction is an Australian Legal Practitioner or a Licensed Conveyancer.

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

Transfer includes the preparation of all documents required to effect a purchase or sale of land or any other transfer of land, and the liaison with, where relevant, any mortgagee or proposed mortgagee.

Withdrawal of Caveat means a Document which removes a Caveat.

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 Subscriber 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 \$20,000; and
- (d) having an annual aggregate amount of not less than \$20,000,000; and
- (e) which includes coverage for Conveyancing Transactions; and
- (f) the terms of which do not limit compliance with Insurance Rules 1.1(a) to (e).

1.2 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 \$20,000; and
- (d) having an annual aggregate amount of not less than \$20,000,000; and
- (e) which provides coverage for third party claims arising from dishonest and fraudulent acts; and
- (f) which includes coverage for Conveyancing Transactions; and
- (g) the terms of which do not limit compliance with Insurance Rules 1.2(a) to (f).

1.3 If a Subscriber does not comply with Insurance Rules 1.1 and 1.2, the 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 \$20,000; and
- (d) having an annual aggregate amount of not less than \$20,000,000; and
- (e) which provides coverage for third party claims arising from dishonest and fraudulent acts; and
- (f) which includes coverage for Conveyancing Transactions; and
- (g) the terms of which do not limit compliance with Insurance Rules 1.3(a) to (f).

- 1.4 A Subscriber 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 1.2.

2 Identity Agent insurance

- 2.1 Each Identity Agent must maintain professional indemnity insurance:

- (a) with an Approved Insurer; and
- (b) for an insured amount of at least \$1.5 million per claim (including legal Costs); and
- (c) having an excess per claim of no greater than \$20,000; and
- (d) having an annual aggregate amount of not less than \$20,000,000; and
- (e) which includes coverage for verification of identity for the purposes of these Participation Rules; and
- (f) the terms of which do not limit compliance with Insurance Rules 2.1(a) to (e).

- 2.2 Each Identity Agent must maintain fidelity insurance:

- (a) with an Approved Insurer; and
- (b) for an insured amount of at least \$1.5 million per claim (including legal Costs); and
- (c) having an excess per claim of no greater than \$20,000; and
- (d) having an annual aggregate amount of not less than \$20,000,000; and
- (e) which provides coverage for third party claims arising from dishonest and fraudulent acts; and
- (f) which includes coverage for verification of identity for the purposes of these Participation Rules; and
- (g) the terms of which do not limit compliance with Insurance Rules 2.2(a) to (f).

- 2.3 If an Identity Agent does not comply with Insurance Rules 2.1 and 2.2, the Identity Agent must maintain professional indemnity insurance:

- (a) with an Approved Insurer; and
- (b) for an insured amount of at least \$1.5 million per claim (including legal Costs); and
- (c) having an excess per claim of no greater than \$20,000; and
- (d) having an annual aggregate amount of not less than \$20,000,000; and
- (e) which provides coverage for third party claims arising from dishonest and fraudulent acts; and

- (f) which includes coverage for verification of identity for the purposes of these Participation Rules; and
- (g) the terms of which do not limit compliance with Insurance Rules 2.3(a) to (f).

2.4 An Identity 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 2.2.

3 Self-insuring Subscribers and Identity Agents

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

- (a) an ADI; or
- (b) the Crown in right of the Commonwealth, a State or a Territory.

4 Deemed compliance with these Insurance Rules

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

- (a) an Australian Legal Practitioner or a Law Practice who holds or is covered by 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 or is covered by 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.

4.2 A Mortgage Broker, when acting as agent of a mortgagee for the purposes of verifying the identity of a mortgagor, is deemed to comply with Insurance Rule 2 if:

- (a) pursuant to legislative requirements, either it holds or is covered by:
 - (i) professional indemnity insurance and fidelity insurance, or
 - (ii) professional indemnity insurance which provides cover for third party claims arising from dishonest and fraudulent acts, and
- (b) that insurance covers the verification of identity.

5 Compliance

The Subscriber or an Identity Agent must comply with any requirements set by its insurer.

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 Fees 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; or
- (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 STANDARD

1 Definitions

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

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.

Application Law 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).

Australian Passport means a passport issued by the Australian Commonwealth 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 the table 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 staff, of an Aboriginal Land Council established under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).

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

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

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

Identifier Declaration means the declaration set out in Verification of Identity Standard paragraph 4. **Identity Declarant** means a Person providing an Identifier Declaration.

Identity Verifier means the Person conducting the verification of identity in accordance with this Verification of Identity Standard.

Individual has the meaning given to it in the ECNL.

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.

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

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

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

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.

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.

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

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

Public Servant means an employee or officer of the Commonwealth, a State or a Territory.

Record has the meaning given to it in the ECNL.

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.

Territory has the meaning given to it in the ECNL.

Verification of Identity Standard means this verification of identity standard, as amended from time to time.

2 Face-to-face regime

2.1 The verification of identity must be conducted during a face-to-face in-person interview between the Identity Verifier and the Person Being Identified.

2.2 Where Documents containing photographs are produced by the Person Being Identified, the Identity Verifier 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 and evidence retention

3.1 At the face-to-face in-person interview described in paragraph 2.1, the Identity Verifier must ensure that the Person Being Identified produces original Documents in one of the Categories in the following table, starting with Category 1.

3.2 The Identity Verifier must be reasonably satisfied that a prior Category cannot be met before using a subsequent Category.

3.3 The Identity Verifier must:

- (a) sight the originals of all Documents from Categories 1, 2, 3, 4, 5 or 6 produced by the Person Being Identified; and
- (b) retain copies of all Documents produced by the Person Being Identified and any Identity Declarant.

3.4 The Documents produced must be current, except for an expired Australian Passport which has not been cancelled and was current within the preceding 2 years.

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

4 The Identifier Declaration

4.1 Where the requirements of:

- (a) Categories 1 to 4 cannot be met, Category 5(a) may be used; and
- (b) Category 5(a) cannot be met, Category 5(b) may be used,

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

4.2 The Identity Verifier must ensure that both the Person Being Identified and the Identity Declarant attend the same face-to-face in-person interview described in paragraph 2.1.

4.3 The Identity Verifier must verify the identity of the Identity Declarant in accordance with this Verification of Identity Standard except that the Identity Verifier cannot utilise Category 5.

4.4 The Identity Verifier must undertake reasonable enquiries to satisfy themselves that the Identity 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(s) the Person Being Identified has or is entering into; and
- (e) where Category 5(b) is used, an Australian Legal Practitioner, a Bank Manager, Community Leader, Court Officer, Doctor, Land Council Officeholder, Licensed Conveyancer, Local Government Officeholder, Nurse, Public Servant or Police Officer.

4.5 The Identity Verifier must ensure that the Identity Declarant provides a Statutory Declaration detailing the following:

- (a) the Identity Declarant's name and address; and
- (b) the Identity Declarant's occupation; and
- (c) the Identity Declarant's date of birth; and
- (d) the nature of the Identity Declarant's relationship with the Person Being Identified; and
- (e) that the Identity Declarant is not a relative of the Person Being Identified; and

- (f) that the Identity Declarant is not a party to the Conveyancing Transaction(s) the Person Being Identified has or is entering into; and
- (g) the length of time that the Identity Declarant has known the Person Being Identified; and
- (h) that to the Identity Declarant's knowledge, information and belief the Person Being Identified is who they purport to be; and
- (i) where Category 5(b) is used, that the Identity Declarant is an Australian Legal Practitioner, a Bank Manager, Community Leader, Court Officer, Doctor, Land Council Officeholder, Licensed Conveyancer, Local Government Officeholder, Nurse, Public Servant or Police Officer.

5 Body Corporate

The Identity Verifier 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 witnessing the affixing of the seal on behalf of the body corporate in accordance with the Verification of Identity Standard.

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

6 Individual as attorney

The Identity Verifier must:

- (a) confirm from the [registered] power of attorney the details of the attorney and the donor; 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 the Verification of Identity Standard.

7 Body Corporate as attorney

The Identity Verifier must:

- (a) confirm from the [registered] power of attorney the details of the attorney and the donor; 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 (Deleted)

9 (Deleted)

10 Further checks

The Identity Verifier must undertake further steps to verify the identity of the Person Being Identified and/or the Identity Declarant where:

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

SCHEDULE 9 – IDENTITY AGENT CERTIFICATION

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

- (a) the identification relates to [full name of the Person Being Identified or the Identity 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 signed, dated and endorsed by me as true copies are attached to this certificate; and
- (d) the verification of identity was conducted in accordance with the Verification of Identity Standard; and
- (e) I witnessed [full name of the Person Being Identified] execute the completed Client Authorisation or grant the mortgage].*”

.....

Date:

.....

Signature of Identity Agent

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

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

*Delete where Identity Agent not requested to witness or is not legally entitled to witness the document.