

E-SIGNATURES AND E-SIGNING PLATFORMS

APSL/LPSLG WORKING GROUP PAPER

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1. OBJECTIVES OF THE WORKING GROUP

- 1.1 Different types of electronic signature provide differing degrees of integrity and security. This working group has been formed to consider issues around the use of "**standard**" **electronic signatures**¹ created by **e-signing platforms** with a view to recommending best practice for **real estate transactions** making use of such platforms.
- 1.2 The law firms represented on this group all use (or are in the process of procuring) the DocuSign e-signing platform and therefore Schedule 3 contains a detailed guide to a typical DocuSign workflow. However, the group has endeavoured to create protocols and recommendations that are provider neutral and applicable to most e-signing platforms with Schedule 4 listing some of the many platforms that are available. If you are able to provide equivalent workflow guides for any of the alternative e-signing platforms, please contact us.
- 1.3 In addition to the desire to help facilitate the use of technology that will streamline the signing process for real estate transactions, the group has also considered the **security implications** of using e-signing platforms instead of "wet ink" signatures. Some platforms offer access authentication, which is a recognised method intended to protect against digital identity theft. See section 4.5.2 and paragraph 2.5.2 of Schedule 3.
- 1.4 The group has not considered virtual closings (using the so-called *Mercury* protocol²) nor has it looked at the use of other forms of electronic signatures, such as signatories pasting an image of their manuscript signature or typing their name into real estate documents, although clearly elements of this paper will apply to the use of such electronic signatures. These types of electronic signatures are generally regarded as less secure and efficient than those created by e-signing platforms and they do not comply with the Land Registry Requirements (see section 2.1.4), although additional actions can be taken to address some of the concerns that exist around their use³.
- 1.5 Whilst agreed amongst a group of PSLs who are members of the LPSLG/APSL, the protocols and recommendations set out in this paper do not represent an agreed best practice of any particular law firm which is represented on either of those groups. Neither does it preclude any such law firm from diverging from them either generally or in a particular case.

2. DEFINITIONS

- 2.1 Throughout this paper key words and phrases are highlighted in blue font and the following definitions apply:
 - 2.1.1 **Certificate of Completion** means the recorded audit trail of the entire signing process for an electronically signed document on an e-signing platform which will typically include the email addresses it was sent to, whether access authentication was used, the time the document was viewed and signed by signatories and witnesses, the IP addresses of the devices used and (if the recipient's device has location-tracking enabled) the GPS co-ordinates of the location of the devices at the time of e-signing (if these features are enabled on the e-signing platform);
 - 2.1.2 **Conveyancer** means an authorised person within the meaning of section 18 of the Legal Services Act 2007 who is entitled to provide the conveyancing

¹ Standard electronic signatures are sometimes referred to as "simple" electronic signatures. Note this paper does not consider the use of AES (advanced electronic signatures) or QES (qualified electronic signatures) which are also often categorised as "digital signatures". Additional layers of security apply to the use of such signatures. Whilst some e-signing platforms have the capability, digital signatures are not commonly seen in England and Wales, at least at the present time.

² *Mercury Tax Group (and another) v HMRC* [2008] EWHC 2721. For further consideration of the issues surrounding Mercury and virtual closings please refer to the APSL/LPSLG Working Party Paper on Virtual Completions for Property Transactions dated April 2020. For HM Land Registry's requirements in relation to Mercury signatures, see section 12 of [LR Practice Guide 8: execution of deeds](#).

³ See section 3.5 and footnote 9.

services referred to in paragraphs 5(1)(a) and (b) of Schedule 2 to that Act, or a person carrying out those activities in the course of their duties as a public officer. It also includes an individual or body who employs or has among their managers such an authorised person who will undertake or supervise those conveyancing activities (rule 217A of the Land Registration Rules 2003)⁴;

- 2.1.3 **Interim Certificate** means an in-process record of the audit trail of the electronic signing process generated by an e-signing platform prior to the document being completed by the Conveyancer controlling the signing process;
- 2.1.4 **Land Registry Requirements** mean HM Land Registry's requirements for electronic signatures set out in [section 13.3 of Practice Guide 8](#);
- 2.1.5 **Non-Registrable Documents** mean documents that are not Registrable Documents;
- 2.1.6 **Practice Guide 8** means [HM Land Registry's Practice Guide 8: execution of deeds](#); and
- 2.1.7 **Registrable Documents** mean the documents listed in [section 13.4 of Practice Guide 8](#).

3. CAN I USE AN E-SIGNING PLATFORM FOR MY TRANSACTION?

- 3.1 In its 2019 report⁵ the Law Commission confirmed that an electronic signature is capable under **English law** of being used to execute documents (including deeds) provided that the signatory intends to authenticate the document in question and any relevant formalities are satisfied. Notwithstanding this endorsement, however, there are a number of situations in which it may not be appropriate to use electronic signatures and/or an e-signing platform.
- 3.2 From **27 July 2020** until further notice HM Land Registry will accept for registration Registrable Documents that comply with the Land Registry Requirements.
- 3.3 We have set out a checklist which includes the Land Registry Requirements and a brief summary of the **legal and practical constraints** on the use of electronic signatures in Schedule 1 and have included a non-exhaustive list of the types of documents which we consider are suitable (and not suitable) for electronic signature in Schedule 2. In view of the recognised difficulties of using electronic signatures and e-signing platforms where a signature is **witnessed**, particularly given HM Land Registry's requirement for access authentication to be used for witnesses in relation to Registrable Documents, we have included a separate paragraph on witnessing at section 5 of this paper. Schedule 3 contains a suggested guide to the workflow when using DocuSign⁶.
- 3.4 Note that whilst it is permissible for different parties to use **different methods of execution**⁷ (e.g. one party signs electronically and another in "wet ink") provided the method and form of execution complies with legal and contractual requirements, where it is proposed to use an e-signing platform there are clear benefits of conducting the entire transaction through that e-signing platform (i.e. with all parties signing one document on the same platform and the Conveyancer controlling the signing process dating it within that platform⁸) including:
 - 3.4.1 speed and efficiency (for both signatories and solicitors);

⁴ To come within the definition of "conveyancer" in rule 217A of the Land Registration Rules 2003 an individual must be authorised under the Legal Services Act 2007 to provide conveyancing services; in effect they must have a practising certificate.

⁵ "Electronic execution of documents" published 3 September 2019 (Law Com No 386).

⁶ Many different e-signing platforms are available. We would welcome offers of equivalent guides to cover the use of other platforms.

⁷ This is expressly permitted by HM Land Registry. See [section 13.5 of Practice Guide 8](#).

⁸ It is a Land Registry Requirement that the Conveyancer controlling the signing process dates an electronically signed Registrable Document within the e-signing platform.

- 3.4.2 the generation of a Certificate of Completion; and
 - 3.4.3 the signed and dated document(s) being contained in a PDF that is coded to match that Certificate of Completion.
- 3.5 If parties are intending to use different methods of execution, this can be done by way of counterparts. This includes cases where it is envisaged that the parties will use different means of applying an electronic signature. Issues have been experienced in practice where documents signed using one e-signing platform "lose" the electronic signatures if then uploaded to an alternative e-signing platform. Anecdotally, we understand that similar issues have also arisen where a signatory has simply inserted an image of their signature into a document. If a party has electronically signed a document other than through an e-signing platform, it will be important to ensure that each "signing" is supported by an appropriate audit trail⁹.
- 3.6 If a Registrable Document is executed in counterpart, it is prudent to ensure all parts of the document that are being electronically signed comply with the Land Registry Requirements (and not just the part being submitted to HM Land Registry). This is because, whilst each counterpart itself constitutes an "original" document, the different counterparts together make up one instrument.

4. WHAT IS THE PROCESS FOR USING AN E-SIGNING PLATFORM?

- 4.1 In this section we have set out a brief overview of the e-signing process. Each e-signing platform has different functionality and it is not possible to reflect all that detail within the confines of this paper. We have, however, set out suggested workflows for the DocuSign platform in Schedule 3.
- 4.2 Whilst it is often the case that all the parties to a transaction will sign the document(s) within the same envelope, as noted above they may use different execution methods or there may be reasons requiring them to use different e-signing platforms or envelopes. If only one party uses electronic signatures or if each party follows separate electronic signing processes, this paper should be interpreted accordingly. Some of the issues considered in this paper will still be relevant and they will need to be discussed and agreed between solicitors in advance in particular where an electronically signed Registrable Document is concerned, where the Conveyancer lodging the application to register it at HM Land Registry will need to certify that it satisfies the Land Registry Requirements even if its own client has used an alternative signing method eg "wet ink".

4.3 Step 1 – Consent

The client and all parties involved in the transaction need to consent to the use of electronic signatures and of an e-signing platform.

- 4.3.1 Schedule 5 Part 1 includes some suggested drafting that law firms can send to their own clients explaining about the use of an e-signing platform.

⁹ An email in the below or similar form should be used by a signatory when sending an electronically signed document back to their solicitor if an e-signing platform is not being used, which will need to be forwarded to the other party's solicitor. The purpose of the email is to provide an audit trail evidencing a clear intention on the part of the signatory to authenticate the document:

"Dear {solicitor},

Property: {Insert description}

Document: {Insert type of document} between {list parties to document} (the "Document")

I confirm that the Document {attached to this email} was electronically signed by me, {name}, in my capacity as {director/attorney} of {company name} on {date of signing}. {My signature was witnessed by {name of witness} who was physically present at the time.}

{Sign off}.

{Name of signatory}"

- 4.3.2 It is for the parties to agree who will control the signing process. One factor to be considered in relation to Registrable Documents is which law firm will be required to certify to HM Land Registry that the Land Registry Requirements have been complied with. See section 6 for further details.
- 4.3.3 Best practice is to agree "**signing/release instructions**" with the other side at an early stage of the transaction setting out who will control the signing process, how any documents are to be signed and dated¹⁰ and, if any of them are deeds, when they will be "delivered". Schedule 5 Part 2 sets out some template wording.
- 4.3.4 HM Land Registry requires (with limited exceptions) that all parties to an electronically signed Registrable Document have Conveyancers acting for them¹¹. For Non-Registrable Documents, however, there is no reason why you could not use electronic signatures and an e-signing platform when dealing with an **unrepresented party**. As you would in a "wet ink" world, it is important that you inform the unrepresented party that you are not advising them in relation to the transaction and that if they have any queries regarding the documents that you are sending to them or the transaction to which they relate, they should take independent legal advice immediately and certainly before signing. We recommend using the wording referred to in paragraph 2 of Schedule 6.

4.4 **Step 2 – Documents**

- 4.4.1 You¹² will need to upload your documents to the e-signing platform.
- 4.4.2 E-signing platforms do not readily facilitate "partial" dating of documents within one electronic envelope. Accordingly **multiple documents** should only be included in the same envelope if it is intended for them to be completed/dated within the platform at the same time or, in the case of Non-Registrable Documents only, it is proposed to date them outside the platform¹³.
- 4.4.3 It is not possible to facilitate "**last minute**" **amendments** (excluding filling in blanks¹⁴) to documents within an e-signing platform:

4.4.3.1 **Non-Registrable Documents**

If last minute amendments are likely to be required post-signature then you may wish to consider only using the e-signing platform for the signing process leaving the dating (including completion of "blanks") and last minute amendments to be completed outside the platform¹⁵, albeit you would then lose the advantage of having the fully recorded audit trail that e-signing platforms provide. As always great care is needed if looking to make any "amendments" to documents after they have been signed by the parties. In view of the *Mercury*¹⁶ case, after a

¹⁰ For Registrable Documents, it is a Land Registry Requirement that an electronically signed document is dated within the e-signing platform by the Conveyancer controlling the signing process.

¹¹ The exceptions are that only the lender in the case of a discharge or release; the personal representatives in the case of an assent; and the donor in the case of a power of attorney need have Conveyancers acting for them. See [section 13.3 of Practice Guide 8](#).

¹² For Registrable Documents, HM Land Registry requires that the Conveyancer controlling the e-signing process must do this.

¹³ Note however that some law firms are not comfortable with documents that have been signed within an e-signing platform being dated outside it and may require both Registrable Documents and Non-Registrable Documents to be dated within the platform.

¹⁴ In the context of a lease, examples of the "blanks" that might need to be filled in on completion include term and rent commencement dates, rent review dates, break dates, Landlord and Tenant Act 1954 notice and declaration dates etc.

¹⁵ The documents, once signed, would need to be downloaded from the e-signing platform and then the dating (including completion of "blanks") and last minute amendments would either need to be dealt with on screen using an appropriate PDF tool or by the documents being printed and the information inserted by hand (effectively "wet ink").

¹⁶ *Mercury Tax Group (and another) v HMRC* [2008] EWHC 2721.

document has been signed, only the completion of blanks, minor or obvious corrections (e.g. correction of cross-references and typographical errors) and other non-material corrections should be made, in each case, with the authority of the parties. In all other cases re-execution is advised.

4.4.3.2 **Registrable Documents**

The Land Registry Requirements specify that the Conveyancer controlling the signing process must date an electronically signed document within the e-signing platform. Therefore if last minute amendments are likely to be required post-signature for a Registrable Document it may be best to avoid the use of electronic signatures. Alternatively, if the parties are confident that the document can be electronically signed quickly, it may be possible to delay the signing until the document has been fully agreed.

4.5 **Step 3 – Recipients**

4.5.1 You¹⁷ will need to populate the e-signing platform with details (name and email address) of the recipients of the envelope. A recipient includes all those who need to be involved in the process (such as the parties' solicitors) as well as those actually e-signing the document(s).

4.5.2 Where "standard" electronic signatures are being used it is possible within some e-signing platforms to add in "**access authentication**" for each recipient¹⁸ to provide an additional layer of security. The three most common options available are:

4.5.2.1 **an access code** – typically access codes are codes that you generate and provide to the recipient directly, outside of the e-signing platform;

4.5.2.2 **an SMS code** – SMS codes are generated by and provided to the recipient's mobile phone as a text message by the e-signing platform itself; and

4.5.2.3 **an automated phone call** – automated phone calls are made by the e-signing platform to the recipient's mobile phone or landline number and a code is played as part of the automated call.

In each case the recipient is required to input the code delivered to them before they are able to access the documents within the envelope. If the second or third option is selected it will be necessary for the recipient's mobile phone or landline number to be inputted into the e-signing platform and it may appear on the Certificate of Completion¹⁹.

4.5.3 For **Registrable Documents**, HM Land Registry requires the use of access authentication for all signatories and witnesses who must receive a 6 digit one-time passcode sent to them by the e-signing platform by text, i.e. SMS. It is not possible to use the first and third options noted above in relation to Registrable Documents.

4.5.4 In relation to **Non-Registrable Documents** individual law firms are likely to take different views on the merits of access authentication. Some may

¹⁷ For Registrable Documents, HM Land Registry requires that a Conveyancer must do this.

¹⁸ Other than, in certain e-signing platforms, witnesses where they have been allocated witness status within the platform and not set up as direct recipients.

¹⁹ Some recipients may object to their mobile phone or landline number being recorded in this way and this may therefore preclude the use of SMS codes/automated phone calls.

strongly encourage or mandate its use. Others may consider that access authentication is only appropriate in specific circumstances or for specific types of transactions. This is a conversation that law firms will need to have when they are agreeing the signing/release instructions.

- 4.5.5 Most e-signing platforms will allow you to specify a **signing order** – a signing order sets out the order in which recipients will receive the envelope. Where this is the case, best practice is to include the other party's solicitor as the first recipient of the envelope so that they can "approve" its content. As well as being included as the first recipient, some law firms acting for the other party may also want to be included as the penultimate recipient so that they can check the documents again after all signatories have signed and before completion is effected although this may not be necessary if, as part of the signing/release instructions, you have agreed to provide the other side with an Interim Certificate (see section 4.9). If you are proposing to complete the documents within the e-signing platform²⁰ it is advisable (in almost all instances) to include yourself²¹ as the final recipient in the signing order with an action to perform on each of the documents. Once all recipients have completed their actions, your role will then be to fill in any blanks and effect completion of the document by dating it in accordance with the signing/release instructions that have been agreed with the other side.

4.6 **Step 4 – Email and private messages**

- 4.6.1 You will need to specify the email subject heading and the email message that all recipients of the envelope will receive.
- 4.6.2 Some e-signing platforms will also allow you to include a "private" email or message to individual recipients, but note that even where labelled "private" in some cases those messages may still be visible to others involved in the transaction.
- 4.6.3 For examples of messages that might be sent to particular recipients, see Schedule 6.
- 4.6.4 Consider how best to record on your legal file the email message visible to all recipients and any private emails or messages.

4.7 **Step 5 – Add fields**

- 4.7.1 The next stage is to add the fields to the documents. These are the fields that the recipients are required to complete.
- 4.7.2 Recipients may need to sign documents in multiple places if plans and other attachments need to be signed or initialled. They may also need to input information into text fields (e.g. a witness inserting their name, address and occupation).
- 4.7.3 If you are intending to complete the documents within the e-signing platform, a field must be attributed to every single "blank" that will need to be filled in prior to or on completion. As has been noted in section 4.4.3 above, it is not possible to facilitate "last minute" amendments to documents within an e-signing platform.
- 4.7.4 **Care is needed with the "dating" field** that is available in many e-signing platforms. Typically, they automatically pre-populate the date (and time) that the recipient performs their required actions which could have the effect of prematurely dating (and so completing) a document. Conversely, if a

²⁰ For Registrable Documents, HM Land Registry requires that the Conveyancer controlling the signing process effects completion by dating them within the platform.

²¹ Or the relevant fee earner who is tasked with effecting formal legal completion of the documents.

transaction is completed near to midnight but the person controlling the dating of the documents accesses the platform after midnight to activate dating the documents, the "automatic" date function would date the documents on the wrong day. To control the date that is applied to a document, best practice is to use text fields which allow the recipient to whom they are allocated to "type in" the correct date manually.

4.8 **Step 6 – Sending the envelope and tracking its progress**

4.8.1 Once the above steps have been completed, the envelope can be sent from the platform to the recipients.

4.8.2 Recipients will receive an email containing a link from which they can open the envelope. Before they are able to move forward they may be required to accept a legal disclosure from the relevant e-signing platform in relation to GDPR. This is to advise them that their personal data will be visible to all recipients of the envelope (including those who have been set up to receive a copy of the completed document(s)) and retained within the systems of the e-signing platform and the law firms advising on the transaction. If access authentication has been enabled, they will also need to input the code that has been delivered to them.

4.8.3 The recipient will be guided through the signing process. Once they have completed all their required actions they will click "Finish" (or "All items complete" or similar) and the envelope will move on to the next stage of the signing process.

4.8.4 The sender of the envelope will be able to track its progress within the e-signing platform and identify if it is being held up at any point.

4.9 **Step 7 – Interim Certificate**

4.9.1 Once all signatories and any witnesses have electronically signed the documents, an Interim Certificate can be generated by most e-signing platforms. If a platform has this functionality, the Interim Certificate can be generated manually within the platform by the envelope sender and emailed to the other party's solicitor for checking or the other side's solicitor can be added as the penultimate recipient of the envelope and allocated the "receives a copy" action (or similar) so that they automatically receive a link to the "in progress" documents and to the Interim Certificate immediately before the envelope is sent to the final recipient to effect completion (assuming that it is intended to date the documents within the e-signing platform).

4.9.2 This enables the other party's solicitor to check before completion that the required signatures have been applied in the correct order (e.g. that any witness has not signed ahead of the signatory whose signature they are witnessing) and if access authentication has been used.

4.10 **Step 8 – Completion**

4.10.1 Assuming that you will complete/date the documents within the e-signing platform and have nominated yourself²² to be the final recipient, once all earlier recipients in the signing order have completed their actions, you²³ will receive the envelope to effect completion by filling in any blanks and dating the documents²⁴. This should be effected in accordance with the signing/release instructions that have been agreed with the other party's

²² Or the relevant fee earner who is tasked with effecting formal legal completion of the documents.

²³ Or the relevant fee earner who is tasked with effecting formal legal completion of the documents.

²⁴ For Registrable Documents, it is a Land Registry Requirement that the Conveyancer controlling the signing process dates the document within the platform.

solicitor. See Schedule 5 Part 2 for further details.

- 4.10.2 If you are **exchanging contracts** for the sale of land by telephone where all parties have e-signed the contract using the same electronic envelope, none of the traditional Law Society Formulae will be relevant. Instead, you should consider whether any additional undertakings are needed in addition to the signing/release instructions that have already been agreed with the other party's solicitor. Where the contract has been e-signed by the parties using separate electronic envelopes, you will need to vary, as appropriate, the undertakings provided for by Law Society Formula B.
- 4.10.3 All those listed in the signing order²⁵ will receive an email confirming that completion²⁶, has taken place and allowing them to download the completed documents. They will also be able to access the Certificate of Completion unless that functionality has been disabled.
- 4.10.4 Following completion of the documents within an envelope you must **promptly download (or obtain copies of) both the documents and the related Certificate of Completion** and file them into your firm's DMS²⁷. Individual firms will have their own retention settings for how long completed documents (and their related Certificates of Completion) will be held within the e-signing platform before being automatically deleted. Once they have been deleted from the e-signing platform, they will not be capable of being retrieved. Any client specific requirements regarding the holding of "hard copy" documents and uploading of completed documents to data rooms etc. must be adhered to and depending on your firm's document retention policy for documents filed into the DMS (which, in response to GDPR, can be for a short period) you may also wish to consider maintaining a physical deeds packet. Certificates of Completion should always be kept with the documents to which they relate in case of future dispute/as evidence in future due diligence exercises.
- 4.10.5 Certificates of Completion record, inter alia, the audit trail of the signing including the email addresses the documents were sent to, when and where fields were completed and the IP addresses of the devices that were used. It is important to bear in mind however that IP addresses and GPS co-ordinates (if enabled) are not always reliable and do not need to be reviewed. The key information to check in a Certificate of Completion is:
 - 4.10.5.1 any witnesses signed after the signatory whose signature they witnessed;
 - 4.10.5.2 signatories did not assign their signature tasks to others (because the "change signing responsibility" function was enabled, but this is unusual); and
 - 4.10.5.3 in the case of a Registrable Document:
 - 4.10.5.3.1 SMS authentication was applied for all signatories (including witnesses); and
 - 4.10.5.3.2 the function "specify recipient" (which allows a recipient and not the Conveyancer controlling the

²⁵ As is noted elsewhere in this paper, in certain e-signing platforms e.g. DocuSign, witnesses will not receive copies of the completed documents if the "sign with witness" function is used. However, this is not true of all e-signing platforms so care is needed. If confidentiality is a major concern then it may be worth considering whether alternative methods of signing are available that do not involve a witness (e.g. a limited company could look to sign by two directors rather than by a single director in the presence of a witness).

²⁶ In this context "completion" means completion by everyone of all allocated actions. It will not be legal completion if the documents are to be dated outside the e-signing platform.

²⁷ In relation to Registrable Documents, HM Land Registry advise that the Conveyancers involved in the transaction retain the Certificate of Completion with their files.

signing process to allocate a signatory for the document) has not been used for signatories (although of course it can be used to enable signatories to specify their witness).

5. WITNESSING²⁸

The "witnessing" of an individual's electronic signature brings with it some additional challenges. They are not new challenges but the advent of electronic signatures brings into sharper focus such issues as evidence, security and reliability than is perhaps ordinarily applied to witnessing in a "wet ink" world.

While there are usually alternatives to witnessing for corporate entities, witnessing may be unavoidable, e.g. where an individual or an individual attorney signs a deed. We have set out below the matters that we have identified as requiring particular consideration:

5.1 Who can act as a witness?

5.1.1 Witnesses should be over 18, not visually impaired and of sound mind. Ideally, they should not be a family member. However, it will not invalidate the witnessing if a family member is the only person available to witness, provided they are neither party to nor a beneficiary of the documents being witnessed²⁹.

5.1.2 Unless the e-signing platform has "in-person" signing³⁰ functionality, in order to sign and complete their details in the document, the witness will require their own email address and access to a device such as a mobile phone, tablet or computer.

5.2 Physical presence

5.2.1 The witness must be physically present and able to see the signatory adding their signature to the document on screen. In times when social distancing measures apply, this could mean that the witness observes the signing standing at an appropriate distance or even through a window, provided that it is possible for the witness to see clearly what the signatory is doing. Witnessing remotely by way of video call or similar is not acceptable.

5.2.2 As recommended at paragraph 3 of Schedule 6 to this paper, best practice is to include a message to those recipients who need to sign in the presence of a witness explaining who can act as a witness and emphasising the need for the witness to be physically present.

5.2.3 Where available, it is also best practice to add a "tooltip" or other informative to the signature field for any recipient required to sign in the presence of a witness e.g.:

Your signature needs to be witnessed. Please do not sign this document unless your witness is physically present and able to observe you adding your signature to the document on screen.

5.2.4 Some firms may choose to seek additional comfort regarding the physical presence of the witness, although this is not a legal requirement. This is likely to take the form of the inclusion of a statement to that effect next to or beneath the signing block within the relevant document(s) for the witness to sign or initial. [Section 13.2 of Practice Guide 8](#) suggests (but does not require) the inclusion of the statement:

²⁸ Note that, although in this paper we use the expression "witnessing", the more accurate legal term is "attestation". Witnessing involves observing the execution of a document. Attestation involves the additional step of recording, on the document itself, that the witness has observed the execution.

²⁹ The other party's solicitor and any lender's solicitor must agree to family members acting as witnesses.

³⁰ In-person signing does not comply with Land Registry Requirements.

I confirm that I was physically present when [name of signatory] signed this deed.

5.3 HM Land Registry requirement for access authentication

- 5.3.1 The Land Registry Requirements require the use of access authentication for all witnesses (in addition to signatories) who must receive a 6 digit one-time passcode sent to them by the e-signing platform by text, i.e. SMS.
- 5.3.2 Many e-signing platforms currently do not have this functionality available for witnesses in their capacity as "witnesses" as opposed to being standard recipients of an envelope who are set up in the "signing order" to receive the envelope immediately after the signatory whose signature that they have witnessed³¹.

5.4 Confidentiality

- 5.4.1 It seems to be the case with many e-signing platforms that all documents within an envelope sent to a witness are visible to that witness, including those documents they are not required to witness. If your transaction involves multiple documents but only some of those require witnessing it might be appropriate to separate out those that require witnessing into a different envelope to the others. However, if confidentiality is a major concern then it may be worth considering whether alternative methods of signing are available that do not involve a witness (e.g. a limited company could look to sign by two directors rather than by a single director in the presence of a witness)³².
- 5.4.2 There is a divergence of approach between e-signing platforms as to whether or not at the end of the signing process witnesses receive copies of the completed documents. In DocuSign witnesses set up using the "signs with witness" function will not receive notification of the completion of an envelope nor will they receive copies of the completed documents, but they do receive the notification and receive the documents if they are set up as direct recipient of the envelope in order to satisfy HM Land Registry's requirement for access authentication.

6. SUBMITTING ELECTRONICALLY SIGNED REGISTRABLE DOCUMENTS TO HM LAND REGISTRY

- 6.1 The Conveyancer lodging the application at HM Land Registry must provide the following certificate **in their own name** (and not the name of their law firm):

I certify that, to the best of my knowledge and belief, the requirements set out in practice guide 8 for the execution of deeds using electronic signatures have been satisfied.

The certificate must be given in a separate letter or document indicating the name of the individual giving the certificate, the law firm they represent and the date. It is not possible to provide the certificate via the notepad or the reply to requisition function within HM Land Registry's business e-services portal.

- 6.2 Because of this certification requirement, wherever possible the signing process should be controlled by an external solicitor and not an in-house solicitor with a practising certificate.

³¹ At the time of publication of this paper the working group is not aware of any e-signing platform which is proven to have this functionality. As noted if the identity of the witness is known when the envelope is created, one workaround is to add the witness as an additional signatory rather than a witness. This allows the Land Registry Requirements to be satisfied, but creates confidentiality issues. See section 5.4 below.

³² Other steps could also be used to preserve confidentiality. For example, using "in-person" signing if that is available (but only for Non-Registrable Documents) and advising the signatory to carefully supervise the witness whilst they sign and ensure that the witness finishes signing in the signatory's presence.

- 6.3 Where the Conveyancer applying for registration did not control the signing process, they should ensure that they receive an Interim Certificate (see paragraph 4.9 above) to avoid the risk that the Certificate of Completion received after completion reveals something that prevents them from giving the certificate required by HM Land Registry. They may also request that they are given by the controlling Conveyancer a certificate addressed to their law firm that mirrors the HM Land Registry certificate. Any such request should be agreed to.
- 6.4 When uploaded to HM Land Registry's business e-services portal, the electronically signed document can be certified as being a true copy of the original document.

SCHEDULE 1

Checklist for using electronic signatures for real estate documents

1. The Land Registry Requirements³³ include:
 - 1.1 **All parties (with limited exceptions³⁴) are represented by a Conveyancer.**
 - 1.2 **A Conveyancer is responsible for setting up and controlling the signing process** through an e-signing platform.
 - 1.3 The **Conveyancer controlling the signing process populates the name, email address and mobile phone number of the signatories.** The details for a witness can be populated later either by the Conveyancer or the signatory provided this is done before the witness attests the documents.
 - 1.4 The **use of access authentication for all signatories and any witnesses** who must receive a 6 digit one-time passcode sent to them by the e-signing platform by text i.e. SMS.
 - 1.5 Once the signing process has been concluded, the **Conveyancer responsible for setting up and controlling the signing process dates the documents within the e-signing platform.**
 - 1.6 The Conveyancer who lodges the application to register the electronically signed documents must provide the following **certificate**:

I certify that, to the best of my knowledge and belief, the requirements set out in practice guide 8 for the execution of deeds using electronic signatures have been satisfied.

The certificate must be given in the Conveyancer's own name. [Appendix 3 of Practice Guide 8](#) sets out an "acceptable" certificate of electronic signatures.
2. These requirements are in addition to the other considerations discussed elsewhere in this paper. Other constraints (some of which are practical rather than legal) include:
 - 2.1 All parties to the transaction and any lender that is financing the transaction must **consent to the use of electronic signatures.** They may have their own views on the security and reliability of electronic signatures and may not regard their use as appropriate even where the law allows it.
 - 2.2 Where it is not possible for usual **signing formalities** to be complied with. The signing formality that is likely to be the most problematic in practice is **witnessing** because of the need for the witness to be physically present. For further comment regarding the position of witnesses please see section 5 in the main body of this paper.
 - 2.3 Where a signing entity's **constitutional documents or internal policies** do not permit the use of electronic signatures. Note that it is not currently considered possible for companies registered under the Companies Act to **seal** documents electronically³⁵.

³³ The Law Society [response dated 17 July 2020](#) to draft practice guidance published by HM Land Registry considers some of the Land Registry Requirements.

³⁴ The exceptions are that only the lender in the case of a discharge or release; the personal representatives in the case of an asset; and the donor in the case of a power of attorney need have Conveyancers acting for them. [See section 13.3 of Practice Guide 8.](#)

³⁵ Section 45(2) Companies Act 2006 (CA 2006) provides, in relation to a company seal, that its name must be "engraved" upon it in legible characters. Failure to meet this requirement amounts to an offence (section 45 CA 2006). The Law Commission's view is that it is doubtful whether the name of a company on a rubber stamp is enough to satisfy the requirement for "engraving" as it would not leave a physical impression on the document (see paragraph 9.5 of the Law Commission's Consultation Paper No. 143 Execution of Deeds and Documents by or on behalf of Bodies Corporate). Given this, it is not currently considered possible for a company (formed under the Companies Acts) to e-seal documents. The position may be different in relation to corporations not formed under the Companies Acts (e.g. local authorities, public bodies, charities and educational establishments), but this will depend upon the wording of the Act of Parliament/Royal Charter creating it and the corporation's constitutional documents.

- 2.4 Where one or more of the contracting parties is an **overseas entity**. You will only be able to proceed with the use of electronic signatures if local counsel has advised that there are no concerns, and no local requirements or formalities, regarding the use of electronic signatures (whether relating to enforcement of judgments in the overseas jurisdiction or formalities around notarisation or registration etc.) and (if required) is willing to issue a due execution opinion³⁶ in relation to the overseas entity executing the document using an electronic signature. In particular, please note that whilst under Scots law electronic signatures are valid for most documents, there are significant differences between Scots and English law in this respect; Scots law advice should always be taken where there are Scottish entities or Scots law documents.
- 2.5 Where **contractual provisions** preclude the use of electronic signatures³⁷.
- 2.6 If the **place of signature** or the location of the document is important (e.g. for tax reasons), it may be preferable not to use electronic signing since it may not be clear where the e-signed document will be treated as having been signed or located.
- 2.7 If there are a **number of documents** involved in your transaction, you might want to consider whether it is possible and/or appropriate for all of them to be electronically signed. If not and there are some documents where **wet ink signing is required**, that may negate the convenience and time savings of using electronic signing for the transaction.
3. Most commercial e-signing platforms have a **limit on the size (and number) of documents** that can be uploaded to an "envelope". Documents that typically exceed these limits are those which contain bulky specifications, technical documents and plans as annexures e.g. construction documents, agreements for lease and leases. In the absence of a technological solution to this problem, one workaround might be to split the contract documents into **multiple separate "envelopes"**. You would first look to circulate the "bulky" supporting documents for the parties to review and accept by signing³⁸. Thereafter, you would issue the main document for signing through the e-signing platform in the normal way. It is important that the main document makes reference to the supporting documents being incorporated so that it is clear which documents form part of the completed contract³⁹.

Although there is no legal need for supporting documents that are incorporated by reference to be signed by the parties through the e-signing platform provided they can be correctly identified (e.g. by referring to the document name, author, any document number, version and date of issue or, alternatively, by "locking them down" in a data room), the advantage of having them signed within the e-signing platform is that it provides greater evidential certainty that they have not subsequently been changed.

In all circumstances following completion, it is recommended that for future reference a "bible" or similar is prepared and circulated to all parties containing a copy of the electronically signed main document and all the incorporated supporting documents including the e-signing platform's Certificate of Completion.

³⁶ Notwithstanding the general acceptability of electronically signed documents under English law it is worth noting the current reluctance of many firms to provide a **"due execution" opinion** in relation to such a document. Accordingly, if there is a need for a "due execution" opinion to be provided in relation to your transaction (this can often arise where finance and lenders are involved), electronic signing may not be the right choice.

³⁷ It is rare for such restrictions to be included in real estate transaction documents.

³⁸ It is as easy to insert a full signature as initials, and a full signature is recommended since the Certificate of Completion typically provides greater detail for the application of signatures than for initials.

³⁹ This is, of course, a pre-requisite if your transaction involves a contract to create or dispose of an interest in land where you will need to ensure due compliance with section 2 of the Law of Property (Miscellaneous Provisions) Act 1989.

SCHEDULE 2

Types of real estate documents considered suitable/not suitable for electronic signature

Subject to due consideration having been given to the checklist at Schedule 1, the following represent non-exhaustive lists of the types of real estate documents which the working group consider are likely to be suitable (and not suitable) for electronic signature.

Part 1– Suitable for electronic signature and not subject to Land Registry Requirements

1. Agreements for lease, sale and surrender⁴⁰
2. Assignments of non-registrable leases
3. Assured shorthold tenancies (ASTs) (provided non-registrable)
4. Building contracts
5. Car parking licences⁴¹
6. Collateral warranties
7. Declarations of trust
8. Deeds of covenant
9. Deeds of guarantee
10. Deeds of surrender of leases which are not registered or noted
11. Development agreements
12. Exclusivity agreements
13. Facility agreements
14. Forward funding agreements
15. Forward sale/purchase agreements
16. Joint venture agreements
17. Land promotion agreements
18. Landlord and Tenant Act 1954 simple declarations⁴²
19. Landlord and Tenant Act 1954 statutory declarations⁴³
20. Licences to alter, assign, change use and/or underlet (unless incorporating a variation to be registered)
21. Licences to occupy⁴⁴

⁴⁰ HM Land Registry will note an agreement which has been electronically signed but does not meet Land Registry Requirements. This is because section 32(3) of the Land Registration Act 2002 provides that "The fact that an interest is the subject of a notice does not necessarily mean that the interest is valid, but does mean that the priority of the interest, if valid, is protected".

⁴¹ This refers to a true licence, i.e. a personal right or permission that offers no security, given to a licensee by a licensor in respect of a licensor's property.

⁴² In the absence of clear legal authority and established market practice and given the importance of the exclusion process, the landlord may prefer that the tenant provides a statutory declaration or simple declaration which is signed in wet ink. The decision to allow e-signing of Landlord and Tenant Act 1954 simple declarations and statutory declarations by tenants should be discussed with each landlord client. It is not possible to administer a 1954 Act statutory declaration remotely.

⁴³ See footnote 42.

⁴⁴ This refers to a true licence, i.e. a personal right or permission that offers no security, given to a licensee by a licensor in respect of a licensor's property.

22. Non-disclosure agreements
23. Non-registrable leases (granted for a term of seven years or less with no requirement to register easements)⁴⁵
24. Novation agreements
25. Option agreements
26. Oversailing (and scaffolding etc.) licences
27. Property/Development management agreements
28. Professional appointments (usually construction related)
29. Property maintenance, operation and service contracts
30. Rent deposit deeds
31. Rent review memorandum
32. Section 38 / 278 highway agreements⁴⁶
33. Section 104 sewer adoption agreements
34. Section 106 planning agreements/Unilateral undertakings⁴⁷
35. Side letters
36. Tenancy agreements (seven years or less, no easements)
37. Tenancies at will
38. Wayleaves

Part 2 – Suitable for electronic signature provided Land Registry Requirements can be met

1. Deeds of easement
2. Deeds of rectification of registered leases
3. Deeds of release of covenants/rights of light and air/easements
4. Deeds of variation of registered leases (if the parties choose to register)
5. Leases granted for terms of more than seven years (or granted for a term of seven years or less where there is a requirement to register easements)
6. Legal charges/mortgages⁴⁸ (and HM Land Registry Forms DS1/DS3)
7. Powers of attorney⁴⁹
8. Reversionary leases where the term takes effect more than three months after the date of the lease

⁴⁵ Excluding reversionary leases where the term takes effect more than three months after the date of grant and all discontinuous leases granted out of a registered title and discontinuous leases for a term of more than seven years when granted out of an unregistered title.

⁴⁶ Provided the highway authority is able to execute electronically. See Schedule 1.

⁴⁷ Provided the local planning authority is able to execute electronically. See Schedule 1.

⁴⁸ Unless a digital mortgage which has been created, signed and dated electronically using HM Land Registry's digital mortgage service.

⁴⁹ General powers of attorney (but not lasting powers of attorney) can be electronically signed. [Section 13.3.2 of Practice Guide 8](#) provides that only the donor of a general power of attorney need be represented by a Conveyancer.

9. All discontinuous leases granted out of a registered title and discontinuous leases for a term of more than seven years when granted out of an unregistered title
10. Transfers of freehold interests in land
11. Transfers of registered leases or unregistered leases having more than seven years of the term unexpired (including surrenders of registered or noted leases)

Part 3 – Not suitable for electronic signature

1. Lasting power of attorney⁵⁰
2. Any certificate or consent to dealing required by a restriction given by a non-conveyancer to HM Land Registry⁵¹
3. The certificate required by a restriction in Form LL⁵²

⁵⁰ See paragraphs 2.97 to 2.107 of the Law Commission's Report on the Electronic execution of documents published 3 September 2019 (Law Com No 386) and [section 13.4 of Practice Guide 8](#)

⁵¹ See paragraph 3.1.5.1 of [LR Practice Guide 19: Notices, restrictions and the protection of third party interests in the register](#).

⁵² See paragraph 3.1.5.5 of [LR Practice Guide 19: Notices, restrictions and the protection of third party interests in the register](#)

SCHEDULE 3
Guide to DocuSign workflow

1. PLATFORM, CONTROL OF PROCESS AND SIGNING ORDER

- 1.1 This workflow assumes that all parties will sign the document(s) using the same DocuSign envelope(s)⁵³ and signing order(s). There is nothing preventing each law firm using its own envelope for its client⁵⁴, but this makes the signing process less coordinated and the law firms involved in the transaction will need to agree the process. Reference in this workflow to Firm 1 is to the law firm controlling the process and to Firm 2 is to the law firm that is not controlling the process. All parts of the process mentioned below are effected within DocuSign unless otherwise stated. Some key actions are highlighted in blue font.
- 1.2 **At the outset the firms should agree the DocuSign process for their transaction.**
- 1.3 The agreement may cover (amongst other matters):
- 1.3.1 the signing order (see paragraphs 1.4 to 1.6 of this Schedule 3);
 - 1.3.2 the details of recipients (and relevant DocuSign actions) that need to be included when creating the signing order;
 - 1.3.3 the position on the use of access authentication⁵⁵;
 - 1.3.4 the content of any message that Firm 1 will give to the client of Firm 2;
 - 1.3.5 what fields each recipient will need to complete;
 - 1.3.6 what information is to be inserted into the blank spaces in the document(s);
 - 1.3.7 whether the law firms need to speak before the blanks are filled in and the document(s) dated – in practice it is expected that the law firms will agree that from the point of the first signature being applied, the document(s) will be held to the order of both law firms pending exchange/completion;
 - 1.3.8 whether the platform settings will allow the sent envelope to be corrected by adding or removing fields within the transaction document(s) or by adding additional documents to the envelope, should this be required (see the section in Schedule 5 Part 2 headed "Agreed process");
 - 1.3.9 in the case of Registrable Documents, whether an Interim Certificate will be emailed by Firm 1 to Firm 2 or otherwise made available to Firm 2 by, for e.g. using the "receives a copy" function prior to completion so that Firm 2 can check that the signing process has complied with Land Registry Requirements;
 - 1.3.10 in the case of deeds, when delivery will take place i.e. when the deed is dated by Firm 1;
 - 1.3.11 whether the documents are to be dated within the DocuSign platform⁵⁶;
 - 1.3.12 whether non-signatory parties (such as a managing agent or a mailbox for

⁵³ Separate envelopes are needed for the documents if they will complete at different times, unless the intention is to date the documents outside DocuSign. A separate envelope may also be needed if a particular document is confidential or sensitive and witnessing is required in relation to other documents comprised within the transaction – this is because presently a witness sent an envelope will be able to view all its contents or because it is too bulky (see paragraph 3 of Schedule 1).

⁵⁴ Some clients undertaking volume transactions may insist on using their preferred platform for all transactions.

⁵⁵ Access authentication and the generation of a 6 digit one-time passcode sent by the platform by text i.e. SMS to every signatory and witness is a Land Registry Requirement for Registrable Documents.

⁵⁶ This is a Land Registry Requirement for Registrable Documents. Note, however, that some law firms are not comfortable with documents that have been signed within an e-signing platform being dated outside it and may require both Registrable Documents and Non-Registrable Documents to be dated within the platform.

a third party) should be included at the end of the signing order to receive a copy of the completed document(s); and

- 1.3.13 that the Certificate of Completion will be provided to all recipients and any witnesses unless the witnesses sign using the "signs with witness" function.

Schedule 5 Part 2 sets out some suggested template wording for the agreement which it is envisaged will be contained within an email.

- 1.4 It is important that the law firms agree the signing order and, where in that order, each law firm is to be included. Firm 2 may wish to be included at the start to check that the document(s) uploaded to the envelope represent the final agreed version(s) and are all present and correct. Firm 2 may also want to be included just before the document(s) are dated, to check the document(s) have been properly executed although this may not be necessary if, as part of the signing/release instructions, Firm 1 has agreed to provide Firm 2 directly with an Interim Certificate prior to completion being effected.
- 1.5 Firm 1 is usually included as the final recipient in the signing order to enter information into the blank spaces (e.g. dates, figures) and date the document(s). By ensuring that documents are completed within DocuSign, its audit trail benefits are maximised and the signing process will comply with Land Registry Requirements⁵⁷.
- 1.6 The flowchart included at the end of this Schedule is an example of how the signing order may work; it provides the alternative of the parties receiving the document(s) for signing at the same time (in parallel) or in sequence.
- 1.7 **Also at the outset each firm should provide an email to their client explaining the DocuSign process.**
- 1.8 Schedule 5 Part 1 within this paper sets out some suggested template wording for that email. The email may request that the client provides certain additional personal data required by the process such as a mobile phone number. An explanation should be given that this personal data may be visible to others involved in the transaction and will be held within the systems of DocuSign and the advising law firms.

2. PROCESS EXAMPLE

The suggested order of events set out below is only an example and will be subject to agreement between the relevant law firms on a case by case basis.

- 2.1 **Firm 1 creates an envelope and uploads the agreed form document(s) with all plans and annexures appended** (which DocuSign converts to PDF format, if they are not already in PDF format). Note that DocuSign has a limit on the size of documents that can be uploaded to an "envelope" – currently set at:
- 2.1.1 25MB per document;
- 2.1.2 2,000 pages per document;
- 2.1.3 200MB total envelope size; and
- 2.1.4 130 documents per envelope.
- 2.2 For most law firms, documents must first be saved locally onto the fee earner's PC or any shared drive in the law firm's network, then uploaded, although eventually it is hoped that it will be possible for them to link directly into their own DMS. A minority of law firms already have this functionality. For the purposes of GDPR and good housekeeping, locally saved documents should be deleted promptly once uploaded to DocuSign.

⁵⁷ HM Land Registry requires the Conveyancer controlling the signing process to complete electronically signed Registrable Documents within the e-signing platform.

- 2.3 Only include more than one document in the same envelope if they will complete simultaneously, unless the intention is to date the documents outside DocuSign⁵⁸. Separate envelopes may also be used for reasons of confidentiality or size of documents (see paragraph 3 of Schedule 1).
- 2.4 One feature within DocuSign is the ability to set a document as a supplement. No fields are attached to a document that is set as a supplement (so there are no actions for a recipient to perform) but you can require the recipients of the envelope to view and accept the supplement.
- 2.5 **Firm 1 adds the recipients (setting a signing order), selects the action(s) that each one will take and includes the relevant fields for the uploaded document(s):**
- 2.5.1 For each recipient (apart from a witness unless they are being included as a direct recipient or where the specify recipient function is being used), Firm 1 must include their name, email address and (where SMS or automated phone call access authentication is to be utilised – see paragraph 2.5.2 of this Schedule 3) mobile phone or landline number (as applicable). If a corporate entity executes by two officers, each officer should be included as a separate recipient.
- 2.5.2 DocuSign offers access authentication for a recipient. This is an extra layer of security that requires the recipient to input an access code into the platform (like a password) to be able to access an envelope and its contents. Not all firms choose to use access codes, and it is up to each firm and client whether they wish to use this. If it is agreed that access codes are to be used, when preparing the envelope Firm 1 will enable the relevant access authentication for each recipient. As noted in section 4.5.3 only a 6 digit one-time passcode generated by and sent to the recipient by DocuSign by text i.e. SMS will comply with Land Registry Requirements. This is, therefore, the route that must be used for Registrable Documents.
- 2.5.3 If the envelope has more than one recipient (as will often be the case), Firm 1 will set a signing order to ensure control over the order in which the document(s) are processed and signed by the various recipients. As mentioned at paragraph 1.3 of this Schedule 3, the signing order should be agreed by the law firms at the outset of the transaction.
- 2.5.4 Firm 1 will either add a generic email that will be seen by all recipients of the envelope or, by selecting the "Custom email and language for each recipient" option, emails tailored to each individual recipient. Additionally a firm may also add, or include as an alternative, private messages⁵⁹ for certain recipients (see paragraph 1.3 of this Schedule 3). It is recommended that either a custom email or a private message or both are sent when Firm 1 sends documents, particularly when Firm 1 is sending documents directly to Firm 2's client or to an unrepresented party or where the actions "specify recipients" or "signs with witness" are allocated to a recipient. Please see Schedule 6 for some sample wording.
- 2.5.5 Firm 1 will also choose the action for the recipient. **Needs to sign** is the default action⁶⁰. Others likely to be of relevance include:
- 2.5.5.1 **Specify recipients** – where the identity of a recipient is not known at the outset. For example it is not possible to confirm which signatory out of a pool of available signatories at the

⁵⁸ This is not an option for Registrable Documents.

⁵⁹ Note that there is a 1,000 character limit for use of private messages within DocuSign; there is no character limit with the custom email option.

⁶⁰ Note also to be used where you are sending the envelope to Firm 2 to "approve" its contents. Although the "Approve" function will not leave any annotation or other mark on the documents themselves it is a "field" that needs to be completed and it is therefore necessary to allocate Firm 2 the action "Needs to sign".

client will be the one to sign on the day. In that situation it is possible to add as a recipient the instructing officer/surveyor at the client and assign to them the action of "specifying" who the next recipient (typically the signatory) will be. They will be required to insert the name, email address (and mobile phone or landline number if SMS or automated phone call authentication is being used) of the recipient who will follow them in the signing order. Firm 2 might also want to specify the recipients for its client. Note that the specify recipient function does not comply with Land Registry Requirements when used for signatories, but can be used by the signatory to specify a witness, although there are confidentiality concerns around this. See section 5.4 above.

2.5.5.2 **Signs with witness** – self-explanatory. To be used if the recipient is a signatory who needs to sign in the presence of a witness and the document is not a Registrable Document⁶¹. The signatory will be required to insert the name and email address of their witness. No mobile phone or landline number is required and no extra authentication can be added to the email a witness receives⁶². Immediately after the signatory has signed, the witness will receive an email inviting them to sign and complete their details in the document. Note that all documents within an envelope sent to a witness are visible to that witness even those documents they are not required to witness⁶³ albeit they will not, unlike all other recipients of the envelope, receive a copy of the completed document(s) at the end of the signing process⁶⁴.

2.5.5.3 **CC (Receives a copy)** – this is not an action per se. The recipient is typically listed at the end of the signing order to ensure that they receive a copy of the completed document(s) at the end of the DocuSign process. However it can be used at any point in the signing order so that the recipient can receive a copy of the "in progress" document and Interim Certificate for checking.

2.5.6 Firm 1 will then move on to applying the relevant **fields** to the document(s) for each recipient. Fields inform the recipient what to do e.g. where to sign or to insert information. Each recipient is allocated a different colour by DocuSign which makes the process of adding the fields for individual recipients more user-friendly. If a recipient is in the signing order more than once, they must be named differently (e.g. "Firm 2 Initial Document Approval" and "Firm 2 Signing Approval") and each name will appear in a different colour.

2.5.7 DocuSign offers many types of fields, however in practice it is likely that only a small number of the standard fields will be utilised:

2.5.7.1 **Approve** – where a recipient is required to "approve" document(s). Typically this will be Firm 2. Although the "Approve" function will not leave any annotation or other mark

⁶¹ Signs with witness cannot be used for Registrable Documents as it does not allow access authentication, which is a Land Registry Requirement for both signatories and witnesses.

⁶² The inability to use access authentication for witnesses was not considered to be an issue before publication of the Land Registry Requirements because the purpose of the witness is to attest the signature of the signatory and the verification of the identity of those who witness wet ink signatures is not current practice.

⁶³ If your transaction involves multiple documents but only some of them require witnessing it might be appropriate to separate out those that require witnessing into a different envelope to the others.

⁶⁴ Some firms may use an "in-person" / same device approach where confidentiality is an issue, although this means that the witness details are not recorded in the Certificate of Completion. There is, therefore, less of an audit trail to assist in proving that the witness was a separate person to the signatory. And of course this route is not available in relation to Registrable Documents.

on the document it will be noted as a completed action in the Certificate of Completion that is produced at the end of the DocuSign process. Where the "Approve" function is being used we would recommend that the "Approve" tag is added to each document within the envelope.

2.5.7.2 **Initial** – where a recipient is required to initial. Note that although "initials" will appear and be visible on documents the detail of who has "initialled" a document (and the date/time of initialling etc.) will not be apparent from the Certificate of Completion that is produced at the end of the DocuSign process. If it is important to capture this information in the Certificate of Completion then the better option would be to require the relevant recipient to apply their signature instead.

2.5.7.3 **Name** – self-explanatory. Will pre-populate with the information that has been inputted for the recipient. Accordingly please always take care to provide a recipient's full name at the stage that you are setting them up as a recipient rather than an abbreviated form.

2.5.7.4 **Signature** – where a recipient needs to sign. In terms of applying a signature a recipient is afforded a couple of different options. They can elect to "draw" their own "signature", "upload" their own signature or "adopt" a standard font signature. If the recipient has their own DocuSign account it is likely that they will already have set their own electronic signature. Care will be needed as to the choice of electronic signature where a specimen signature for a signatory is already held on record, a situation that can often be encountered in finance transactions.

2.5.7.5 **Text** – text boxes can be aligned and resized to fit the space available. Text boxes should be used where, for example, a date or address needs to be inserted. Text fields must be inserted in all blank spaces in the document(s) (e.g. in a lease context examples of the blanks that might need to be filled in on completion include term and rent commencement dates, rent review dates, break dates, Landlord and Tenant Act 1954 Act notice and declaration dates as well as the date of the lease itself on the front page and in the prescribed clauses). Where relevant a text field should also be inserted on the front page of a contract for the sale of land/an agreement for lease to allow for the inclusion of the time of exchange and the names of those conducting the exchange.

2.5.8 **Be very careful with the dating of documents in DocuSign.** The law firms will not usually want a document to be automatically dated when the last (or indeed any) recipient signs, so do not apply the **"Date Signed"** field. To control the date applied to any document, use a text field for the date and assign responsibility (see paragraph 1.3 of this Schedule 3) for dating, usually to Firm 1⁶⁵ as the last recipient after all the signatories have signed.

2.6 **Once the above steps have been completed Firm 1 will send the envelope from the platform to the recipients:**

2.6.1 If Firm 2 has been set as the first recipient with the "Approve" function then they will need to "approve" the contents of the envelope before it can move further on in the signing order.

⁶⁵ For Registrable Documents it must be Firm 1 in order to satisfy Land Registry Requirements.

- 2.6.2 Each recipient will receive an email containing a link from which they can open the envelope. The recipient does not need to have a DocuSign account and, they may be required to accept an **electronic record and signature disclosure** before they are able to move forward. This is a legal disclosure apropos GDPR advising them that their personal data will be visible to all recipients and retained within both DocuSign's and the advising law firms' systems. If access authentication has been enabled (see paragraph 2.5.2 of this Schedule 3) the recipient will also need to input any code(s) that have been sent to them.
- 2.6.3 The system guides the recipient through what is a fairly straightforward signing process. The recipient may be asked to create a signature (see paragraph 2.5.7.4 of this Schedule 3). Note that in addition to being able to see the fields that they are to complete, recipients are also able to see fields that have been completed/filled out by recipients ahead of them in the signing order. They are not able to see the fields that have been inserted for recipients after them in the signing order to complete/fill in.
- 2.6.4 Depending on the DocuSign settings applied, recipients have the option of **"voiding"** an envelope if they do not want to complete their allocated actions. If an envelope is voided it will not progress any further through the signing process. You can apply a setting so that any recipient who chooses to void an envelope is required to provide a reason for doing so.
- 2.6.5 Assuming, however, that a recipient is happy to proceed once they have completed all of their required actions they will click "Finish" and the document(s) will move on to the next stage of the signing process.
- 2.6.6 If Firm 2 has been set as the penultimate recipient with the "Approve" function then they will need to "approve" the due execution of the documents before the envelope moves on to Firm 1 for completion, but this will not be necessary if Firm 2 is added as a CC "receives a copy" before Firm 1 effects completion by filling in any blanks and dating the documents(s). See paragraph 2.7 below.
- 2.7 Provided the **Document Markup** feature has not been enabled within the settings (which we do not recommend for either Registrable Documents or Non-Registrable Documents), recipients are not able to modify an envelope. Until the first recipient has approved or signed the document, the Conveyancer controlling the signing process may **correct** any aspect of the envelope. Once one recipient has approved/signed a document, the document becomes locked and can no longer be changed and any signatures cannot be removed. Additional signatories and fields can, however, be added by the controlling Conveyancer using the correct function. Depending on the settings applied, an envelope can also be **voided** by either the controlling Conveyancer or any recipient at any stage prior to all actions having been completed.
- 2.8 For Registrable Documents, Firm 1 should email to Firm 2 an **Interim Certificate** (accessed by choosing "History" from the drop down options available for the envelope) so that they can check that the signing process complies with Land Registry Requirements⁶⁶. Alternatively, Firm 2 can be added in the signing order as a **CC "receives a copy"** before Firm 1 so that they automatically receive a link to the "in process" document and the Interim Certificate immediately prior to Firm 1's action of dating the document.
- 2.9 If it is intended to complete the document(s) within DocuSign⁶⁷ and Firm 1 has nominated itself, last in the signing order, the envelope will make its way to **Firm 1 to effect completion by filling in any blanks and "dating" the document(s)**. This should be effected in accordance with the process agreed with Firm 2 at the outset.

⁶⁶ See section 4.10.5 for the key information to check in a Certificate of Completion.

⁶⁷ HM Land Registry requires the Conveyancer controlling the signing process to complete electronically signed Registrable Documents within the e-signing platform.

Dating within DocuSign is ideal because of the audit trail benefits. If completion is to take place outside DocuSign then the document(s) will need to be downloaded by Firm 1 and completed using an appropriate PDF tool or wet ink, onto a printed copy⁶⁸.

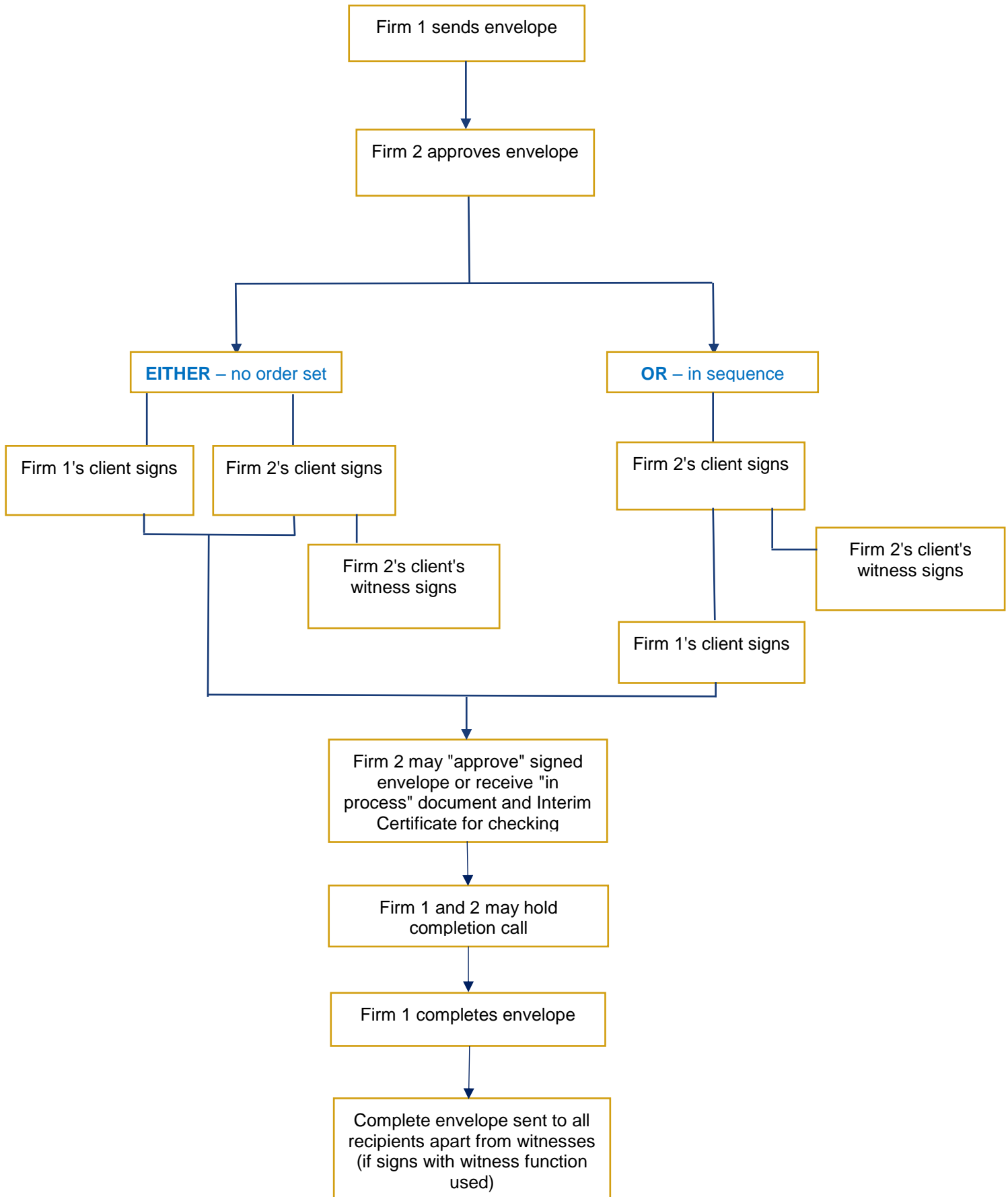
- 2.10 All recipients (apart from witnesses when the **signs with witness** function has been used in the case of Non-Registrable Documents) will receive an email from DocuSign letting them know that completion has taken place. Depending on the size of the completed document(s) and Firm 1's DocuSign settings, the email will either attach the completed documents or contain a link from which the recipients can access the document(s) on DocuSign's system. The recipients may also be able to access the Certificate of Completion directly.
- 2.11 Following completion of document(s) within an envelope, best practice is for Firm 1 and Firm 2 to **promptly download both the document(s) and the related Certificate of Completion**⁶⁹ and save them to their respective DMS. The Certificate of Completion records the history of the document(s) to which it relates including the email addresses they were sent to, when and where fields were completed and the IP addresses of the devices that were used. Individual firms will have set their own timelines for how long completed documents (and their related Certificate of Completion) will be held within DocuSign. Once they have been deleted from DocuSign they will not be capable of being retrieved.
- 2.12 Any client specific requirements regarding the holding of hard copy documents and uploading of completed documents to data rooms etc. should also be adhered to.

⁶⁸ Some law firms are not comfortable with documents that have been signed within an e-signing platform being dated outside it and may require both Registrable Documents and Non-Registrable Documents to be dated within the platform.

⁶⁹ If Firm 1's settings are such that the Certificate of Completion is not automatically available to Firm 2, then Firm 2 should ask Firm 1 to supply it.

ENVELOPE FLOWCHART

(Indicative flowchart only. Refer to the main body of this paper for full details of all requirements)



SCHEDULE 4
E-signature platform providers⁷⁰

- AdobeSign
- Contractbook
- Docsketch
- DocuSign
- eSign Live
- GetAccept
- HelloSign
- Infotrack
- KeepSolid Sign
- Lightico
- Nitropro / Nitrosign
- OneSpan Sign
- PandaDoc
- RightSignature
- SecuredSigning
- Signable
- SignEasy
- SignNow
- ValidSign

⁷⁰ Other providers may be available.

SCHEDULE 5
Signing/release instructions

Part 1 – Suggested text for email to be sent to your client

The drafting below will need to be tailored according to your client's experience of using e-signing platforms.

Subject: Using {name of e-signing platform} for {insert description of matter}

As discussed, for {insert description of matter} we will be using {name of e-signing platform} (the "**Platform**") to e-sign the following agreed form document(s):

- {specify document}
- {specify document}

We have already reported to you on the terms of these documents.

You will shortly receive an email from us via the Platform with a link to the document(s) to be signed by you.

{You will be prompted to request an SMS code (generated by the Platform) to be delivered to your mobile phone which you will be required to input before you are able to access the documents.}

{If this is the first time you have used the Platform}⁷¹ you will be asked to create your signature. Please follow the instructions provided to do this. Once you have signed the document(s), you should click "Finish". The signed documents will be held to the joint order of this firm and the {insert description of party}'s solicitors until {exchange} {completion} takes place.

{As you need to sign the document(s) in front of a witness, as part of the signing process you will be asked to provide the name, email address {and mobile phone number} of your witness. Please note that the witness will need to be physically present when you sign and must be able to see you adding your signature to the document(s) on screen. {To comply with social distancing measures, this could mean that the witness observes the signing at an appropriate distance or perhaps through the window of a house, conservatory or car.} The witnessing of your signature remotely by way of video call or similar is not acceptable. Immediately after you have signed the documents(s), your witness will be emailed asking them to sign and complete their details in the document(s) {and also sign a statement confirming their physical presence} using their own device, which they should do promptly.}

If you have any queries about the document(s), please contact me immediately, and before you sign the document(s).

Following {exchange}{completion}, you will automatically receive an email from the Platform advising that {exchange}{completion} has taken place. The completed document(s) and the certificate of completion which provides the audit trail of the signing process will be available for you to download⁷².

As a result of using the Platform, please note that your personal details including your email address, {mobile phone number}, IP address {and location of signing} will be visible to all parties involved in this transaction and that they will be held within the systems of the Platform and the law firms advising on the transaction.

{Please obtain consent from the witness regarding the visibility and holding of their personal data.}

⁷¹ Not all e-signing platforms save users' signatures.

⁷² This will depend on the settings of the e-signing platform.

Part 2 – Suggested text for email to be sent to the other party

Best practice is to agree "signing/release instructions" with the other party at an early stage of the transaction setting out how any documents are to be signed and dated and, if any of them are deeds, when they will be "delivered". The drafting below is provided as a starting point to aid your discussions with the other side, although it will need to be tailored to the individual circumstances of your transaction.

Subject: Electronic signing protocol for *{insert description of matter}*

In connection with *{insert description of matter}* (the "**Transaction**") we have agreed that the parties will use the *{name}* e-signing platform (the "**Platform**") to *{sign}* *{execute}* the following document(s):

- *{specify document}*
- *{specify document}*

{Copies of the agreed forms of these documents are attached to this email.}

Confirmation of recipient details

{You have previously provided} *{Please provide}* us with the following details in respect of the recipient(s) for your client:

- Full name
- Role (e.g. signing as director, authorised signatory, etc.)
- Email address
- *{Mobile phone number⁷³}*

You confirm that *{the}{each}* recipient has been informed that these details will be visible to all parties involved in the Transaction and that they have consented to the retention of these details within the systems of *{name of e-signing platform}* and the law firms advising on the Transaction.

{Where a recipient is being asked to nominate a witness, you confirm that they have been asked to obtain consent in similar terms from the witness regarding the visibility and holding of their personal data in connection with the Transaction. The signatory will need to enter the name and email address of their witness⁷⁴. Immediately after the signatory has signed the document(s), the witness will be emailed (at the email address provided by the signatory) asking them to sign and complete their details in the document(s).}

Agreed process

1. *{The}{Each}* agreed form document will be uploaded by us to the Platform and circulated (within one envelope) in the following signing order:

Signing order	Recipient	Action
1.	You	To review and approve the document(s)
2.	<i>{Are the documents to be sent to the recipients for the parties at the same time or in a specified order?}</i>	<i>{Specify actions}</i>

⁷³ Only required if you are utilising SMS access authentication. If access authentication is to be provided by automated phone call it is possible to provide a landline number as an alternative.

⁷⁴ If the e-signing platform facilitates access authentication for witnesses and this is being enabled e.g. in order to ensure compliance with Land Registry Requirements, this drafting may need to be adjusting to include reference to the fact that the witness's mobile phone number may also need to be captured.

Signing order	Recipient	Action
3.	{You	To review and approve the fully signed documents prior to completion}
4.	Us	To insert agreed information into any blank spaces and effect completion of the document(s) by dating it/them within the Platform

2. Within the envelope we will include the following message(s) addressed to your client's recipient{s}:
{Insert the appropriate message(s). Refer to the suggested drafting in Schedule 6.}
3. {The recipient{s} will be prompted to request an SMS code (generated by the Platform) on their mobile phone{s} which they will be required to input before they are able to access the documents within the envelope⁷⁵.}
4. The settings for the Platform allow us (but not you or any other recipients) to correct a sent envelope. We will notify you if any corrections are required to be made.
5. From the point at which the first signature is applied to the documents within the envelope, all documents held within the envelope will be held to our joint order pending their completion. You may download the signed but undated document(s) {which will be watermarked "in process"}⁷⁶ in order to check that they have been correctly signed. Any downloads at this stage are permitted strictly on the condition that they are held to our joint order, the documents cannot be dated and you will not release them to any other party.
6. When the envelope is returned to us as the final recipient in the signing order, we will:
 - 6.1 {send you an interim certificate of completion so that you can satisfy yourself that the signing process met with the Land Registry's requirements for electronic signatures set out in section 13.3 of Practice Guide 8: execution of deeds;}
 - 6.2 {telephone you to agree that the Transaction document(s) can be dated};
 - 6.3 {insert agreed information into the relevant blank spaces and} date the Transaction documents within the Platform.
7. {Exchange} {Completion} {and delivery, if any of the documents are deeds,} will be effected when the Transaction documents are dated.
8. Following {exchange}{completion}, you and your client's recipient{s} {(but not any witnesses/including any witnesses)}⁷⁷ will automatically receive an email from the Platform advising that {exchange}{completion} has taken place. The completed document(s) and the certificate of completion which provides the audit trail of the signing process will be available for you and them to download⁷⁸.

⁷⁵ Required in relation to Registrable Documents. Adjust if an alternative method of access authentication is being enabled.

⁷⁶ This will depend on the settings of the e-signing platform.

⁷⁷ This will depend upon the functionality of the particular e-signing platform being used.

⁷⁸ This will depend on the settings of the e-signing platform.

SCHEDULE 6

Examples of private messages to be sent to particular recipients

The following messages, or a combination of them (as appropriate), are recommended. They may need to be shortened if the e-signing platform limits the number of characters that can be used:

1. To recipients not represented by your law firm (essentially other parties to transactions)⁷⁹:

You are being sent document(s) for electronic signing. We understand that you have already been advised by your solicitor about this. If you have any queries about the document(s), you should contact your solicitor immediately, and before you electronically sign them. {Name of firm} is not advising you on any aspect of the document(s) or the related transaction nor on the use of the {name} e-signing platform.

2. To unrepresented recipients:

You are being sent document(s) for electronic signing. If you have any queries about the document(s), you should seek independent legal advice immediately, and before you electronically sign them. {Name of firm} is not advising you on any aspect of the document(s) or the related transaction nor on the use of the {name} e-signing platform.

3. Additional wording for recipients who are required to sign in the presence of a witness:

{For a number of the documents}, you are required to sign in the presence of a witness. You will need to provide the full name and email address of your witness⁸⁰. Immediately after you have signed the document(s) your witness will receive an email inviting them to sign and complete their details in the document(s). {Please let your witness know in advance that their personal details will be visible to all parties involved in this transaction and that they will be held within the systems of {name of e-signing platform} and the law firms advising on the transaction.}

Your witness will need to be physically present when you sign the document(s) and will need to observe you adding your signature to the documents "on screen". Witnessing by way of a video call or similar is not sufficient. Your witness should be over 18, not visually impaired and of sound mind. They must not be a party to the document(s) being witnessed (or a signatory for another entity that is party to the document(s)) or a beneficiary under it/them. They {may} {must not be} a family member⁸¹.

4. To witnesses (if the e-signing platform facilitates witnesses receiving private messages):

Please follow the instructions to sign these documents as a witness. By inserting your e-signature and clicking on "Finish", you will be confirming that you were in the physical presence of the signatory when they inserted their e-signature.

{Your personal details will be visible to all parties involved in this transaction and they will be held within the systems of {name of e-signing platform} and the law firms advising on the transaction.}

⁷⁹ This is required as in the ordinary course you would not be emailing another solicitor's client directly. The wording of the message should be agreed with the other solicitor in advance and included in the signing/release instructions that you agree with them.

⁸⁰ Adjust if access authentication is being enabled to also refer to provision of the witness's mobile phone or landline number as appropriate. The wording may also need to be adjusted if the witness is being added as a signatory by the Conveyancer to satisfy the Land Registry Requirements.

⁸¹ Choose the appropriate wording depending upon whether or not the other party's solicitor and any lender's solicitor agree to family members acting as witnesses.