

ATM ACCESS AUSTRALIA LIMITED

ABN 52 130 571 103

A Company limited by Guarantee

ATM ACCESS CODE

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PART A PRELIMINARY

1 INTRODUCTION

1.1 Background

The RBA together with industry participants have agreed to reform the Australian ATM system. The reforms include three elements:

- (a) an Access Code to facilitate access to the ATM system;
- (b) facilitation of direct charging for the use of ATMs; and
- (c) the setting of the bilateral interchange fees paid between ATM Issuers and ATM Acquirers in respect of ATM Transactions to zero (subject to certain exceptions).

The Access Code and the ATM Access Regime provide the implementation framework for these reforms.

1.2 Operation of the Access Code

- (a) The Access Code is divided into the following parts:
 - (i) Part A relates to preliminary matters such as the scope of the Access Code, its objectives and membership fees (see also Schedule 5);
 - (ii) Part B relates to the obligation to provide access, outlines the eligibility requirements for seeking access and the process which an Access Seeker must follow to apply for access to the ATM system and enter a Connection Agreement with an Access Provider, the implementation process once a Connection Agreement has been signed and payment obligations for access (see also Schedule 1, Schedule 2, Schedule 3, Schedule 6, Schedule 7 and Schedule 8);
 - (iii) Part C relates to Members engaging in ATM Interchange Activities with each other, including rules in relation to Direct Charging (see also Schedule 4); and
 - (iv) Part D relates to administration of the Code, including dispute resolution, reporting, confidentiality and liability.
- (b) Key roles and terms under the Access Code are summarised in the following table.

Role	Description
Roles relevant to the provision of ATM services to Cardholders	
ATM Acquirer	Operates ATMs, in which ATM Cards may be used to access funds from an account held by the ATM Cardholder with an ATM Issuer. An ATM Acquirer may operate its own ATMs and/or may operate ATMs owned by a third party. An ATM Acquirer may also be an ATM Issuer.
ATM Issuer	Issues ATM Cards and PINs to its customers, for use in ATMs operated by the ATM Issuer or any other ATM Acquirer. An ATM Issuer may also be an ATM Acquirer.
Roles relevant to the granting of access rights	
Access Seeker	The party that seeks to exercise the access rights granted by the Access Code. An Access Seeker must be or become a Member.
Access Provider	A Member of the Access Company with whom an Access Seeker wishes to establish a Direct Connection or Direct Clearing/Settlement Arrangement.
Options for connection	
Direct Connection	A direct communications link between two parties via distinct IPsec protected Virtual Private Network (VPN) connections to the COIN that enables them to directly exchange ATM Transaction messages: <ul style="list-style-type: none"> ▪ in respect of their own activities as an ATM Issuer or ATM Acquirer; and/or ▪ on behalf of ATM Issuers and/or ATM Acquirers, to facilitate the Clearing and Settlement of ATM Transactions.
(Using a) Switch	If a party wants to exchange ATM Transaction messages with another party with whom it does NOT have a Direct Connection, then it must use the services of a Switch.
Options for clearing and settling ATM Transactions	
Direct Connection	A direct communications link between two parties via distinct IPsec protected Virtual Private Network (VPN) connections to the COIN that enables them to directly exchange ATM Transaction messages, to facilitate Clearing and Settlement of ATM Transactions that arise

Role	Description
	between them or between parties on whose behalf they Clear and Settle ATM Transactions.
Direct Clearing/Settlement Arrangement	An arrangement between two parties that are indirectly connected via a Switch that enables them to exchange ATM Transaction messages and, directly Clear and Settle ATM Transactions that arise between them or between parties on whose behalf they Clear and Settle ATM Transactions.
(Using a) Clearing/Settlement Agent	<p>When a Member needs to Clear and Settle ATM Transactions with a counterparty with whom they do not have:</p> <ul style="list-style-type: none"> ▪ a Direct Connection; or ▪ a Direct Clearing/Settlement Arrangement, <p>the Member must use the services of a Clearing/Settlement Agent. Through this service, the Member can Clear and Settle its ATM Transactions with the Clearing/Settlement Agent, and the Clearing/Settlement Agent will then Clear and Settle with other Direct Clearer/Settlers in the ATM system.</p>
Services available under the Access Code	
Direct Connection Service	To establish a Direct Connection. (See also Schedule 6.)
Direct Clearing/Settlement Service	<p>To establish a Direct Clearing/Settlement Arrangement. (See also Schedule 6.)</p> <p>An Access Seeker seeking access to a Direct Clearing/Settlement Service must have entered into an agreement with a Switch to provide indirect connectivity to the Access Provider(s) with whom it seeks to establish a Direct Clearing/Settlement Arrangement.</p>
Terms relevant to clearing and settling ATM Transactions	
ATM Interchange Activities	The exchange of the ATM Transaction messages required to Clear and Settle an ATM Transaction.
ATM Interchange Terms	<p>The terms prescribed by the Access Code with which Members must comply when they engage in ATM Interchange Activities with each other. These terms replace any inconsistent terms in pre-existing bilateral agreements.</p> <p>(See also Schedule 4 and clause 8.4 re agreed variations.)</p>
Interchange Fee	A wholesale fee payable between an ATM Issuer and an ATM Acquirer with respect to an ATM

Role	Description
	Transaction. (See also clause 10.)
Members of the Access Company	
Members	<p>Members are:</p> <ul style="list-style-type: none"> ▪ the founding Members of the Access Company; and ▪ any Access Seekers that enter into a Connection Agreement to establish a Direct Connection or a Direct Clearing/Settlement Arrangement. Access Seekers become Members at the time of entering into their first Connection Agreement. <p>Members must:</p> <ul style="list-style-type: none"> ▪ act as Access Providers, ie provide Direct Connection Services and Direct Clearing/Settlement Services to any Access Seeker that seeks access to those services and meets the eligibility criteria subject to and on the terms set out in this Access Code; and ▪ unless the Member operates solely as a Switch, engage in ATM Interchange Activities with all other Members in accordance with the ATM Interchange Terms. <p>(A list of the current Members can be found on the Access Company's website.)</p>

- (c) The descriptions provided in the table above are for illustrative purposes only and:
- (i) are not intended to replace the definitions of these terms provided in Schedule 9; and
 - (ii) do not affect the rights and obligations of Members set out elsewhere in the Access Code.

1.3 Scope

- (a) The Access Code regulates:
- (i) access to Connectivity Services, which is defined in this Code as connectivity via the COIN in accordance with the CECS Access Standard Interchange Specification. It is intended that the provision of access on this basis will promote timeliness of access to the ATM system, subject only to the potential impact of the Payments Network Migration Project, and thus enhance the capacity of the Code to achieve its stated objectives; and

- (ii) ATM Interchange Activities between Members.
- (b) Access to Indirect Connection and access to Indirect Clearing/Settlement services are not regulated by the Access Code.

1.4 Access Code objectives

The objectives of the Access Code are to:

- (a) facilitate equitable, practicable and ongoing access to the Direct Connection Service and the Direct Clearing/Settlement Service and thereby promote competition;
- (b) facilitate Direct Charging;
- (c) ensure the maintenance of Direct Connections and Direct Clearing/Settlement Arrangements;
- (d) facilitate the RBA's reform agenda for the ATM system;
- (e) take into account Access Providers' proprietary rights;
- (f) take into account the interests of current and future Members, including Access Seekers;
- (g) be objective and transparent;
- (h) be technology neutral, which in the context of the Access Code is intended to mean that the Access Code will regulate access without promoting, impeding or endorsing a particular technology or technological solution; and
- (i) achieve all of the above in a co-regulatory regime without impinging on:
 - (i) the integrity, security, reliability and stability of ATM Transactions;
or
 - (ii) the universal acceptance of ATM Cards.

1.5 Effect of the Access Code

- (a) The Access Code has been established for the benefit of current and future Members who, and in consideration of becoming Members, acknowledge that they are bound to:
 - (i) comply with the Constitution and the Access Code; and
 - (ii) fulfil and perform every obligation and duty imposed on them by or pursuant to the Constitution and the Access Code.

- (b) The Access Code has the effect of a contract under seal:
 - (i) between the Access Company and each Member; and
 - (ii) between the Members.

1.6 Access Seekers becoming Members

- (a) Once Access Seekers become Members, they are bound as all other Members to the provisions of the Access Code pursuant to clause 1.5.
- (b) Any party seeking to exercise a right as an Access Seeker under this Access Code undertakes to comply with the obligations of an Access Seeker expressed in this Access Code.
- (c) Any right of an Access Seeker under this Access Code arises, and continues, only for as long as the Access Seeker is in full compliance with the obligations of Access Seekers under this Access Code.

1.7 Inconsistencies

- (a) If a provision of the Access Code is inconsistent with a provision of the ATM Access Regime, the provision of the ATM Access Regime prevails.
- (b) If a provision of the Access Code is inconsistent with a provision of the Constitution, the provision of the Constitution prevails but only to the extent that the provision of the Constitution is consistent with the ATM Access Regime.
- (c) If a provision of the Access Code is inconsistent with a provision of the CECS Regulations, the CECS Manual, the COIN Regulations or the COIN Operating Manual, the provision of the Access Code prevails.

1.8 Assignment of obligations

A Member or Access Seeker cannot assign obligations under the Access Code, unless specifically authorised by the Access Code.

1.9 Governing jurisdiction

Any disputes arising under the Access Code or Associated Agreements are governed by the law of New South Wales.

1.10 Administration

- (a) The Access Company may delegate its administrative responsibilities to a third party.

- (b) In delegating its administrative responsibilities to a third party, the Access Company must:
 - (i) monitor compliance with the obligations delegated; and
 - (ii) ensure that the terms of the delegation are consistent with the Access Company's obligations under the Access Code.
- (c) In fulfilling its role, any third party is bound to act in accordance with the objectives of the Access Code as set out in clause 1.4 and is bound to comply with any duties and obligations of the Access Company imposed by the Access Code.
- (d) Should the Access Company delegate its administrative responsibilities it remains responsible for fulfilling its obligations under the Access Code.

1.11 Membership fees

Members must pay any fees and charges imposed by the Access Company from time to time, including the Annual Membership Fee (see Schedule 5).

1.12 Commencement

The Access Code takes effect from the date determined by the Access Company (**Commencement Date**).

Next page is 2.1

PART B CONNECTIONS AND CONNECTIVITY SERVICES

2 MEMBERS' OBLIGATIONS

2.1 Access obligations

Subject to clause 6.1(f), a Member must provide the following Connectivity Services to Access Seekers:

- (a) if a Member is a Direct Connector, Direct Connection Services; and/or
- (b) if a Member is a Direct Clearer/Settler, Direct Clearing/Settlement Services.

2.2 Right to decide whether to act as a Switch or Clearing/Settlement Agent

Members have the right to:

- (a) decide whether or not to act as a Switch. For the avoidance of doubt a Member is not obliged to provide switching services to any person seeking to act as an Indirect Connector; and
- (b) decide whether or not to act as a Clearing/Settlement Agent. For the avoidance of doubt, a Member is not obliged to provide Clearing/Settlement Services to any person seeking to act as an Indirect Clearer/Settler.

2.3 Clearing/Settlement Agents

Members that are Clearing/Settlement Agents:

- (a) engage in ATM Interchange Activities on behalf of Indirect Clearer/Settlers; and
- (b) are responsible for ATM Transactions involving Indirect Clearer/Settlers,

as principals. The terms upon which a Member acts as a Clearing/Settlement Agent for an Indirect Clearer/Settler are not regulated by this Access Code.

Next page is 3.1

3 ACCESS SEEKERS' RIGHT TO SEEK ACCESS

3.1 Eligibility Criteria for Access Seekers

To be eligible to seek access to Connectivity Services under the Access Code a person must:

- (a) be a Constitutional Corporation which carries on a business at or through a permanent establishment in Australia;
- (b) be, or propose to be and be capable of operating as either:
 - (i) an ATM Issuer;
 - (ii) an ATM Acquirer;
 - (iii) a Clearing/Settlement Agent (for ATM Issuers and/or ATM Acquirers); and/or
 - (iv) a Switch;
- (c) be solvent (within the meaning given to that term in the *Corporations Act*) and otherwise able to meet the financial and other obligations imposed on Members, Access Seekers and Access Providers by the Access Code;
- (d) not be, and must not have been within the previous two years, in material default of any Connection Agreement, or any other agreement for the provision of access in respect of ATM Transactions;
- (e) demonstrate that it will comply with any regulatory requirements applicable to its business; and
- (f) demonstrate that its business practices will be sound and secure, so that its membership of the Access Code will not adversely affect the integrity, security, reliability and stability of ATM Interchange Activities, and the Clearing and Settlement of ATM Transactions between Members.

3.2 Connectivity obligations

An Access Seeker that seeks access to the Direct Clearing/Settlement Service must enter into an agreement with a Switch to provide indirect connectivity to the relevant Access Provider(s).

3.3 Limits on access rights

The access rights granted under the Access Code are non-exclusive contractual rights and do not give Access Seekers any right, title or interest in an Access Provider's infrastructure and systems.

Next page is 4.1

4 NEW CONNECTION PROCESS

4.1 Introductory guide

- (a) The Access Company must prepare and periodically update an introductory guide to ATM Access dealing with matters such as:
 - (i) an introduction to the Access Code, the CECS Manual, the COIN Operating Manual and the Standard Testing Protocol;
 - (ii) an outline of the eligibility criteria for Access Seekers;
 - (iii) an outline of the process and steps required to become a Member;
 - (iv) to the extent they are ascertainable, a list of fees and charges payable, or likely to be payable, as part of the processes of applying for access and becoming a Member;
 - (v) a copy of the Application Form (prepared in accordance with the requirements set out in Schedule 2);
 - (vi) a copy of the Confidentiality Deed (substantially in the form of Schedule 1); and
 - (vii) any other matters that the Access Company considers relevant.
- (b) The Access Company must prepare and periodically update a list of all Members.
- (c) The Access Company must make the guide referred to in paragraph (a) and the list referred to in paragraph (b) publicly available.

4.2 Assistance by the Access Company

- (a) If a person who has obtained the guide referred to in clause 4.1 requires information not covered in the guide, the person may approach the Access Company for assistance.
- (b) If a request for assistance is made, the Access Company must provide any information reasonably required by the person making the request.
- (c) For the purposes of paragraph (b), it is not reasonable to:
 - (i) require information that is Confidential Information of the Access Company or a Member; or
 - (ii) require information that is not related to the operation of the Access Code.
- (d) The Access Company may charge its reasonable Costs of providing assistance under this clause 4.2.

4.3 Information to be provided to the Access Company

Members must provide the Access Company with the name and contact details of a person who will negotiate on the Member's behalf in respect of the provision of Connectivity Services to an Access Seeker.

4.4 Information to be provided to an Access Seeker

(a) Provided the Access Seeker has executed the Confidentiality Deed, upon the request of the Access Seeker the Access Company must provide information to the Access Seeker relating to:

- (i) the number of Connection Agreements an Access Provider has executed or Application Forms it has received, for which testing is not yet completed; and
- (ii) the anticipated Next Available Date for an Access Provider,

and such other information as the Access Seeker reasonably requires to determine which Access Providers to seek Connectivity Services from and to assess the likely timeframes in which Direct Connections and Direct Clearing/Settlement Arrangements may be established.

(b) An Access Provider who has notified the Access Company that it has reached its capacity under clause 6.1(f) must promptly notify the Access Company whenever:

- (i) it has completed its obligations under clauses 6.3 and 6.4 in respect of an Access Seeker;
- (ii) a Connection Offer lapses;
- (iii) a Connection Agreement is terminated; or
- (iv) there is any change to the anticipated Next Available Date it had provided in respect of any Access Seeker,

and provide such further information as the Access Company reasonably requires, to comply with its obligations under paragraph (a).

(c) Where the Access Company receives notice from an Access Provider under paragraph (b), it must notify any Access Seekers who have lodged an Application Form for that Access Provider, but are not yet receiving Connectivity Services, of any change to the Next Available Date and the number of Access Seekers to be given an opportunity to carry out testing under clauses 6.3 and 6.4 before it.

4.5 Application process

- (a) An Access Seeker must:
 - (i) request from the Access Company, and the Access Company must provide, a copy of the Access Code, the CECS Manual, the COIN Operating Manual and the Standard Testing Protocol;
 - (ii) lodge with the Access Company a completed Application Form;
 - (iii) provide to the Access Company an executed counterpart of the Confidentiality Deed for each Member from whom the Access Seeker is requesting Connectivity Services;
 - (iv) comply with the Access Code from the time of lodgement of the Application Form until they cease to be a Member or the negotiation process under clause 4.6 has expired without acceptance of a Connection Offer; and
 - (v) pay the Application Fees (see Schedule 5).
- (b) Upon receiving an Application Form and the Application Fee, the Access Company must:
 - (i) notify the Access Seeker within 15 Business Days whether it is satisfied that the Access Seeker meets the criteria in section 3; and
 - (ii) if the Access Company is satisfied that the Access Seeker meets the criteria in section 3, forward the executed counterpart of the Confidentiality Deed to each Member from which the Access Seeker has requested Connectivity Services.
- (c) A decision by the Access Company on whether an Access Seeker satisfies the criteria in section 3 is binding on all Access Providers.
- (d) A Member that has received an executed counterpart of the Confidentiality Deed under paragraph (b) must within five (5) Business Days of receiving it:
 - (i) execute and return its counterpart of the Confidentiality Deed to the Access Company; and
 - (ii) if applicable, notify the Access Company in writing of the date from which clause 6.1(f) will cease to be relevant to the Access Seeker (assuming that all pending Application Forms and executed Connection Agreements result in the commencement of testing for Access Seekers) (**Next Available Date**).

- (e) Upon receipt of an executed counterpart of a Confidentiality Deed from a Member, the Access Company must:
 - (i) forward to the Access Seeker the executed counterpart of the Confidentiality Deed; and
 - (ii) forward to the Access Provider a copy of the Application Form from the Access Seeker.
- (f) Upon receipt of written notification under clause 4.5(d)(ii) the Access Company must inform the Access Seeker in writing of the Next Available Date nominated by the Member.
- (g) Information provided by the Access Seeker in the Application Form as part of the application process is Confidential Information to which clause 13 applies.

4.6 Negotiation process

- (a) Access Seeker Information Package

Subject to clause 4.7, within twenty-five (25) Business Days of receiving an Application Form, the Access Provider must give the Access Seeker an information package (**Access Seeker Information Package**) containing:

- (i) an offer for the provision of the Connectivity Service in compliance with clause 4.6(b) (**Connection Offer**); and
- (ii) any further information that in the Access Provider's opinion is relevant to the negotiation process.

- (b) Connection Offer

The Connection Offer referred to in clause 4.6(a)(i) must:

- (i) include the Access Provider's Standard Connection Terms (see Schedule 3);
- (ii) include as part of the Access Provider's Standard Connection Terms a Connection Charge (see clause 7); and
- (iii) include any other terms required to constitute an agreement between the Access Seeker and the Access Provider.

- (c) Response to a Connection Offer

- (i) Within ten (10) Business Days of receiving a Connection Offer under clause 4.6(a)(i), the Access Seeker may notify the Access Provider that it:

- (A) will accept the Connection Offer without undertaking any negotiations with the Access Provider; or
 - (B) wishes to negotiate the terms of the Connection Offer.
- (ii) If the period specified in paragraph (i) expires without the Access Seeker notifying the Access Provider of a decision, the Connection Offer lapses.
- (d) Acceptance of Connection Offer without negotiation

If the Access Seeker accepts the Connection Offer in accordance with clause 4.6(c)(i)(A), the Access Seeker and the Access Provider must as soon as practicable enter into a Connection Agreement substantially in the form of the Connection Offer.

- (e) Notification of decision to negotiate the terms of the Connection Offer
- (i) Subject to clause 4.6(e)(ii) and clause 4.7, if the Access Seeker notifies the Access Provider that it wishes to negotiate in accordance with clause 4.6(c)(i)(B), the Access Seeker and the Access Provider must as soon as practicable commence negotiations which negotiations must be completed within twenty (20) Business Days of the Access Seeker notifying the Access Provider in accordance with clause 4.6(c)(i)(B).
 - (ii) The Access Seeker and the Access Provider may agree to extend the timeframe in paragraph (i).
 - (iii) At the end of the negotiation process in paragraph (i), the Access Seeker and the Access Provider may:
 - (A) agree to enter into a Connection Agreement;
 - (B) agree to terminate negotiations in which case the Connection Offer lapses; or
 - (C) trigger the Dispute Resolution process set out in clause 12.

(f) Costs

The Access Seeker and the Access Provider must each bear its own Costs of negotiating, preparing and executing the Connection Agreement and any other instrument executed under the Access Code.

4.7 Transitional Provisions

Notwithstanding anything to the contrary in this Access Code or any other document or instrument, during the Transitional Period the Access Provider may, by written notice to the Access Seeker, extend either the period referred to in clause 4.6(a) or negotiation period in clause 4.6(e) if it considers an extension is required to ensure that the Access Offer or any negotiated Access Agreement is not inconsistent with its obligations as a participant in the Payments Network Migration Project.

Next page is 5.1

5 CONNECTION AGREEMENT

5.1 Entering into a new Connection Agreement

Each Connection Agreement executed under the Access Code must contain Standard Connection Terms prepared in compliance with Schedule 3.

5.2 Access Seeker's obligation to become a Member

On signing a Connection Agreement, the Access Seeker becomes a Member and agrees to be bound by the Constitution and the Access Code as provided for in clause 1.5.

5.3 Varying an existing Connection Agreement

The parties to an existing Connection Agreement may agree to vary the terms of a Connection Agreement provided that the agreement, as varied, meets the applicable requirements of clause 5.1.

Next page is 6.1

6 CONNECTION ESTABLISHMENT PROCESS

6.1 Step 1: Planning

- (a) Within thirty (30) days of signing the Connection Agreement, the Access Seeker and Access Provider must meet to discuss and agree on an Implementation project plan (**Project Plan**).
- (b) The Project Plan must cover all matters reasonably required to allow for the provision of the Connectivity Services to be acquired by the Access Seeker under the Connection Agreement.
- (c) The Access Provider and the Access Seeker must provide all information reasonably required for the preparation of the Project Plan.
- (d) The Access Provider or Access Seeker may request the Access Company to provide any assistance reasonably required to prepare the Project Plan. The Access Company will provide such assistance.
- (e) The Access Seeker is responsible for developing and updating Project Plan documentation.
- (f) An Access Provider is not obliged to undertake the obligations in clauses 6.3 and 6.4 for more than two (2) Access Seekers concurrently.

6.2 Step 2: Certification and CECS and COIN membership

Before the Access Seeker may proceed to conduct testing with the Access Provider as set out in Step 4, the Access Seeker must provide to the Access Provider:

- (a) current certificates from APCA confirming that the systems the Access Seeker intends to use for connecting to the systems of the Access Provider have been certified in accordance with;
 - (i) the requirement set out in the CECS Manual (as relevantly required depending on whether the Access Seeker will act as an ATM Issuer, ATM Acquirer, Clearing/Settlement Agent and/or Switch and subject to any transitional arrangements imposed by the Access Company under clause 18); and
 - (ii) clause 3.10 of the COIN Operating Manual;
- (b) unless the Access Seeker is seeking access to act solely as a Switch, evidence that the Access Seeker is a member of both CECS and the COIN.

6.3 Step 3: Test planning

- (a) Before beginning Step 4 of the Implementation process, the Access Seeker must, in consultation with the Access Provider, update the Project Plan.
- (b) The updated Project Plan must:
 - (i) include a timetable (**Testing Timetable**) for testing the operation of the Access Seeker's system with the Access Provider's systems;
 - (ii) include a testing protocol, substantially in accordance with the Standard Testing Protocol, describing the duration and scope of the testing process and the standards that must be met in order to complete testing successfully (**Testing Protocol**); and
 - (iii) be approved by the Access Provider, which approval will not be unreasonably withheld.
- (c) The Testing Protocol must have regard to:
 - (i) any relevant obligations set out in the CECS Manual; and
 - (ii) reasonable requests of the Access Provider.
- (d) Unless otherwise agreed, the Testing Timetable must provide that testing will be completed by a date to be nominated by the Access Provider which is no later than 150 Business Days (not counting the 14 days before 31 December of each year and the 14 days immediately thereafter) after completion of the Project Plan under clause 6.1(a), or the Next Available Date (whichever is later).

6.4 Step 4: Testing

- (a) The Access Seeker and the Access Provider must conduct tests in accordance with the Testing Timetable and Testing Protocol developed in clause 6.3.
- (b) Testing will be deemed to be successful if and when all tests in the Testing Protocol are successfully completed in accordance with the criteria set out in the Testing Protocol.
- (c) A Direct Connection or Direct Clearing/Settlement Arrangement will exist between the Access Provider and the Access Seeker from the next Business Day after testing is deemed to be successful (unless the Access Provider and the Access Seeker agree otherwise).

- (d) If an Access Provider fails to make its systems available for testing at the times set out in the Testing Timetable agreed under clause 6.3:
 - (i) the Access Provider must agree to complete all testing at a different time; and
 - (ii) within 30 days of receiving written notice from the Access Seeker, the Access Provider must pay as directed by the Access Seeker an amount as liquidated damages calculated in accordance with Schedule 7.
- (e) If an Access Seeker fails to make its systems available for testing at the times set out in the Testing Timetable agreed under clause 6.3:
 - (i) the Access Seeker must agree to complete all testing at a different time; and
 - (ii) within 30 days of receiving written notice from the Access Provider, the Access Seeker must pay as directed by the Access Provider an amount as liquidated damages calculated in accordance with Schedule 7.
- (f) The only remedy available to the Access Seeker or the Access Provider for a failure of the other party to make systems available for testing is liquidated damages calculated in accordance with Schedule 7.

6.5 Project Plan and other Connection Agreements

When agreeing, proposing or approving a Project Plan or updated Project Plan under clauses 6.1 or 6.3, the Access Seeker and the Access Provider must have regard to:

- (a) any other Connection Agreement(s) that may require the Access Provider or Access Seeker to engage in a concurrent or overlapping Implementation process and the Access Provider's planning and testing capacity under clause 6.1(f); and
- (b) any obligation of the Access Provider, during the Transitional Period, to engage in any process required of it as a participant in the Payments Network Migration Project. In particular, the Access Seeker acknowledges and agrees that whilst the purpose of the Code is to facilitate timeliness of access to the ATM system, during the Transitional Period, the Access Provider may extend any timeframe allowed in this clause 6 if necessary to construct and implement fully functional and compliant COIN interchanges.

6.6 Costs

- (a) The Access Seeker must bear all of its Costs of compliance with the Implementation process.

- (b) The Access Seeker must pay any Connection Charges specified in the Connection Agreement which relate to the Implementation process.

Next page is 7.1

7 PAYMENT FOR CONNECTIVITY

7.1 Connection Charges

Connection Charges are regulated by the ATM Access Regime. If Connection Charges are not regulated by the ATM Access Regime then they are unregulated and must be negotiated and agreed by the applicable Access Seeker and Access Provider.

7.2 Other Services

Members may agree to provide/acquire services outside the scope of the Connectivity Services on commercial terms. The provision of these additional services is not regulated by the Access Code.

Next page is 8.1

PART C ATM INTERCHANGE ACTIVITIES

8 OBLIGATION TO ENGAGE IN ATM INTERCHANGE ACTIVITIES

8.1 Members must engage in ATM Interchange Activities

From the Commencement Date each Member must engage (or stand ready to engage) in ATM Interchange Activities with all ATM Certified Members (other than those Members that have been suspended under clause 9) by reason of a combination of:

- (a) Direct Connections;
- (b) Direct Clearing/Settlement Arrangements; and/or
- (c) having appointed a Clearing/Settlement Agent to engage in ATM Interchange Activities on its behalf.

8.2 Terms Applicable to ATM Interchange Activities

Members engaging in ATM Interchange Activities with each other must do so in accordance with:

- (a) the ATM Interchange Terms in Schedule 4; and
- (b) the applicable provisions of the CECS Regulations and Manual subject to any transitional arrangements specified by the Access Company under clause 18.

8.3 Switches excluded

A reference to a Member in this clause 8 does not include a Member that is a Switch provided it is not also an ATM Issuer, ATM Acquirer or Clearing/Settlement Agent.

8.4 Agreed Variations

Subject to clause 10, the ATM Interchange Terms may be varied and/or supplemented by terms agreed between any two Members.

Next page is 9.1

9 SUSPENSION OF ATM INTERCHANGE ACTIVITIES

9.1 Right to suspend Members

- (a) A Member's participation in ATM Interchange Activities under clause 8 is suspended immediately upon:
 - (i) the Member having its CECS membership suspended in accordance with Parts 4 or 8A of the CECS Regulations; or
 - (ii) the Member being subject to a notice from APCA's CEO to CECS Members pursuant to CECS Regulation 2.8.
- (b) The Access Company may suspend a Member's participation in ATM Interchange Activities under clause 8 if:
 - (i) the Member is not capable of complying with its obligations under the Access Code, including without limitation the eligibility criteria set out in section 3; or
 - (ii) the provisions in clause 2.2.2 of the CECS Manual, or clause 3.10 of the COIN Operating Manual, apply in respect of the Member.
- (c) A Member that is a Switch will not be considered incapable of complying with its obligations under the Access Code solely because an Indirect Connector to whom it provides switching services has engaged in conduct that would have been a breach of the Access Code if that Indirect Connector had been a Member.
- (d) A Member that is a Clearing/Settlement Agent will not be considered incapable of complying with its obligations under the Access Code solely because an Indirect Clearer/Settler for whom it clears and/or settles has engaged in conduct that would have been a breach of the Access Code if that Indirect Clearer/Settler had been a Member.
- (e) The Access Company must not suspend the Member's right to the ongoing provision of services under clause 8, other than, or to an extent greater than reasonably necessary, to address the event that caused the suspension.
- (f) Prior to suspending a Member under clause 9.1(b), the Access Company must:
 - (i) notify the affected Member;
 - (ii) give the affected Member an opportunity to address the event that caused the suspension, provided that in the Access Company's reasonable opinion, the provision of such opportunity is not likely to have a detrimental effect on the integrity, security, reliability and stability of ATM Transactions; and

- (iii) give due consideration to any reasons given by the Member as to why it should not be suspended under this clause 9.
- (g) Suspension under this clause will continue until the event that caused the suspension has been addressed by the Member.

9.2 Effect of suspension

A Member whose participation in ATM Interchange Activities is suspended under this clause is not excused from discharging obligations under the Access Code, including and without limitation, obligations incurred by it in connection with services provided prior to the suspension.

9.3 Obligation to notify

The Access Company must notify all Members if:

- (a) a Member has been suspended; or
- (b) suspension of a Member has ceased to apply,

in accordance with clause 9.1.

9.4 Right to request suspension of a Member

- (a) A Member may request that the Access Company suspend another Member under clause 9.1.
- (b) A Member making a request under paragraph (a) must do so in good faith and must provide the Access Company with sufficient information in support of its request.
- (c) The Access Company has a right to refuse a Member's request to suspend another Member as provided for under paragraph (a) and must refuse such a request where the requirements for suspension in clause 9.1 are not satisfied.

9.5 Fine in lieu of suspension

- (a) Provided that suspension is not required, in the Access Company's reasonable opinion, to preserve the integrity, security, reliability and/or stability of ATM Transactions, the Access Company may fine a Member instead of suspending them pursuant to clause 9.1(b)(i).
- (b) Any fine imposed under paragraph (a) must be no more than the Membership Fee (for each breach of the Access Code).

Next page is 10.1

10 INTERCHANGE FEES

Payment of Interchange Fees in respect of ATM Transactions is regulated by the ATM Access Regime.

Next page is 11.1

11 DIRECT CHARGING

11.1 Direct Charging Rules

An ATM Acquirer that Direct Charges must comply with the relevant provisions of the CECS Manual (subject to any transitional arrangements imposed by the Access Company under clause 18).

11.2 Damages for Non-compliance with Direct Charging Rules

- (a) This clause 11.2 applies when there is a systems error that:
- (i) causes non-compliance with clauses 11.3 and/or 11.4 of the CECS Manual; and
 - (ii) affects 10 or more transactions,

(Direct Charging Systems Error).

- (b) Each Member agrees that the amount of \$7,500.00 is a conservative and genuine pre-estimate of the total loss that all Members that are ATM Issuers will suffer as a result of a Direct Charging Systems Error.
- (c) If a Direct Charging Systems Error occurs, then:
- (i) the loss suffered by each Member that is an ATM Issuer (**Issuer Member**) as a result is presumed to be:

\$7,500 * the Member's Issuing Share

where **Issuing Share** means a Member's percentage share of National ATM Transaction Volume (as defined in the Constitution) attributable to its activities as an ATM Issuer; and

- (ii) the Member responsible for the ATMs affected by the Direct Charging System Error (**Responsible Member**) must:
 - (A) pay to the Access Company the sum of \$7,500.00; and
 - (B) rectify the Direct Charging Systems Error as soon as practicable.
- (d) All sums received by the Access Company pursuant to sub-clause (c)(ii)(A) above must be distributed to the Issuer Members in proportion to their Issuing Share.

- (e) The presumption in sub-clause (c)(i) above will cease to apply between the Responsible Member and an Issuer Member if either of them establish (to the satisfaction of the other or by Dispute Resolution pursuant to Part 12) that the liability of the Responsible Member to the Issuer Member differs from the amount prescribed by sub-clause (c)(i). If this occurs then any amounts received by the Issuer Member pursuant to sub-clause (d) must be taken into account in determining the amount due and payable between the Responsible Member and the Issuer Member.
- (f) Issuer Members agree not to seek additional compensation for any loss suffered as a result of a Direct Charging Systems Error from the Responsible Member pursuant to Part 12 of the CECS Regulations.
- (g) Nothing in this clause 11.2 affects the right of the Responsible Member to seek contribution and/or compensation for a Direct Charging Systems Error from a party with whom it has a Third Party Agreement.

11.3 Prohibition on hindering or preventing Direct Charging

- (a) Where an ATM Acquirer wishes to Direct Charge in respect of ATM Transactions with a cardholder of an ATM Issuer, the ATM Issuer must not engage in conduct that hinders or prevents that Member from Direct Charging.
- (b) For the avoidance of doubt, clause 11.3(a) does not prevent a Member from:
 - (i) exercising any right or permission in the Access Code; or
 - (ii) charging its cardholders a fee for an ATM Transaction.

Note: paragraph 6 of Schedule 4 also contains provisions relevant to Direct Charging.

Next page is 12.1

PART D ACCESS CODE ADMINISTRATION

12 DISPUTE RESOLUTION

12.1 Application of this clause

- (a) This clause 12 applies to a dispute:
- (i) between the Access Company and an Access Seeker, in respect of the actual or prospective ability of the Access Seeker to meet or continue meeting the eligibility criteria set out in clause 3.1;
 - (ii) between Members, or between an Access Seeker and a Member, or between the Access Company and an Access Seeker, or between the Access Company and a Member, arising in connection with the rights and obligations under the Access Code; or
 - (iii) between parties to a Connection Agreement in relation to the rights and obligations of the parties under that Connection Agreement

but only if:

- (iv) those rights and obligations are regulated under the Access Code; and
- (v) the Dispute is not one to which the CECS Regulations' dispute resolution process applies

(Dispute).

- (b) This clause and the definition of Dispute do not apply to any Dispute between Members, or involving Members, in connection with rights and obligations under agreements that have been entered into other than pursuant to and regulated by the Access Code.

12.2 Court proceedings

A Member or an Access Seeker must not start court proceedings (except proceedings seeking interlocutory relief) in relation to a Dispute unless it has followed the procedure set out in this clause 12.

12.3 Panel of Experts

- (a) The Access Company must, from time to time, appoint persons to act as Experts for determining Disputes under the Access Code (**Panel of Experts**), provided that the persons so appointed are, in the Access Company's reasonable opinion suitably qualified to act as Experts.
- (b) The Access Company must maintain a register of persons who have been appointed to the Panel of Experts.

- (c) A person may be considered suitably qualified to act as an Expert for the purposes of paragraph (a), if the person has:
- (i) no less than 2 years experience acting as an independent Expert resolving relevant disputes; or
 - (ii) knowledge and/or experience in the payments industry, including but not limited to knowledge or experience of:
 - (A) the CECS Manual and the COIN Operating Manual;
 - (B) payments processing (for debit and credit transactions); or
 - (C) clearing and settlement processes (for debit and credit transactions).

For the avoidance of doubt, the Access Company may determine that a person is suitably qualified to act as an Expert even if they do not satisfy paragraphs (i) and (ii) if the person has other qualifications and experience which renders them suitably qualified.

12.4 Notification of a Dispute

- (a) The Access Company or any Access Seeker or Member can notify a Dispute by issuing a written notice to the other party to the Dispute stating that a Dispute has arisen, setting out the nature of the Dispute and the grounds for the Dispute (**Dispute Notice**).
- (b) If the Access Company receives a Dispute Notice it can, within ten (10) Business Days, notify a Member that the Member concerned is joined as a party to the Dispute (the **Second Dispute Notice**) and must provide that Member with a copy of the Dispute Notice.
- (c) The Access Company must supply a copy of each Second Dispute Notice to the party that issued the Dispute Notice and any other parties to the Dispute.
- (d) Within ten (10) Business Days of the receipt of a Dispute Notice or, if a Second Dispute Notice has been issued, within ten (10) Business Days of the receipt of the Second Dispute Notice, the parties to the Dispute must meet and use reasonable endeavours acting in good faith to resolve the Dispute by joint discussions.
- (e) Unless otherwise agreed by the parties in writing, if the parties to the Dispute are unable to resolve the Dispute within fifteen (15) Business Days of commencing discussions under paragraph (d), a senior representative of each party suitably authorised to make decisions in relation to the Dispute must meet and use reasonable endeavours acting in good faith to resolve the Dispute by joint discussions.

- (f) Unless otherwise agreed by the parties in writing, if the parties to the Dispute are unable to resolve the Dispute within fifteen (15) Business Days of commencing discussion under paragraph (e), the parties to the Dispute must refer the Dispute to an independent Expert for determination pursuant to clause 12.6.

12.5 Withdrawal of Dispute Notice

The party to a Dispute that issued the Dispute Notice may withdraw the Dispute Notice at any time before the Expert makes a decision in relation to the Dispute.

12.6 Expert determination process

- (a) Appointment of Expert
- (i) The parties to the Dispute may agree to appoint an Expert from the Panel of Experts, to act as the Expert to resolve their Dispute (**Expert**).
 - (ii) If the parties to the Dispute fail to agree to appoint a person to act as Expert within ten (10) Business Days of the Dispute being referred under clause 12.4(f) to Expert determination, then the Access Company must select a person from the Panel of Experts to act as Expert. In making that selection, the Access Company should have regard to the desirability of appointing persons who do not have actual or potential conflicts of interest in relation to the Dispute or the parties to it. The selected Expert must not be employed or retained in any other capacity by any of the parties to the Dispute, at the time he or she is appointed to resolve a Dispute or within two years before that date.
 - (iii) The Expert must agree to comply with clause 13 in relation to any Confidential Information he or she obtains.
- (b) Process
- (i) Within ten (10) Business Days after the appointment of the Expert, each party to the Dispute must give the Expert and the other party a copy of:
 - (A) the Dispute Notice;
 - (B) a statement of the facts upon which the party relies in relation to the Dispute;
 - (C) a statement of the party's contentions in relation to each matter in Dispute; and

- (D) a document stating the names and the titles or positions of the person whom that party intends will appear before or meet with the Expert.
- (ii) Each party has the right to reply to the submissions made by the other in paragraph (i), within five (5) Business Days of receiving these submissions.
- (iii) Each party has the right to respond to the written reply made by the other in paragraph (ii), within five (5) Business Days of receiving the other's written reply.
- (iv) In resolving the Dispute, the Expert:
 - (A) must act in a fair and unbiased manner;
 - (B) must act as an expert and not as an arbitrator, and the provisions of the *Commercial Arbitration Act 1984* (NSW) have no application to the Expert's determination;
 - (C) is not bound by the rules of evidence;
 - (D) may receive evidence and submissions from the parties in a form and at times as the Expert determines, and make copies of them available to the other party;
 - (E) may permit the parties to meet with or appear before the Expert personally or be represented by any person at any meeting or hearing conducted by the Expert;
 - (F) must determine the times and places at which any meeting or hearing will be held;
 - (G) must take into account any statements, evidence, submissions or other material received from any party, and any other material from other sources as the Expert considers desirable for the purpose of resolving the Dispute;
 - (H) may require any party to produce to the Expert documents in the party's possession or control as the Expert considers desirable for the purpose of resolving the Dispute; and
 - (I) may take steps the Expert considers necessary to protect the confidentiality of any documents or other material received by him or her.
- (v) The Expert must at any time terminate the determination process without making a final determination if he or she thinks that:
 - (A) the Dispute Notice was vexatious;

- (B) the subject matter of the Dispute is trivial, misconceived or lacking in substance; or
 - (C) the party who initiated or continues to press the Dispute has not engaged in discussions under clauses 12.4(b) and 12.4(e) in good faith.
- (c) Determination
- (i) The Expert must resolve the Dispute within fifty (50) Business Days after his or her appointment by issuing a written determination.
 - (ii) In undertaking determination of a Dispute, the Expert must have regard to all matters considered relevant, including any relevant provisions of the Access Code and the ATM Access Regime, if there is one in force.
 - (iii) The Expert's written determination:
 - (A) must set out the reasons for the determination; and
 - (B) may include, as part of the Expert's resolution of the Dispute, directions requiring:
 - A a party to pay a sum of money to the other party;
 - B a party to pay interest on any such sum;
 - C a party to pay the other party's Costs of complying with the Dispute resolution procedure in this clause; and
 - D a party to do any other act or thing, or refrain from doing any act or thing, as the Expert considers desirable to resolve the Dispute.
 - (iv) Subject to any order of a court to the contrary, a party must comply with the Expert's determination, including any directions made in the determination.
 - (v) The Expert's determination is final and binding upon the parties.

12.7 Costs

Each party must pay an equal share of the total Costs of the Expert in resolving the Dispute, unless the Expert orders otherwise.

12.8 Security

While a Dispute is being dealt with in accordance with this clause 12, either party to the Dispute may request that the Expert considers and decides whether it is appropriate that a reasonable form of security to secure Payment of any amounts payable, or likely to be payable, to that party upon resolution of the Dispute be paid to that party.

Next page is 13.1

13 CONFIDENTIALITY

- (a) All Confidential Information must be treated as confidential by the recipient of that information, its employees, legal advisers, auditors and, any other of its contactors, prospective contractors, or other consultants or prospective consultants, to whom the information has been disclosed.
- (b) Confidential Information should only be provided to contractors, prospective contractors, consultants and prospective consultants who have a need to know the information to carry out their roles.
- (c) Subject to paragraph (d), each Access Seeker, Member, Expert and the Access Company must keep confidential all Confidential Information and must not:
 - (i) use or copy such Confidential Information except for the purposes of the Access Code; or
 - (ii) disclose or communicate, cause to be disclosed or communicated or make available such Confidential Information to any third person.
- (d) A party (**Disclosing Party**) may to the extent necessary disclose the Confidential Information of another party:
 - (i) with the consent of the provider of that information (which consent is not to be unreasonably withheld);
 - (ii) in accordance with the requirements of the Access Code;
 - (iii) to the extent required by Law or required by any stock exchange or supervisory or regulatory authority having jurisdiction over the Disclosing Party; or
 - (iv) in connection with legal proceedings relating to the Access Code or a Connection Agreement made under the Access Code.
- (e) If required by Law or by any stock exchange or supervisory or regulatory authority to disclose Confidential Information:
 - (i) the Disclosing Party must, prior to that disclosure, notify the provider of that information;
 - (ii) the Disclosing Party and the person who provided the Confidential Information must, acting reasonably, agree the form of the disclosure (unless they are restrained from doing so by the Law or requirement); and
 - (iii) the Disclosing Party must seek reasonable confidentiality arrangements to protect the confidentiality of the Confidential Information and to prevent further disclosure.

- (f) The provider of the Confidential Information may request at any time that the Confidential Information be returned, destroyed or deleted. In such a case, the recipient(s) of the Confidential Information will comply with the request without unreasonably delay.
- (g) Each Access Seeker, Member, Expert and the Access Company acknowledge that a breach of this clause may cause another party irreparable damage for which monetary damages would not be an adequate remedy. Accordingly, in addition to other remedies that may be available, a party may seek injunctive relief against such a breach or threatened breach of this clause 13.

Next page is 14.1

14 REPORTING

14.1 Reporting

- (a) The Access Company may:
 - (i) establish reporting requirements for Members as required to ensure compliance with, and the effectiveness of, the Access Code; and
 - (ii) notify all Members of the application of those requirements.
- (b) In establishing reporting requirements, the Access Company must consult with all the Members.
- (c) Each Member must comply with all reporting requirements set by the Access Company under the Access Code. In complying with this obligation, a Member must not recklessly or knowingly provide or permit any other person to provide on behalf of that Member, misleading or deceptive data or information to any other Member or to the Access Company.
- (d) A Member may request, and the Access Company may agree to impose, reasonable additional reporting requirements on another Member in order to monitor or assess compliance with the Access Code by that Member. Unless it would frustrate the reasonable purpose of the reporting, the results of that additional reporting must be kept confidential by the Access Company.
- (e) Each Member must bear its own Costs of complying with the reporting requirements under the Access Code.

14.2 Transparency

The Access Company:

- (a) must publish annually a report providing information on compliance with the Access Code; and
- (b) may publish policies or guidelines in relation to the manner in which it will exercise any discretions vested in it under the Access Code, and in relation to the operation of the Access Code.

14.3 Information sharing

- (a) Each Access Seeker agrees, as a condition of applying for access, that the Access Company can:
 - (i) receive information from APCA that is necessary for it to fulfil its functions under the Access Code; and

- (ii) provide information to APCA but only to the extent that is necessary for APCA to fulfil its functions under the CECS Regulations and Manual.
- (b) Each Member agrees as a condition of their Membership that the Access Company can:
 - (i) receive information from APCA that is necessary for it to fulfil its functions under the Access Code; and
 - (ii) provide information to APCA but only to the extent that is necessary for APCA to fulfil its functions under the CECS Regulations and Manual.

Next page is 15.1

15 WARRANTIES AND LIABILITY

15.1 Member and Access Seeker warranties

At all times each Member and Access Seeker represents and warrants to each other Member, Access Seeker and the Access Company that:

- (a) it has the power to observe its obligations under this Access Code;
- (b) it performs its obligations under the Access Code in good faith;
- (c) it has not relied on any representation made by any other Member or the Access Company to induce it to become a Member or otherwise act in accordance with the Access Code;
- (d) it has made (without reliance on any other Member or the Access Company) its own independent assessment of the Access Code as being appropriate with respect to access to Connectivity Services; and
- (e) its obligations under the Access Code are valid and binding on it.

15.2 Access Company not liable

To the extent permitted by Law and with the exception of obligations with respect to specific performance, the Access Company will not be liable for any loss to any persons or damage to persons or property, whether such loss or damage is direct or consequential (including economic loss and loss of profits), howsoever arising out of the performance of the Access Company's obligations under the Access Code including:

- (a) any decision made by the Access Company in connection with its obligations under the Access Code;
- (b) any act or omission by any Member or any person other than the Access Company, its officers, employees or agents (including without limitation any errors or delays, any breach of warranty or undertaking or representation, any breach of the Access Code or the terms of any other document relating to the Access Code, any Insolvency Event, any fraud or any forgery);
- (c) any act or omission by, or any refusal to do any act by, the Access Company, its officers, employees or agents in good faith and without negligence or in reliance on any act, conduct or consent of any other person or on any instructions, information or document provided by any other person;
- (d) the failure of the Access Company, its officers, employees or agents to receive instructions, information or documents from any other person, unless the failure has resulted from a negligent act or omission of the Access Company;

- (e) the terms of any instructions, information or document given to the Access Company, other than an error or omission resulting from a negligent act or omission of the Access Company;
- (f) any error or omission in any document issued by the Access Company, other than an error or omission resulting from a negligent act or omission of the Access Company;
- (g) any technological failure of any sort (including without limitation any telephone computer or electrical failure);
- (h) any contractual arrangements between any Member and any other person; or
- (i) any change in the status, financial condition, affairs or creditworthiness of a Member or another person, including without limitation in its capacity as a Direct Connector, Switch, Direct Clearer/Settler or Clearing/Settlement Agent.

15.3 Limitation of liability

If, notwithstanding clause 15.2, any liability is incurred by the Access Company in relation to the Access Code, to the extent permitted by Law, the aggregate amount of that liability in respect of all claims made by Members and Access Seekers in respect of, or arising out of, any one event will not exceed the aggregate amount of Annual Membership Fees paid by Members during the twelve (12) months preceding the month in which the liability is incurred.

Next page is 16.1

16 VARIATION OF THE ACCESS CODE

16.1 Variation of the code

If the Access Company considers that it is necessary or desirable to make a variation to the Code which is of a procedural or technical matter, or required to correct a manifest error in relation to any part of the Access Code (**Minor Variation**), the Access Company may vary the Access Code if:

- (a) the Access Company has notified Members of the proposed variation to the Access Code, inviting them to provide comments or make submissions, and has given due consideration to those comments or submissions;
- (b) the variation is consistent with the objectives of the Access Code as set out in clause 1.4;
- (c) the variation is consistent with the terms of the ATM Access Regime; and
- (d) the variation has been approved in accordance with clause 16.2.

16.2 Approvals of variations

- (a) If the variation is a Minor Variation, the variation must be approved by the Board by a majority under clause 7.2(a) of the Constitution.
- (b) If the variation is not a Minor Variation; it must be approved:
 - (i) if the variation changes the definition of Direct Connection Service and/or the rights and obligations of Direct Connectors, by a Special Resolution of the Members who are Direct Connectors;
 - (ii) if the variation changes the definition of Direct Clearing/Settlement Service and/or the rights and obligations of Direct Clearer/Settlers, by a Special Resolution of the Members who are Direct Clearer/Settlers; and
 - (iii) otherwise, by a Special Resolution of all the Members in a general meeting.

16.3 Regulatory approvals

The Access Company must obtain any regulatory approvals necessary prior to the implementation of any variation of the Access Code.

Next page is 17.1

17 NOTICES

- (a) A notice, consent or other communication under the Access Code is only effective if it is:
- (i) in writing and in legible English, signed by or on behalf of the person giving it;
 - (ii) addressed to the person to whom it is to be given; and
 - (iii) either:
 - (A) sent by pre-paid mail (by airmail, if the addressee is overseas) or delivered to that person's address;
 - (B) sent by fax to that person's fax number; or
 - (C) sent by electronic mail to that person's electronic mail address.
- (b) Subject to paragraph (a), a notice, consent or other communication under the Access Code is, in the absence of earlier receipt, regarded as given and received:
- (i) if it is delivered, on delivery at the address of the relevant person;
 - (ii) if it is sent by fax at the time and on the day it was successfully sent;
 - (iii) if it is sent by mail, on the third Business Day after the day of posting, or if to or from a place outside Australia, on the seventh Business Day after the day of posting; or
 - (iv) if it is sent by electronic mail at the time and on the day it was successfully sent.
- (c) If a notice, consent or other communication under the Access Code is given and received on a day that is not a Business Day or after 5.00 pm (local time in the place of receipt) on a Business Day, it is regarded as being given and received at 9.00 am on the next Business Day.
- (d) For the purposes of this clause, a person's address and fax number and electronic mail address are:
- (i) if the addressee is the Access Company, the registered office of the Access Company; and
 - (ii) if the addressee is a Member, an address shown for that person in the register of Members maintained by the Access Company; and

- (iii) in all other cases, the address and fax number or electronic mail address (if any) supplied by that person to the sender of the notice.

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18 TRANSITIONAL PROVISIONS

18.1 Compliance with the CECS Regulations and Manual

The Access Company may determine from time to time in writing that Access Seekers and Members are not required to comply with particular terms of the CECS Regulations and/or CECS Manual under the Access Code and that they shall be deemed to be Certified Members as a result of any such determination. In making this determination, the Access Company may set a limit to the time during which compliance with the CECS Regulations and/or Manual is not required.

18.2 Existing interchange agreements

- (a) Subject to paragraph (b), interchange agreements entered into prior to the commencement of the Access Code continue to be enforceable.
- (b) If a provision in an interchange agreement is inconsistent with a provision of the Access Code then the provision of the Access Code prevails to the extent of the inconsistency.

SCHEDULE 1 - Confidentiality Deed

DATE

PARTIES

1. _____(ACCESS COMPANY)
2. _____(ACCESS SEEKER)

THE PARTIES AGREE

1 DICTIONARY

- (a) The terms used in this agreement are defined below:

Approved Purpose means the sole and exclusive purpose of the parties acting in accordance with the rights and obligations imposed on Access Seekers and Members under the Access Code.

Confidential Information means all information of the Discloser or any of its Related Bodies Corporate disclosed to the Recipient or any of its Related Bodies Corporate including, without limitation information:

- (i) comprised in or relating to any intellectual property rights of the Discloser;
- (ii) relating to the business, financial position, assets or liabilities of the Discloser and any matter that does or may affect the financial position or reputation of the Discloser;
- (iii) relating to future business plans of the Discloser; and
- (iv) relating to the internal management and structure of the Discloser, or the personnel, policies and strategies of the Discloser,

but does not include any information which is generally and publicly available.

Discloser means a party disclosing the Confidential Information.

Recipient means a party receiving the Confidential Information.

Recipient Representative means in respect of a party an officer, employee, agent, contractor or professional adviser of that party.

- (b) Words capitalised in this Deed that are not defined in paragraph (a) above have the meaning given to them in Schedule 9 of the ATM Access Code.

2 BACKGROUND

- (a) The Access Seeker is requesting access from the Access Provider under the Access Code.
- (b) As part of the process of negotiation and Implementation of the new access arrangements, the Access Provider and Access Seeker may disclose to each other Confidential Information.
- (c) The Access Provider and Access Seeker have agreed to deal with any Confidential Information disclosed to each other in accordance with the terms of this agreement.

3 ADDITIONAL PARTIES

3.1 Members providing contributing Connectivity Services

Where an Access Seeker is requesting Connectivity Services from a Member or Members:

- (a) the Access Company may supply a copy of this Deed to the Member and request that the Member become a party to this Deed; and
- (b) the Member becomes such a party by executing a Deed of Acknowledgement in the form attached to this Deed.

3.2 Parties Bound

The Access Seeker and the Access Company agree to be bound in respect of their respective obligations under this deed in favour of each Access Provider that signs a Deed of Acknowledgement, from the date that such signed Deed of Acknowledgement is received by the Access Company.

3.3 Copies of Deeds of Acknowledgement

As soon as practicable, upon executing a Deed of Acknowledgement the Member must provide the Deed to the Access Company and, if requested to do so, the Access Company must provide a copy of the Deed of Acknowledgement to the Access Seeker.

4 RECIPIENT'S OBLIGATIONS

4.1 Recipient must keep Information confidential

The Recipient must:

- (a) keep confidential all Confidential Information;
- (b) use all Confidential Information solely for the Approved Purpose and, for the avoidance of doubt, must not use the Confidential Information to compete against the Discloser; and

- (c) not copy or record in any other form any part of the Confidential Information except as is strictly necessary for the Approved Purpose and in accordance with this Deed.

4.2 Disclosure to Recipient Representatives

The Recipient must:

- (a) only disclose Confidential Information to a Recipient Representative to the extent necessary for the Recipient Representative to perform their duties for the Approved Purpose; and
- (b) ensure that each Recipient Representative to whom Confidential Information has been disclosed keeps that information confidential and does not do anything which would be a breach of this agreement if done by the Recipient.

4.3 Disclosure required by Law

- (a) The Recipient is not bound to keep confidential any Confidential Information if and to the extent that the Confidential Information is required by Law to be disclosed.
- (b) If required by Law to disclose Confidential Information, the Recipient must prior to that disclosure:
 - (i) notify the Discloser; and
 - (ii) seek reasonable confidentiality arrangements to protect the confidentiality of the Confidential Information and to prevent further disclosure.

4.4 Information in the public domain

- (a) The Recipient is not bound to keep confidential any information if and to the extent that the information is in the public domain other than because of a breach of this agreement.
- (b) If the Recipient is uncertain whether any information is Confidential Information, the Recipient must treat the information as if it were Confidential Information unless and until the Discloser agrees in writing that the information is not Confidential Information.

5 RECIPIENT DOES NOT OWN THE INFORMATION

The Recipient acknowledges that this agreement does not:

- (a) transfer to it any interest in any intellectual property; and
- (b) oblige the Discloser to disclose any Confidential Information to the Recipient.

6 RETURN OF INFORMATION

6.1 Recipient's rights may cease

The Discloser may at any time notify the Recipient in writing that its right to use the Confidential Information ceases and the Recipient must immediately, at the Discloser's option:

- (a) return to the Discloser all of the Discloser's Confidential Information in its possession or control;
- (b) destroy it and permit the Discloser to witness the destruction; or
- (c) delete it in the case of machine readable records.

6.2 Obligations continue

The obligations of confidentiality under this agreement continue to apply after the date of this agreement even if:

- (a) the Approved Purpose is completed or terminated; and
- (b) the Recipient has returned, destroyed or deleted the Confidential Information in accordance with clause 6 (**Return of information**),

unless the Recipient is, or has become, a Member of the Access Company, in which case the obligations of confidentiality under this agreement are replaced by the obligations of confidentiality under the Access Code.

7 CONSEQUENCE OF BREACH

7.1 Breach of agreement will damage Discloser

The Recipient acknowledges that any breach of this agreement may cause damage to the Discloser and its Related Bodies Corporate. In the event of a breach the Discloser is permitted to institute proceedings to exercise all rights and remedies available under all relevant jurisdictions including equity.

8 DISCLAIMER

8.1 No representations

The Recipient acknowledges that none of the Discloser, its Related Bodies Corporate, their respective officers, employees, advisers or agents has made or makes any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information.

8.2 Recipient releases Discloser

The Discloser, its Related Bodies Corporate and their respective officers, employees, advisers and agents disclaim liability for any loss or damage suffered or incurred by any person acting on any Confidential Information.

8.3 Discloser contracts as trustee

For the purposes of clause 8.1 (**No representations**) and 8.2 (**Recipient releases Discloser**), the Discloser contracts on its own behalf and as trustee of the benefit of the acknowledgment and release, for its Related Bodies Corporate and their respective officers, employees, advisers and agents.

9 MISCELLANEOUS

The rights and obligations set out in this Deed are in addition to, and do not derogate from, the rights or obligations of confidence expressed in the ATM Access Code.

SIGNED as a Deed.

Signed by [*the Access Seeker*] in the presence of:

Signature of director/secretary

Signature of director

Name of director/secretary (print)

Name of director (print)

Signed by [*the Access Company*] in the presence of:

Signature of director/secretary

Signature of director

Name of director/secretary (print)

Name of director (print)

Attachment Deed of Acknowledgement

DATE

ADDITIONAL PARTY

1. _____ (**ACCESS PROVIDER**)

THE ADDITIONAL PARTY AGREES

The Access Provider agrees to become a party and be bound by the Confidentiality Deed executed by

(INSERT NAME OF ACCESS SEEKER)

and the Access Company on

(INSERT DATE)

SIGNED as a Deed.

Signed by [*the Access Provider*] in the presence of:

Signature of director/secretary

Signature of director

Name of director/secretary (print)

Name of director (print)

SCHEDULE 2 - Application Form

The Application Form must include the following:

- (a) Date of the Application Form.
- (b) Name of the Access Seeker.
- (c) Name of the proposed Access Provider and the services sought.
- (d) Financial information about the Access Seeker that shows the Access Seeker is solvent and able to meet its commitments under the Access Code.
- (e) Information about the proposed ATM operations of the Access Seeker, including information as to scale of operations, area of operations (e.g. state based, national), proposed time when the Access Seeker will test its systems with the systems of the Access Provider, timing of Implementation, roll out plan, growth plan, details of any contracts already negotiated, etc.
- (f) A capability statement and supporting documentation detailing how the Access Seeker will be able to meet the eligibility requirements under the Access Code, what resources it will have available, the Access Seeker's capability to become an Access Provider, etc.
- (g) An acknowledgement that the Access Seeker agrees to seek access in accordance and in compliance with the terms of the Access Code and agrees to become a Member upon entry into a Connection Agreement.
- (h) An acknowledgement that by lodging the Application Form, the Access Seeker has agreed to be bound to the obligations of an Access Seeker under the Access Code, in accordance with clause 1.6 of the Access Code.

SCHEDULE 3 - Standard Connection Terms

How to use this schedule

The terms in this Schedule must be included in any Connection Offer prepared by an Access Provider under clause 4.6 of the Access Code.

Other than including the terms in this Schedule, the Connection Offer may contain any other terms the Access Provider considers necessary to make the Connection Offer an offer capable of being accepted by the Access Seeker. Examples of terms that may need to be added by the Access Provider include: term, intellectual property rights, force majeure, relationship of the parties, notices, governing law and insurance. Such terms must not be inconsistent with the terms in this Schedule.

A reference should also be included that terms capitalised in the Connection Offer but not defined have the same meaning given to that term in the Access Code.

1 ACKNOWLEDGMENTS

[Insert:]

1.1 Acknowledgements

- (a) The Access Company has provided and the Access Seeker has received copies of the Access Code, the CECS Manual, the COIN Operating Manual and the Standard Testing Protocol (effective as at the date of this agreement).
- (b) The Access Seeker and the Access Provider acknowledge that the Access Provider is only obliged to provide Connectivity Services as defined in Schedule 6 of the Access Code.

2 ACCESS RIGHTS

[Insert:]

2.1 Grant of access rights

- (a) The Access Provider must provide the Access Seeker the Services as defined in the Attachment to this agreement, at Connection Charges set out in clause 3.1 of this agreement.
- (b) The access rights granted pursuant to clause [2.1(a)] of this agreement:
 - (i) are non-exclusive contractual rights and do not give the Access Seeker any right, title or interest in the Access Provider's ATM infrastructure and systems; and

- (ii) are otherwise granted on the terms and conditions set out in this agreement.

3 CONNECTION CHARGES

[Insert:]

3.1 Connection Charges

Payment of Connection Charges

- (a) Subject to paragraph [(c)], the Access Seeker must pay to the Access Provider the Connection Charges set out in the Attachment to this agreement.
- (b) The Connection Charges payable under this agreement:
 - (i) must be paid in two equal instalments payable on commencement of the testing in accordance with clause 6.4 and on completion of that testing; and
 - (ii) are non-refundable.
- (c) The Access Seeker is not obliged to pay the Connection Charges to the Access Provider if:
 - (i) the Access Seeker and the Access Provider have entered into a Connection Agreement in respect of the same Connectivity Services within the previous 14 months (**Original Connection Agreement**);
 - (ii) the Original Connection Agreement was terminated pursuant to clause [5(a)(i) or clause 5(a)(ii)] of that agreement; and
 - (iii) the acts or omissions that triggered the application of clause [5(a)(i) or clause 5(a)(ii)] were not the responsibility or fault of the Access Seeker.

Charges for variation to Service

- (a) The parties may agree to vary the Service defined in the Attachment to this agreement after the date of commencement of this agreement.
- (b) Any variation of the Service under paragraph [(a)] may result in additional charges. For the avoidance of doubt, any such additional charges:
 - (i) are not payable unless they have been agreed between the Access Seeker and the Access Provider; and
 - (ii) must comply with any relevant obligations set out in the ATM Access Regime (if one is in force).

GST

The parties agree that all Payments have been set or determined without regard to the impact of GST. If GST is payable, the provisions in Schedule 9 will apply.

4 IMPLEMENTATION

[Insert:]

4.1 Implementation**Implementation according to Access Code**

Implementation of the Service must be completed in accordance with the relevant provision in clause 6 of the Access Code, including provisions in relation to planning, certification and testing of the Service.

Obligation to make systems available for testing

The Access Seeker must make its systems available for testing during the Testing Timetable as agreed in accordance with clause 6.4 of the Access Code.

5 TERMINATION

[Insert:]

5.1 Termination

- (a) Subject to paragraph [(b)], either party to this agreement (**Terminating Party**) may terminate the entire agreement, by providing notice to the other party if:
- (i) the Access Seeker ceases to meet the eligibility criteria set out in section 3 of the Access Code;
 - (ii) the other party is in material breach of its obligations under the Implementation process set out in clause 6 of the Access Code for a period of more than 20 consecutive Business Days, the Terminating Party has given five (5) Business Days notice of such breach and the other party has failed to rectify such breach within that time;
 - (iii) the other party is in material breach of this agreement, the Terminating Party has given five (5) Business Days notice of such breach and the other party has failed to rectify such breach within that time;
 - (iv) an Insolvency Event occurs in relation to the other party;

- (v) continued operation of this agreement would be unlawful or would pose an imminent threat to life or property;
 - (vi) in the Terminating Party's reasonable opinion, the other party attempted to use, is likely to use, or has used any Service (whether with or without the authorisation and/or permission of the Terminating Party) in contravention of any law where that contravention is likely to have a material adverse effect on a party to this agreement; or
 - (vii) any material information provided or representation made by either party to the other party is untrue, misleading or inaccurate and has an adverse material impact on the other party in relation to its provision of the Service under this agreement.
- (b) Prior to terminating this agreement, in full or to the extent necessary, the Terminating Party must notify the other party and the Access Company in writing that it proposes to terminate this agreement.
- (c) In the event that this agreement is terminated:
- (i) all sums due or accrued or payable to each party under this agreement or up to the date of termination and all sums due or payable to each party become immediately due and payable to that party;
 - (ii) each party must immediately return to the other party at its own expense all equipment, facilities, plant and other property of the other party used under this agreement in good working condition, fair wear and tear only excepted; and
 - (iii) each party must immediately remove all of that party's equipment, facilities, plant and other property located on the other party's premises used under this agreement.
- (d) On termination of this agreement, each party must, at its own expense, deliver to the other party, or after notice from that other party, destroy or erase all documents or other forms of storage which comprise or contain the other party's Confidential Information or from which the other party's Confidential Information can be reproduced.
- (e) Termination or expiry of this agreement is not a waiver of a breach of any term or condition of this agreement and is without prejudice to a party's rights, liabilities or obligations that have accrued prior to such termination or expiry.

6 APPOINTMENT OF NOMINATED INTERMEDIARIES

[Insert:]

6.1 Nominated Intermediaries

The Access Provider may retain a third party to perform one or more of the Access Provider's obligations under this agreement.

7 DISPUTE RESOLUTION

[Insert:]

7.1 Dispute Resolution

If there is a matter of disagreement between the Access Seeker and Access Provider in relation to their rights and obligations under this agreement, either party may refer the matter to the Dispute Resolution process in clause 12 of the Access Code, if the disagreement falls within the definition of a Dispute as provided in clause 12.1 of the Access Code.

8 CONFIDENTIALITY

[Insert:]

8.1 Confidentiality

The Access Seeker and Access Provider must comply with the confidentiality obligations set out in clause 13 of the Access Code.

Attachment

[Insert:]

ATTACHMENT

SERVICE

[Insert definition of the relevant Connectivity Service as provided for in Schedule 6 of the Access Code, as amended from time to time.]

CONNECTION CHARGES

[The Connection Offer must include Connection Charges (see clause 7 of the Access Code).

If the Access Provider and the Access Seeker agree to include services other than Connectivity Services in the Connection Agreement, the charges payable for these additional services must not be bundled with the Connection Charges (i.e., they must be itemised separately).]

SCHEDULE 4 - ATM Interchange Terms

The ATM Interchange Terms are:

1 APPLICATION TO THIRD PARTY AGREEMENTS

- (a) To the extent that these ATM Interchange Terms confer a benefit on a Member who is acting as a Switch and/or Clearing/Settlement Agent, the Member may pass on the benefit to each third party it represents under the relevant Third Party Agreements.
- (b) To the extent that performance of these ATM Interchange Terms depends upon the actions of a third party who is represented by a Member, the Member must ensure that the Third Party Agreement imposes obligations on the third party to perform those actions. The Member remains responsible for ensuring that the obligations under these ATM Interchange Terms are met.

2 APPLICATION OF THE CECS REGULATIONS, CECS MANUAL, COIN REGULATIONS AND COIN OPERATING MANUAL

- (a) Each Member must give full effect to the CECS Regulations and Manual.
- (b) Each Member must give full effect to the COIN Regulations and COIN Operating Manual.
- (c) For the purposes of the settlement cut-off time in clause 10.2 of the CECS Manual the cut-off time will be 12 midnight Eastern Standard Time unless otherwise bilaterally agreed between Members.

3 APPROVED CARDS

- (a) For the purposes of these ATM Interchange Terms, **Approved Cardholder** means:
 - (i) a customer of a Member (or third party represented by a Member) who has been issued with an ATM Card and a PIN by that Member or by a third party represented by the Member in accordance with a Third Party Agreement; or
 - (ii) any person who operates an account or has access to an account held with a Member (or third party represented by a Member) who has been issued with an ATM Card and PIN by the Member (or third party represented by a Member).
- (b) Each Member shall accept ATM Cards of Approved Cardholders at its ATMs for the purpose of making ATM Transactions.
- (c) Each Member warrants to each other Member that:

- (i) reasonable care and diligence has been taken in investigating the integrity of its Approved Cardholders;
- (ii) all details of all current ATM Cards issued by it or a third party which it represents (including lost and stolen Cards) are updated daily within the relevant computer system to enable authorisation requests to be answered promptly; and
- (iii) there will not be any terms and conditions imposed upon Approved Cardholders in conflict with the Access Code.

4 PROMOTIONS AND ADVERTISING

- (a) Each Member may display signage at their respective ATM locations which indicates the ATM Cards of Members that are acceptable for ATM use. Each Member will bear its own expenses in displaying such signage.
- (b) Each Member authorises each other Member to use its mark, logo and name for the purpose of promoting ATM interchange to their respective Approved Cardholders.

5 INDEMNITY AND LIMITATION OF LIABILITY

- (a) For the purposes of this clause Interchange Facility means the combination of hardware, software, communications lines and operational procedures which enables the exchange, authorisation and reconciliation of ATM Transactions between Members or where a Member is a Clearing/Settlement Agent between the third party they represent in accordance with the Third Party Agreement (the **Interchange Facility**).
- (b) Each Member warrants to each other Member that the Interchange Facility which it operates or controls:
 - (i) will comply in all material respects with the requirements of the Access Code and any technical requirements specified by the Access Company from time to time; and
 - (ii) will be operated competently.
- (c) If a Member commits any error or omission in the operation of the Interchange Facility, or fails or is unable for any reason to furnish, deliver or transmit an ATM Transaction as provided for herein, or in so supplying, delivering or transmitting an ATM Transaction, or operating the Interchange Facility commits an error or omission or does any act or thing incidental thereto which causes the other party to suffer loss or damage, the maximum liability or responsibility towards the affected Member shall be:
 - (i) to correct the operation of the Interchange Facility or ATM Transaction; or

- (ii) to furnish and transmit the ATM Transaction to the affected Member as soon as is reasonably practical.
- (d) Each Member agrees to indemnify each other Member against direct losses which are the result of any person's negligent or fraudulent use of an ATM Card and PIN issued by the indemnifying Member, to effect an ATM Transaction. However, the indemnifying Member is not responsible for losses that occur:
 - (i) even though the indemnifying Member did not authorize the ATM Transaction; and/or
 - (ii) as a result of another Member's non-compliance with any requirement of the Access Code, the CECS Regulations or the CECS Manual.

6 DIRECT CHARGING

- (a) Subject to paragraph [(b)], ATM Issuers may, at their absolute discretion, decline an ATM Transaction.
- (b) ATM Issuers must not decline an ATM Transactions solely because it is subject to a Direct Charge.

SCHEDULE 5 - Fees**1 FEES AND CHARGES PAYABLE**

Fees and charges are payable in accordance with the following table:

Fee	Amount (or method of calculation)	To be paid	Recipient
Application Fee	\$1,000.00 for each Member from whom the Access Seeker is requesting Connectivity Services. The fee can be adjusted by the Access Company from time to time on the basis of the Access Company's administrative Costs of processing applications.	At the time of lodging an Application Form (see clause 4.5).	Access Company
Annual Membership Fee	As determined by the Access Company from time to time, taking into account the costs associated with the administration of the Access Company and any membership fees payable by Members under CECS.	At the beginning of each financial year or another time determined by the Access Company from time to time.	Access Company

2 TAXES

All fees listed in this Schedule are exclusive of GST.

If GST is payable in respect of the fees in this Schedule, GST must be calculated in accordance with Schedule 8.

SCHEDULE 6 - Connectivity Services

Connectivity Services means any or any combination of the following services:

(a) Direct Connection Service:

(i) Subject to paragraph (ii), is a service to establish a Direct Connection between two Direct Connectors for ATM Transactions that complies with the requirements set out in the CECS Manual and the COIN Operating Manual solely comprising:

- establishing connection to the COIN via distinct IPsec Virtual Private Network (VPN) connections in accordance with the requirements of the COIN Operating Manual; and
- Internet Protocol (**IP**) based communication links and configuration of IP hardware and software to support the CECS Access Standard Interchange Specification; and
- configuring hardware, software and systems for basic Clearing, Settlement and any other back end processing required to complete Clearing and Settlement of ATM Transactions ; and
- testing the links, transaction processing capability and Clearing and Settlement capability, substantially in accordance with the Standard Testing Protocol, to ensure fault free continuous system availability and that the new arrangements do not compromise the stability and integrity of the ATM system; and
- IT and operation project management.

(ii) The Access Company may amend the definition of a Direct Connection Service from time to time.

(b) Direct Clearing/Settlement Service:

(i) Subject to paragraph (ii), is a service to establish a Direct Clearing/Settlement Arrangement between Members comprising:

- configuring hardware, software and systems for basic Clearing, Settlement and any other back end processing required to complete Clearing and Settlement of ATM Transactions via distinct IPsec Virtual Private Network (VPN) connections to the COIN in accordance with the requirements of the COIN Operating Manual; and

- testing Clearing and Settlement capability and transaction processing capability, substantially in accordance with the Standard Testing Protocol, to ensure fault free continuous system availability and that the new arrangements do not compromise the stability and integrity of the ATM system; and
 - IT and operation project management.
- (ii) The Access Company may amend the definition of a Direct Clearing/ Settlement Service from time to time.
- (c) Ongoing Service:

Any Direct Connection or Direct Clearing/Settlement Arrangement established under the Access Code must be maintained unless and until:

- (i) one of the two Members that is party to the Direct Connection or Direct Clearing/Settlement Arrangement ceases to be a Member; or
- (ii) the parties agree to terminate that Direct Connection or Direct Clearing/ Settlement Arrangement.

SCHEDULE 7 - Liquidated Damages

Where an Access Seeker or Access Provider has made its systems available for testing at the time agreed in the Testing Timetable (**Available Party**) when the other party did not (**Delayed Party**), the Delayed Party must pay Liquidated Damages to the Available Party in accordance with clause 6.4 and this Schedule,

The Liquidated Damages will be the lesser of:

- (a) the sum of Wages, Materials and Outsourced Testing Expenses; and
- (b) the Liquidated Damages Cap,

where:

- (c) **Wages** means the wages paid to the staff of the Available Party for time spent or set aside in anticipation of testing (which testing, as a result of the failure, did not occur), but only for the period until the staff resumed other duties.
- (d) **Materials** means the amount paid and which cannot be recouped by the Available Party (other than pursuant to this Schedule) for consumables purchased in anticipation of testing which, as a result of the failure, did not occur.
- (e) **Outsourced Testing Expenses** means the Cost paid and which cannot be recouped by the Available Party (other than pursuant to this Schedule) to a third party provider to undertake or assist in testing which testing, as a result of the failure, did not occur.
- (f) **Liquidated Damages Cap** means the Direct Connection Cap prescribed by the ATM Access Regime.

It is agreed that any amount of Liquidated Damages payable under this Schedule is a conservative and genuine pre-estimate of loss that the Available Party may suffer as a result of a delay in testing.

The amount payable to the Available Party under this Schedule is reduced proportionally to the extent to which the liability is caused, or contributed to, by the Available Party.

No claims relating to Liquidated Damages may be raised more than 12 months after the failure to make systems available for testing at the time agreed in the Testing Timetable first occurred.

The Available Party must take reasonable steps to mitigate its loss.

SCHEDULE 8 - GST**1.1 GST**

- (a) Any consideration or amount payable under the Access Code, including any non-monetary consideration (as reduced in accordance with clause (e) if required) (**Consideration**) is exclusive of GST.
- (b) If GST is or becomes payable on a Supply made under or in connection with the Access Code, an additional amount (**Additional Amount**) is payable by the party providing consideration for the Supply (**Recipient**) equal to the amount of GST payable on that Supply as calculated by the party making the Supply (**Supplier**) in accordance with the GST Law.
- (c) The Additional Amount payable under clause (b) is payable at the same time and in the same manner as the Consideration for the Supply but is only payable on receipt of a valid Tax Invoice (if required under the GST Law).
- (d) If for any reason (including, without limitation, the occurrence of an Adjustment Event) the amount of GST payable on a Supply (taking into account any Decreasing or Increasing Adjustments in relation to the Supply) varies from the Additional Amount payable by the Recipient under clause (b):
 - (i) the Supplier must provide a refund or credit to the Recipient, or the Recipient must pay a further amount to the Supplier, as appropriate;
 - (ii) the refund, credit or further amount (as the case may be) will be calculated by the Supplier in accordance with the GST Law; and
 - (iii) the Supplier must notify the Recipient of the refund, credit or further amount within 14 days after becoming aware of the variation to the amount of GST payable. If there is an Adjustment Event in relation to the Supply, the requirement for the Supplier to notify the Recipient will be satisfied by the Supplier issuing to the Recipient an Adjustment Note (if required by the GST Law) within 14 days after becoming aware of the occurrence of the Adjustment Event.
- (e) Notwithstanding any other provision in this Code, if an amount payable under or in connection with the Code (whether by way of reimbursement, indemnity or otherwise) is calculated by reference to an amount incurred by a party, whether by way of cost, expense, outlay, disbursement or otherwise (**Amount Incurred**), the amount payable must be reduced by the amount of any Input Tax Credit to which that party is entitled in respect of that Amount Incurred.

- (f) Any reference in this clause to an Input Tax Credit to which a party is entitled includes, without limitation, an Input Tax Credit arising from a Creditable Acquisition by that party but to which the Representative Member of a GST Group of which the party is a member is entitled.

SCHEDULE 9 - Definitions and interpretation

1 DEFINITIONS

- (a) Terms used in the Access Code not defined in this clause have the meaning given to that term in the CECS Regulations or CECS Manual.
- (b) The following definitions apply to the Access Code:

Access Code means the ATM Access Code.

Access Company means the ATM Access Australia Limited (ABN 52 130 571 103), a company limited by guarantee.

Access Provider means a Member that has received an Application Form requesting access to Connectivity Services.

Access Seeker means a person seeking access to Connectivity Services in accordance with the Access Code.

Access Seeker Information Package has the meaning given to that term in clause 4.6(a).

ADI means an Authorised Deposit-taking Institution as authorised to carry on banking business in Australia under the *Banking Act*.

Adjustment Event has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999*.

Adjustment Note has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999*.

Annual Membership Fees has the meaning given to that term in Schedule 5.

APCA means the Australian Payments Clearing Association Limited (ABN 12 055 136 519).

Application Fee has the meaning given to that term in Schedule 5.

Application Form means an application form complying with the requirements in Schedule 2.

Approved Cardholder has the meaning given to that term in Schedule 4.

Associated Agreements includes but is not limited to the Connection Agreement and any agreement that contains the ATM Interchange Terms.

ATM means an automatic teller machine in Australia.

ATM Acquirer means a body corporate which in connection with an ATM Transaction:

- (a) discharges the obligations owed by an ATM Issuer to an ATM Cardholder; and/or
- (b) engages as a result in ATM Interchange Activities with that ATM Issuer.

ATM Access Regime means the Access Regime imposed by the RBA under section 12 of the *Payment Systems (Regulation) Act 1988* headed “Access Regime for the ATM System” dated 23 February 2009, as varied from time to time.

ATM Card means a card issued by an ATM Issuer to its customer which enables that customer as an ATM Cardholder, to effect ATM Transactions.

ATM Cardholder means a customer of an ATM Issuer who is issued an ATM Card and a PIN for use with it.

ATM Certified Member means a Member that is:

- a CECS member; and
- meets CECS’ certification requirements applicable to its institutional capacity as set out in clause 6.2(a) of the Access Code, subject to any transitional arrangements specified by the Access Company under clause 18.

ATM Interchange Activities means the exchange of payment instructions for value between ATM Acquirers and ATM Issuers arising from ATM Transactions.

ATM Interchange Terms means the terms set out in Schedule 4.

ATM Issuer means a body corporate which issues an ATM Card and, in connection with any ATM Transaction effected using that ATM Card:

- assumes obligations to the relevant ATM Cardholder, which obligations are in the first instance discharged on its behalf by an ATM Acquirer; and/or
- engages in ATM Interchange Activities with that ATM Acquirer.

ATM Transaction means a cash withdrawal or a balance enquiry made at an ATM by a cardholder using a card issued by an ATM Issuer.

Available Party has the meaning given to that term in Schedule 7.

Board means the Board of the Access Company.

Business Day means a day on which banks are open for business excluding Saturdays, Sundays and public holidays in New South Wales.

CECS Access Standard Interchange Specification means the document entitled CECS Access Standard Interchange Specification, which creates a specific minimum technical specification within the Standard Interchange Specification contained in Part 9 of the CECS Manual.

CECS Manual means the manual adopted by APCA for the purposes of the Consumer Electronic Clearing System, as amended from time to time.

CECS Regulations means the Regulations adopted by APCA for the purposes of the Consumer Electronic Clearing System, as amended from time to time.

Clearing means the process of transmission authorisation and reconciliation of payment instructions between ATM Issuers and ATM Acquirers arising out of ATM Transactions.

Clearing/Settlement Agent is a Direct Clearer/Settler that Clears and Settles on behalf of Indirect Clearers/Settlers.

COIN means the Community of Interest Network, being the high availability managed network governed by the COIN Regulations and COIN Operating Manual.

COIN Operating Manual means the manual adopted by APCA for the purposes of the Community of Interest Network for Australian Paper Clearing System (CS1), Bulk Electronic Clearing System (CS2) and Consumer Electronic Clearing System (CS3), dated 6 April 2010, as amended from time to time.

COIN Regulations means the regulations adopted by APCA for the purposes of the Community of Interest Network for Australian Paper Clearing System (CS1), Bulk Electronic Clearing System (CS2) and Consumer Electronic Clearing System (CS3), dated 6 April 2010, as amended from time to time.

Commencement Date has the meaning given to it in clause 1.12.

Confidential Information of a party means all information of that party or any of its Related Bodies Corporate (regardless of form) which:

- is regarded by the party as confidential to it or can reasonably be inferred to be confidential from the circumstances in which it is disclosed;
- is disclosed to or observed by another person; and

- is not in or has not come into the public domain otherwise than by disclosure in breach of an obligation of confidence owed to the party,

and all notes, compilations, analyses, extracts, summaries and other records prepared by or for the benefit of the person receiving information or any of its Related Bodies Corporate based on or incorporating that information, but does not include:

- information which is generally and publicly available; or
- information on an aggregated basis which is required by the Access Company for reporting requirements, but which does not identify the provider of the information.

Confidentiality Deed means the Confidentiality Deed set out in Schedule 1.

Connection Agreement means an agreement for the provision of the Connectivity Services by the Access Provider to an Access Seeker made in accordance with the terms of this Access Code.

Connection Charges means charges payable by an Access Seeker to the Access Provider under a Connection Agreement in respect of the Connectivity Services.

Connection Offer has the meaning given to that term in clause 4.6(a)(i).

Connectivity Services are the services set out in Schedule 6.

Constitution means the constitution of the Access Company, as amended from time to time.

Constitutional Corporation has the meaning given to that term in the *Payment Systems and Netting Act 1998*.

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

Creditable Acquisition has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999*.

Decreasing Adjustment has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999*.

Delayed Party has the meaning given to that term in Schedule 7.

Direct Charge is a charge levied by the ATM operator upon a cardholder to make an ATM Transaction.

Direct Charging System Error has the meaning given to that term in clause 11.2.

Direct Clearer/Settler means:

- (a) an ATM Acquirer that:
- (i) clears ATM Transactions directly; and
 - (ii) settles using one of the methods prescribed in CECS Regulation 8.1(a)(ii);

with an ATM Issuer, or with a representative of an ATM Issuer appointed to settle on behalf of that ATM Issuer in accordance with CECS Regulation 8.1(b), for the value of payment obligations arising from ATM Interchange Activities between it and the ATM Issuer; and

- (b) an ATM Issuer that:
- (i) clears ATM Transactions directly; and
 - (ii) settles using one of the methods prescribed in CECS Regulation 8.1(a)(ii);
 - (iii) with an ATM Acquirer, or with a representative of an ATM Acquirer appointed to settle on behalf of that ATM Acquirer in accordance with CECS Regulation 8.1(b), for the value of payment obligations arising from ATM Interchange Activities between it and that ATM Acquirer;
- (c) a body corporate of the kind referred to in CECS Regulation 4.2(b)(iii).

Direct Clearing/Settlement Arrangement means an arrangement between two indirectly connected Members for the purposes of Clearing and Settlement with each other as Direct Clearer/Settlers.

Direct Clearing/Settlement Service has the meaning given to that term in Schedule 6.

Direct Connection means a direct communications link between two Members for the purposes of:

- exchanging Transaction Messages in respect of their own activities as an ATM Issuer or ATM Acquirer; and/or
- exchanging Transaction Messages on behalf of other ATM Issuers or ATM Acquirers,

to facilitate the Clearing and Settlement of ATM Transactions.

Direct Connection Service has the meaning given to that term in Schedule 6.

Direct Connector means a Member that:

- exchanges ATM Transaction Messages using two or more Direct Connections; and
- unless the Member is a Switch, Clears and Settles ATM Transactions,

Disclosing Party has the meaning given to that term in clause 13(d).

Dispute has the meaning given to that term in clause 12.1.

Dispute Notice has the meaning given to that term in clause 12.4(a).

Dispute Resolution Process means the Dispute Resolution Process set out in clause 12.

ESA means an Exchange Settlement Account held with the RBA.

Expert has the meaning given to that term in clause 12.6(a)(i).

Founding Members means the founding members listed in the Constitution.

GST means the goods and services tax as imposed by the GST Law together with any related interest, penalties, fines or other charges.

GST Amount means, in relation to the Payment, an amount arrived at by multiplying the Payment (or the relevant part of the Payment if only part of a Payment is consideration for a Taxable Supply) by the appropriate rate of GST.

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999*, or, if that Act is not valid or does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

GST Group has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999*.

Implementation means the process set out in clause 6.

Increasing Adjustment has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999*.

Indirect Clearer/Settler means a person who has appointed a Direct Clearer/Settler for the purposes of Clearing and Settlement in respect of that person's activities as an ATM Issuer and/or ATM Acquirer.

Indirect Clearing/Settlement means Clearing and Settlement undertaken by a Clearing/Settlement Agent for an Indirect Clearer/Settler.

Indirect Connection means a communications link between an Indirect Connector and a Switch.

Indirect Connector is an ATM Issuer and/or ATM Acquirer who maintains a communications link with a Switch for the purposes of exchanging Transaction Messages with that Switch in respect of the Indirect Connector's activities as an ATM Issuer and/or ATM Acquirer.

Insolvency Event means, in relation to a person:

- (a) an application is made to a court for an order or an order is made that the person be wound up;
- (b) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of the person, or one of them is appointed, whether or not under an order;
- (c) the person enters into, or resolves to enter into, a scheme of arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them, other than for the purposes of a solvent reorganisation;
- (d) the person resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so;
- (e) the person is or states that it is unable to pay its debts when they fall due;
- (f) as a result of the operation of section 459F(1) of the *Corporations Act* or any corresponding legislation, the person is taken to have failed to comply with a statutory demand;
- (g) the person is, or makes a statement from which it may be reasonably deduced that the person is, the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act* or any corresponding legislation;
- (h) the person takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to the person;
- (i) a body responsible for the prudential supervision of the person assumes management and control of that person;

- (j) to the extent not otherwise provided for above, the person goes into external administration within the meaning of the *Payment Systems and Netting Act 1998*; or
- (k) anything analogous or having a substantially similar effect to any of the events specified above happens under the Law of any applicable jurisdiction.

Input Tax Credit has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999*.

Interchange Fee is a wholesale fee which is payable between an ATM Issuer and ATM Acquirer, directly or indirectly in relation to an ATM Transaction.

Issuer Member has the meaning given to that term in clause 11.2.

Issuing Share has the meaning given to that term in clause 11.2.

Law includes any requirement of any statute, rule, regulation, proclamation, ordinance, designation instrument, standard, access regime or by-law, present or future, and whether state, federal or otherwise.

Materials has the meaning given to that term in Schedule 7.

Member means a member of the Access Company.

Membership Fee means the fee payable to the Access Company on becoming a Member.

Minor Variation has the meaning given to that term in clause 16.1.

Next Available Date has the meaning given to that term in clause 4.5(d)(ii).

New Connection Process means the process set out in clause 4.

Outsourced Testing Expenses has the meaning given to that term in Schedule 7.

Original Connection Agreement has the meaning given to that term in clause 3.1(c)(i) of Schedule 3.

PIN means a personal identification number which is either issued by an ATM Issuer, or selected by a ATM Cardholder for the purpose of authenticating the ATM Cardholder by the Issuer of the Card.

Panel of Experts has the meaning given to that term in clause 12.3(a).

Payment means a fee or an amount of any monetary consideration (other than a GST Amount).

Payments Network Migration Project means the project managed by APCA to migrate all bilateral clearing interchange links used by direct clearers in Australian Paper Clearing System (CS1), Bulk Electronic Clearing System (CS2) and Consumer Electronic Clearing System (CS3) to, inter alia, the COIN, and due to be completed by 31 December 2011.

Project Plan has the meaning given to that term in clause 6.1(a).

RBA means the Reserve Bank of Australia.

RBA Benchmark means a benchmark calculated in accordance with any ATM Access Regime in force and applicable from time to time.

Related Body Corporate has the meaning given to that term in the *Corporations Act*.

Representative Member has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999*.

Responsible Member has the meaning given to that term in clause 11.2.

Settlement means the process of discharging payment obligations between ATM Issuers and ATM Acquirers arising from ATM Transactions.

Settlement Agent is a Direct Settler that Clears and Settles on behalf of an Indirect Clearer/Settler.

Special Resolution has the meaning given to that term in the Constitution.

Standard Connection Terms means the Standard Connection Terms set out in Schedule 3.

Standard Testing Protocol means the document entitled Standard Testing Protocol provided by the Access Company to the Access Seeker pursuant to clause 4.5.

Supply has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999*.

Switch is a Direct Connector that exchanges Transaction Messages between Members or between Members and Indirect Connectors.

Tax Invoice has the meaning given to that term in GST Law.

Taxable Supply has the meaning given to that term in GST Law.

Testing Protocol has the meaning given to that term in clause 6.3(b)(ii).

Testing Timetable has the meaning given to that term in clause 6.3(b)(i).

Third Party Agreement means an agreement between:

- a Switch and an Indirect Connector in respect of the provision of Indirect Connection services; or
- a Clearing/Settlement Agent and an Indirect Clearer/Settler in respect of the provision of Indirect Clearing/Settlement services.

Transaction Messages means messages containing Payment instructions and any other instructions needed to effect an ATM Transaction.

Transitional Period means the period up to and including the date which is determined by APCA to be the date of completion of the Payments Network Migration Project.

Wages has the meaning given to that term in Schedule 7.

2 INTERPRETATION

Unless expressed to the contrary:

- (a) the singular includes the plural and vice versa;
- (b) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (c) a reference to:
 - (i) a clause is a reference to a clause in the Access Code, and a reference to a Schedule is a reference to a Schedule in the Access Code;
 - (ii) a person includes a firm, unincorporated association, body corporate and government or statutory body or authority and where the person is a body corporate includes a Related Body Corporate;
 - (iii) a person includes its legal personal representatives, successors and assigns;
 - (iv) a statute, ordinance, or other Law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (v) a right includes a benefit, remedy, discretion, authority or power;
 - (vi) the words include, includes or including must be read as if they are followed by the words without limitation;
 - (vii) time is a reference to local time in New South Wales;

- (viii) \$ or dollars is a reference to the lawful currency of Australia;
 - (ix) the Access Code includes the Schedules;
 - (x) a document (including the Access Code) includes the document as varied or replaced from time to time and notwithstanding any change in the identity of any relevant parties to such document;
 - (xi) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile or electronic transmission;
 - (xii) any thing (including any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them; and
 - (xiii) conduct includes any omission and any representation, statement or undertaking, whether or not in writing;
- (d) where time is to be reckoned by reference to a day or event, that day or the day of that event will be excluded;
 - (e) headings and outline clauses are provided from convenience only and do not form part of the Access Code;
 - (f) the relevant definitions for any words that are capitalized in the Access Code can be found in this Schedule 9 and if they are not included in this Schedule 9 they can be found in the CECS Regulations or Manual; and
 - (g) in the case of any inconsistency between the definitions in this Schedule 9 and the definitions in the Schedules to the Access Code:
 - (i) the definitions in this Schedule 9 will apply in interpreting the clauses in the Access Code; and
 - (ii) the definitions contained in each respective Schedule must apply in interpreting that particular Schedule.