

Schedule 1 – General Conditions

Version 2.0

Effective: 1 July 2020

1 Prerequisites to operation of the ELN

Note: Operating Requirement 15 and Schedule 3 to the Operating Requirements contain additional provisions which apply in addition to the conditions in this clause.

- (a) Within 20 Business Days after the date of this Approval, the ELNO must:
- (i) enter into an agreement with Revenue NSW governing:
 - (A) the connectivity of the Electronic Lodgment Network (the **ELN**) with Revenue NSW's systems;
 - (B) the contribution of the ELNO to the reasonable costs of Revenue NSW incurred in connection with integrating Revenue NSW's systems with the ELN;
 - (C) the governance and operational management of the relationship between Revenue NSW and the ELNO; and
 - (D) any other terms reasonably required by the Registrar or Revenue NSW (for example in relation to Intellectual Property Rights, liability, privacy, termination and dispute resolution),

(Revenue NSW Terms);
 - (ii) enter into an agreement with the operator of the Land Registry System and Titles Register (the **LRS Operator**) governing:
 - (A) the technical and operational connectivity of the ELN with the Land Registry System (including performance metrics);
 - (B) the payment and collection of fees, and the contribution of the ELNO to the reasonable costs of the LRS Operator incurred in connection with integrating the Land Registry System with the ELN;
 - (C) the governance and operational management of the relationship between the LRS Operator and the ELNO; and
 - (D) any other terms reasonably required by the Registrar or the LRS Operator (for example in relation to Intellectual Property Rights, liability, privacy, termination and dispute resolution),

(LRS Terms);
 - (iii) develop a register of any reasonably foreseeable internal or external events or issues (the **Risks**) arising from the operation of the ELN or the ELNO's compliance with this Approval (the **Risk Register**) that:
 - (A) will enable Risks to be viewed, categorised and reported to the Registrar; and

(B) includes the associated processes, policies, activities, actions or things used to mitigate the Risks,

and submit the draft Risk Register to the Registrar;

(iv) establish the Vendor Guarantee and provide the Registrar with the information required by clause 9.1(c); and

(v) provide the Registrar with an executed copy of the confirmation of acceptance in the form set out in **Schedule 5**,

(the **Prerequisites**).

- (b) If the ELNO and Revenue NSW or the LRS Operator are unable to reach agreement on the Revenue NSW Terms or LRS Terms (as the case may be), the ELNO may refer the dispute to the Registrar for determination under clause 11 by giving written notice to the Registrar.
- (c) The ELNO must not implement a Release of the ELN into production, or otherwise make available any part of the ELN for use by Subscribers, in each case where such Release or availability impacts (or is capable of impacting) the lodgment or registration of any Registry Instrument or other Document, until:
- (i) the Registrar determines that the Prerequisites have been satisfied by the ELNO;
 - (ii) the ELNO has provided the Registrar a copy of the written notice from the LRS Operator to the ELNO confirming that the ELN and the Land Registry System are compatible and able to connect, that Testing is complete, and that the ELNO may commence implementing the Release in accordance with the Change Management Framework, LRS Terms and Revenue NSW Terms;
 - (iii) the ELNO has provided the Registrar a copy of the written notice from Revenue NSW to the ELNO confirming that the ELN and the Revenue NSW systems are compatible and able to connect, that Testing is complete, and that the ELNO may commence implementing the Release in accordance with the Revenue NSW Terms;
 - (iv) the Registrar has notified the ELNO in writing that the ELNO has demonstrated, to the Registrar's satisfaction, the ELNO's full compliance with Category Two of Schedule 3 of the Operating Requirements; and
 - (v) the ELNO has satisfied any other conditions in this Approval required to be satisfied for the purpose of this clause.

2 Suspension, revocation and renewal of this Approval

2.1 Revocation or suspension of this Approval

Note: Operating Requirement 20 contains additional provisions which apply in addition to the conditions in this clause.

- (a) Subject to clause 2.2, where the Registrar wishes to exercise the right to suspend or revoke the ELNO's Approval pursuant to Operating Requirement 20.1, the Registrar must comply with the requirements set out in paragraphs (b), (c) and (d). For the avoidance of doubt, the ELNO must comply with its obligations as described in paragraphs (b), (c) and (d).

- (b) In addition to Operating Requirement 20.1, but subject to paragraph (c), the Registrar may, by notifying the ELNO in writing:
 - (i) suspend (for a period determined by the Registrar) or revoke this Approval if the ELNO fails to comply with a condition of this Approval in a material respect; or
 - (ii) suspend (for a period determined by the Registrar) this Approval if:
 - (A) Revenue NSW terminates the Revenue NSW Terms (in accordance with its terms) due to a breach of the Revenue NSW Terms by the ELNO; or
 - (B) the LRS Operator terminates the LRS Terms (in accordance with its terms) due to a breach of the LRS Terms by the ELNO.
- (c) If the breach or other circumstances giving rise to the relevant ground for suspension or revocation of the ELNO's Approval under Operating Requirement 20.1 are capable of remedy, or if the Registrar otherwise elects, the Registrar may require the ELNO to provide a response under paragraph (d) within the period specified in the Registrar's notice (the **Response Period**), in which case the suspension or revocation (as the case may be) pursuant to Operating Requirement 20.1 will not take effect and the ELNO may continue its operation of the ELN in accordance with this Approval until such time as paragraph (d)(ii) or paragraph (d)(iii)(A) applies.
- (d) If the ELNO receives a notice from the Registrar under paragraph (c):
 - (i) prior to the expiry of the Response Period, the ELNO must provide a written response to the Registrar in relation to the alleged ground for suspension or revocation (as the case may be), which response must (as applicable):
 - (A) demonstrate, with sufficient evidence, to the Registrar's satisfaction, that the breach or other circumstances under paragraph (c) have been remedied;
 - (B) describe the steps (including the steps referred to in paragraph (iv)(B)) the ELNO will take to address the breach or other circumstances under paragraph (c) (the **Remediation Steps**); or
 - (C) explain why the ELNO considers that this Approval should not be suspended or revoked (as the case may be);
 - (ii) if the ELNO does not provide a written response to the Registrar in accordance with paragraph (i), the Registrar may suspend or revoke this Approval (as the case may be) with immediate effect;
 - (iii) after receiving a response from the ELNO under paragraph (i), the Registrar may determine that:
 - (A) this Approval should still be suspended or revoked (as the case may be), including where the Remediation Steps are (in the Registrar's opinion) inadequate, in which case the Registrar may suspend or revoke this Approval (as the case may be); or
 - (B) this Approval should not be suspended or revoked, in which case the suspension or revocation (as the case may be) will not take effect and the ELNO may continue its operation of the ELN in accordance with

this Approval subject to any further action or additional special conditions (if any) imposed by the Registrar,

and in each case the Registrar will:

- (C) have regard to any relevant advice received from ARNECC;
 - (D) notify the ELNO in writing accordingly; and
 - (E) where the Registrar determines that this Approval should still be suspended or revoked, provide the ELNO with written reasons for its determination; and
- (iv) unless the Registrar notifies the ELNO pursuant to paragraph (iii)(B), the ELNO must immediately:
- (A) notify all Subscribers of the suspension or revocation (as the case may be) and the impact on Conveyancing Transactions being conducted via the ELN; and
 - (B) notify the Registrar of the steps the ELNO has taken (or will take) to ensure that any Conveyancing Transactions that are not completed as at the date of such suspension or revocation (as the case may be) will be adequately transitioned or finalised.
- (e) Where this Approval is suspended or revoked by the Registrar:
- (i) the Registrar may require or permit the ELNO to take any action (in addition to any steps notified by the ELNO under clause 2.1(c)(iv)(B)) to ensure that any Conveyancing Transactions that are not completed as at the date of such suspension or revocation (as the case may be) will be adequately transitioned or finalised;
 - (ii) the ELNO must not operate the ELN:
 - (A) except to the extent required to comply with clause 2.1(e)(i); or
 - (B) unless the suspension is lifted or a new Approval is granted by the Registrar (as the case may be); and
 - (iii) the Registrar may publish the decision (including on the Registrar's website).

2.2 Emergency powers of the Registrar

If any event occurs which the Registrar considers materially jeopardises the operation, security, integrity or stability of the ELN, the Land Registry System or the Titles Register:

- (a) the Registrar may give a direction to the ELNO to suspend part or all of the communications between the ELN and the Land Registry System until the event no longer exists, and the Registrar may give such a direction without complying with the requirements set out in clause 2.1 above; and
- (b) the ELNO must:
 - (i) do all things reasonably required by the Registrar to give effect to any such direction; and

- (ii) as soon as it reasonably can, notify all Subscribers of the nature of the Registrar's direction and the impact on Conveyancing Transactions being conducted via the ELN.

2.3 Renewal of Approval

Note: Operating Requirement 15 and Schedule 3 to the Operating Requirements contain additional provisions which apply in addition to the conditions in this clause.

- (a) The ELNO may, at least 12 months prior to the expiry to the term of this Approval, request a renewal of the Approval under section 19 of the ECNL for a further period of 10 years provided that the ELNO continues to meet the Operating Requirements and the provisions of this Approval.
- (b) The Registrar must either grant the renewal of the Approval or provide reasons why the Renewal has not been granted, at least 4 months prior to the expiry of the Approval.
- (c) The Registrar may, in the Registrar's sole discretion, attach conditions to the renewal of the Approval.

3 Competition conditions

3.1 Pricing

- (a) The ELNO may charge ELNO Service Fees in accordance with its pricing policy and this clause 3.
- (b) If the ELNO charges ELNO Service Fees, the ELNO must:
 - (i) for each financial year commencing on 1 July, prepare and publish on its website its Pricing Table for that financial year; and
 - (ii) not charge a fee greater than the amount specified in the published Pricing Table.
- (c) The ELNO may increase the ELNO Service Fees once every year of this Approval on 1 July, provided that the percentage increase in the revised ELNO Service Fees does not exceed the percentage increase in the CPI for the immediately preceding March quarter when compared with the CPI for the March quarter of the previous year, less the Factor, calculated as follows:

$$\text{ELNO Service Fees percentage increase} = \left(\frac{A-B}{B} \right) \times 100\% - \text{Factor}$$

where:

A is the CPI number for the March quarter immediately preceding the 1 July for which the amount is calculated; and

B is the CPI number for the March quarter in the year prior to the March quarter referred to in A,

(the **CPI Cap**).

- (d) The Factor is, for each financial year commencing 1 July, the percentage determined by the Registrar, notified by the Registrar to the ELNO and published

by the Registrar on its website. In determining the Factor, the Registrar must have regard to cost-reflective pricing and the outcomes of:

- (i) the review of pricing regulation of electronic conveyancing conducted by the Independent Pricing and Regulatory Tribunal of New South Wales (**IPART**) as commissioned by the Premier of New South Wales in October 2018; and
 - (ii) any future review conducted by IPART with a similar scope or similar subject matter to that described in paragraph (i).
- (e) Notwithstanding paragraphs (c) and (d), the ELNO may, at any time, request the Registrar's approval, which may not be unreasonably withheld, for proposed changes to its Pricing Table, including in the event:
- (i) of any change to the amount of any insurance premium payable by the ELNO in respect of any insurance policy the ELNO is required to hold under Operating Requirement 4.7.2; or
 - (ii) that a change in any law gives rise to a change in the ELNO's operating costs; or
 - (iii) that additional fees, charges or costs are imposed on the ELNO by the Registrar, Land Registry or any other government agency.
- (f) If the ELNO Service Fees include Information Fees, following a change in Information Fees, the ELNO may re-calculate the ELNO Service Fees and change the Pricing Table to reflect the re-calculated ELNO Service Fees.
- (g) The Pricing Table for any year commencing on 1 July, and any changes to it, must be published at least 20 Business Days, or as soon as reasonably practicable, before the Pricing Table, or the changes to it, take effect.

4 Initial Testing, cooperation, continuous improvement and System Changes

4.1 Initial Testing

Note: Operating Requirements 6 and 13 contain additional provisions which apply in addition to the conditions in this clause.

- (a) The ELNO must test:
- (i) functional requirements (such as correct performance of the business rules, compatibility and connectivity); and
 - (ii) non-functional requirements (such as security, performance, reliability or capacity),

of the ELN and each of the Land Registry System and Revenue NSW's systems, to demonstrate that the ELN is capable of operating in accordance with the terms and conditions in this Approval, the ECNL and the Operating Requirements (the **Initial Testing**) in the circumstances described in Operating Requirement 6.

Such testing comprises the initial testing described in Operating Requirement 6. The ELNO must also perform the Initial Testing as part of the subsequent testing required pursuant to the Change Management Framework and Operating Requirement 13.

- (b) At least 10 Business Days before the ELNO, Revenue NSW and/or the LRS Operator performs any Initial Testing, the ELNO must provide the Registrar with a document (or set of documents) developed with and agreed by Revenue NSW and the LRS Operator in accordance with this clause 4.1, describing the nature of the Initial Testing and the dates the Initial Testing will take place (the **Registry/Revenue Test Plan**).
- (c) The Registry/Revenue Test Plan must be sufficient to apply to any functional requirements and non-functional requirements of the ELN, any part of the Land Registry System, or any system of Revenue NSW which integrates or connects with the ELN, including system interface changes and patches (each a **Release**), and include the following:
 - (i) the scope of the Initial Testing and key risks, issues and deliverables;
 - (ii) the approach to the Initial Testing, including the phases of Initial Testing (for example, regression testing, integration testing and user acceptance testing);
 - (iii) the timelines and schedule for the Initial Testing;
 - (iv) the roles and responsibilities of the ELNO, Revenue NSW and the LRS Operator in relation to the Initial Testing (including required resources and tools);
 - (v) the management and correction of defects by the ELNO, Revenue NSW and the LRS Operator following the Initial Testing;
 - (vi) the entry and exit criteria for each phase of the Initial Testing;
 - (vii) a description of the requirements, approach and use of environments and data throughout all phases of the Initial Testing;
 - (viii) the user scenarios describing each applicable business and system processes the subject of the Initial Testing, and expected results;
 - (ix) a traceability matrix and test scripts for the Initial Testing; and
 - (x) the details of applicable sign off and acceptance points, including estimated timelines for submission by the ELNO, Revenue NSW and the LRS Operator of any document contemplated by the Registry/Revenue Test Plan requiring approval by the other party.
- (d) If the Registrar notifies the ELNO of any comments on the Registry/Revenue Test Plan prior to the scheduled date of any Initial Testing notified under paragraph (b), the ELNO must agree with Revenue NSW and/or the LRS Operator (as applicable) any necessary amendments to the Registry/Revenue Test Plan to reflect the Registrar's comments, and resubmit the Registry/Revenue Test Plan to the Registrar.
- (e) No Initial Testing can commence without a Registry/Revenue Test Plan being agreed between the ELNO, Revenue NSW and the LRS Operator and notified to the Registrar in accordance with paragraph (b) or (where applicable) paragraph (d), and all Initial Testing must be completed in accordance with such Registry/Revenue Test Plan.
- (f) Promptly following any Initial Testing, the ELNO must provide to the Registrar a copy of the reports from the Initial Testing demonstrating whether or not:

- (i) the ELN is compatible with and able to connect to each of the Land Registry System and Revenue NSW's systems; and
 - (ii) the Release results in any non-functional issues for the ELN, the Land Registry System, or Revenue NSW's systems, such as reduced security, performance, reliability or capacity.
- (g) If any Initial Testing demonstrates that:
- (i) the ELN is not compatible or able to connect with either the Land Registry System or Revenue NSW's systems; and/or
 - (ii) the Release results in any non-functional issues for the ELN, the Land Registry System, or Revenue NSW's systems,
- (in each case, in the reasonable opinion of the ELNO, the LRS Operator, Revenue NSW and/or the Registrar), the ELNO must work with the LRS Operator and/or Revenue NSW (as applicable) to:
- (iii) make the necessary amendments to the ELN, Revenue NSW's systems and/or the Land Registry System (as the case may be);
 - (iv) recommence Initial Testing in accordance with the Registry/Revenue Test Plan notified to the Registrar in accordance with paragraph (b) or (where applicable) paragraph (d); and
 - (v) repeat this process until (as applicable):
 - (A) the ELN, Revenue NSW's systems and the Land Registry System are compatible and able to connect; and/or
 - (B) all non-functional issues for the ELN, the Land Registry System, or Revenue NSW's systems (as applicable) have been addressed.

4.2 Cooperation

Note: Operating Requirement 5.3(k) contains additional provisions which apply in addition to the conditions in this clause.

- (a) The ELNO must co-operate with the Registrar, the LRS Operator and Revenue NSW in connection with maintaining the integrity of the Land Registry System and Titles Register and the collection of duties, by providing such assistance and/or information as is both reasonable and necessary in the circumstances.
- (b) The ELNO acknowledges that due to the interaction between the ELN and the Land Registry System or with Revenue NSW:
 - (i) if a problem occurs, a situation may arise where it is difficult to identify whether the problem exists in the ELN or in the Land Registry System or with Revenue NSW; and
 - (ii) if required by the Registrar or the LRS Operator, or Revenue NSW, as applicable, the ELNO:
 - (A) must engage in good faith in a multi-supplier discussion to determine the cause of the problem and the course of action to resolve the problem; and

- (B) may request the Registrar to participate in, facilitate or observe this multi-supplier discussion.

4.3 Registrar Testing

Note: Operating Requirements 5.3(k), 6, 7.11, 7.12, 10.4 and 13 and Schedule 3 to the Operating Requirements contain additional provisions which apply in addition to the conditions in this clause.

- (a) Subject to paragraph (b), the ELNO must to the extent reasonably required by the Registrar, test and evaluate the performance and effectiveness of the ELN and/or allow any nominated State Service Provider to conduct such testing and evaluation (the **Registrar Testing**), which may include performing security testing such as vulnerability testing, penetration testing, manual configuration tests and reviews, self-assurance testing and other vulnerability and threat assessment testing.
- (b) The Registrar may not require the ELNO to conduct the Registrar Testing more than once in each year during the term of this Approval, except where the Registrar reasonably believes that an incident or issue has arisen in connection with the performance, effectiveness or security of the ELN.
- (c) The ELNO must:
 - (i) cooperate in good faith with, and provide reasonable access to, the Registrar and any nominated State Service Provider;
 - (ii) provide such other assistance to the Registrar and any State Service Provider as is reasonably requested by the Registrar from time to time; and
 - (iii) notify the Registrar of the ELNO's (and its contractors') reasonable IT, security and workplace health and safety requirements,to enable the Registrar Testing to be performed.
- (d) The ELNO must provide the Registrar and any nominated State Service Provider with all test plans and test results for the Registrar Testing. For clarity, this obligation will not apply to the extent that the State Service Provider itself produces the relevant test plans or obtains the relevant test results.
- (e) If, in the Registrar's opinion,
 - (i) SOC 2 reports for the ELNO provided by the ELNO to the Registrar; or
 - (ii) other independent reports for the ELNO,satisfy some or all of the testing and evaluation requirements imposed by the Registrar under paragraphs (a) and (c), then the Registrar will accept those reports as fulfilment of the relevant requirements to the extent that they satisfy the requirements. If the Registrar so accepts those reports, the ELNO must promptly provide the Registrar with a copy of such reports on an annual basis.

4.4 System Changes

Note: Operating Requirement 13 contains additional provisions which apply in addition to the conditions in this clause.

- (a) If the ELNO intends to make a change to the ELN or any other system or interface which may:

- (i) have an impact on any of Revenue NSW's systems, the Land Registry System or any interface or other system of the LRS Operator or require any change to such system; or
- (ii) require a change to any business activity of Revenue NSW or the LRS Operator,

(an **ELN System Change**), the ELNO must:

- (iii) provide the Registrar, Revenue NSW (where the ELN System Change interfaces with or affects any of Revenue NSW's systems) and/or the LRS Operator (where the ELN System Change interfaces with or affects the Land Registry System or any interface or other system of the LRS Operator) at least 3 months (or such shorter period as agreed by the Registrar) prior written notice of the ELN System Change before it is implemented;
- (iv) consult with the Registrar, Revenue NSW (where the ELN System Change interfaces with or affects any of Revenue NSW's systems) and/or the LRS Operator (where the ELN System Change interfaces with or affects the Land Registry System or any interface or other system of the LRS Operator) with regard to the ELN System Change, including the way it will be implemented, its impact, and the reasons it is considered necessary;
- (v) provide the Registrar with a copy of any agreements made with Revenue NSW (where the ELN System Change interfaces with or affects any of Revenue NSW's systems) and/or the LRS Operator (where the ELN System Change interfaces with or affects the Land Registry System or any interface or other system of the LRS Operator) in relation to the ELN System Change;
- (vi) accommodate any adjustments to the way the ELN System Change will be implemented, or other requirements relating to the implementation of the ELN System Change, that are proposed by the Registrar, Revenue NSW (where the ELN System Change interfaces with or affects any of Revenue NSW's systems) and/or the LRS Operator (where the ELN System Change interfaces with or affects the Land Registry System or any interface or other system of the LRS Operator) in order to avoid any negative impact on the end-to-end service provision to users of the ELN, Revenue NSW's systems, and Land Registry System; and
- (vii) once adjusted pursuant to paragraph (vi), implement the ELN System Change (including in accordance with any requirements referred to in paragraph (vi)) in accordance with the agreed schedule, at its own cost.

(b) If the ELNO receives a written notice from:

- (i) the LRS Operator describing a change to the Land Registry System or any other system or interface of the LRS Operator that is involved in or affects the ELN or any interface or other system of the ELNO; or
- (ii) Revenue NSW describing a change to any Revenue NSW system or interface that is involved in or affects the ELN or any interface or other system of the ELNO,

(each an **LRS / Revenue System Change**), the ELNO must:

- (iii) consult with the Registrar, Revenue NSW (where the LRS / Revenue System Change interfaces with or affects any of Revenue NSW's systems) and/or the LRS Operator (where the LRS / Revenue System Change interfaces with or affects the Land Registry System or any interface or other

system of the LRS Operator) with regard to the LRS / Revenue System Change, including the way it will be implemented, its impact, and the reasons it is considered necessary;

- (iv) provide the Registrar with a copy of any agreements made with Revenue NSW (where the LRS / Revenue System Change interfaces with or affects any of Revenue NSW's systems) and/or the LRS Operator (where the LRS / Revenue System Change interfaces with or affects the Land Registry System or any interface or other system of the LRS Operator) in relation to the LRS / Revenue System Change;
 - (v) accommodate any adjustments to the way the LRS / Revenue System Change will be implemented, or other requirements relating to the implementation of the LRS / Revenue System Change, that are proposed by the Registrar, Revenue NSW (where the LRS / Revenue System Change interfaces with or affects any of Revenue NSW's systems) or the LRS Operator (where the LRS / Revenue System Change interfaces with or affects the Land Registry System or any interface or other system of the LRS Operator) in order to avoid any negative impact on the end-to-end service provision to users of the ELN, Revenue NSW's systems, and the Land Registry System; and
 - (vi) make any changes to the ELN and any of its other interfaces and systems as required in respect of the LRS / Revenue System Change (and in accordance with any requirements referred to in paragraph (v)) in accordance with the agreed schedule, at its own cost.
- (c) The ELNO acknowledges that the procedure for implementing and testing system changes in accordance with this clause shall form part of the Change Management Framework established and maintained pursuant to clause 13 of the Operating Requirements.

4.5 Continuous improvement

The ELNO must continuously improve the provision of services to support the conduct of Conveyancing Transactions to Subscribers and to support the wider land titles and conveyancing industry, including the operation and maintenance of the ELN, Land Registry System and Titles Register (as applicable) in consultation with the Registrar, the LRS Operator and industry.

4.6 Data standards

- (a) The ELNO acknowledges that the Data Standard specified by the Registrar for the purposes of the Operating Requirements as at the date of this Approval is the National Electronic Conveyancing Data Standards (or NECDS), as amended from time to time.
- (b) The Registrar may nominate a new Data Standard at any time by notice in writing to the ELNO in accordance with Operating Requirement 10.3. For the avoidance of doubt, if a new Data Standard is nominated by the Registrar, any reference to the NECDS in this Approval is taken to be to the new Data Standard.

5 Service Levels, governance and reporting

5.1 Service Levels

Note: Operating Requirement 11 and Schedule 2 to the Operating Requirements contain additional provisions which apply in addition to the conditions in this clause.

- (a) The ELNO must report on its performance against the service levels set out in **Schedule 3 (the Service Levels)** as described in clause 5.3.
- (b) From time to time, the Registrar may consider imposing additional service levels or varying the existing Service Levels and to assist the Registrar in that process, the ELNO must provide to the Registrar such performance, business and industry data to which the ELNO has access and which the Registrar reasonably requests it provide.
- (c) Where the ELNO fails to meet a particular Service Level for three (3) consecutive months, upon request by the Registrar, the ELNO must conduct a Root Cause Analysis to determine the root cause of the failure to meet the relevant Service Level (including any fault, issue or failure affecting the ELN, or any interworking problem between the ELN and the Land Registry System or Revenue NSW's systems) and provide a copy of the results of the Root Cause Analysis to the Registrar.
- (d) The Registrar may publicly report, including by publishing on its website:
 - (i) the ELNO's performance against the Service Levels, including as reported under clause 5.3(b)(i), and other similar performance-related information in relation to this Approval;
 - (ii) the ELNO's performance against the Performance Levels set out in the Operating Requirements, including as reported under clause 5.3(b)(ii);
 - (iii) the outcomes of any Root Cause Analysis requested under paragraph (c); and
 - (iv) such other information that the Registrar considers reasonably necessary to report publicly in connection with this Approval.

5.2 Governance Meetings

The ELNO must:

- (a) within one week after the date of this Approval, appoint two (2) representatives to attend a monthly governance meeting with the Registrar to review and discuss:
 - (i) each of the items referred to in clause 5.3, having reference to the reports provided by the ELNO; and
 - (ii) any other issues relating to the ELN and the ELNO's compliance with, and performance of its obligations under, this Approval, the ECNL and the Operating Requirements,
 (each a **Governance Meeting**);
- (b) promptly notify the Registrar of the ELNO's appointed representatives and any replacement of its representatives from time to time;
- (c) ensure its representatives and, where technology issues are to be addressed at a Governance Meeting, at least one of the ELNO's technology experts attend each Governance Meeting at the location notified in writing by the Registrar; and
- (d) ensure its representatives and the ELNO's technology experts are of sufficient seniority and have appropriate authority and adequate knowledge with regard to the matters to be addressed at each Governance Meeting.

5.3 Reporting

Note: Operating Requirements 5.3(j), 5.3(k), 7.9, 7.10, 7.11, 7.12, 9 and 18 contain additional provisions which apply in addition to the conditions in this clause.

- (a) Without limiting any reporting required under this Approval in relation to the Service Levels, the ELNO must provide a report to the Registrar following any problem or incident affecting the security, integrity or performance of the ELN (including any security incidents of the kind referred to in Operating Requirement 7), promptly (and in any event within one (1) Business Day) following any such problem or incident, which report must also include any available Root Cause Analysis in respect of the problem or incident.
- (b) At least five (5) Business Days prior to each Governance Meeting, the ELNO must provide the Registrar with a report in the form approved by the Registrar covering:
 - (i) the ELNO's performance against the Service Levels during the immediately preceding calendar month (the **Reporting Month**);
 - (ii) the ELNO's performance against the Performance Levels during the Reporting Month (including the details in the latest Monthly Report required under Operating Requirement 18.1);
 - (iii) User numbers and Subscriber uptake statistics for the Reporting Month and updated total User and Subscriber statistics;
 - (iv) the number of claims on the Vendor Guarantee in the Reporting Month;
 - (v) a list of all unscheduled system outages affecting the ELN that occurred during the Reporting Month, and in respect of each such outage:
 - (A) the root cause, including whether each such outage was (in the ELNO's opinion) caused by the LRS Operator or an outage of the LRS Operator's other systems, Revenue NSW or an outage of Revenue NSW systems, or the ELNO or an outage of its systems;
 - (B) the results of any Root Cause Analysis in respect of the outage; and
 - (C) the actions being taken by the ELNO to prevent re-occurrence of such outages, including in accordance with any Remedial Plan required under clause 5.6;
 - (vi) a list of all planned system outages affecting the ELN for the forthcoming month, and confirmation that the ELNO has notified the Registrar, Revenue NSW, the LRS Operator, Subscribers and other affected parties; and
 - (vii) a list of all security incidents that have affected the ELNO's ELN during the Reporting Month (including any security incidents of the kind referred to in Operating Requirement 7) and (in respect of each such security incident) the steps the ELNO has taken to:
 - (A) notify affected Subscribers, the Registrar and other ELNOs (if any) of the security incident; and
 - (B) prevent similar security incidents occurring in future,together with the results of any Root Cause Analysis under clause 5.5.

- (c) The obligation to provide reporting set out in paragraph (b) can only be satisfied by the ELNO providing the data in respect of New South Wales specifically. If the ELNO wishes to provide data on a national basis rather than data that relates to New South Wales only, the ELNO may make a written request to the Registrar and must include its rationale for making the request, and the Registrar will consider the request in its discretion.
- (d) At least five (5) Business Days prior to each Governance Meeting occurring in March, June, September and December, the ELNO must provide the Registrar with a report in the form approved by the Registrar covering:
 - (i) an update on the current and emerging Risks affecting the ELN, including an update of the Risk Register reflecting those Risks; and
 - (ii) an update on customer experience for the Subscribers and Users, including any initiatives the ELNO has taken in respect of customer experience (such as establishing a dedicated help line for Subscribers in the State of NSW).

5.4 Interconnection Committee

The ELNO must:

- (a) within 30 days after the date of this Approval, appoint two (2) representatives to participate in a committee with the LRS Operator, which must meet once each calendar quarter to:
 - (i) monitor, review and manage the interactions between the ELN and the Land Registry System (as well as any other systems of the ELNO and the LRS Operator), including the day-to-day interactions of such systems and the end-to-end service provision to users of the ELN and the Land Registry System;
 - (ii) address any issues arising from the interactions of such systems on the provision of services to users of the ELN, including by developing and implementing remedial plans; and
 - (iii) consult on and effect improvements to users' end-to-end experience of the ELN, including through changes to systems of the ELNO or the LRS Operator, or to the interactions between such systems,

(the **Interconnection Committee**);
- (b) promptly notify the Registrar of the ELNO's appointed representatives and any replacement of the representatives by notice to the other;
- (c) ensure its representatives attend each Interconnection Committee meeting;
- (d) ensure its representatives are of sufficient seniority and have appropriate authority and adequate knowledge with regard to the matters to be addressed by the Interconnection Committee;
- (e) promptly notify the Registrar in writing of any matter which the Interconnection Committee is unable to resolve;
- (f) if requested by the Registrar, allow the Registrar (or one or more representatives of the Registrar) to attend the Interconnection Committee; and

- (g) cooperate with any consultation conducted by the Registrar with the Interconnection Committee and comply with any instruction the Registrar gives to the Interconnection Committee on the appropriate resolution of the matter.

5.5 Root Cause Analysis

- (a) If the ELNO and the LRS Operator are unable to determine or agree the cause of any RCA Issue, the ELNO may provide written notice to the Registrar electing that the ELNO and the LRS Operator conduct Root Cause Analysis. The ELNO must then work with the LRS Operator to conduct such Root Cause Analysis, the costs of which will be shared between the ELNO and the LRS Operator equally.
- (b) If:
 - (i) the Registrar has received complaints from customers, or complaints from industry bodies on customers' behalf, with respect to any aspect of the ELN;
 - (ii) the performance of the ELN does not comply with any applicable standard or performance metric under this Approval, the ECNL or the Operating Requirements (including where the Root Cause Analysis is required under clause 5.1(c)); or
 - (iii) the Registrar otherwise has reasonable grounds to request Root Cause Analysis (including following the Registrar's receipt of a notice from the ELNO under paragraph (a)),

and the Registrar, acting reasonably, has provided a written notice to the ELNO requesting that Root Cause Analysis be undertaken in respect of any RCA Issue, the ELNO must within the period specified by the Registrar in the Registrar's notice:

- (iv) work with the LRS Operator to complete the Root Cause Analysis; and
- (v) deliver to the Registrar a written report agreed with the LRS Operator, identifying the root cause(s) in the form reasonably specified or approved by the Registrar from time to time (**RCA Report**).
- (c) If the ELNO is unable to complete the Root Cause Analysis or agree the RCA Report with the LRS Operator, the ELNO must:
 - (i) permit the Registrar to appoint a technical expert to complete such Root Cause Analysis and prepare the RCA Report; and
 - (ii) promptly pay half of the costs of such technical expert (subject to the Registrar providing a copy of the expert's invoice).
- (d) Without limiting clause 6.2, the ELNO acknowledges that the Registrar may publish the RCA report and any other information in relation to an RCA Issue.
- (e) Any Root Cause Analysis must include, without limitation:
 - (i) preparing a timeline of key events leading to the RCA Issue; and
 - (ii) identifying corrective action; and considering whether the RCA Issue would have occurred had that action been taken.

5.6 Remedial Plans

Once a Root Cause Analysis has been completed under clause 5.5:

- (a) the ELNO must within 10 Business Days following completion of the Root Cause Analysis:
 - (i) develop and agree with the LRS Operator a remedial plan describing the actions and schedule dates for the ELNO and /or the LRS Operator to correct the root cause(s) of the RCA Issue (the **Remedial Plan**); and
 - (ii) submit the Remedial Plan to the Registrar for approval;
- (b) if the Registrar notifies the ELNO of any comments on the Remedial Plan prior to the scheduled date of any remediation work notified under paragraph (a), the ELNO must agree with the LRS Operator any necessary amendments to the Remedial Plan to reflect the Registrar's comments, and resubmit the Remedial Plan to the Registrar for approval;
- (c) if the ELNO is unable to agree the Remedial Plan with the LRS Operator, the ELNO must:
 - (i) permit the Registrar to appoint a technical expert to develop the Remedial Plan; and
 - (ii) promptly pay half of the costs of such technical expert (subject to the Registrar providing a copy of the expert's invoice); and
- (d) once approved by the Registrar, the ELNO must:
 - (i) work together with the LRS Operator to promptly implement the Remedial Plan;
 - (ii) upon request, advise the Registrar of the status of such implementation;
 - (iii) notify the Registrar as soon as the Remedial Plan has been implemented, and confirm whether the root cause(s) of the RCA Issue have been corrected; and
 - (iv) if, following implementation of the Remedial Plan, the root cause(s) of the RCA Issue have not been corrected, develop a new remedial plan with the LRS Operator (in which case the process in this clause 5.6 will start again, and will continue until the root cause(s) of the RCA Issue have been corrected).

6 Compliance and observation

6.1 General

The ELNO must:

- (a) comply with this Approval, the ECNL, the Operating Requirements, the Revenue NSW Terms and the LRS Terms;
- (b) comply with all applicable laws in undertaking the activities permitted by this Approval; and
- (c) immediately notify the Registrar in writing if the ELNO becomes aware that it has failed to comply with, or may no longer be able to comply with, this Approval, the ECNL, the Operating Requirements, the Revenue NSW Terms or the LRS Terms.

6.2 Publicity

Note: Operating Requirement 5.3(j) contains additional provisions which apply in addition to the conditions in this clause.

- (a) The ELNO must give the Registrar prior written notice of any public statement about this Approval or its subject matter, or any other matter which may or is reasonably likely to affect the Registrar, and must have due regard to any comments made by the Registrar.
- (b) Paragraph (a) does not apply to any disclosures or announcements:
 - (i) in relation to the ELN or the performance of this Approval, in training, educating and making offers to Subscribers;
 - (ii) to enable consultation with the public regarding the ELN; or
 - (iii) if required by law or the rules or regulations of any recognised public securities exchange upon which its securities are listed or legally binding order of any court or government agency, provided that the ELNO promptly notifies the Registrar of the disclosure.
- (c) The ELNO:
 - (i) acknowledges that the Registrar may make any public statement, or publish any materials, in connection with this Approval; and
 - (ii) must cooperate with the Registrar in relation to any public statement the Registrar wishes to make or any materials the Registrar wishes to publish, in connection with this Approval.
- (d) The ELNO must:
 - (i) comply with the media and notifications protocol agreed between the ELNO and any of ARNECC, the Registrar, Revenue NSW and/or the LRS Operator, as amended from time to time; and
 - (ii) consult with the Registrar, ARNECC, Revenue NSW and the LRS Operator from time to time as reasonably required by the Registrar, ARNECC, Revenue NSW or the LRS Operator (as the case may be) to develop and maintain such media and notifications protocol.

6.3 Privacy

In relation to its handling of Personal Information (including the collection, use, disclosure and security of Personal Information), the ELNO must:

- (a) comply with:
 - (i) all applicable Privacy Laws, and must comply with the *Privacy Act 1988* (Cth) as though the ELNO were an “organisation” subject to that Act; and
 - (ii) in respect of Personal Information that is contained in, or generated from, the ELN, the *Privacy and Personal Information Protection Act 1998* (NSW) and *Privacy and Personal Information Protection Regulation 2005* (NSW) as if the ELNO were a “public sector agency”,
- (the **Privacy Legislation**);

- (b) not do anything which if done by the Registrar would be a breach of the Privacy Legislation; and
- (c) comply with any and all directions given by the Registrar in order for the Registrar to comply with the Registrar's obligations under the Privacy Legislation.

6.4 Investigating Conveyancing Transactions

The ELNO must:

- (a) carry out any audit or investigation of Conveyancing Transactions in accordance with any requirements notified by the Registrar from time to time;
- (b) immediately notify the Registrar of the outcome of such audit or investigation following its completion;
- (c) not store, use, reproduce or disclose any Land Information or other information obtained in connection with such audit or investigation, except for the purpose of carrying out such audit or investigation or as otherwise directed by the Regulator; and
- (d) ensure that any Personal Information obtained from the Registrar or any other person in relation to such audit and investigation is handled in accordance with clause 6.3.

6.5 Disaster recovery

Note: Operating Requirement 12 contains additional provisions which apply in addition to the conditions in this clause.

The ELNO must:

- (a) develop and implement policies, procedures and processes to recover and continue to operate the ELN following a disaster; and
- (b) upon request, promptly provide the Registrar with a copy of such policies, procedures and processes, as well as its Business Continuity and Disaster Recovery Management Program.

6.6 Observation

Note: Operating Requirement 15.5 contains additional provisions which apply in addition to the conditions in this clause.

If the Registrar, acting reasonably, identifies an area of concern in connection with the operation of the ELN or the performance of any of the ELNO's obligations under this Approval, the ECNL or the Operating Requirements, the ELNO must, on at least 5 Business Days' notice from the Registrar, provide the Registrar with:

- (a) access to any Personnel of the ELNO involved with the ELN or the performance of the ELNO's obligations under this Approval, the ECNL or the Operating Requirements;
- (b) access to the locations from which the ELNO and its contractors performs its obligations under this Approval, the ECNL or the Operating Requirements;
- (c) copies of any practices and procedures of the ELNO and its contractors relating to the ELN, this Approval, the ECNL or the Operating Requirements;

- (d) copies of any other resources used by the ELNO or its contractors in connection with the performance of the ELN, this Approval, the ECNL or the Operating Requirements; and
- (e) access to such other things as the Registrar may from time to time wish to access in connection with this Approval,

to enable the Registrar to understand and observe the operation of the ELN and/or the performance of the ELNO's obligations under this Approval, the ECNL or the Operating Requirements.

6.7 Registry Instruments and Document Formats

Following a change to a Registry Instrument or Document Format approved by the Registrar in accordance with the Change Management Framework, the ELNO must continue to support the lodgment of the prior version of that Registry Instrument or Document Format (as the case may be) for six months (or such other period agreed between the Registrar, the ELNO and the LRS Operator), following the effective date of the implementation of that new Registry Instrument or Document Format (as applicable).

6.8 LRS Terms and Revenue NSW Terms

The ELNO must ensure that the LRS Terms and the Revenue NSW Terms remain in effect at all times during the term of this Approval, except where the ELNO's failure to do so is not a result of the ELNO's breach of the LRS Terms or the Revenue NSW Terms (as applicable).

7 Document Formats and ELNO Materials

- (a) Operating Requirement 19.5 applies to the Document Formats and Business Rules as if each reference to "Land Information" in that clause was a reference to the Document Formats and Business Rules.
- (b) Without limiting Operating Requirement 19.5:
 - (i) the Document Formats and the Business Rules are owned by the State of NSW; and
 - (ii) all Intellectual Property Rights in the materials provided by the ELNO to the Registrar via the ELN (excluding any Land Information and other Intellectual Property Rights owned by the Registrar, the State of NSW, the LRS Operator, or any of their other licensors) (the **ELNO Materials**) are and will be owned by the ELNO or its licensors.
- (c) The Registrar grants the ELNO a limited, non-exclusive, non-transferable licence:
 - (i) to use the Document Formats, Business Rules and Land Information solely for the purpose of creating electronic Registry Instruments and lodging them with the LRS Operator, and otherwise performing its obligations under this Approval, the ECNL and the Operating Requirements; and
 - (ii) to make copies of the Document Formats and Business Rules solely for backup, statutory retention, training, testing, and audit purposes.
- (d) Neither the licence granted under paragraph (c), nor any part of the Intellectual Property Rights in the Document Formats, Business Rules and Land Information, may be assigned, transferred or sub-licensed by the ELNO without the prior written consent of the Registrar.

- (e) The ELNO grants the Registrar a worldwide, perpetual, irrevocable, non-exclusive licence to copy, use and modify the ELNO Materials for the purpose of:
 - (i) registering electronic Registry Instruments, operating the Land Registry System and Titles Register and overseeing the operation of the Land Registry System and Titles Register;
 - (ii) performing the Registrar's obligations (and managing the ELNO's performance of the ELNO's obligations) under this Approval, the ECNL and the Operating Requirements; and
 - (iii) otherwise performing governmental functions in relation to the ELN, the Land Registry System and Titles Register, and other property or rights-related registers that the State of NSW may from time to time maintain.
 - (f) The Registrar may sublicense its rights under paragraph (e) to any third party, including the LRS Operator, in furtherance of the purposes specified in paragraph (e). However, this does not extend to the commercial exploitation of the ELNO Materials by any such third party for their own benefit independently of these purposes.
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8 Development of Value Added Services

- (a) The ELNO may seek to develop products and services in addition to the core function of facilitating Conveyancing Transactions (the **Value Added Services**).
- (b) Where a Value Added Service utilises Land Information, the ELNO must provide the Registrar with any information concerning such Value Added Service reasonably required by the Registrar, obtain the Registrar's approval under Operating Requirement 19.3 and ensure that the Value Added Service:
 - (i) does not infringe the rights (including Intellectual Property Rights) of:
 - (A) the Registrar or the State of NSW; or
 - (B) the LRS Operator, in relation to its operation of the Land Registry System and Titles Register and performance of related functions previously performed by Land and Property Information NSW pursuant to the *Land and Property Information NSW (Authorised Transaction) Act 2016* (NSW);
 - (ii) does not bring the Registrar or the State of NSW into disrepute;
 - (iii) does not diminish the overall safety, security and integrity of the Titles Register or public confidence in the Titles Register;
 - (iv) is administered in accordance with the Privacy Laws and Privacy Legislation; and
 - (v) does not breach the prohibition on engaging in legal practice by unqualified entities pursuant to section 10 of the *Legal Profession Uniform Law* (NSW).
- (c) In respect of any approval sought by the ELNO under Operating Requirement 19.3, the ELNO must notify the Registrar:
 - (i) whether or not any information provided to the Registrar in connection with any proposed Value Added Service is confidential information of the ELNO; and

- (ii) the extent to which any such confidential information may be disclosed by the Registrar to the LRS Operator for the purpose of the Registrar considering the matters referred to in Operating Requirement 19.3 and this clause 8.
- (d) As soon as practicable following its receipt of the ELNO's proposal for Value Added Services, the Registrar will review the proposal and notify the ELNO:
 - (i) that the proposed Value Added Service is acceptable, either unconditionally or subject to any terms or conditions;
 - (ii) of the details of any alterations required by the Registrar in order to satisfy Operating Requirement 19.3, following which the ELNO may resubmit the proposed Value Added Services to the Registrar for approval; or
 - (iii) that it rejects the proposed Value Added Service, in which case it will provide reasons,

and the Registrar will not be acting unreasonably if, in exercising its rights under this clause 8, it takes into account the Registrar's rights and obligations in relation to the LRS Operator's operation of the Land Registry System and Titles Register on an exclusive basis pursuant to the *Land and Property Information NSW (Authorised Transaction) Act 2016* (NSW).

- (e) The Registrar may revoke the approval of a Value Added Service if the ELNO fails to comply with a condition of the approval and the ELNO must promptly cease that Value Added Service.
- (f) Nothing in this clause limits the ELNO's obligations under any Operating Requirements that requires the ELNO to establish a Related Entity or establish an ELN business unit that is separate from a Downstream or Upstream Service business unit or that otherwise deals with subject matter that is similar or corresponding to that contained in such Operating Requirements.

9 Liability and indemnity

9.1 Vendor Guarantee against fraud

- (a) The ELNO must provide a guarantee which:
 - (i) applies for the benefit of the vendor in a Conveyancing Transaction for the sale of residential property;
 - (ii) protects such vendor(s) against any fraudulent activity that is carried out by any person other than the Subscriber via the ELN, affecting the settlement of the Conveyancing Transaction;
 - (iii) compensates such vendor(s) for any reasonable losses suffered, including:
 - (A) amounts unlawfully obtained by a third party and not recovered;
 - (B) interest; and
 - (C) other reasonable fees and expenses incurred by such vendor(s) as a result of their failure to settle on the purchase of another residential property;
 - (iv) may include a reasonable cap on the ELNO's liability; and

- (v) does not impose any unreasonable constraints, requirements or processing timeframes in relation to claims made by vendors,
- (the **Vendor Guarantee**).
- (b) For the avoidance of doubt, the ELNO may include in the Vendor Guarantee customary limitations and exclusions.
 - (c) To enable Subscribers and Users to compare vendor guarantees, the ELNO must:
 - (i) provide the Registrar with accurate and comprehensive details to enable the Registrar to complete the following table, including responses to the Registrar’s reasonable requests for clarification on any of the matters described below;
 - (ii) publish such table on the ELNO’s website; and
 - (iii) allow the Registrar to publish such table on the Registrar’s website.

Guarantee term and conditions	<i>[insert name of relevant ELNO]</i>
Who does the guarantee apply to?	
What is the timeframe for making a claim under the guarantee?	
What is the processing timeframe under the guarantee?	
If there is a cap on liability under the guarantee, what is this amount?	
What limitations and exclusions apply to the guarantee?	

9.2 Indemnity

- (a) To the maximum extent permitted by law, the ELNO indemnifies the Registrar and the State of NSW (and their respective officers and employees) (**Those Indemnified**) from all loss or liability suffered or incurred by Those Indemnified and any third party in connection with or arising out of:
 - (i) any act or omission of the ELNO which causes or contributes to any event referred to in clause 2.2;
 - (ii) any claim that the copying, use or modification of the ELNO Materials by the Registrar or its sub-licensees in accordance with clauses 7(e) or 7(f) (as applicable) infringes the Intellectual Property Rights of any person;
 - (iii) the ELN automatically unsigned any Registry Instrument or Document for the purposes of section 12 of the ECNL based on a compliance error message returned by the Land Registry System; or
 - (iv) any breach by the ELNO of Operating Requirement 19.3 or clause 8.

9.3 Exclusion of liability

To the maximum extent permitted by law, the Registrar will not be liable to the ELNO (or any of its Subscribers or any of its Subscribers' clients) for any loss or damage (including any indirect or consequential loss or damage, or loss of profits, business, revenue or data) whether in contract, tort (including negligence) or otherwise arising from or in connection with any defect, error, omission or inaccuracy in the Land Information, Document Formats or Business Rules.

10 Changes to conditions of Approval and Operating Requirements

10.1 Changes to conditions of this Approval

- (a) Any new conditions or other variations to the conditions of this Approval must be the subject of good faith consultation by the Registrar with the ELNO before the amendment comes into effect.
- (b) Paragraph (a) does not apply to any suspension by the Registrar of conditions under clause 13.11(h), or to changes requested by the ELNO under clause 10.3.
- (c) Each amendment to the conditions in this Approval must be notified to the ELNO at least 20 Business Days before the amendment comes into effect. The notification must contain the date the amendment comes into effect.

10.2 Amendments without prior consultation

- (a) The Registrar may determine that an amendment to the conditions in this Approval need not be the subject of prior consultation or notification in accordance with clause 10.1 before the amendment comes into effect, if the Registrar determines in good faith that:
 - (i) such a course is required by law; or
 - (ii) an emergency situation, as referred to in the ECNL, exists.
- (b) Notwithstanding paragraph (a), each amendment must be notified to the ELNO as soon as reasonably practicable before the amendment comes into effect. The notification must contain the date the amendment comes into effect.

10.3 Changes to this Approval requested by the ELNO

- (a) The ELNO may request a change to the conditions in this Approval by submitting the request in writing to the Registrar, which request must:
 - (i) specify the text of the change;
 - (ii) specify a proposed date for the change to be made; and
 - (iii) contain an explanation of the purpose of the change.
- (b) Following its receipt of a request from the ELNO under paragraph (a), the Registrar:
 - (i) will review the requested change;

- (ii) may consult with Revenue NSW, the LRS Operator and other Electronic Lodgment Network Operators (if any) in relation to the requested change; and
- (iii) will advise the ELNO whether the Registrar:
 - (A) accepts the requested change to the conditions in this Approval entirely;
 - (B) accepts a specified part of the requested change to the conditions in this Approval; or
 - (C) refuses to accept the requested change.

10.4 Changes made by the Registrar

- (a) If the Registrar amends the Operating Requirements in accordance with the Amendment to Operating Requirements Procedure, and the effect of such amendment is to materially increase the cost to the ELNO of complying with the Operating Requirements, the ECNL or this Approval, the ELNO may:
 - (i) request a change to the amendment in accordance with clause 10.3 in order to reduce the cost to the ELNO; and
 - (ii) if the Registrar does not approve such change, on 12 months' written notice to the Registrar surrender this Approval without liability to the Registrar and implement the ELNO's Transition Plan.
- (b) If the Registrar amends the conditions of this Approval and the effect of such amendment is to materially increase the cost to the ELNO of complying with the Operating Requirements, the ECNL or this Approval, the ELNO may:
 - (i) request a change to the amendment in accordance with clause 10.3 in order to reduce the cost to the ELNO; and
 - (ii) if the Registrar does not approve such change, on 12 months' written notice to the Registrar surrender this Approval without liability to the Registrar and implement the ELNO's Transition Plan.
- (c) Nothing in this clause limits the ELNO's rights to require the Registrar to provide, in writing, the grounds for a decision of the Registrar under section 28(1)(e) of the ECNL.

11 Disputes may be resolved by the Registrar

- (a) This clause 11 applies to disputes between the LRS Operator or Revenue NSW (each a **Disputing Party**) and the ELNO.
- (b) The ELNO may request in writing that the Registrar determines a dispute under this clause 11.
- (c) The Registrar is not obliged to accept a dispute for determination under this clause 11 unless:
 - (i) the Registrar is reasonably satisfied that the ELNO and the Disputing Party have complied with any dispute resolution process under the Revenue NSW Terms or the LRS Terms, as applicable, and the ELNO and the Disputing Party have not reached agreement;

- (ii) the Disputing Party agrees for the Registrar to hear the dispute under this clause 11; and
 - (iii) the Disputing Party agrees to be bound by the determination of the Registrar made under this clause 11.
- (d) For the purposes of facilitating negotiations between the ELNO and the Disputing Party, the Registrar may give directions requiring the ELNO to:
- (i) give information to the Disputing Party where it is relevant and reasonable to do so, subject to the Disputing Party agreeing reasonable confidentiality restrictions in relation to that information where it is confidential;
 - (ii) carry out reasonable research or investigations in order to obtain relevant information;
 - (iii) respond in writing to the Disputing Party's proposal; and
 - (iv) ensure that a representative of the ELNO attends a mediation or conciliation conference with a representative of the Disputing Party and mediator or other person nominated by the Registrar.
- (e) A determination by the Registrar under this clause 11 may deal with matters that were not the basis for notification of the dispute, provided those other matters are connected with or incidental to the matters that were so notified.
- (f) The Registrar must not make a determination under this clause 11 which would:
- (i) be inconsistent with any law or any other terms and conditions agreed between the ELNO and the Disputing Party; or
 - (ii) require the ELNO to make an ELN System Change, unless the Disputing Party agrees to make a reasonable contribution to any reasonable costs the ELNO incurs in developing and maintaining that System Change.
- (g) Before making a determination under this clause 11, the Registrar must provide the ELNO and the Disputing Party with:
- (i) a reasonable opportunity to make submissions to the Registrar; and
 - (ii) a draft determination and a reasonable opportunity to make submissions on that draft determination.
- (h) The Registrar may publish rules for the conduct of determinations under this clause 11 with which the ELNO and the Disputing Party must comply.
- (i) The ELNO is bound by any determination notified by the Registrar under this clause 11.

12 Delegation of obligations

12.1 Contracting

- (a) The ELNO may engage reputable contractors to assist it with the design, implementation and operation of the ELN and the performance of any part of its obligations under this Approval and the Operating Requirements.

- (b) The ELNO need not obtain the Registrar's consent before engaging a contractor pursuant to clause 12.1(a).
- (c) The appointment of a contractor does not relieve the ELNO from any of its liabilities or obligations under this Approval or the Operating Requirements or under any law.
- (d) The ELNO must ensure:
 - (i) the suitability of each contractor engaged under clause 12.1(a) to carry out the ELNO's obligations under this Approval and the Operating Requirements; and
 - (ii) that any arrangement entered into with a contractor requires at a minimum that the contractor is bound by obligations consistent with the ELNO's obligations under this Approval, as relevant to the contractor's activities and services.
- (e) The ELNO is and remains liable under this Approval for the acts and omissions of any contractor engaged at any time in connection with this Approval.

12.2 No Assignment or novation

This Approval is personal and must not be assigned or otherwise transferred. If the ELNO transfers its business, the transferee must apply for an Approval in its own right, and must meet all of the eligibility requirements for an ELNO (set out in the Operating Requirements).

12.3 ELNO as trustee

- (a) The ELNO warrants that it is not acting as trustee of any trust or settlement or as agent of any person in relation to this Approval or the operation of the ELN and that it will not in the future become a trustee in relation to this Approval or the operation of the ELN.
- (b) If, in breach of the warranty provided in paragraph (a), the ELNO does at any time in the future act in the capacity of trustee in relation to this Approval or the operation of the ELN:
 - (i) this Approval binds the ELNO in its personal capacity and in its capacity as trustee; and
 - (ii) the ELNO must take any action necessary to ensure the assets of the trust are available to satisfy any claim by the Registrar for any default by the ELNO and the ELNO must not deal with any material assets of the trust without the Registrar's prior written consent.

12.4 Change of Control Event

- (a) The ELNO must not:
 - (i) undergo a Change of Control Event; or
 - (ii) allow a Change of Control Event to continue to subsist,
 without first obtaining the Registrar's consent in accordance with this clause 12.4.
- (b) Where a Change of Control Event is contemplated by the ELNO, or as soon as practicable after the ELNO otherwise becomes aware that a Change of Control

Event has occurred, the ELNO must give written notice to the Registrar, which notice must include:

- (i) details of the Change of Control Event;
 - (ii) the date on which the Change of Control Event occurred or is proposed to occur; and
 - (iii) evidence in the form of the Documents and certifications set out in Category Three of Schedule 3 of the Operating Requirements that the Change of Control Event will not affect the ELNO's ability to continue to comply with the Operating Requirements.
- (c) After its receipt of the ELNO's notice under paragraph (b), the Registrar may request the ELNO to provide any additional information required by the Registrar in relation to the Change of Control Event (the **Request**), and the ELNO must promptly furnish such information as soon as possible (the **Response**).
- (d) Within 20 Business Days after its receipt of the ELNO's notice under paragraph (b) (the **Deadline**), the Registrar must determine, acting reasonably, whether to:
- (i) consent to the Change of Control Event;
 - (ii) consent to the Change of Control Event, subject to changes to the Approval (such as the imposition of special conditions); or
 - (iii) withhold consent to the Change of Control Event,
- provided that:
- (iv) in each case, the Registrar must give written notice of such determination to the ELNO; and
 - (v) the Deadline will be extended by the same number of Business Days between the Registrar's Request and the ELNO Response under paragraph (c).
- (e) If the Registrar notifies the ELNO pursuant to paragraph (d) that the Registrar does not consent to the Change of Control Event, or the ELNO does not accept any change to the Approval or special conditions imposed by the Registrar as a condition of any such consent, the ELNO's Approval will be deemed to have been revoked:
- (i) as at the date the Registrar provides such notification under paragraph (d), if the Change of Control Event has already occurred; or
 - (ii) as at the date of the Change of Control Event, if the Change of Control Event occurs subsequent to the notice under paragraph (d).
- (f) If the ELNO is aware that a Change of Control Event has occurred and has not provided notice in accordance with paragraph (b), the ELNO's Approval will:
- (i) be deemed to have been revoked as at the date specified by the Registrar (which must not be earlier than the date of the Change of Control Event); or
 - (ii) continue subject to such conditions as the Registrar may reasonably require, as determined by the Registrar.

- (g) If:
 - (i) the Registrar notifies the ELNO pursuant to paragraph (d) that the Registrar consents to the Change of Control Event;
 - (ii) the Registrar fails to notify the ELNO by the Deadline in accordance with paragraph (d) (for clarity, including any extension to the Deadline under paragraph (d)); or
 - (iii) the Change of Control Event does not occur,this Approval will continue unaffected.
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13 Miscellaneous

13.1 Notices

- (a) Any notice, consent, approval or other communication required to be in writing under this Approval must be signed by or on behalf of the sender addressed to the recipient, and:
 - (i) hand delivered to the recipient's address;
 - (ii) sent by pre-paid mail to the recipient's address; or
 - (iii) sent by email to the recipient's email address.
- (b) A notice sent in accordance with this clause is treated as having been given and received:
 - (i) if hand delivered, on the day of delivery if delivered before 5.00 pm (at the place of delivery) on a Business Day, otherwise on the next Business Day;
 - (ii) if sent by prepaid mail, on the third Business Day after posting; or
 - (iii) if sent by email, the next Business Day, unless a delivery failure message is received by the sender of the notice.
- (c) The address and email address of the ELNO are set out in **Schedule 4**. The address and email address of the Registrar are published on its website.
- (d) The ELNO must immediately notify the Registrar in writing of any change of the ELNO's address or email address.

13.2 Survival

Clauses 2.1 (Revocation or suspension of this Approval), 6.2 (Publicity), 6.3 (Privacy), 6.4(c) and (d) (Investigating Conveyancing Transactions), 7(b), (e) and (f) (Document Formats and ELNO Materials), 9.2 (Indemnity) and 13 (Miscellaneous) survive any expiry or revocation of this Approval, together with any other provisions which by their nature survive any expiry or revocation of this Approval.

13.3 Governing law and jurisdiction

- (a) This Approval is governed by the laws in force in the State of NSW.

- (b) The courts of NSW will have non-exclusive jurisdiction to determine any proceeding in relation to this Approval. Any proceeding brought in a Federal Court must be instituted in the New South Wales Registry of that Federal Court.

13.4 Foreign disclosure

- (a) The ELNO must take all steps reasonably necessary to ensure that it does not become subject to any Foreign Disclosure Laws.
- (b) Without limiting paragraph (a) or its other obligations under this Approval, the ELNO must:
 - (i) promptly inform the Registrar if it receives or becomes subject to any request or requirement to disclose any Land Information pursuant to any Foreign Disclosure Laws (a **Disclosure Order**); and
 - (ii) upon receipt of a Disclosure Order, not disclose any Land Information in response to that Disclosure Order without the prior written consent of the Registrar.

13.5 Waiver

- (a) Any waiver by the Registrar of any condition in this Approval is ineffective unless it is in writing and signed by the Registrar waiving its rights.
- (b) A waiver by the Registrar in respect of a failure by the ELNO to comply with a condition of this Approval, is not a waiver in respect of any other failure by the ELNO to comply with that condition or any other condition of this Approval.
- (c) The failure of the Registrar to enforce at any time any of the provisions of this Approval must not be interpreted as a waiver of that provision.

13.6 Severance

- (a) Each word, phrase, sentence, paragraph and clause of this Approval is severable.
- (b) If a court determines that a part of this Approval is unenforceable, invalid, illegal, void or voidable that court may sever that part.
- (c) Severance of a part of this Approval will not affect any other part of this Approval.

13.7 Reading Down

Where a word, phrase, sentence, paragraph, clause or other provision of this Approval would otherwise be unenforceable, illegal, void or voidable the effect of that provision shall so far as possible, be limited and read down so that it is not unenforceable, illegal, void or voidable.

13.8 Rights cumulative

Subject to any express provision in this Approval to the contrary, the rights, powers or remedies of the Registrar under this Approval are cumulative and in addition to, and do not exclude or limit, any right, power or remedy in any other part of this Approval or otherwise provided at law or in equity.

13.9 Consents and approvals – absolute discretion

Except as expressly provided in this Approval, the Registrar may conditionally or unconditionally in its absolute discretion give or withhold any consent or approval under this Approval.

13.10 Approval of Independent Expert

Where an ELNO requests approval of an Independent Expert from the Registrar pursuant to the Operating Requirements, the Registrar will:

- (a) respond to the request within 20 Business Days of receipt of the request;
- (b) not unreasonably refuse approval of the proposed Independent Expert; and
- (c) where approval is refused, give written reason(s) for the refusal.

The approval of the Independent Expert by the Registrar does not affect or diminish any obligation of the ELNO under the Operating Requirements, any liability of the ELNO to the Registrar or the right of the Registrar to take action against or to recover damages from the ELNO.

13.11 Definitions and interpretation

- (a) The ECNL, including regulations made thereunder, and the Operating Requirements contain definitions and other provisions that affect the interpretation and application of this Approval.
- (b) In this Approval, capitalised terms not defined have the meaning in the ECNL and the Operating Requirements, except so far as any contrary intention appears in these conditions.
- (c) This Approval is subject to the ECNL and the Operating Requirements. Nothing in this Approval limits the ELNO's obligations (or the Registrar's rights and remedies) under the ECNL and the Operating Requirements.
- (d) The drafting notes contained in this Approval are intended for the guidance of the parties only. For the avoidance of doubt, the fact that a drafting note omits a reference to a relevant provision of the Operating Requirements or the ECNL does not mean that the provision does not apply, nor does it limit the ELNO's obligations (or the Registrar's rights and remedies) under the provision or waive the requirement for the ELNO to comply with such obligations or the right for the Registrar to enforce such rights and remedies (as the case may be).
- (e) In this Approval, the words 'such as', 'includes', 'including', 'for example', 'particularly' and similar expressions are not used as, nor intended to be interpreted as, words of limitation.
- (f) Where there is a conflict or inconsistency between a provision of the ECNL or the Operating Requirements and a provision of this Approval, the provisions of the ECNL or the Operating Requirements prevail to the extent of the conflict or inconsistency (unless expressly stated in this Approval, including as specified in Schedule 2).
- (g) Nothing in this Approval limits the ELNO's obligations (or the LRS Operator's rights and remedies) under the LRS Terms.
- (h) If the Registrar is satisfied (acting reasonably) that the subject matter of any condition in this Approval is dealt with in the Operating Requirements in the same,

or a substantially similar, way to the way in which it is dealt with in this Approval, the Registrar may by notice to the ELNO suspend the application of that condition for such period as the Registrar may specify in the notice.

(i) In this Approval:

Change of Control Event means an event the occurrence of which has the effect that:

- (i) if a person Controlled the ELNO prior to the time the event occurred, that person ceased to Control the ELNO or another person obtained Control of the ELNO; or
- (ii) if no person Controlled the ELNO prior to the time the event occurred, a person obtained Control of the ELNO.

Control and Controlled means that a person has, directly or indirectly:

- (i) control in the terms set out in section 50AA of the *Corporations Act 2001* (Cth) (as it is at the date of this Approval); or
- (ii) the ability to exercise or control the exercise of the right to vote in respect of more than 50% of the voting shares or other form of voting equity in the ELNO; or
- (iii) the ability to dispose or exercise control over the disposal of more than 50% of the shares or other form of equity in the ELNO.

Conveyancing Transaction has the meaning given in the ECNL.

CPI means the all groups consumer price index for all capital cities in original terms published by the Australian Bureau of Statistics or its successor, or (where such index ceases to be published quarterly, or the method of calculation of such index substantially alters) the nearest equivalent index nominated by the Registrar.

Disputing Party has the meaning given in clause 11(a).

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

Downstream or Upstream Service has the meaning given to it in the Operating Requirements.

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

ELNO Materials has the meaning given in clause 7(b)(ii).

Foreign Disclosure Laws means any laws outside of Australia that may require disclosure of any Land Information, whether to intercept or obstruct terrorism, or for any other reason.

Governance Meeting has the meaning given in clause 5.2(a).

Independent Expert has the meaning given in the Operating Requirements.

Initial Testing has the meaning given in clause 4.1(b).

Interconnection Committee has the meaning given in clause 5.4(a).

IPART has the meaning given in clause 3.1(d)(ii)(A).

Land Information has the meaning given in the Operating Requirements.

Land Registry System has the meaning given in the Operating Requirements.

LRS Operator has the meaning given in clause 1(a)(ii).

LRS Terms has the meaning given in clause 1(a)(ii).

Operating Requirements has the meaning given to it in the ECNL.

Person has the meaning given to it in the ECNL.

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

Prerequisites has the meaning given in clause 1(a).

Pricing Table means the table of ELNO Service Fees prepared by the ELNO in accordance with the requirements set out in clause 3.1.

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.

Privacy Legislation has the meaning given in clause 6.3(a).

RCA Issue means any fault, issue or failure affecting the ELN, any interworking problem between the ELN and any of the LRS Operator's systems (including the Land Registry System and the Titles Register), or any services provided by the ELNO in connection with the ELN.

RCA Report has the meaning given in clause 5.5(b)(v).

Registrar Testing has the meaning given in clause 4.3(a).

Registry/Revenue Test Plan has the meaning given in clause 4.1(b).

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

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

Related Party means the ELNO's principals, shareholders, directors, officers, employees or agents.

Release has the meaning given in clause 4.1(c).

Remedial Plan has the meaning given in clause 5.6(a)(i).

Remediation Steps has the meaning given in clause 2.1(d)(i)(B)

Reporting Month has the meaning given in clause 5.3(b)(i).

Revenue NSW Terms has the meaning given in clause 1(a)(i)

Risks has the meaning given in clause 1(a)(iii)

Risk Register has the meaning given in clause 1(a)(iii)

Root Cause Analysis means analysis to determine the root cause of the RCA Issue in accordance with clause 5.5(e), as required under clauses 5.1 and 5.5.

Service Levels has the meaning given in clause 5.1(a).

State Service Provider means any third party supplier of goods or services to the Registrar.

Subscriber has the meaning given in the ECNL.

Those Indemnified has the meaning given in clause 9.2(a).

Titles Register has the meaning given in the ECNL.

Transition Plan has the meaning given in the Operating Requirements.

User has the meaning given in the Operating Requirements.

Value Added Services has the meaning given in clause 8(a).

Vendor Guarantee has the meaning given in clause 9.1(a).