



Australian  
**Payments  
Network**

# **ATM Access Standard**

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**Australian Payments Network Limited**  
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## IMPORTANT INFORMATION

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### RESPONSIBILITY

This Standard was developed by Australian Payments Network Limited (AusPayNet).

Current versions of Standards developed by AusPayNet are available on the AusPayNet website [www.auspaynet.com.au](http://www.auspaynet.com.au).

### FEEDBACK

Stakeholders may submit suggested updates, edits, changes, additions or other feedback on the Standard by sending an email to [standardsdevelopment@auspaynet.com.au](mailto:standardsdevelopment@auspaynet.com.au).

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## PART A PRELIMINARY

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### 1. INTRODUCTION

#### 1.1 Background

- 1.1.1 In 2009 the RBA together with industry participants agreed to reform the Australian ATM system. The reforms included three measures:
- (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).
- 1.1.2 To implement these reforms, the RBA introduced the ATM Access Regime and ATM Access Australia Limited (AAAL) developed the ATM Access Code.
- 1.1.3 On 3 December 2024, AAAL resolved to de-register AAAL as a company following the replacement of the ATM Access Code with a new subscription-based Access Standard administered by AusPayNet.
- 1.1.4 This Access Standard is intended to supercede the ATM Access Code. Accordingly:
- (a) this Access Standard takes effect in accordance with clause 1.14.1;
  - (b) the parties to a Connection Agreement executed under the ATM Access Code agree that references to the ATM Access Code in the Connection Agreement shall be taken to be to this Access Standard, unless the context requires otherwise.

#### 1.2 Operation of the Access Standard

- 1.2.1 The Access Standard is divided into the following parts:
- (a) **Part A** relates to preliminary matters such as the scope of the Access Standard, subscribing to the Standard, its objectives, administration and fees;
  - (b) **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 5 and Schedule 6);

- (c) **Part C** relates to Subscribers engaging in ATM Interchange Activities with each other, including rules in relation to Direct Charging (see also Schedule 4); and
- (d) **Part D** relates to administration of the Access Standard, including dispute resolution, reporting, confidentiality and liability.

1.2.2 Key roles and terms under the Access Standard are summarised in the following table.

| Role                                                                  | Description                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|-----------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Roles relevant to the provision of ATM services to Cardholders</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 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.<br>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.<br>An ATM Issuer may also be an ATM Acquirer.                                                                                                                                                                                                                                                                                           |
| <b>Roles relevant to the granting of access rights</b>                |                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Access Seeker                                                         | The party that seeks to exercise the access rights granted by the Access Standard.<br>An Access Seeker must be or become a Subscriber.                                                                                                                                                                                                                                                                                                                    |
| Access Provider                                                       | A Subscriber with whom an Access Seeker wishes to establish a Direct Connection or Direct Clearing/Settlement Arrangement.                                                                                                                                                                                                                                                                                                                                |
| <b>Options for connection</b>                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 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"> <li>in respect of their own activities as an ATM Issuer or ATM Acquirer; and/or</li> <li>on behalf of ATM Issuers and/or ATM Acquirers, to facilitate the Clearing and Settlement of ATM Transactions.</li> </ul> |
| (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.                                                                                                                                                                                                                                                                                       |
| <b>Options for clearing and settling ATM Transactions</b>             |                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 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 between them or between parties on whose behalf they Clear and Settle ATM Transactions.                                                                                         |

| Role                                                            | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|-----------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Direct Clearing/<br>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/<br>Settlement Agent                         | When a Subscriber needs to Clear and Settle ATM Transactions with a counterparty with whom they do not have: <ul style="list-style-type: none"> <li>• a Direct Connection; or</li> <li>• a Direct Clearing/Settlement Arrangement,</li> </ul> the Subscriber must use the services of a Clearing/Settlement Agent. Through this service, the Subscriber 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. |
| <b>Services available under the Access Standard</b>             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Direct Connection<br>Service                                    | To establish a Direct Connection. (See also Schedule 5)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Direct Clearing/<br>Settlement Service                          | To establish a Direct Clearing/Settlement Arrangement. (See also Schedule 5)<br>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.                                                                                                                                                                                                           |
| <b>Terms relevant to clearing and settling ATM Transactions</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| ATM Interchange<br>Activities                                   | The exchange of the ATM Transaction messages required to Clear and Settle an ATM Transaction.                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| ATM Interchange Terms                                           | The terms prescribed by the Access Standard with which Subscribers must comply when they engage in ATM Interchange Activities with each other. These terms replace any inconsistent terms in pre-existing bilateral agreements.<br>(See also Schedule 4 and clause 8.4 re agreed variations)                                                                                                                                                                                                                                                             |
| Interchange Fee                                                 | A wholesale fee payable between an ATM Issuer and an ATM Acquirer with respect to an ATM Transaction. (See also clause 10)                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Subscribers to the Standard</b>                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Subscribers                                                     | Subscribers are: <ul style="list-style-type: none"> <li>• members of the Former Access Company that have subscribed to the Standard in accordance with clause 1.5; and</li> <li>• any Access Seekers that enter into a Connection Agreement to establish a Direct Connection or a Direct Clearing/Settlement Arrangement. Access Seekers become Subscribers at the time of entering into their first Connection Agreement and by subscribing to the Standard in accordance with clause 1.5.</li> </ul>                                                   |

| Role                 | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Subscribers (cont'd) | <p>Subscribers must:</p> <ul style="list-style-type: none"> <li>act as Access Providers, i.e. 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 Standard; and</li> <li>unless the Subscriber operates solely as a Switch, engage in ATM Interchange Activities with all other Subscribers in accordance with the ATM Interchange Terms.</li> </ul> <p>(A list of the current Subscribers can be found on AusPayNet's website)</p> |

- 1.2.3 The descriptions provided in the table above are for illustrative purposes only and:
- are not intended to replace the definitions of these terms provided in Schedule 7; and
  - do not affect the rights and obligations of Subscribers set out elsewhere in the Standard.

## 1.3 Scope

- 1.3.1 The Access Standard regulates:
- access to Connectivity Services, which is defined in this Access Standard as connectivity via the COIN in accordance with the IAC Access Standard Interchange Specification. It is intended that the provision of access on this basis will promote timeliness of access to the ATM system, and thus enhance the capacity of the Access Standard to achieve its stated objectives; and
  - ATM Interchange Activities between Subscribers.
- 1.3.2 Access to Indirect Connection and access to Indirect Clearing/Settlement services are not regulated by the Access Standard.

## 1.4 Access Standard Objectives

The objectives of the Access Standard are to:

- facilitate equitable, practicable and ongoing access to the Direct Connection Service and the Direct Clearing/Settlement Service and thereby promote competition;
- ensure the maintenance of Direct Connections and Direct Clearing/Settlement Arrangements;
- facilitate the RBA's reform agenda for the ATM system;

- (d) take into account Access Providers' proprietary rights;
- (e) take into account the interests of current and future Subscribers, including Access Seekers;
- (f) be objective and transparent;
- (g) be technology neutral, which in the context of the Access Standard means compliance with current standards and specifications as set out in the IAC Code Set; and
- (h) 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 Subscription**

- 1.5.1 All Subscribers must execute and provide to AusPayNet a Deed Poll in favour of AusPayNet and each other Subscriber from time to time, as set out in Schedule 8.
- 1.5.2 Each Subscriber irrevocably appoints AusPayNet as its agent solely to acknowledge and agree on behalf of that Subscriber to any Deed Poll executed by another Subscriber.
- 1.5.3 Each Subscriber acknowledges that AusPayNet (i) does not warrant that it has authority to sign any Deed Poll on behalf of any Subscriber; and (ii) owes no fiduciary or other duties to the Subscribers who appoint AusPayNet agent under clause 1.5.2 above.

## **1.6 Effect of the Access Standard**

- 1.6.1 The Access Standard has been established for the benefit of current and future Subscribers who, and in consideration of becoming Subscribers, acknowledge that they are bound to:
  - (a) comply with the Access Standard; and
  - (b) fulfil and perform every obligation and duty imposed on them by or pursuant to the Access Standard.
- 1.6.2 The Access Standard has the effect of a contract under seal:
  - (a) between AusPayNet and each Subscriber; and
  - (b) between Subscribers.

## **1.7 Access Seekers becoming Subscribers**

- 1.7.1 Once Access Seekers become Subscribers in accordance with clause 1.5, they are bound as all other Subscribers to the provisions of the Access Standard pursuant to clause 1.6.
- 1.7.2 Any party seeking to exercise a right as an Access Seeker under this Access Standard undertakes to comply with the obligations of an Access Seeker expressed in this Access Standard.
- 1.7.3 Any right of an Access Seeker under this Access Standard arises, and continues, only for as long as the Access Seeker is in full compliance with the obligations of Access Seekers under this Access Standard.

## **1.8 Inconsistencies**

- 1.8.1 If a provision of the Access Standard is inconsistent with a provision of the ATM Access Regime, the provision of the ATM Access Regime prevails.
- 1.8.2 If a provision of the Access Standard is inconsistent with a provision of the IAC Regulations, the IAC Code Set, the COIN Regulations or the COIN Operating Manual, the provision of the Access Standard prevails.

## **1.9 Assignment of obligations**

- 1.9.1 A Subscriber or Access Seeker cannot assign obligations under the Access Standard, unless specifically authorised by the Access Standard.

## **1.10 Governing Jurisdiction**

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

## **1.11 Subscriber and Access Seeker Fees**

- 1.11.1 Subscribers and Access Seekers must pay any fees and charges, where reasonable, imposed by AusPayNet from time to time in accordance with Schedule 9 and/or the Fee Policy.

## **1.12 Meetings**

- 1.12.1 Subscribers are not under any obligation to meet regularly, however AusPayNet may at its discretion call a meeting of the Subscribers by providing them with 14 days' notice.
- 1.12.2 Subscribers may also request that AusPayNet convene a meeting on their behalf if required.
- 1.12.3 AusPayNet will provide the following support for any meeting of the Subscribers:

- (a) convening the Subscriber meeting; and
  - (b) secretariat and administrative support including preparation of agendas, minutes of meetings and follow up of action items.
- 1.12.4 Each Subscriber may nominate one individual from their organisation to participate in a Subscriber meeting.
- 1.12.5 AusPayNet will appoint a person to act as the Chair at a Subscriber meeting.
- 1.12.6 The quorum for a Subscriber meeting is at least 75% of the Subscribers.
- 1.12.7 All meetings will enable hybrid attendance (i.e. attendance in person or via technological means). AusPayNet will facilitate in-person attendance of meetings where required. Each subscriber will bear its own Costs of attending any meeting.

### 1.13 Voting

- 1.13.1 Each Subscriber will have one vote for any matter referred to Subscribers for a decision.
- 1.13.2 Subscribers may vote on any matter by way of written resolution (including but not limited to decisions regarding amendments to the Access Standard) provided the following conditions are met:
  - (a) the proposed resolution must be circulated to Subscribers, specifying the subject matter, proposed resolution and the date by which votes must be cast;
  - (b) the deadline for submission of votes, must be at least 21 days from the date of the proposed resolution;
  - (c) Subscribers are to cast their vote by signing and returning the resolution via email to [legalteam@auspaynet.com.au](mailto:legalteam@auspaynet.com.au).
- 1.13.3 A written resolution for amendment to the Access Standard will only be approved if it satisfies the applicable requirements contained in clause 16.
- 1.13.4 All other written resolutions may be passed if approved by a majority of the Subscribers who cast a vote.
- 1.13.5 The results of any vote will be communicated by AusPayNet to all Subscribers within 14 days of the close of voting.

### 1.14 Commencement

- 1.14.1 The Access Standard takes effect from the date determined by AusPayNet (**Commencement Date**), which shall not be prior to the date on which AusPayNet has received from each entity that was a Member under and as defined in the Access Code as at 19 June 2025 an executed Deed Poll in favour of AusPayNet and each other Subscriber from time to time in accordance with clause 1.5 above.

## PART B CONNECTIONS AND CONNECTIVITY SERVICES

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### 2. SUBSCRIBERS' OBLIGATIONS

#### 2.1 Access obligations

2.1.1 Subject to clause 6.1.6, a Subscriber must provide the following Connectivity Services to Access Seekers:

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

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

2.2.1 Subscribers have a right to:

- (a) decide whether or not to act as a Switch. For the avoidance of doubt a Subscriber 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 Subscriber is not obliged to provide Clearing/Settlement Services to any person seeking to act as an Indirect Clearer/Settler.

#### 2.3 Clearing/Settlement Agents

2.3.1 Subscribers 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 Subscriber acts as a Clearing/Settlement Agent for an Indirect Clearer/Settler are not regulated by this Access Standard.

#### 2.4 Termination of Subscription

2.4.1 A person ceases to be a Subscriber on:

- (a) becoming insolvent or making an arrangement or composition with creditors generally;
- (b) being wound-up, dissolved or otherwise ceasing to exist;
- (c) ceasing to be a member of the COIN and/or the IAC or, in the case of a Subscriber acting solely as a Switch, ceasing to be a Member of the COIN; or

- (d) providing written notice to AusPayNet by post that it wishes to cease being a Subscriber, effective as at a date no less than 10 Business Days following receipt of that notice, in which case the person ceases to be a Subscriber as of specified date.

2.4.2 Ceasing to be a Subscriber shall not affect any rights or liabilities including indemnities arising under the Access Standard, the Deed Poll, any Connection Agreement, prior to the date on which the person ceases to be a Subscriber, nor shall it affect any rights or liabilities arising from any act, matter or thing occurring before that date, including any rights or liabilities that have accrued up to that date.

### **3. ACCESS SEEKERS' RIGHT TO SEEK ACCESS**

#### **3.1 Eligibility Criteria for Access Seekers**

- 3.1.1 To be eligible to seek access to Connectivity Services under the Access Standard 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 2001* (Cth)) and otherwise able to meet the financial and other obligations imposed on Subscribers, Access Seekers and Access Providers by the Access Standard;
  - (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 subscription to the Access Standard will not adversely affect the integrity, security, reliability and stability of ATM Interchange Activities, and the Clearing and Settlement of ATM Transactions between Subscribers.
  - (g) become a member of both the IAC and the COIN unless the Access Seeker is seeking access to act solely as a Switch, in which case the Subscriber must be a member of the COIN but not the IAC.

#### **3.2 Connectivity obligations**

- 3.2.1 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**

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

## **4. NEW CONNECTION PROCESS**

### **4.1 Introductory guide**

- 4.1.1 AusPayNet must prepare and periodically update an introductory guide to ATM Access dealing with matters such as:
- (a) an introduction to the Access Standard, the IAC Code Set, the COIN Operating Manual and the Standard Testing Protocol;
  - (b) an outline of the eligibility criteria for Access Seekers;
  - (c) an outline of the process and steps required to become a Subscriber;
  - (d) 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 Subscriber;
  - (e) a copy of the Application Form (prepared in accordance with the requirements set out in Schedule 2);
  - (f) a copy of the Confidentiality Deed (substantially in the form of Schedule 10);
  - (g) a copy of the Deed Poll; and
  - (h) any other matters that AusPayNet considers relevant.
- 4.1.2 AusPayNet must prepare and periodically update a list of all Subscribers.
- 4.1.3 AusPayNet must make the guide referred to in subclause 4.1.1 and the list referred to in subclause 4.1.2 publicly available.

### **4.2 Assistance by AusPayNet**

- 4.2.1 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 AusPayNet for assistance.
- 4.2.2 If a request for assistance is made, AusPayNet must provide any information reasonably required by the person making the request.
- 4.2.3 For the purposes of subclause 4.2.2, it is not reasonable to:
- (a) require information that is Confidential Information of AusPayNet, an AusPayNet Member or a Subscriber; or
  - (b) require information that is not related to the operation of the Access Standard.

- 4.2.4 The AusPayNet may charge its reasonable Costs of providing assistance under this clause 4.2.

### **4.3 Information to be provided to AusPayNet**

- 4.3.1 Subscribers must provide AusPayNet with the name and contact details of a person who will negotiate on the Subscriber's behalf in respect of the provision of Connectivity Services to an Access Seeker.

### **4.4 Information to be provided to an Access Seeker**

- 4.4.1 Provided the Access Seeker has executed the Confidentiality Deed, upon the request of the Access Seeker AusPayNet must provide information to the Access Seeker relating to:

- (a) the number of Connection Agreements an Access Provider has executed or Application Forms it has received, for which testing is not yet completed; and
- (b) 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.

- 4.4.2 An Access Provider who has notified AusPayNet that it has reached its capacity under clause 6.1.6 must promptly notify AusPayNet whenever:

- (a) it has completed its obligations under clauses 6.3 and 6.4 in respect of an Access Seeker;
- (b) a Connection Offer lapses;
- (c) a Connection Agreement is terminated; or
- (d) 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 AusPayNet reasonably requires, to comply with its obligations under subclause 4.4.1.

- 4.4.3 Where AusPayNet receives notice from an Access Provider under subclause 4.4.2, 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

4.5.1 An Access Seeker must:

- (a) request from AusPayNet, and AusPayNet must provide, a copy of the Access Standard, the IAC Code Set, the COIN Operating Manual and the Standard Testing Protocol;
- (b) lodge with AusPayNet a completed Application Form;
- (c) provide to AusPayNet an executed counterpart of the Confidentiality Deed for each Subscriber from whom the Access Seeker is requesting Connectivity Services;
- (d) comply with the Access Standard from the time of lodgement of the Application Form until they cease to be a Subscriber or the negotiation process under clause 4.6 has expired without acceptance of a Connection Offer; and
- (e) pay the Application Fees as determined by AusPayNet in accordance with Schedule 9.

4.5.2 Upon receiving an Application Form and the Application Fee, AusPayNet must:

- (a) notify the Access Seeker within 15 Business Days whether it is satisfied that the Access Seeker meets the criteria in clause 3; and
- (b) if AusPayNet is satisfied that the Access Seeker meets the criteria in clause 3, forward the executed counterpart of the Confidentiality Deed to each Subscriber from which the Access Seeker has requested Connectivity Services.

4.5.3 A decision by AusPayNet on whether an Access Seeker satisfies the criteria in clause 3 is binding on all Access Providers.

4.5.4 A Subscriber that has received an executed counterpart of the Confidentiality Deed under subclause 4.5.2 must within five (5) Business Days of receiving it:

- (a) execute and return its counterpart of the Confidentiality Deed to AusPayNet; and
- (b) if applicable, notify AusPayNet in writing of the date from which clause 6.1.6 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**).

4.5.5 Upon receipt of an executed counterpart of a Confidentiality Deed from a Subscriber, AusPayNet must:

- (a) forward to the Access Seeker the executed counterpart of the Confidentiality Deed; and
- (b) forward to the Access Provider a copy of the Application Form from the Access Seeker.

- 4.5.6 Upon receipt of written notification under clause 4.5.4(b) AusPayNet must inform the Access Seeker in writing of the Next Available Date nominated by the Subscriber.
- 4.5.7 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

### 4.6.1 Access Seeker Information Package

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:

- (a) an offer for the provision of the Connectivity Service in compliance with clause 4.6.2 (**Connection Offer**); and
- (b) any further information that in the Access Provider's opinion is relevant to the negotiation process.

### 4.6.2 Connection Offer

The Connection Offer referred to in clause 4.6.1(a) must:

- (a) include the Access Provider's Standard Connection Terms (see Schedule 3);
- (b) include as part of the Access Provider's Standard Connection Terms a Connection Charge (see clause 7.1); and
- (c) include any other terms required to constitute an agreement between the Access Seeker and the Access Provider.

### 4.6.3 Response to a Connection Offer

- (a) Within ten (10) Business Days of receiving a Connection Offer under clause 4.6.1(a), the Access Seeker may notify the Access Provider that it:
  - (i) will accept the Connection Offer without undertaking any negotiations with the Access Provider; or
  - (ii) wishes to negotiate the terms of the Connection Offer.
- (b) If the period specified in subclause (a) expires without the Access Seeker notifying the Access Provider of a decision, the Connection Offer lapses.

### 4.6.4 Acceptance of Connection Offer without negotiation

If the Access Seeker accepts the Connection Offer in accordance with clause 4.6.3(a) (i), 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.

4.6.5 *Notification of decision to negotiate the terms of the Connection Offer*

- (a) Subject to clause 4.6.5(b), if the Access Seeker notifies the Access Provider that it wishes to negotiate in accordance with clause 4.6.3(a)(ii), 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 4.6.3(a)(ii).
- (b) The Access Seeker and the Access Provider may agree to extend the timeframe in subclause (a).
- (c) At the end of the negotiation process in subclause (a), the Access Seeker and the Access Provider may:
  - (i) agree to enter into a Connection Agreement;
  - (ii) agree to terminate negotiations in which case the Connection Offer lapses; or
  - (iii) trigger the Dispute Resolution process set out in clause 12.

4.6.6 *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 Standard.

## **5. CONNECTION AGREEMENT**

### **5.1 Entering into a new Connection Agreement**

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

### **5.2 Access Seeker's obligation to become a Subscriber**

- 5.2.1 An Access Seeker becomes a Subscriber when it has:
- (a) signed a Connection Agreement; and
  - (b) subscribed to the Standard in accordance with clause 1.5 by executing a Deed Poll in the form of Schedule 8.

### **5.3 Varying an existing Connection Agreement**

- 5.3.1 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.

## 6. CONNECTION ESTABLISHMENT PROCESS

### 6.1 Step 1: Planning

- 6.1.1 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**).
- 6.1.2 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.
- 6.1.3 The Access Provider and the Access Seeker must provide all information reasonably required for the preparation of the Project Plan.
- 6.1.4 The Access Provider or Access Seeker may request AusPayNet to provide any assistance reasonably required to prepare the Project Plan. AusPayNet will provide such assistance.
- 6.1.5 The Access Seeker is responsible for developing and updating Project Plan documentation.
- 6.1.6 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 IAC and COIN membership

- 6.2.1 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 AusPayNet 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 IAC Code Set (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 AusPayNet under clause 18); and
    - (ii) clause 3.10 of the COIN Operating Manual;

unless the Access Seeker is seeking access to act solely as a Switch, evidence that the Access Seeker is a member of both the IAC and the COIN.

### 6.3 Step 3: Test planning

- 6.3.1 Before beginning Step 4 of the Implementation process, the Access Seeker must, in consultation with the Access Provider, update the Project Plan.
- 6.3.2 The updated Project Plan must:
- (a) include a timetable (**Testing Timetable**) for testing the operation of the Access Seeker's system with the Access Provider's systems;
  - (b) 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
  - (c) be approved by the Access Provider, which approval will not be unreasonably withheld.
- 6.3.3 The Testing Protocol must have regard to:
- (a) any relevant obligations set out in the IAC Code Set; and
  - (b) reasonable requests of the Access Provider.
- 6.3.4 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 6.1.1, or the Next Available Date (whichever is later).

### 6.4 Step 4: Testing

- 6.4.1 The Access Seeker and the Access Provider must conduct tests in accordance with the Testing Timetable and Testing Protocol developed in clause 6.3.
- 6.4.2 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.
- 6.4.3 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).
- 6.4.4 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:
- (a) the Access Provider must agree to complete all testing at a different time; and

- (b) 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 6.
- 6.4.5 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:
  - (a) the Access Seeker must agree to complete all testing at a different time; and
  - (b) 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 6.
- 6.4.6 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 6.

## **6.5 Project Plan and other Connection Agreements**

- 6.5.1 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 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 6.1.6.

## **6.6 Costs**

- 6.6.1 The Access Seeker must bear all of its Costs of compliance with the Implementation process.
- 6.6.2 The Access Seeker must pay any Connection Charges specified in the Connection Agreement which relate to the Implementation process.

## **7. PAYMENT FOR CONNECTIVITY**

### **7.1 Connection Charges**

- 7.1.1 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**

- 7.2.1 Subscribers 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 Standard.

## **PART C   ATM INTERCHANGE ACTIVITIES**

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### **8.   OBLIGATION TO ENGAGE IN ATM INTERCHANGE ACTIVITIES**

#### **8.1   Subscribers must engage in ATM Interchange Activities**

- 8.1.1 From the Commencement Date each Subscriber must engage (or stand ready to engage) in ATM Interchange Activities with all ATM Certified Members (other than those Subscribers 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**

- 8.2.1 Subscribers 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 IAC Regulations and IAC Code Set subject to any transitional arrangements specified by AusPayNet under clause 18.

#### **8.3   Switches excluded**

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

#### **8.4   Agreed Variations**

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

## **9. SUSPENSION OF ATM INTERCHANGE ACTIVITIES**

### **9.1 Right to suspend Subscribers**

- 9.1.1 A Subscriber's participation in ATM Interchange Activities under clause 8 is suspended immediately upon:
- (a) the Subscriber having its IAC membership suspended in accordance with IAC Regulation 6.3 or Part 3 of Volume 5 of the IAC Code Set; or
  - (b) the Subscriber being subject to a notice from AusPayNet's CEO to IAC members pursuant to IAC Regulation 2.11.
- 9.1.2 AusPayNet may suspend a Subscriber's participation in ATM Interchange Activities under clause 8 if:
- (a) the Subscriber is not capable of complying with its obligations under the Access Standard, including without limitation the eligibility criteria set out in clause 3; or
  - (b) the provisions in clause 3.4 of Volume 6 of the IAC Code Set, or clause 3.10 of the COIN Operating Manual, apply in respect of the Subscriber.
- 9.1.3 A Subscriber that is a Switch will not be considered incapable of complying with its obligations under the Access Standard solely because an Indirect Connector to whom it provides switching services has engaged in conduct that would have been a breach of the Access Standard if that Indirect Connector had been a Subscriber.
- 9.1.4 A Subscriber that is a Clearing/Settlement Agent will not be considered incapable of complying with its obligations under the Access Standard 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 Standard if that Indirect Clearer/Settler had been a Subscriber.
- 9.1.5 AusPayNet must not suspend the Subscriber'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.
- 9.1.6 Prior to suspending a Subscriber under clause 9.1.2, AusPayNet must:
- (a) notify the affected Subscriber;
  - (b) give the affected Subscriber an opportunity to address the event that caused the suspension, provided that in AusPayNet'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
  - (c) give due consideration to any reasons given by the Subscriber as to why it should not be suspended under this clause 9.

- 9.1.7 Suspension under this clause will continue until the event that caused the suspension has been addressed by the Subscriber.

## **9.2 Effect of suspension**

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

## **9.3 Obligation to notify**

- 9.3.1 AusPayNet must notify all Subscribers if:
- (a) a Subscriber has been suspended; or
  - (b) suspension of a Subscriber has ceased to apply,
- in accordance with clause 9.1.

## **9.4 Right to request suspension of a Subscriber**

- 9.4.1 A Subscriber may request that AusPayNet suspend another Subscriber under clause 9.1.
- 9.4.2 A Subscriber making a request under subclause 9.4.1 must do so in good faith and must provide AusPayNet with sufficient information in support of its request.
- 9.4.3 AusPayNet has a right to refuse a Subscriber's request to suspend another Subscriber as provided for under subclause 9.4.1 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**

- 9.5.1 Provided that suspension is not required, in AusPayNet's reasonable opinion, to preserve the integrity, security, reliability and/or stability of ATM Transactions, AusPayNet may fine a Subscriber instead of suspending them pursuant to clause 9.1.2(a).
- 9.5.2 Any fine imposed under subclause 9.5.1 must be no more than the Subscription Fee (for each breach of the Access Standard).

## **10. INTERCHANGE FEES**

### **10.1 Payment of Interchange Fees**

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

## **11. DIRECT CHARGING**

### **11.1 Direct Charging Rules**

- 11.1.1 An ATM Acquirer that Direct Charges must comply with the relevant provisions of Volume 6 of the IAC Code Set (subject to any transitional arrangements imposed by AusPayNet under clause 18).

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

## PART D ACCESS STANDARD ADMINISTRATION

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### 12. DISPUTE RESOLUTION

#### 12.1 Application of the clause

12.1.1 This clause 12 applies to a dispute:

- (a) between AusPayNet 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;
- (b) between Subscribers, or between an Access Seeker and a Subscriber, or between AusPayNet and an Access Seeker, or between AusPayNet and a Subscriber, arising in connection with the rights and obligations under the Access Standard; or
- (c) between parties to a Connection Agreement in relation to the rights and obligations of the parties under that Connection Agreement

but only if:

- (d) those rights and obligations are regulated under the Access Standard; and
- (e) the Dispute is not one to which the IAC Regulations' dispute resolution process applies

**(Dispute).**

12.1.2 This clause and the definition of Dispute do not apply to any Dispute between Subscribers, or involving Subscribers, in connection with rights and obligations under agreements that have been entered into other than pursuant to and regulated by the Access Standard.

#### 12.2 Court proceedings

12.2.1 A Subscriber 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

12.3.1 AusPayNet must, from time to time, appoint persons to act as Experts for determining Disputes under the Access Standard (**Panel of Experts**), provided that the persons so appointed are, in AusPayNet's reasonable opinion suitably qualified to act as Experts.

12.3.2 AusPayNet must maintain a register of persons who have been appointed to the Panel of Experts.

- 12.3.3 A person may be considered suitably qualified to act as an Expert for the purposes of subclause 12.3.1, if the person has:
- (a) no less than 2 years experience acting as an independent Expert resolving relevant disputes; or
  - (b) knowledge and/or experience in the payments industry, including but not limited to knowledge or experience of:
    - (i) the IAC Code Set and the COIN Operating Manual;
    - (ii) payments processing (for debit and credit transactions); or
    - (iii) clearing and settlement processes (for debit and credit transactions).

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

## 12.4 Notification of a Dispute

- 12.4.1 AusPayNet or any Access Seeker or Subscriber 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**).
- 12.4.2 If AusPayNet receives a Dispute Notice it can, within ten (10) Business Days, notify a Subscriber that the Subscriber concerned is joined as a party to the Dispute (the **Second Dispute Notice**) and must provide that Subscriber with a copy of the Dispute Notice.
- 12.4.3 AusPayNet must supply a copy of each Second Dispute Notice to the party that issued the Dispute Notice and any other parties to the Dispute.
- 12.4.4 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.
- 12.4.5 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 subclause 12.4.4, 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.
- 12.4.6 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 subclause 12.4.5, 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

- 12.5.1 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

### 12.6.1 *Appointment of Expert*

- (a) 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**).
- (b) 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 12.4.6 to Expert determination, then AusPayNet must select a person from the Panel of Experts to act as Expert. In making that selection, AusPayNet 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 they are appointed to resolve a Dispute or within two years before that date.
- (c) The Expert must agree to comply with clause 13 in relation to any Confidential Information they obtain.

### 12.6.2 *Process*

- (a) 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:
  - (i) the Dispute Notice;
  - (ii) a statement of the facts upon which the party relies in relation to the Dispute;
  - (iii) a statement of the party's contentions in relation to each matter in Dispute; and
  - (iv) 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.
- (b) Each party has the right to reply to the submissions made by the other in subclause (a), within five (5) Business Days of receiving these submissions.
- (c) Each party has the right to respond to the written reply made by the other in subclause (b), within five (5) Business Days of receiving the other's written reply.
- (d) In resolving the Dispute, the Expert:

- (i) must act in a fair and unbiased manner;
  - (ii) must act as an expert and not as an arbitrator, and the provisions of the *Commercial Arbitration Act 2010* (NSW) have no application to the Expert's determination;
  - (iii) is not bound by the rules of evidence;
  - (iv) 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;
  - (v) 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;
  - (vi) must determine the times and places at which any meeting or hearing will be held;
  - (vii) 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;
  - (viii) 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
  - (ix) may take steps the Expert considers necessary to protect the confidentiality of any documents or other material received by them.
- (e) The Expert must at any time terminate the determination process without making a final determination if they think that:
- (i) the Dispute Notice was vexatious;
  - (ii) the subject matter of the Dispute is trivial, misconceived or lacking in substance; or
  - (iii) the party who initiated or continues to press the Dispute has not engaged in discussions under clauses 12.4.4 12.4.2and 12.4.5 in good faith.

#### 12.6.3 Determination

- (a) The Expert must resolve the Dispute within fifty (50) Business Days after their appointment by issuing a written determination.
- (b) In undertaking determination of a Dispute, the Expert must have regard to all matters considered relevant, including any relevant provisions of the Access Standard and the ATM Access Regime, if there is one in force.

- (c) The Expert's written determination:
  - (i) must set out the reasons for the determination; and
  - (ii) 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.
- (d) 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.
- (e) The Expert's determination is final and binding upon the parties.

## **12.7 Costs**

- 12.7.1 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**

- 12.8.1 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.

### 13. CONFIDENTIALITY

13.1.1 Each recipient must ensure that Confidential Information is not disclosed to any person outside the recipient entity except:

- (a) any existing, prospective or potential contractors, consultants or third party providers, including any participants in a tender process initiated by or for that recipient;
- (b) with the consent of the provider of that information (which consent is not to be unreasonably withheld);
- (c) (in the case of statistics) on a basis which does not identify the provider of the information;
- (d) if required to be disclosed by law or required by any stock exchange or supervisory authority which is responsible for the prudential supervision of the recipient;
- (e) in connection with legal proceedings or disputes in which the recipient is a party;
- (f) where the disclosure is required in circumstances contemplated by the Access Standard;
- (g) its legal advisers and auditors for the purpose of considering or advising upon the Confidential Information; or
- (h) to a Related Body Corporate of the recipient.

13.1.2 Except to the extent that it would contravene a law or stock exchange listing requirement, in respect of disclosure by a recipient (the First Recipient) of Confidential Information to a further recipient (the Second Recipient) pursuant to subclauses (a), (d), (e) and (h) above, the First Recipient must prior to disclosure:

- (a) advise AusPayNet in writing; and
- (b) ensure the Second Recipient is aware of and agrees to comply with equivalent confidentiality provisions prior to disclosing the Confidential Information.

13.1.3 Subject to clause 13.1.2 above, all recipients of Confidential Information must keep the Confidential Information confidential (even if the recipient ceases to be a Subscriber).

Recipients must promptly return or destroy the Confidential Information on request except to the extent the Confidential Information:

- (a) is contained in internal credit policy, board or committee papers or minutes;

- (b) is a copy of the Confidential Information that has been made during routine backup processes;
- (c) must be retained to comply with any applicable law, professional standard or indemnity insurance requirements; or
- (d) is incorporated into a proposal (e.g. offers or draft agreements) between the Access Seekers.

## **14. REPORTING**

### **14.1 Reporting**

14.1.1 AusPayNet may:

- (a) establish reporting requirements for Subscribers as required to ensure compliance with, and the effectiveness of, the Access Standard; and
- (b) notify all Subscribers of the application of those requirements.

14.1.2 In establishing reporting requirements, AusPayNet must consult with all the Subscribers.

14.1.3 Each Subscriber must comply with all reporting requirements set by AusPayNet under the Access Standard. In complying with this obligation, a Subscriber must not recklessly or knowingly provide or permit any other person to provide on behalf of that Subscriber, misleading or deceptive data or information to any other Subscriber or to AusPayNet.

14.1.4 A Subscriber may request, and AusPayNet may agree to impose, reasonable additional reporting requirements on another Subscriber in order to monitor or assess compliance with the Access Standard by that Subscriber. Unless it would frustrate the reasonable purpose of the reporting, the results of that additional reporting must be kept confidential by AusPayNet.

14.1.5 Each Subscriber must bear its own Costs of complying with the reporting requirements under the Access Standard.

### **14.2 Transparency**

14.2.1 AusPayNet:

- (a) must publish annually a report providing information on compliance with the Access Standard; 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 Standard, and in relation to the operation of the Access Standard.

### **14.3 Information sharing**

14.3.1 Each Access Seeker agrees, as a condition of applying for access, that AusPayNet can:

- (a) use information it may hold about the Access Seeker's participation in any Framework that is necessary for it to fulfil its functions under the Access Standard; and

- (b) use information about the Access Seeker's participation under the Access Standard but only to the extent that is necessary for AusPayNet to fulfil its functions under the IAC Regulations and IAC Code Set.

14.3.2 Each Subscriber agrees as a condition that AusPayNet can:

- (a) use information it may hold about the Subscriber's participation in Frameworks that is necessary for it to fulfil its functions under the Access Standard; and
- (b) use information it may hold about the Subscriber's participation under the Access Code, but only to the extent that is necessary for AusPayNet to fulfil its functions under the IAC Regulations and IAC Code Set.

## 15. WARRANTIES AND LIABILITY

### 15.1 Subscriber and Access Seeker warranties

- 15.1.1 At all times each Subscriber and Access Seeker represents and warrants to each other Subscriber, Access Seeker and AusPayNet that:
- (a) it has the power to observe its obligations under this Access Standard;
  - (b) it performs its obligations under the Access Standard in good faith;
  - (c) it has not relied on any representation made by any other Subscriber or AusPayNet to induce it to become a Subscriber or otherwise act in accordance with the Access Standard;
  - (d) it has made (without reliance on any other Subscriber or AusPayNet) its own independent assessment of the Access Standard as being appropriate with respect to access to Connectivity Services; and
  - (e) its obligations under the Access Standard are valid and binding on it.

### 15.2 AusPayNet not liable

- 15.2.1 To the extent permitted by Law and with the exception of obligations with respect to specific performance, AusPayNet 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 AusPayNet's obligations under the Access Standard including:
- (a) any decision made by AusPayNet in connection with its obligations under the Access Standard;
  - (b) any act or omission by any Subscriber or any person other than AusPayNet, 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 Standard or the terms of any other document relating to the Access Standard, any Insolvency Event, any fraud or any forgery);
  - (c) any act or omission by, or any refusal to do any act by, AusPayNet, 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 AusPayNet, 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 AusPayNet;
  - (e) the terms of any instructions, information or document given to AusPayNet, other than an error or omission resulting from a negligent act or omission of AusPayNet;

- (f) any error or omission in any document issued by AusPayNet, other than an error or omission resulting from a negligent act or omission of AusPayNet;
- (g) any technological failure of any sort (including without limitation any telephone computer or electrical failure);
- (h) any contractual arrangements between any Subscriber and any other person; or
- (i) any change in the status, financial condition, affairs or creditworthiness of a Subscriber 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**

- 15.3.1 If, notwithstanding clause 15.2, any liability is incurred by AusPayNet in relation to the Access Standard, to the extent permitted by Law, the aggregate amount of that liability in respect of all claims made by Subscribers and Access Seekers in respect of, or arising out of, any one event will not exceed the aggregate amount of \$60,000.00.

## **16. AMENDMENTS TO THE ACCESS STANDARD**

### **16.1 Amendments**

- 16.1.1 The Access Standard may be amended as necessary provided that any amendments are consistent with the objectives of the Standard and the ATM Access Regime.
- 16.1.2 Where an amendment to the Access Standard is proposed, AusPayNet must provide the proposed amendment to the RBA for review prior to its implementation. If the RBA considers that the amendment may result in material or substantial changes to the ATM Access Regime, AusPayNet must obtain the RBA's approval or non-objection before the amendment is implemented.
- 16.1.3 For clarity, amendments that are purely typographical, formatting-related, or otherwise minor and administrative in nature are still considered amendments to the Access Standard that need to be subject to RBA review.

### **16.2 Minor Amendments**

- 16.2.1 Minor Amendments are amendments to the Access Standard that:
  - (a) address procedural or technical matters; or
  - (b) are required to correct manifest errors within the Standard.
- 16.2.2 Minor Amendments must be approved by majority of at least 66.7% of Subscribers.

### **16.3 Material Amendments**

- 16.3.1 Material Amendments are amendments to the Access Standard that:
  - (a) Change the definition of a Direct Connection Service and/or the rights and obligations of Direct Connectors; or
  - (b) Change the definition of a Direct Clearing/Settlement Service and/or the rights and obligations of Direct Clearer/Settlers; or
  - (c) Substantively alter the principles, processes, requirements, or obligations of a Subscriber.
- 16.3.2 Material Amendments as described in clauses 16.3.1(a), (b) and (c) must be approved by at least 75% of Subscribers in the following categories:
  - (a) Direct Connectors for clause amendments under clause 16.3.1(a);
  - (b) Direct Clearer/Settlers for clause 16.3.1(b); and
  - (c) All Subscribers for clause 16.3.1(c).

## **16.4 Non-material and Typographical Amendments**

- 16.4.1 AusPayNet may make other non-material or typographical amendments as and when required at its discretion, provided that such amendments do not materially impact the rights or obligations of any Subscriber.

## **16.5 Process for Approval of Minor and Material Amendments**

- 16.5.1 For all Minor and Material Amendments:
- (a) AusPayNet will notify Subscribers of the proposed amendment and invite Subscribers to provide comments or make submissions for AusPayNet to consider.
  - (b) AusPayNet will issue a Notice to Subscribers containing the final version of the proposed amendments and will circulate a written resolution for voting in accordance with clause 1.13.2.
  - (c) An amendment will be considered approved if it receives the requisite number of votes as set out in clause 16.2.2 or 16.3.2.
  - (d) AusPayNet will notify Subscribers of the outcome of the vote.
- 16.5.2 AusPayNet must publish all amendments to the Access Standard as soon as reasonably practicable.
- 16.5.3 For Material Amendments Subscribers may elect to call a meeting of the Subscribers in accordance with clause 1.12 if the nature or complexity of the amendments warrants it.

## **16.6 Regulatory approvals**

- 16.6.1 AusPayNet must obtain any regulatory approvals necessary prior to the implementation of any amendment of the Access Standard.

## 17. NOTICES

- 17.1.1 A notice, consent or other communication under the Access Standard is only effective if it is:
- (a) in writing and in legible English, signed by or on behalf of the person giving it;
  - (b) addressed to the person to whom it is to be given; and
  - (c) either:
    - (i) sent by pre-paid mail (by airmail, if the addressee is overseas) or delivered to that person's address; or
    - (ii) sent by electronic mail to that person's electronic mail address.
- 17.1.2 Subject to paragraph 17.1.1, a notice, consent or other communication under the Access Standard is, in the absence of earlier receipt, regarded as given and received:
- (a) if it is delivered, on delivery at the address of the relevant person;
  - (b) if it is sent by mail, on the seventh Business Day after the day of posting, or if to or from a place outside Australia, on the fourteenth Business Day after the day of posting; or
  - (c) if it is sent by electronic mail at the time and on the day it was successfully sent.
- 17.1.3 If a notice, consent or other communication under the Access Standard 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.
- 17.1.4 For the purposes of this clause, a person's address and fax number and electronic mail address are:
- (a) if the addressee is AusPayNet, the registered office of AusPayNet; and
  - (b) if the addressee is a Subscriber, an address shown for that person in the register of Subscribers maintained by AusPayNet; and
  - (c) 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.

## **18. TRANSITIONAL PROVISIONS**

### **18.1 Compliance with the IAC Regulations and IAC Code Set**

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

### **18.2 Existing interchange agreements**

- 18.2.1 Subject to subclause 18.2.2, interchange agreements entered into prior to the commencement of the Access Standard continue to be enforceable.
- 18.2.2 If a provision in an interchange agreement is inconsistent with a provision of the Access Standard then the provision of the Access Standard prevails to the extent of the inconsistency.

## SCHEDULE 1 - CONFIDENTIALITY DEED

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### DATE

### PARTIES

1. \_\_\_\_\_ (AUSPAYNET)
2. \_\_\_\_\_ (ACCESS SEEKER)

### THE PARTIES AGREE

#### 1 DICTIONARY

- (a) The terms used in this Deed 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 Subscribers under the Access Standard.

**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 7 of the ATM Access Standard.

## **2 BACKGROUND**

- (a) The Access Seeker is requesting access from the Access Provider under the Access Standard.
- (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 Deed.

## **3 ADDITIONAL PARTIES**

### **3.1 Subscribers providing contributing Connectivity Services**

Where an Access Seeker is requesting Connectivity Services from a Subscriber or Subscribers:

- (a) AusPayNet may supply a copy of this Deed to the Subscriber and request that the Subscriber become a party to this Deed; and
- (b) the Subscriber 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 AusPayNet 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 AusPayNet.

### **3.3 Copies of Deeds of Acknowledgement**

As soon as practicable, upon executing a Deed of Acknowledgement the Subscriber must provide the Deed to AusPayNet and, if requested to do so, AusPayNet 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 Deed 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 Deed.
- (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 Deed 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 Deed continue to apply after the date of this Deed 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 Subscriber, in which case the obligations of confidentiality under this Deed are replaced by the obligations of confidentiality under the Access Standard.

## 7 CONSEQUENCE OF BREACH

### 7.1 Breach of Deed will damage Discloser

The Recipient acknowledges that any breach of this Deed 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 acknowledgement 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 Standard.

**EXECUTED** as a Deed.

Signed by AusPayNet in the presence of:

---

Signature of director/secretary

---

Signature of director

---

Name of director/secretary (print)

---

Name of director (print)

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)

## 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 AUSPAYNET 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**

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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 Standard.
- (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 Standard, 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 Standard and agrees to become a Subscriber 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 Standard, in accordance with clause 1.6 of the Access Standard.

## SCHEDULE 3 - STANDARD CONNECTION TERMS

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### 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 Standard.

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 Standard.

## 1 ACKNOWLEDGEMENTS

[Insert:]

### 1.1 Acknowledgements

- (a) AusPayNet has provided and the Access Seeker has received copies of the Access Standard, the IAC Code Set, 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 7 of the Access Standard.

## 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 paragraph 3.1 of this agreement.
- (b) The access rights granted pursuant to paragraph [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 of the Access Standard 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 4 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.

## 4 IMPLEMENTATION

[Insert:]

### 4.1 Implementation

#### Implementation according to Access Standard

Implementation of the Service must be completed in accordance with the relevant provision in clause 6 of the Access Standard, 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 Standard.

## 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 clause 3 of the Access Standard;
  - (ii) the other party is in material breach of its obligations under the Implementation process set out in clause 6 of the Access Standard 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 AusPayNet 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 Standard, if the disagreement falls within the definition of a Dispute as provided in clause 12.1 of the Access Standard.

## **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 Standard.

#### **Attachment**

[Insert:]

## **ATTACHMENT**

### **SERVICE**

[Insert definition of the relevant Connectivity Service as provided for in Schedule 5 of the Access Standard, as amended from time to time.]

### **CONNECTION CHARGES**

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

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

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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 Subscriber who is acting as a Switch and/or Clearing/Settlement Agent, the Subscriber 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 Subscriber, the Subscriber must ensure that the Third Party Agreement imposes obligations on the third party to perform those actions. The Subscriber remains responsible for ensuring that the obligations under these ATM Interchange Terms are met.

### 2 APPLICATION OF THE IAC REGULATIONS, IAC CODE SET, COIN REGULATIONS AND COIN OPERATING MANUAL

- (a) Each Subscriber must give full effect to the IAC Regulations and IAC Code Set.
- (b) Each Subscriber must give full effect to the COIN Regulations and COIN Operating Manual.
- (c) For the purposes of the settlement cut-off time in clause 2.2 of Volume 5 of the IAC Code Set the cut-off time will be 12 midnight Eastern Standard Time unless otherwise bilaterally agreed between Subscribers.

### 3 APPROVED CARDS

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

#### **4 PROMOTIONS AND ADVERTISING**

- (a) Each Subscriber may display signage at their respective ATM locations which indicates the ATM Cards of Subscribers that are acceptable for ATM use. Each Subscriber will bear its own expenses in displaying such signage.
- (b) Each Subscriber authorises each other Subscriber 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 Subscribers or where a Subscriber is a Clearing/Settlement Agent between the third party they represent in accordance with the Third Party Agreement (**the Interchange Facility**).
- (b) Each Subscriber warrants to each other Subscriber that the Interchange Facility which it operates or controls:
  - (i) will comply in all material respects with the requirements of the Access Standard and any technical requirements specified by AusPayNet from time to time; and
  - (ii) will be operated competently.
- (c) If a Subscriber 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 Subscriber 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 Subscriber as soon as is reasonably practical.
- (d) Each Subscriber agrees to indemnify each other Subscriber 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 Subscriber, to effect an ATM Transaction. However, the indemnifying Subscriber is not responsible for losses that occur:

- (i) even though the indemnifying Subscriber did not authorise the ATM Transaction; and/or
- (ii) as a result of another Subscriber's non-compliance with any requirement of the Access Standard, the IAC Regulations or the IAC Code Set.

## **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 - CONNECTIVITY SERVICES

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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 IAC Code Set 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 IAC 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) AusPayNet may amend the definition of a Direct Connection Service from time to time in accordance with clause 16.3.
- (b) Direct Clearing/Settlement Service:
  - (i) Subject to paragraph (ii), is a service to establish a Direct Clearing/Settlement Arrangement between Subscribers 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) AusPayNet may amend the definition of a Direct Clearing/ Settlement Service from time to time in accordance with clause 16.3.
- (c) Ongoing Service:  
Any Direct Connection or Direct Clearing/Settlement Arrangement established under the Access Standard must be maintained unless and until:
  - (i) one of the two Subscribers that is party to the Direct Connection or Direct Clearing/Settlement Arrangement ceases to be a Subscriber; or
  - (ii) the parties agree to terminate that Direct Connection or Direct Clearing/Settlement Arrangement.

## SCHEDULE 6 - LIQUIDATED DAMAGES

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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 7 - DEFINITIONS AND INTERPRETATION

---

### 1 DEFINITIONS

Terms used in the Access Standard not defined in this clause have the meaning given to that term in the IAC Regulations or the IAC Code Set.

The following definitions apply to the Access Standard:

**Access Provider** means a Subscriber 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 Standard.

**Access Seeker Information Package** has the meaning given to that term in clause 4.6.1.

**Access Standard** means the ATM Access Standard.

**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* (Cth).

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

**Application Fee** has the meaning given to that term in Schedule 9.

**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 Access Code** means the ATM Access Code developed by ATM Access Australia Limited (AAAL).

**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 1998* (Cth) 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 Subscriber that is:

- an IAC member; and
- meets the IAC's certification requirements applicable to its institutional capacity as set out in clause 6.2.1(a) of the Access Standard, subject to any transitional arrangements specified by AusPayNet 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.

**AusPayNet** means the Australian Payments Network (ABN 12 055 136 519).

**AusPayNet Member** means a member of AusPayNet or any one of its Frameworks.

**Available Party** has the meaning given to that term in Schedule 6.

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

**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 AusPayNet 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 AusPayNet 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 1.14.1.

**Confidential Information** means any information provided by or to any Subscriber or Access Seeker that is confidential and/or commercially sensitive which includes without limitation information that:

- (a) is identified as confidential or ought to have been known by the recipient to be confidential;
- (b) relates to the discloser's products or services, or business affairs and practices; or
- (c) is in connection with the operations of or provided for the purposes of its role as a Subscriber or Access Seeker, including without limitation AusPayNet's Regulations, Procedures and the Access Standard, as well as process and information created or collated by AusPayNet from its membership or other stakeholder, determined by AusPayNet or the Subscribers to be confidential.

but does not include information that:

- (a) is in or comes into the public domain other than by breach of clause 13; or
- (b) is independently known to the recipient and who is entitled to disclose it; or
- (c) information on an aggregated basis which is required by AusPayNet 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 Standard.

**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 4.6.1(a).

**Connectivity Services** are the services set out in Schedule 5.

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

**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* (Cth).

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

**Deed Poll** means the Deed Poll signed by a Subscriber as set out in Schedule 8.

**Delayed Party** has the meaning given to that term in Schedule 6.

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

**Direct Clearer/Settler** means:

- (a) an ATM Acquirer that:
  - (i) clears ATM Transactions directly; and
  - (ii) settles using one of the methods prescribed in IAC Regulation 11.3(a)(i); with an ATM Issuer, or with a representative of an ATM Issuer appointed to settle on behalf of that ATM Issuer in accordance with IAC Regulation 11.3(a)(ii), 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 IAC Regulation 11.3(a)(i); with an ATM Acquirer, or with a representative of an ATM Acquirer appointed to settle on behalf of that ATM Acquirer in accordance with IAC Regulation 11.3(a)(ii), 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 IAC Regulation 4.1(b)(iii).

**Direct Clearing/Settlement Arrangement** means an arrangement between two indirectly connected Subscribers 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 5.

**Direct Connection** means a direct communications link between two Subscribers 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 5.

**Direct Connector** means a Subscriber that:

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

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

**Dispute Notice** has the meaning given to that term in clause 12.4.1.

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

**EMV** stands for Europay, MasterCard and Visa, a global standard for inter-operation of integrated circuit cards and IC card capable point of sale terminals and automated teller machines, for authenticating credit and debit card transactions.

**ESA** means an Exchange Settlement Account held with the RBA.

**Expert** has the meaning given to that term in clause 12.6.1(a).

**Fee Policy** means the AusPayNet Fee Policy as amended from time to time.

**Former Access Company** means ATM Access Australia Limited (ABN 52 130 571 103).

**Framework** has the meaning set out in the AusPayNet 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* (Cth), 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.

**IAC** means the Issuers and Acquirers Community as governed by the IAC Regulations and IAC Code Set.

**IAC Code Set** means the codes, practices, procedures, standards and/or specifications for the purposes of the Issuers and Acquirers Community published pursuant to IAC Regulation 11.1.

**IAC Regulations** means the Regulations adopted by AusPayNet for the purposes of the Issuers and Acquirers Community, as amended from time to time.

**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* (Cth).

**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.

**Industry Fee** has the meaning given to that term in Schedule 9.

**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 2001 (Cth) 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 2001* (Cth) 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* (Cth); 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 (Cth).

**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.

**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 6.

**Material Amendment** has the meaning given to that term in clause 16.3.

**Minor Amendment** has the meaning given to that term in clause 16.2.

**Next Available Date** has the meaning given to that term in clause 4.5.4(b).

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

**Outsourced Testing Expenses** has the meaning given to that term in Schedule 6.

**Original Connection Agreement** has the meaning given to that term in paragraph 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 12.3.1.

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

**Project Plan** has the meaning given to that term in clause 6.1.1.

**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 2001* (Cth).

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

**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.

**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 AusPayNet to the Access Seeker pursuant to clause 4.5.

**Subscriber** means:

- (a) a member of the Former Access Company that has subscribed to the Standard by executing the Deed Poll in Schedule 8 in accordance with clause 1.5 of the Access Standard; and
- (b) any Access Seekers that enter into a Connection Agreement to establish a Direct Connection or a Direct Clearing/Settlement Arrangement. Access Seekers become Subscribers at the time of entering into their first Connection Agreement and by subscribing to the Access Standard in accordance with clause 1.5.

**Subscription Fee** means the fee payable to AusPayNet on becoming a Subscriber as set out in Schedule 9.

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

**Switch** is a Direct Connector that exchanges Transaction Messages between Subscribers or between Subscribers 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 6.3.2(b).

**Testing Timetable** has the meaning given to that term in clause 6.3.2(a).

**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.

**Wages** has the meaning given to that term in Schedule 6.

## 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 Standard, and a reference to a Schedule is a reference to a Schedule in the Access Standard;
  - (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 Standard includes the Schedules;
  - (x) a document (including the Access Standard) 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 Standard;
- (f) the relevant definitions for any words that are capitalised in the Access Standard can be found in this Schedule 7 and if they are not included in this Schedule 7 they can be found in the IAC Regulations or IAC Code Set; and
- (g) in the case of any inconsistency between the definitions in this Schedule 7 and the definitions in the Schedules to the Access Standard:
  - (i) the definitions in this Schedule 7 will apply in interpreting the clauses in the Access Standard; and
  - (ii) the definitions contained in each respective Schedule must apply in interpreting that particular Schedule.

## SCHEDULE 8 - DEED POLL

### DEED POLL – SUBSCRIPTION TO STANDARD

#### Participating Institution

|                               |          |
|-------------------------------|----------|
| <b>Name</b>                   | [Insert] |
| <b>ABN/ACN</b>                | [Insert] |
| <b>Place of incorporation</b> | [Insert] |
| <b>Registered address</b>     | [Insert] |

#### General Terms

- 1) The Australian Payments Network Limited ABN 12 0551 365 19 ('AusPayNet') has collaborated with relevant industry stakeholders to develop the 'ATM Access Standard' (**Standard**).
- 2) The Participating Institution wishes to subscribe to the Standard.
- 3) The Participating Institution agrees that it will:
  - a) observe, comply with and be bound by all provisions of the Standard that are applicable to the activities in which it participates; and
  - b) engage with AusPayNet in all matters relating to the Standard in good faith.
- 4) The Participating Institution acknowledges that, to the maximum extent permitted by law, in no event shall AusPayNet be liable for any direct or indirect loss, damage or expense (irrespective of the manner in which it occurs), which may be suffered due to the Participating Institution's subscription to the above Standard.
- 5) This deed is a deed poll by the Participating Institution which operates in favour of AusPayNet and each Subscriber other than the Participating Institution from time to time and may be relied on and enforced separately by each of AusPayNet and each such Subscriber from time to time in accordance with its terms.
- 6) A single or partial exercise or waiver of a right relating to this deed does not prevent any other exercise of that right or the exercise of any other right.
- 7) This deed is governed by the law of New South Wales, Australia. The Participating Institution irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction there.
- 8) If any provision in this deed is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of other clauses in this deed.

**Date:**

**Executed as a deed poll.**

**Signed, sealed and delivered by** [Name of Participating Institution, ABN/ACN] in accordance with section 126 of the *Corporations Act 2001* (Cth) by:

\_\_\_\_\_  
Signature of authorised agent

\_\_\_\_\_  
Title of authorised agent

\_\_\_\_\_  
Name of authorised agent

**Acknowledged and agreed by** Australian Payments Network Limited ABN 12 0551 365 19  
for itself and on behalf of each then Subscriber

\_\_\_\_\_  
Signature of authorised agent

\_\_\_\_\_  
Title of authorised agent

\_\_\_\_\_  
Name of authorised agent

## SCHEDULE 9 – 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 Subscriber from whom the Access Seeker is requesting Connectivity Services. The fee can be adjusted by AusPayNet from time to time on the basis of AusPayNet's administrative costs of processing applications. | By Access Seekers at the time of lodging an Application Form (see clause 4.5)                                                                               | AusPayNet |
| Subscription Fee | \$50,000.00                                                                                                                                                                                                                         | By new Subscribers who were not members of the Former Access Company on Subscribing to the Standard (required when a Connection Agreement is entered into). | AusPayNet |
| Industry Fee     | An amount as determined by the AusPayNet Board in accordance with the Fee Policy to fund industry work in relation to the development and/or maintenance of the Access Standard.                                                    | By Subscribers as determined by the AusPayNet Board from time to time.                                                                                      | AusPayNet |