

1. Model Rules

1.1 Electronic Conveyancing

- (a) The parties agree that Settlement will be completed as an Electronic Conveyance in accordance with these Model Rules, unless:
 - (i) either party gives notice under rule 1.6 below that Settlement will not be completed as an Electronic Conveyance.
- (b) The Vendor and the Purchaser agree:
 - (i) to comply with the Electronic Conveyancing National Law (ECNL) and any Participation Rules, annexed hereto as Schedule 1, Operating Requirements and any other directions in operation as at the date of Settlement by the Registrar General in relation to electronic conveyancing;
 - (ii) to the extent that there is any inconsistency the following order of precedence applies:
 - (A) the ECNL and any Participation Rules, annexed hereto as Schedule 1, Operating Requirements and any other directions in operation as at the date of Settlement by the Registrar General in relation to electronic conveyancing;
 - (B) the amendments to the Agreement set out at 1.1(c) below;
 - (C) the terms of the Agreement;
 - (D) the remaining rules set out in these Model Rules; and
 - (iii) to do all things reasonably necessary to complete Settlement as an Electronic Conveyance.
- (c) The parties agree that the Agreement is amended to enable Electronic Conveyance as follows:
 - (i) Clause 3.2 is replaced with: The balance of the Purchase Price will be deposited in anticipation of Electronic Conveyancing as directed by the Vendor.
 - (ii) Clause 4.1 is replaced with: The Purchaser's Legal Representative must create, provide, transmit or otherwise make available to the Vendor's Legal Representative, an executed Transfer and or other instrument required to transfer title to the Property to the Purchaser via Electronic Conveyancing at least seven (7) days before the Settlement Date.
 - (iii) Clause 4.3 (or Clause 4.2 if the agreement is either a Rural Contract or a Commercial Contract) is replaced with: The Vendor must notify the Purchaser at least two (2) business days before the Settlement Date of

the details of any payments to third party destination accounts required at the Settlement Date.

- (iv) Clause 5.1 is replaced with: Unless otherwise agreed, Settlement must occur via Electronic Conveyancing on the Settlement Date.
 - (v) Clause 5.2 is replaced with: Before Settlement (provided the Purchaser has complied with its obligations under this Agreement), the Vendor's Legal Representative must provide, transmit or otherwise make available to the Purchaser the duly executed Transfer and any other documents required to transfer title to the Property to the Purchaser via Electronic Conveyancing.
 - (vi) Clause 19.3.2 (or if a Commercial Contract Clause 21.4) is replaced with: Any other payment due under this Agreement shall be made in electronic transfer of funds.
- (d) Settlement occurs under these Model Rules when the Electronic Workspace records that:
- (i) the exchange of funds between financial institutions in accordance with the instructions of the parties has occurred; or
 - (ii) if there is no exchange of funds or other value, the documents necessary to enable the Purchaser to become the registered proprietor of the Property have been accepted by the Registrar General for electronic lodgement.

1.2 **Creation of Electronic Workspace**

- (a) The Vendor must within 5 business days of the date of the Agreement:
 - (i) create an Electronic Workspace;
 - (ii) populate the Electronic Workspace with the details of the Property and other required particulars relating to the sale of the Property; and
 - (iii) invite the Purchaser and the Vendor's mortgagee (if any) to join the Electronic Workspace.
- (b) The Purchaser must:
 - (i) accept the Vendor's invitation to join the Electronic Workspace within 2 business days of receipt of the invitation;
 - (ii) populate the Electronic Workspace with the required particulars relating to the sale of the Property; and
 - (iii) invite the Purchaser's mortgagee (if any) to join the Electronic Workspace.
- (c) If the Vendor does not comply with rule 1.2(a) above the Purchaser may:
 - (i) create an Electronic Workspace;

- (ii) populate the Electronic Workspace with the details of the Property and other required particulars relating to the sale of the Property; and
- (iii) invite the Vendor and the Purchaser's mortgagee (if any) to join the Electronic Workspace; and
- (iv) the Vendor must:
 - (A) accept the Purchaser's invitation to join the Electronic Workspace within 2 business days of receipt of the invitation;
 - (B) populate the Electronic Workspace with the required particulars relating to the sale of the Property; and
 - (C) invite the Vendor's mortgagee (if any) to join the Electronic Workspace.
- (d) The Electronic Workspace is an electronic address for the service of notices and for written communications for the purposes of the ECNL and any electronic transaction legislation.

1.3 **Completion of Electronic Workspace**

- (a) At least 5 business days before the Settlement Date, the Vendor must nominate a time of the day between the hours of 9.00am and 4.00pm on the Settlement Date for the locking of the Electronic Workspace for the purpose of completing Settlement.
- (b) The parties must do all things reasonably necessary and in a timely manner to complete the Electronic Workspace in order to achieve Settlement as an Electronic Conveyance on the Settlement Date.
- (c) Without limiting rule 1.3(b) above, to enable the Electronic Workspace to be completed:
 - (i) the Vendor must populate the Electronic Workspace with payment details no later than 1 business day before the Settlement Date; and
 - (ii) the parties must, no later than 1 business day before the Settlement Date:
 - (A) ensure all required data has been entered into the Electronic Workspace;
 - (B) ensure that any documents requiring a Digital Signature have been Digitally Signed; and
 - (C) ensure that all certifications required by the ECNL are complete.
- (d) Notwithstanding the above paragraph, if Settlement has not occurred before 5.00pm on the Settlement Date, the parties must do all things reasonably necessary to complete Settlement as an Electronic Conveyance on the next business day.

1.4 **Electronic System Failure**

- (a) If by reason of an electronic or computer system failure of any of the Land Registry, the Reserve Bank of Australia or the ELNO Settlement does not occur on the Settlement Date, the failure to settle does not constitute a breach or default by either party under this Agreement; and
 - (i) subject to rules 1.6 above and 1.4(a)(ii) below, the parties will do all things reasonably necessary to complete Settlement as an Electronic Conveyance on the next business day or such other date as the parties may agree; or
 - (ii) if Settlement is not able to be completed as an Electronic Settlement by reason of the failure of the electronic or computer systems of the Land Registry and only if the Electronic Workspace allows, the parties by agreement may elect to proceed with Settlement notwithstanding that Settlement cannot be completed as an Electronic Conveyance;
- (b) If Settlement pursuant rule 1.4(a)(ii) above is completed, then:
 - (i) all documents in the Electronic Workspace forming part of the Lodgement Case are taken to have been delivered to the Purchaser or Purchaser's mortgagee at the time of the Settlement;
 - (ii) the Purchaser is taken to have unconditionally accepted the relevant documents;
 - (iii) the Purchaser has the right to occupy and deal with the Property;
 - (iv) the Vendor's interest in the Property is taken to have passed to the Purchaser; and
 - (v) the Vendor has no legal or equitable interest in the Property.

1.5 **Exchange of Non-electronic Documents**

- (a) The parties must agree in writing on a method, time and place for delivery or exchange of any documents relating to the sale that cannot be delivered or exchanged using the Electronic Workspace.
- (b) If the parties cannot agree, the party who holds the documents holds them in escrow for the benefit of the party who is entitled to them and the party holding the documents must deliver the documents as reasonably directed by the person entitled to them immediately after Settlement.
- (c) If either party becomes aware that Settlement cannot reasonably be completed using Electronic Conveyancing, they must notify the other party as soon as reasonably practicable after becoming aware of that fact.
- (d) If notice is given under rule 1.5(c), above then the parties must comply with rules 1.4 above and 1.6 below and clauses 15 and 16 of the Agreement.

1.6 **Withdrawal from Electronic Conveyancing**

- (a) Either party may by notice in writing to the other, elect not to continue with an Electronic Conveyance.
- (b) A notice under rule 1.6(a) above must be given no later than 5 business days before the Settlement Date unless an Electronic Conveyance cannot proceed because:
 - (i) the transaction is excluded from being completed as an Electronic Conveyance by the ECNL, Participation Rules or the Land Registry;
 - (ii) a party's conveyancer cannot complete the Settlement due to a genuine and unforeseen circumstance outside of his or her own reasonable control which has arisen in the period commencing within 5 business days of the Settlement Date;
 - (iii) if by reason of electronic or computer system failure, Settlement does not occur as an Electronic Conveyance on the Settlement Date; or
 - (iv) either party's financial institution is unable to complete Settlement as an Electronic Conveyance.
- (c) If a party serves a notice under rule 1.6(b) above such notice must appoint a new date for Settlement PROVIDED THAT such date is not more than 5 business days from the Settlement Date.

1.7 **Time**

Time is of the essence in respect of any obligation under these Model Rules .

Schedule 1

Electronic Conveyancing National Law (South Australia) Act 2013 -

http://www.austlii.edu.au/au/legis/sa/consol_act/ecnlaa2013517/

Participation Rules for Electronic Conveyancing -

http://www.arnecc.gov.au/_data/assets/pdf_file/0007/208474/SA_Participation_Rules_Version_3.pdf