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AUSTRALIAN PAYMENTS CLEARING ASSOCIATION LIMITED

ABN 12 055 136 519

A Company limited by Guarantee

REGULATIONS

for

HIGH VALUE CLEARING SYSTEM FRAMEWORK

(CS4)

Commenced August 1997

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REGULATIONS
FOR
HIGH VALUE CLEARING SYSTEM
(CS4)
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REGULATIONS

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(CS4)

FRAMEWORK

PART 1 PRELIMINARY

1.1 Definitions

The following words have these meanings in these Regulations unless the contrary intention appears.

"Amendment Date" has the meaning set out in the Constitution.

"APCA PDS" means:

- (a) the SWIFT PDS, and
- (b) any other payment delivery system implemented by the Company from time to time,

for sending and receiving domestic high value payment instructions in the HVCS between Framework Participants.

"APRA" means the Australian Prudential Regulation Authority.

"Article" means an article of the Constitution.

"Board" means the board of directors of the Company.

"BSB Number" means, in relation to a Framework Participant, its BSB Number assigned to it by the Company.

"Building Society" means an ADI whose name appears in the list of ADIs on the APRA website under the heading "Building Societies".

"Building Society Member" means a Framework Participant:

- (a) (i) which is a Building Society, which has not elected to be treated as a Credit Union Member during the Grandfathering Period; or

- (ii) which formerly had a consent from APRA to use the words “building society” in its name and now operates as a bank and has a consent from APRA to use the word “bank” in its name, which has not elected to be treated as a Credit Union Member or an Electing Member during the Grandfathering Period; or
- (b) (i) which is a Credit Union;
- (ii) which formerly had a consent from APRA to use the words “credit union” in its name and now operates as a bank and has a consent from APRA to use the word “bank” in its name; or
 - (iii) whose name appears in the list of ADIs on the APRA website under the heading “Other ADIs” and described as a company which provides services to building societies and credit unions,
- which has elected to be treated as a Building Society Member during the Grandfathering Period.

"Business Day" means a day on which banks are open for general banking business in Sydney or Melbourne and on which the RITS/RTGS System is operating to process payments.

"Cash Settlement Rate" [deleted]

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"CBT" means computer based terminal (including hardware and software) and, in relation to an APCA PDS, means a computer based terminal used to access that APCA PDS.

"Certificate" means a certificate evidencing a determination made under PART 13 signed by:

- (a) in the case of a determination by the Management Committee, the Chairman of the Management Committee or members of the Management Committee who together are entitled to cast more than 50% of the total votes available to be cast at meetings of the Management Committee; or
- (b) in the case of a determination by the Board, the chairman of the Company or Directors who together are entitled to cast sufficient votes for the resolution on such determination to be passed at meetings of the Board.

"Chief Executive Officer" means the person appointed as a chief executive officer of the Company under Article 7.13 of the Constitution and a reference in these Regulations to the Chief Executive Officer includes a reference to a person nominated by the Chief Executive Officer to be responsible for the matter referred to in that reference.

"Clearing System" has the same meaning as in the Constitution.

"Company" means Australian Payments Clearing Association Limited ABN 12 055 136 519.

"Confidential Information" means any information in any form or medium in connection with the operations of the High Value Clearing System (CS4) which is made available by the Company or any Framework Participant to any other Framework Participant or the Company from time to time and includes without limitation those provisions of the Regulations and Procedures which the Management Committee determines to be commercially sensitive or otherwise desirable to be kept confidential in order to preserve the integrity or security of the High Value Clearing system (CS4).

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

"Constitutional Corporation" has the same meaning as in the *Payment Systems and Netting Act 1998 (Cth)*.

"Contingency" means any Disabling Event and any other event or circumstance specified by the Management Committee for the purposes of PART 9.

"Credit Union" means an ADI whose name appears in the list of ADIs on the APRA website under the heading "Credit Unions".

"Credit Union Member" means a Framework Participant:

- (a)
 - (i) which is a Credit Union, which has not elected to be treated as a Building Society Member during the Grandfathering Period; or
 - (ii) which formerly had a consent from APRA to use the words "credit union" in its name and now operates as a bank and has a consent from APRA to use the word "bank" in its name, which has not elected to be treated as a Building Society Member or an Electing Member during the Grandfathering Period; or
- (b)
 - (i) which is a Building Society;
 - (ii) which formerly had a consent from APRA to use the words "building society" in its name and now operates as a bank and has a consent from APRA to use the word "bank" in its name; or
 - (iii) whose name appears in the list of ADIs on the APRA website under the heading "Other ADIs" and described as a company which provides services to building societies and credit unions,

which has elected to be treated as a Credit Union Member during the Grandfathering Period.

"Declared Member" means a Framework Participant to which an FCS Declaration applies.

"Defaulter" means, in relation to an FTS Event, a Framework Participant which prior to it becoming a Defaulter fails to discharge obligations incurred by it under:

- (a) these Regulations and the Procedures; or
- (b) the regulations and procedures of another Clearing System, other than the Consumer Electronic Clearing System, in its capacity as a framework participant of that other Clearing System; or
- (c) the regulations and manual of the Consumer Electronic Clearing System in its capacity as a CECS framework participant,

in a manner which results in that FTS Event.

"Development Recoupment Fees" [Deleted]

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"Director" means a director (whether voting or non-voting) for the time being of the Company and where appropriate includes an alternate director appointed under Article 7.5 of the Constitution.

"Disabling Event" means any:

- (a) processing, communications or other failure of a technical nature;
- (b) inaccessibility (total or partial) to facilities by means of which payments are sent and received; or
- (c) manifestation of industrial action,

which affects, or may affect, the ability of any Framework Participant to participate to the normal and usual extent in sending and receiving payments.

"Dispute" means a dispute or difference between:

- (a) the Board, the Management Committee, any delegate of the Management Committee and any one or more Framework Participants; or
- (b) two or more Framework Participants,

arising out of, or in any way connected with, the Constitution (insofar as it relates to the operation or management of the HVCS), these Regulations and the Procedures including, without limitation, a dispute or difference:

- (c) arising out of, or in any way connected with, any non-compliance with the Constitution (insofar as they apply to the HVCS), these Regulations or the Procedures;
- (d) arising out of, or in any way connected with, any decision of the Board which relates to the HVCS, the Management Committee or any delegate of the Management Committee;

- (e) as to any sum of money claimed to be payable pursuant to, or any liability or obligation or other matter to be ascertained or dealt with or which arises under Regulations 5.17 to 5.18 inclusive;
- (f) arising out of, or in any way connected with, the non-payment or alleged non-payment of any sum of money otherwise payable or alleged to be otherwise payable pursuant to these Regulations or the Procedures;
- (g) arising out of, or in any way are connected with, the efficiency of the methods and procedures used by a Framework Participant;
- (h) arising out of the application of or compliance with any instruction or request included in any payment message made by another Framework Participant of the HVCS; or
- (i) arising out of the operation or performance of an APCA PDS;

but excluding any dispute or difference arising out of, or in any way connected with, PART 12 (Failure to Settle) of these Regulations unless all parties to such dispute or difference and the Company agree to it being determined pursuant to PART 13 (Breaches of Regulations and Disputes) of these Regulations.

“Electing Member” has the meaning set out in the Constitution.

“ESR” [Deleted]

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“Exchange Settlement Account” means an exchange settlement account, or similar account, maintained by a Framework Participant with the Reserve Bank.

“Failed Settlement” means, in relation to an FTS Event, the settlement in relation to which that FTS Event occurred.

“FCS” means the financial claims scheme established under Division 2AA of the *Banking Act 1959 (Cth)*.

“FCS Declaration” means a declaration made by the Minister under section 16AD of the *Banking Act 1959 (Cth)*.

“FCS Rules” means the processing rules set out in Regulations 11.8 and 11.9.

“FTS Event” has the meaning given in Regulation 12.3.

“Governance Transition Period” means the period commencing on the Amendment Date and expiring on 30 June 2014.

“Grandfathering Period” and **“the first phase of the Grandfathering Period”** and **“the second phase of the Grandfathering Period”** have the meanings set out in the Constitution.

"**GST**" has the same meaning as in the GST Law and also includes any amount imposed as additional tax, interest, penalty, fine or other charge payable in respect of GST.

"**GST Exclusive Consideration**" means any amount payable (or deemed to be payable) under the Constitution, these Regulations or the Procedures in connection with any Taxable Supply (other than amounts payable under Regulations 6.10(a) or 6.11(a)) and the GST exclusive value of any non-monetary consideration provided in connection with the Supply.

"**GST Law**" has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

"**GST Rate**" means the rate of GST under the GST Law.

"**High Value Clearing System (CS4)**" means the systems and procedures contained in these Regulations for the purpose of co-ordinating, facilitating and protecting the conduct and exchange of payments among Framework Participants and all aspects of the related clearing cycle.

"**High Value Market Share**" and "**HVMS**" mean a Framework Participant's share of transactions in HVCS determined as set out in Regulation 7.7.

"**HVCS**" means High Value Clearing System (CS4).

"**HVCS Establishment Contribution**" [Deleted]

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"**HVCS Establishment Contributor**" [Deleted]

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"**HVCS Establishment Cost**" [Deleted]

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"**Insolvency Event**" means the happening of any of these events:

- (a) an application is made to a court for an order or an order is made that a Framework Participant be wound up;
- (b) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of a Framework Participant, or one of them is appointed, whether or not under an order;
- (c) a Framework Participant 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;
- (d) a Framework Participant resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so;
- (e) a Framework Participant 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, a Framework Participant is taken to have failed to comply with a statutory demand;
- (g) a Framework Participant is, or makes a statement from which it may be reasonably deduced that the Framework Participant 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) a Framework Participant takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a Framework Participant;
- (i) APRA or another body responsible for the prudential supervision of a Framework Participant assumes management and control of that Framework Participant;
- (j) to the extent not otherwise provided for above, a Framework Participant 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.

"Management Committee" means the committee constituted pursuant to PART 7.

"Mutuals Group" has the meaning set out in the Constitution.

"Payment" means, in relation to an APCA PDS, a payment submitted via that APCA PDS for settlement in the RITS/RTGS System.

"Potential FTS Event" means any act, matter or thing which with the lapse of time or the fulfilment of any condition would, or would reasonably be likely to, result in an FTS Event.

"Procedures" means the practices, procedures, standards and specifications adopted by the Management Committee pursuant to PART 11.

"Payment System Market Share" and **"PSMS"** have the meaning set out in the Constitution.

"Real Time Gross Settlement" means, in respect of settlement of payment obligations in any particular settlement system, the processing and settlement of those payment obligations in that system in real time and on a gross (not net) basis.

"Receiver" means a Constitutional Corporation that receives Payments from another Framework Participant in accordance with HVCS Regulations and Procedures once admitted into the HVCS.

"Register" means the register of Members of the Company to be kept under the *Corporations Act 2001 (Cth)* and where appropriate includes a branch register.

"Registered Office" means the registered office for the time being of the Company.

"Regulations" means these regulations (including, without limitation, the Annexures to these Regulations) as amended from time to time for the use and operation of, or participation by Framework Participants in, HVCS.

"Reserve Bank" means the Reserve Bank of Australia.

"Revised Settlement" means, in relation to an FTS Event, the revised settlement referred to in Regulation 12.9.

"RITS Regulations" means the regulations and conditions of operation for the RITS/RTGS System published from time to time by the Reserve Bank.

"RITS/RTGS System" means the settlement system established and operated, or to be established and operated, by the Reserve Bank for Real Time Gross Settlement and includes the Central SWIFT Interface. For the avoidance of doubt, references to the RITS/RTGS System include that system when operating to effect settlement of Payments on a Real Time Gross Settlement basis and when otherwise operating to effect settlement of payments on a deferred net settlement basis.

"Secretary" means a person appointed by the Chief Executive Officer to perform the duties of secretary of the Management Committee under Regulation 7.14.

"Sender" means a Constitutional Corporation that sends Payments to another Framework Participant in accordance with the HCVS Regulations and Procedures once admitted into the HCVS.

"Service Provider" means, in relation to a particular APCA PDS, the provider of the facilities by which payment instructions and other messages are sent and received through that APCA PDS.

"Settlement Day" means any day on which Payments are processed in the RITS/RTGS System as specified in, or in accordance with, the RITS Regulations.

"Supply" has the meaning given by the GST Law.

"Survivor" means, in relation to an FTS Event, each Framework Participant other than the Defaulter.

"Suspension Event" has the meaning given in Regulation 5.10.

"SWIFT" means Society For Worldwide Interbank Financial Telecommunication s.c, having its registered address at Avenue Adèle 1, B-1310 La Hulpe, Belgium.

"SWIFT FIN Copy Service" means the service provided by SWIFT to Framework Participants pursuant to the SWIFT Service Agreement.

"SWIFT Network" means the proprietary telecommunication network and associated software owned and utilised by SWIFT to provide communications services to its users.

"SWIFT PDS" means the SWIFT FIN Copy Service, operating, under normal circumstances, in Y-Mode, configured with Framework Participants' CBTs to meet the processing requirements of the HVCS, together with any ancillary SWIFT services provided in connection with the SWIFT FIN Copy Service.

"SWIFT PDS CUG" is the group of Framework Participants admitted to use the SWIFT PDS to send and receive payments.

"SWIFT Service Agreement" means the agreement effective 16 December 1996 entitled "Agreement between APCA and SWIFT for FIN Copy Service Administration", pursuant to which SWIFT provides its FIN Copy Service to Framework Participants.

"SWIFT User" means a body corporate that has been granted the right to connect to the SWIFT Network in accordance with the terms and conditions set out in the by-laws of SWIFT and in the SWIFT User Handbook.

"SWIFT User Handbook" means the set of rules and procedures published from time to time by SWIFT (in whatever medium) as the "SWIFT User Handbook" governing use of SWIFT's services.

"System Administrator" means the person appointed by the Reserve Bank to supervise operation of the RITS/RTGS System.

"System Certification" means, in relation to an APCA PDS, the initial certification issued by the Management Committee to a person in accordance with the Procedures for that APCA PDS prior to that person being permitted to send and receive payments using that APCA PDS.

"Tax Invoice" means a tax invoice complying with the requirements of the GST Law.

"Voting Member" has the meaning given to that term in the Constitution.

1.2 Interpretation

In these Regulations:

- (a) words importing any one gender include the other gender;
- (b) the word person includes a firm, a body corporate, an unincorporated association or an authority;
- (c) the singular includes the plural and vice versa; and

- (d) a reference to a statute, code or the *Corporations Act 2001 (Cth)* (or to a provision of a statute, code or the *Corporations Act 2001 (Cth)*) means the statute, the code, the *Corporations Act 2001 (Cth)* or the provision as modified or amended and in operation for the time being, or any statute, code or provision enacted in lieu thereof and includes any regulation or rule for the time being in force under the statute, the code, the *Corporations Act 2001 (Cth)* or the provision.
- (e) In PART 7 and PART 8, a Framework Participant and its Subsidiaries are deemed to be a single entity for the purposes of determining membership of the Management Committee and voting rights and, accordingly, a reference to a Framework Participant for those purposes is deemed to be a reference to the Framework Participant and its Subsidiaries acting jointly.
- (f) A reference in PART 13 to:
 - (i) a determination by a person includes a decision by that person; and
 - (ii) proceedings includes actions, suits and proceedings at law, in equity or otherwise.
- (g) Words defined in the *Corporations Act 2001 (Cth)* have, unless the contrary intention appears, the same meaning in these Regulations.
- (h) These Regulations have been adopted by the Board and take effect on a date to be specified by the Chief Executive Officer.
- (i) Headings are inserted for convenience and do not affect the interpretation of these Regulations.

1.3 Inconsistency with Constitution or Procedures

- (a) If a provision of these Regulations or the Procedures is inconsistent with a provision of the Constitution, the provision of the Constitution prevails.
- (b) If a provision of the Procedures is inconsistent with a provision of these Regulations, the provision of these Regulations prevails.

1.4 Governing Law

These Regulations are to be interpreted in accordance with the same laws which govern the interpretation of the Constitution.

1.5 Copyright

Copyright in these Regulations and the Procedures is vested in the Company.

1.6 Payment Systems and Netting Act 1998

For the purposes of Part 3 of the *Payment Systems and Netting Act 1998 (Cth)* (“Act”) as it applies to the netting arrangement contemplated by these Regulations and the Procedures:

- (a) the Company is the coordinator of the arrangement;
- (b) notification to the coordinator for the purposes of sections 12(1)(e)(i) and (f) of the Act is by means of notice given to the Chief Executive Officer pursuant to Regulation 2.5; and
- (c) discretion to exclude a party from the arrangement for the purposes of section 12(1)(e)(ii) of the Act is available to the coordinator by means of the Management Committee taking action pursuant to Regulation 5.10(a)(v), the operation of Regulation 5.17(a)(ii) or (iii) or the Board acting pursuant to Article 2.17 of the Constitution or Regulation 5.17(d).

1.7 Governance Transition Period

- (a) Each Constitutional Corporation which was a member of HVCS immediately before the Amendment Date is:
 - (i) deemed to be admitted as a Framework Participant in the same capacity as it was before the Amendment Date; and
 - (ii) bound by these Regulations, as amended on the Amendment Date.
- (b) Subject to Regulation 7.10 and notwithstanding Regulation 7.2 every member of the Management Committee (and each Secretary) in office immediately before the Amendment Date:
 - (i) continues in office until not later than the expiry of the Governance Transition Period; and
 - (ii) has the voting entitlement he or she had immediately before the Amendment Date, until not later than the expiry of the Governance Transition Period.
- (c) During the Governance Transition Period the Framework Participants must do all things necessary to ensure that the members of the Management Committee are nominated or elected, as the case may be, in accordance with Regulation 7.1, by the expiry of the Governance Transition Period.

The next page is 2.1

PART 2 **SCOPE AND EFFECT**

2.1 **Objects and Scope of Clearing System**

- (a) The primary objective of HVCS is to co-ordinate, manage and ensure the implementation and operation of effective systems, policies and procedures for the exchange by electronic transmission and settlement of irrevocable payments between Framework Participants, using an APCA PDS. This encompasses all aspects of the related clearing cycle including, without limitation:
 - (i) preservation of the efficiency, security and integrity of such exchanges;
 - (ii) specifications and standards for equipment, communication links and message formats used for such exchanges; and
 - (iii) operational procedures for such exchanges, the settlement of resulting obligations and treatment of payments exchanged erroneously.
- (b) The essential characteristics of HVCS are that:
 - (i) individual payments are exchanged by Framework Participants, using a highly secure electronic system in which all payments are irrevocable at the time of settlement; and
 - (ii) no minimum dollar amount applies to such payments, rather they are usually characterised by their large size relative generally to payment instructions exchanged in other Clearing Systems, the need for robust security, and/or the time critical nature of the payments.
- (c) In addition the High Value Clearing System (CS4) is intended to facilitate multilateral settlement of amounts owing to or by a Framework Participant as a consequence of its participation in any other Clearing System operated on a deferred net settlement basis.

2.2 **Effect of Regulations and Procedures**

- (a) HVCS has been established for the benefit of Framework Participants who, by and in consideration of becoming Framework Participants and Voting Members of the Company, acknowledge that they are bound to comply with the Constitution, these Regulations and the Procedures and to fulfil and perform every obligation and duty imposed on them by or pursuant to the Constitution, these Regulations and the Procedures.
- (b) These Regulations and the Procedures have the effect of a contract under seal:

- (i) between the Company and each Framework Participant; and
 - (ii) between the Framework Participants.
- (c) The contractual relationship between the Company and the Framework Participants and between the Framework Participants forms part of an ongoing business relationship between such parties in relation to the conduct and exchange of payments between Framework Participants.

2.3 Framework Participants Act as Principals

- (a) In incurring rights and obligations under these Regulations and the Procedures (whether as a result of the exchange of payments or otherwise), each Framework Participant acts on the basis that it assumes those rights and incurs those obligations as a principal, notwithstanding any other fact, matter or circumstance.
- (b) No person other than the Framework Participant which assumes rights or incurs obligations under these Regulations and the Procedures (including any person asserting rights as a principal on whose behalf such Framework Participant acts) may enforce those rights or assume those obligations.
- (c) Any rights and obligations attaching to any payment exchanged in accordance with these Regulations and the Procedures which:
- (i) are vested in, or which may be acquired or incurred (whether at law, in equity or otherwise) by, the Framework Participant which sends or receives that payment in accordance with these Regulations and the Procedures,
- against or in favour of:
- (ii) the other Framework Participant which receives that payment,
- are discharged and satisfied in consideration for the rights and obligations acquired or incurred under these Regulations and the Procedures as the result of the exchange of those payments.
- (d) Nothing in this Regulation 2.3 shall affect the rights and obligations attaching to any payment which are vested in, or may be acquired or incurred (whether at law, in equity or otherwise) by, any other person.

2.4 Assignment and Transfer

The rights and obligations of each Framework Participant under the Constitution, the Regulations and the Procedures are incapable of being assigned (whether at law, in equity or otherwise), charged, transferred or the subject of any trust or other fiduciary obligation which may affect or abrogate the personal liability of that Framework Participant. No action which purports to do any of the foregoing shall affect in any manner the rights and obligations of a Framework Participant under the Constitution, these Regulations and the Procedures.

2.5 Insolvency

A Framework Participant must notify the Chief Executive Officer immediately upon becoming aware of:

- (a) any Insolvency Event in respect of itself; or
- (b) any reasonable grounds to suspect any Insolvency Event in respect of any other Framework Participant.

2.6 CEO to Act on Insolvency Notification

- (a) Upon receiving any notification under Regulation 2.5(a), the Chief Executive Officer must promptly notify APRA, the Reserve Bank, all other Framework Participants, all members of the Management Committee and all Directors.
- (b) Upon receiving any notification under Regulation 2.5(b), the Chief Executive Officer must promptly:
 - (i) notify APRA and the Reserve Bank;
 - (ii) make enquiries of the Framework Participant in respect of which the Insolvency Event is reported to be suspected; and
 - (iii) if the relevant Framework Participant is prudentially supervised, make enquiries of APRA or if the relevant Framework Participant is not supervised by APRA, the relevant supervisor.
- (c) To the extent that an Insolvency Event is either admitted by the relevant Framework Participant or the relevant supervisor acts pursuant to paragraph (i) of the definition of “Insolvency Event” and that fact is communicated to the Chief Executive Officer, the Chief Executive Officer must promptly notify all other Framework Participants, all members of the Management Committee and all Directors.
- (d) The provisions of Regulation 5.10 or Regulation 5.17 may apply as a result.

2.7 Relationship with Other Clearing Systems

Except as may be determined from time to time by the Board, any payment which is required by the Regulations for another Clearing System operated by, or under the auspices of the Company to be cleared, exchanged or settled in accordance with that Clearing System may not be exchanged or cleared through HVCS, but may be settled through HVCS if the Regulations and Procedures of that Clearing System provide for such settlement. Framework Participants (in their capacity as such) are not responsible for any failure to settle or to perform other obligations arising from the operations of any such other Clearing System.

2.8 Payments Suitable for HVCS

- (a) These Regulations and the Procedures do not apply to the clearing and settlement of payments denominated in a currency other than Australian dollars or payments which are for exchange outside Australia.
- (b) The Procedures may stipulate that additional payments of a particular description or type are unacceptable for processing by HVCS.

2.9 Review

The Management Committee must regularly review the overall integrity and efficiency of HVCS in light of operational experience and provide regular reports by way of recommendation to the Board on the need (if any) for amendments to the Regulations and the Procedures.

The next page is 3.1

PART 3 DISCLAIMERS AND LIMITATION OF LIABILITY

3.1 Assets and Liabilities of the Company

It is expressly agreed and acknowledged that the Company will not acquire any financial assets (other than in respect of fees and charges payable by Framework Participants) nor incur any liabilities as a result of the exchange of payments between Framework Participants in accordance with the Constitution, these Regulations and the Procedures.

3.2 Representations and Warranties

Each Framework Participant represents and warrants to the Company and each other Framework Participant that:

- (a) it has not relied on any representation made by the Company or any other Framework Participant to induce it to become a Framework Participant or to exchange and clear payments in accordance with these Regulations and the Procedures;
- (b) it will make (without reliance on the Company or any other Framework Participant and based on documents and information which it considers appropriate) its own independent investigation of the financial condition and affairs of each other Framework Participant;
- (c) it has made its own appraisal of the qualifications to be satisfied in order for a person to become a Framework Participant; and
- (d) it has made (without reliance on or inducement to or from the Company or any other Framework Participant) its own assessment and approval of the Constitution, the Regulations and the Procedures as being appropriate for the conduct and settlement of exchanges of payments between Framework Participants.

3.3 Disclaimers

- (a) Neither the Company nor any of its officers, employees or agents has any duty or responsibility, either initially or on a continuing basis to:
 - (i) keep itself informed about the performance by the Framework Participants of their respective obligations under the Constitution, these Regulations and the Procedures, provided that if the Company becomes aware that a Framework Participant has breached its obligations under the Constitution, these Regulations or the Procedures, the Company will bring the matter to the attention of that Framework Participant and the Management Committee; or
 - (ii) keep itself informed about the financial condition, affairs or creditworthiness of any Framework Participant; or

PART 3 DISCLAIMERS AND LIMITATION OF LIABILITY

- (iii) except as expressly provided in the Constitution, these Regulations or the Procedures, provide any Framework Participant with credit or other information with respect to any other Framework Participant.

- (b) Each Framework Participant acknowledges that no officer, employee or agent of the Company has any authority to make any representations or give any warranties in relation to the liability of the Company with respect to the operation of HVCS which are inconsistent with the Constitution, these Regulations or the Procedures.

3.4 Exclusions

Without limiting Regulation 3.1 or any other provision of these Regulations, the Company will not be liable for any loss to any person or damage to persons or property, whether such loss or damage is direct or consequential (including but not limited to loss of profits), howsoever arising out of:

- (a) any act or omission by any Framework Participant or any other person other than the Company, its officers, employees or agents (including without limitation any errors or delays, any breach of warranty or undertaking or representation, any breach of these Regulations, the Procedures or the terms of any other document relating to HVCS, any Insolvency Event, any failure to settle any transaction or any fraud);

- (b) any act or omission done by, or any refusal to do any act by, the Company or any Service Provider or any of their 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 to the Company, its officers, employees or agents by any other person;

- (c) any fraud on the part of any officer, employee or agent of the Company or any Service Provider outside the scope of their employment with the Company or that Service Provider, except to the extent to which the Company would have been responsible at common law for such fraud;

- (d) the failure of the Company or any Service Provider or any of their officers, employees or agents to receive any instructions, information or document from any other person, unless the failure has resulted from a negligent act or omission of the Company;

- (e) the terms of any instructions, information or document given to the Company or any Service Provider or any of their officers, employees or agents by any other person;

- (f) any error or omission in any document issued by the Company or any Service Provider, other than an error or omission resulting from a negligent act or omission of the Company;

PART 3 DISCLAIMERS AND LIMITATION OF LIABILITY

- (g) any technological failure of any sort (including without limitation any telephone, computer or electrical failure);
- (h) any unauthorised access to, or participation in, the HVCS by any person, other than an officer, employee or agent of the Company or any Service Provider;
- (i) any contractual arrangements between any Framework Participant and another person; or
- (j) any change in the status, financial condition, affairs or creditworthiness of a Framework Participant or another person.

3.5 Limit of Liability

- (a) If, notwithstanding Regulations 3.1 to 3.4 inclusive, any liability is incurred by the Company in relation to the HVCS, the aggregate amount of that liability in respect of all claims made by Framework Participants in respect of or arising out of any one event will not exceed the amount equal to ten times the Framework fee charged to a Framework Participant under Regulation 6.2.
- (b) All claims made by Framework Participants against the Company in relation to the HVCS must be made within 12 months of the occurrence of the event which it is alleged gives rise to the claims against the Company.
- (c) For the purposes of Regulation 3.5 all inter-related events which give rise to the Company's liability under these Regulations or otherwise will be treated as one event.
- (d) In the event of any two or more Framework Participants suffering losses which exceed the total aggregate limit specified in Regulation 3.5, the liability of the Company to each of those Framework Participants in accordance with these Regulations will be proportional to the total loss suffered by each of those Framework Participants respectively.

The next page is 4.1

PART 4 LIABILITY OF HVCS FRAMEWORK PARTICIPANTS

4.1 Indemnity

Subject to Regulation 4.4, each Contributing Framework Participant agrees to indemnify the Company:

- (a) jointly with every other Contributing Framework Participant;
- (b) on demand and without counterclaim or set-off;
- (c) for all losses, damages, costs (including legal fees on a full indemnity basis), charges, expenses and liabilities arising from or referable to any claims, demands, actions or proceedings against the Company by SWIFT in connection with the Company's obligation under Article 6.3 of the SWIFT Service Agreement to indemnify SWIFT; and
- (d) in accordance with Regulation 4.4.

4.2 Contributing Framework Participant

In this PART 4 a "Contributing Framework Participant" in relation to any claim, demand, action or proceeding, referred to in Regulation 4.1(c) ("SWIFT Claim"), is:

- (a) a person who was a Framework Participant on the date on which the Management Committee made the decision to:
 - (i) allow or refuse to allow entry or re-entry of any person to, or withdraw any Framework Participant from, the SWIFT PDS CUG; or
 - (ii) modify the FIN Copy Service Profile,which gave rise to that SWIFT Claim; or
- (b) if in the opinion of the Management Committee:
 - (i) the Management Committee decision referred to in Regulation 4.2(a) which gave rise to that SWIFT Claim is not clearly evident or there was no such decision, and
 - (ii) there is otherwise clearly evident an act or omission of the Company (including of any of its employees or agents) which gave rise to that SWIFT Claim,a person who was a Framework Participant on the date of that act or omission which gave rise to that SWIFT Claim; or
- (c) if in the opinion of the Management Committee:

PART 4 LIABILITY OF HVCS FRAMEWORK PARTICIPANTS

- (i) the Management Committee decision referred to in Regulation 4.2(a) which gave rise to a particular SWIFT Claim is not clearly evident or there was no such decision, and
- (ii) there is otherwise no clearly evident act or omission of the Company referred to in Regulation 4.2(b) which gave rise to that SWIFT Claim,

a person who was a Framework Participant on the date of first service on the Company of written notice of that SWIFT Claim.

4.3 Final determination

Any determination by the Management Committee for the purposes of Regulation 4.2 is, subject to PART 13, final and conclusive for the purposes of PART 4, including any determination as to whether any decision of Management Committee which gave rise to a SWIFT Claim is clearly evident or exists or whether any act or omission of the Company which gave rise to a SWIFT Claim is clearly evident.

4.4 Amount to be Contributed

Contributing Framework Participants who are liable jointly to indemnify the Company under Regulation 4.1 must indemnify the Company rateably in accordance with their respective shares of HVMS as calculated by the Management Committee in accordance with Regulation 7.7.

4.5 Shortfall Contributions

- (a) If the Company claims a payment from any Contributing Framework Participant under Regulation 4.1 or this Regulation 4.5, and the claim is not duly and properly satisfied, then each other Contributing Framework Participant, severally, in accordance with the formula set out in this Regulation 4.5, hereby agrees to further indemnify the Company on demand and without set off or counterclaim, against non-receipt of that payment and against any costs incurred by the Company in connection with funding the amount not paid.
- (b) For the purposes of this Regulation 4.5 a claim is not to be regarded as having been duly and properly satisfied if it is avoided under any law, including without limitation, any insolvency law.
- (c) If the Company makes a demand under Regulation 4.5(a), then each Contributing Framework Participant must pay to the Company the amount represented by "SA" in the formula:

$$SA = (SV / (AV - DV)) \times DA$$

where:

PART 4 LIABILITY OF HVCS FRAMEWORK PARTICIPANTS

- (i) SV is that Contributing Framework Participant's percentage share of HVMS as most recently calculated by the Management Committee in accordance with Regulation 7.7 and expressed as a number and not a percentage (eg. a 20.5% share of HVMS would be expressed as 20.5).
 - (ii) AV is the sum of the SV for all Contributing Framework Participants.
 - (iii) DV is the sum of the SV for all Defaulting Contributing Framework Participants.
 - (iv) DA is the difference between the total payment to be made to the Company by all Contributing Framework Participants in respect of a claim under Regulation 4.1 or Regulation 4.5 (as the case may be) and the amount that is duly and properly received by the Company in respect of that claim.
- (d) In this Regulation 4.5, a "Defaulting Contributing Framework Participant" means any Contributing Framework Participant against which the Company makes a claim under Regulation 4.1 or Regulation 4.5 (as the case may be) and which does not duly and properly satisfy that claim.

4.6 Continuing Obligations

Each indemnity in this PART 4:

- (a) is a continuing obligation independent of the other obligations of Framework Participants under these Regulations and the Procedures;
- (b) survives:
 - (i) termination of any contract constituted by these Regulations and the Procedures;
 - (ii) discontinuation for any reason of HVCS;
 - (iii) changes to these Regulations, the Procedures or any other rules, directions or determinations applicable to HVCS;
 - (iv) changes from time to time for any reason in the membership of or participation in HVCS;
 - (v) cessation by any Framework Participant of participation in HVCS; and
 - (vi) notwithstanding Regulation 4.1(a) and any common law or equitable rule to the contrary, failure for whatever reason of any Framework Participant to contribute or to be liable to contribute to indemnifying the Company under Regulations 4.2, 4.5 or 4.8;

PART 4 LIABILITY OF HVCS FRAMEWORK PARTICIPANTS

- (c) does not require the Company to incur expense or make a payment before the Company may enforce it; and
- (d) does not require proof of any loss, damage, cost, charge, expense or liability of the Company to be provided to any person before the Company may enforce it, other than, in relation to the indemnity in Regulation 4.1, the certificate referred to in Regulation 4.7.

4.7 Certificate by Company

A demand by the Company on any Contributing Framework Participant in respect of the indemnity in Regulation 4.1 is sufficient for the purposes of that Regulation if it is in the form of a certificate which:

- (a) is addressed to that Contributing Framework Participant;
- (b) is signed by the Chief Executive Officer on behalf of the Company;
- (c) indicates that the Company has incurred or suffered loss, damage, costs, charges, expenses and/or liability in respect of which the Company is entitled to be indemnified;
- (d) identifies with reasonable particularity the relevant claim, demand, action or proceeding against the Company;
- (e) specifies the total amount of the loss, damage, costs, charges, expenses and/or liability incurred or suffered by the Company; and
- (f) specifies the amount payable by that Contributing Framework Participant.

4.8 Foreign Currency Indemnity

Whenever:

- (a) the Company is, or would be, required to make any payment in a foreign currency to satisfy any claim, demand, action, or proceeding in respect of which the Company is indemnified under Regulations 4.1 or 4.5; and
- (b) any amount received by the Company from any Contributing Framework Participant under the indemnity in Regulation 4.1 or 4.5 in respect of that claim, demand, action, or proceeding is in a currency other than that foreign currency,

then as a separate obligation to the indemnities in Regulations 4.1 and 4.5, that Contributing Framework Participant must indemnify the Company for any shortfall caused by conversion by the Company of that amount to that foreign currency.

4.9 Fraudulent Activity Security Requirements

Each Framework Participant must ensure that its own systems and procedures provide appropriate protection against fraudulent activity in connection with HVCS, in accordance with these Regulations and the Procedures.

4.10 Chief Executive Officer to be Notified of Fraud

- (a) All actual or suspected fraudulent activity involving HVCS must be reported immediately to the Chief Executive Officer by each Framework Participant directly connected with or directly affected by that activity, unless the activity is confined to or within a Framework Participant's own operations.
- (b) A report to the Chief Executive Officer under this Regulation 4.10 must contain reasonable particulars of the actual or suspected fraudulent activity, including the extent or suspected extent of it, and all remedial action taken or proposed in relation to that activity.

4.11 Framework Participants' Liability in the Event of Fraud

If fraud occurs the cost of it is to be borne by Framework Participants as follows:

- (a) where the source of the fraudulent activity can be identified and is proved to be within one Framework Participant's operations or organisation, that Framework Participant solely must bear the costs of the fraud (including, without limitation, costs in the nature of principal sums or interest paid or lost);
- (b) where the source of the fraudulent activity can be identified and is proved to be within two or more Framework Participants' operations or organisations, those Framework Participants must share equally the costs of the fraud (including, without limitation, costs in the nature of principal sums or interest paid or lost); and
- (c) where the source of the fraudulent activity cannot be identified, the costs of the fraud (including, without limitation, costs in the nature of principal sums or interest paid or lost) must be shared by all Framework Participants in proportion to their respective average annual percentage shares of HVMS applicable on the date on which the fraud occurred.

4.12 Assistance by Framework Participants

- (a) Each Framework Participant must provide all reasonable assistance, to the extent that it is legally able to do so, requested by any other Framework Participant to help that other member:
 - (i) investigate any actual or suspected fraudulent activity involving or possibly involving HVCS; or
 - (ii) identify the source of any fraudulent activity involving HVCS.

PART 4 LIABILITY OF HVCS FRAMEWORK PARTICIPANTS

- (b) Each Framework Participant must provide all reasonable assistance requested by the Management Committee to help the Management Committee or any Framework Participant:
 - (i) investigate any actual or suspected fraudulent activity involving or possibly involving HVCS;
 - (ii) identify the source of any fraudulent activity involving HVCS; or
 - (iii) take appropriate remedial action in relation to that or similar activity (including action to prevent continuation or recurrence of that or similar activity).

- (c) If the Management Committee conducts an investigation under Regulation 4.13, each Framework Participant must on written request by the Management Committee, provide all information and other assistance reasonably requested by the Management Committee for the purposes of that investigation, including (without limitation):
 - (i) copies of or extracts from any records (however kept) of the HVCS messages in the possession or control of that Framework Participant; and
 - (ii) the means to read or otherwise interpret any information provided by that Framework Participant if that information is not readily intelligible without that means.

4.13 Determination regarding fraud

- (a) The Management Committee:
 - (i) must investigate any actual or evident fraudulent activity involving HVCS on written application by any Framework Participant;
 - (ii) may investigate any suspected fraudulent activity involving HVCS on written application by any Framework Participant; and
 - (iii) may investigate any actual or suspected fraudulent activity involving HVCS if it decides in its absolute discretion to do so.

- (b) If the Management Committee conducts an investigation under Regulation 4.13, it may determine that the fraud investigated by it falls within Regulation 4.11(a), (b) or (c). Every such determination of the Management Committee under Regulation 4.13:
 - (i) must be evidenced by a certificate signed by the chairman of the Management Committee or by members of the Management Committee who together are entitled to cast more than 50% of the total votes available to be cast at meetings of the Management Committee; and

PART 4 LIABILITY OF HVCS FRAMEWORK PARTICIPANTS

- (ii) subject to Regulation 4.14, is conclusive as to whether the fraud falls within any one of Regulations 4.11(a), (b) or (c), and is binding upon the Framework Participants affected by it.

- (c) The Management Committee need not make any determination as to whether any fraud investigated by it falls within Regulation 4.11(a), (b) or (c) if it cannot reach a reasonable decision on the information then available to it.

4.14 Disputed Determinations

The provisions of PART 13 of these Regulations apply to any Dispute arising as a result of any determination of the Management Committee under Regulation 4.13.

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PART 5 HVCS MEMBERSHIP

5.1 Framework Participants

Each Framework Participant must at all times satisfy the applicable minimum technical and operational standards and other requirements set out in these Regulations and the Procedures.

5.2 Qualifications - All Framework Participants

In order to be a Framework Participant in HVCS, a person must:

- (a) be a Constitutional Corporation which carries on business at or through a permanent establishment in Australia;
- (b) be:
 - (i) a Sender; and
 - (ii) a Receiver; or
 - (iii) a body corporate that represents one or more Senders and Receivers and, in such capacity, settles directly or indirectly by arrangement with another Framework Participant in accordance with PART 10 of these Regulations for the value of the payment obligations incurred by those Senders or Receivers as a result of the exchange of Payments pursuant to these Regulations and Procedures.
- (c) be able to comply with all applicable laws, the Constitution, these Regulations and the Procedures;
- (d) be able to comply with the technical, security and operational standards which are contained in these Regulations and the Procedures;
- (e) obtain appropriate System Certification;
- (f) agree to pay all applicable fees, costs, charges and expenses which may be levied on, or which are to be reimbursed by, Framework Participants in accordance with these Regulations;
- (g) be able and agree to comply with all applicable requirements of any relevant Service Provider as specified in the Procedures;
- (h) not impair the overall efficiency of HVCS after becoming a Framework Participant;

- (i) not adversely affect the integrity of payments sent and received between Framework Participants or the settlement of those payments (or otherwise introduce a significant new risk into HVCS after becoming a Framework Participant); and
- (i) either:
 - (i) be subject (whether by legislation, mutual agreement or otherwise) to prudential supervision by APRA; or
 - (ii) fall within one or more of the following categories:
 - (A) a body corporate, the members of which are all bodies corporate supervised in accordance with this Regulation 5.2(i), which is determined by the Management Committee to be of sufficient financial standing (or which has provided sufficient collateral or other security) to be a Framework Participant;
 - (B) a body corporate whose obligations are unconditionally and irrevocably guaranteed in a manner satisfactory to the Management Committee by a foreign bank which is subject to prudential supervision in its home jurisdiction by a central bank or other governmental authority which has adopted the recommendations of the Committee on Banking Regulations and Statutory Practices of the Bank of International Settlements;
 - (C) a body corporate whose obligations are unconditionally and irrevocably guaranteed in a manner satisfactory to the Management Committee by the Commonwealth or the government of a state or territory of Australia;
 - (D) a body corporate whose obligations are unconditionally and irrevocably guaranteed in a manner satisfactory to the Management Committee by the central government of a member nation of the Organisation for Economic Co-Operation and Development; or
 - (E) a body corporate which is determined by the Management Committee to be subject to adequate prudential supervision and of sufficient financial standing (or which has provided sufficient collateral or other security) to be a Framework Participant; and
- (j) if required by the Management Committee or the Board, provide evidence that its prudential supervisor does not object to the application for participant membership.

5.3 CLS Bank

CLS Bank International need not meet the requirements set out in Regulation 5.2(a) or (b) in order to be a Framework Participant in HVCS, provided that it satisfies the other requirements of Regulation 5.2.

5.4 Applications for Membership as a Framework Participant

- (a) Applications for Membership as a Framework Participant must be addressed to the Secretary and must be in the form of ANNEXURE 1. Applicants must:
- (i) comply with all the conditions of application specified in these Regulations;
 - (ii) provide sufficient information to demonstrate that the applicant satisfies the applicable requirements for Membership as a Framework Participant contained in Regulation 5.2; and
 - (iii) promptly supply such other information as the Management Committee may reasonably require.
- (b) Each prospective applicant for membership of the HVCS proposing to use the SWIFT PDS to send and receive payments as a Framework Participant must, before lodging an application in accordance with this Regulation 5.4, enter into a confidentiality agreement in form and substance materially the same as that set out at ANNEXURE 2 or otherwise with such variations as may be approved by the Management Committee.
- (c) For the avoidance of doubt it is a condition of membership of the HVCS for each Framework Participant using, or proposing to use the SWIFT PDS, that the member has entered into a valid and binding confidentiality agreement in accordance with this Regulation 5.4.

5.5 Management Committee to consider applications

- (a) The Secretary must promptly forward a copy of each application for Membership as a Framework Participant to the members of the Management Committee.
- (b) All applications for Membership as a Framework Participant received by the Management Committee must be promptly considered by the Management Committee.
- (c) The Management Committee must accept for membership an applicant which complies with the conditions for membership specified in these Regulations.
- (d) The Management Committee must refer an application to the Board if:

- (i) the Management Committee is unable to determine whether an applicant complies with the conditions for membership specified in these Regulations; or
 - (ii) three members of the Management Committee or members entitled to cast more than 33% of the total votes available to be cast at meetings of the Management Committee determine that an applicant does not comply with the conditions for membership specified in these Regulations.
- (e) Where an application is referred to the Board, the Board must promptly exercise the powers of the Management Committee in determining whether the applicant complies with the conditions for membership specified in these Regulations and, if so, the Board must accept the application.

5.6 Applicant may withdraw Application

A body corporate which has applied for Membership as a Framework Participant but has not been informed by the Secretary of the result of its application may withdraw the application at any time.

5.7 Outcome of Application

- (a) If an application for Membership as a Framework Participant is not accepted by the Management Committee the Secretary must notify the applicant.
- (b) An applicant whose application is not accepted may:
 - (i) within 3 months request that the Board review that decision; or
 - (ii) at any time lodge a fresh application for membership in accordance with these Regulations.
- (c) If an application for membership as a Framework Participant is accepted the Management Committee must determine the date from which the successful applicant is admitted as a Framework Participant and entitled to use the APCA PDS specified in the successful application. That date must not be less than 21 days after the date on which the Management Committee approved the application.
- (d) The Secretary must promptly notify the applicant and all Framework Participants of each successful application for membership as a Framework Participant and the date on which that applicant will commence as a Framework Participant in HVCS.

5.8 Effect of Successful Application

Upon becoming a Framework Participant in HVCS, a successful applicant will also become a Voting Member of the Company with the rights and obligations set out in the Constitution, effective from the date on which the successful applicant commences participation in HVCS.

5.9 Rights, Restrictions and Obligations of Framework Participants

- (a) A Framework Participant (in its capacity as a Voting Member) has all the rights of a Voting Member set out in the Constitution including, in relation to:
- (i) sharing in any distribution of capital or profits of the Company or in a distribution on a winding-up, dissolution or a reduction of the capital of the Company;
 - (ii) voting at general meetings of the Company; and
 - (iii) receiving notices, annual reports and audited profit and loss accounts and audited balance sheets and attending and speaking at general meetings of the Company.
- (b) A Framework Participant has the right to be a participant in HVCS, to send and receive payments in accordance with these Regulations and the Procedures and to vote at any HVCS meeting convened in accordance with PART 8 or any other meeting of the Framework Participants of HVCS convened in accordance with the Constitution or the Corporations Act.
- (c) In exercising its rights, each Framework Participant must act in good faith.
- (d) A Framework Participant may not transfer or share its membership as a Framework Participant.

5.10 Suspension

- (a) The Management Committee, after consultation with the Reserve Bank and subject to Regulation 5.10(c) below, may suspend the membership of a Framework Participant for a specified or indefinite period of time in the following circumstances (each a “**Suspension Event**”):
- (i) the Framework Participant is subject to prudential supervision and the relevant supervisor requests such suspension;
 - (ii) by agreement with the Framework Participant concerned;
 - (iii) the Framework Participant no longer satisfies any applicable requirement for membership set out in Regulation 5.2;

- (iv) a Disabling Event occurs in respect of the Framework Participant, but only during the continuance of that Disabling Event and any subsequent period which might be necessary because of the applicable requirements pertaining to any particular APCA PDS;
 - (v) an Insolvency Event (not being an event which results in automatic cessation of membership pursuant to Regulation 5.17(a)(ii) or (iii)) occurs in respect of the Framework Participant; or
 - (vi) the Framework Participant breaches its obligations under the Constitution, these Regulations or the Procedures and fails to rectify the breach or provide an explanation satisfactory to the Management Committee within 30 days of receipt of a request from the Secretary to rectify the breach or provide such an explanation.
- (b) A Framework Participant may also be automatically suspended in accordance with PART 12.
- (c) If a Framework Participant is subject to prudential supervision by APRA then the Management Committee must give APRA reasonable notice of, and an opportunity to be heard at, any meeting at which it will consider suspending the Framework Participant pursuant to Regulation 5.10(a)(v).

5.11 Effect of Suspension on Framework Participant

Subject to Regulation 5.14, a Framework Participant whose membership is suspended under Regulation 5.10 is not entitled to:

- (a) participate in the HVCS;
- (b) clear and settle payments using an APCA PDS; nor
- (c) vote at any HVCS meeting convened in accordance with PART 8, or any other meeting of the Framework Participants of the High Value Clearing System (CS4) convened in accordance with the Constitution or the *Corporations Act 2001 (Cth)*,

except to the extent set out in the Procedures or approved by the Management Committee (or the Chief Executive Officer if authorised to grant such approvals by the Management Committee).

5.12 Effect of Suspension on Management Committee Nominee

If a Framework Participant whose membership is suspended under Regulation 5.10 has nominated a member of the Management Committee pursuant to Regulation 7.1(a), that member is not entitled to vote at meetings of the Committee, but may continue to attend and participate in such meetings, during the period of suspension under Regulation 5.10.

5.13 Conditions in lieu of Suspension

If a Suspension Event occurs in respect of a Framework Participant, the Management Committee may (in lieu of suspending the membership of that Framework Participant) impose conditions on the membership of that Framework Participant or vary any provision of the Procedures in relation to the exchange of payments addressed to or initiated by that Framework Participant. The rights and obligations of that Framework Participant under these Regulations shall be subject to any such conditions or variation. The Management Committee may at any subsequent time vary or revoke any such conditions or variation.

5.14 Obligations of a Suspended Framework Participant

A Framework Participant whose membership is suspended under Regulation 5.10 or which is subject to any condition or variation under Regulation 5.13 is not excused from discharging, in accordance with these Regulations and Procedures, obligations under the Constitution, these Regulations and the Procedures including, without limitation, obligations incurred in connection with payments exchanged prior to the suspension of that Framework Participant, except as expressly provided in or pursuant to these Regulations or the Procedures.

5.15 Notification of Suspension

The Secretary must immediately notify the System Administrator and all Framework Participants (by the most expeditious means available) of any suspension under Regulation 5.10 and must promptly notify all Framework Participants of all other action taken under Regulations 5.10 to 5.14 inclusive.

5.16 Reinstatement of a Suspended Framework Participant

- (a) The Management Committee after consultation with the Reserve Bank, and subject to Regulation 5.16(b), may at its discretion reinstate a suspended Framework Participant effective on a given date specified by the Management Committee having regard to any applicable requirements pertaining to the relevant APCA PDS, including those imposed by the Service Provider.
- (b) If a Framework Participant is subject to prudential supervision by APRA and has been suspended pursuant to Regulation 5.10(a)(v) then the Management Committee must give APRA reasonable notice of, and an opportunity to be heard at, any meeting at which it will consider reinstating the Framework Participant.
- (c) The Secretary must as soon as reasonably possible notify the System Administrator and all Framework Participants of any decision under this Regulation 5.16 to reinstate a suspended Framework Participant and the re-commencement date for that member.

5.17 Termination

- (a) A Framework Participant ceases to be a Framework Participant on:
 - (i) resignation;
 - (ii) becoming insolvent or making an arrangement or composition with creditors generally;
 - (iii) being wound-up, dissolved or otherwise ceasing to exist; or
 - (iv) the Board terminating that Framework Participant's membership in accordance with the Constitution and these Regulations.
- (b) A Framework Participant may, by notice in writing to the Company, resign as a Framework Participant with effect from a date which is not less than 21 days after the date of the service of the notice. The notice is irrevocable.
- (c) A Framework Participant may not resign except by giving notice in accordance with this Regulation 5.17.
- (d) The Board (after consultation with the Management Committee) may, by notice in writing to a Framework Participant, terminate the membership of that Framework Participant with immediate effect, provided that the Board may not terminate the membership of a Framework Participant unless the following pre-conditions have been fulfilled:
 - (i) a Suspension Event has occurred in respect of that Framework Participant and has not been remedied;
 - (ii) (if that Framework Participant is subject to Prudential Supervision) the Board has consulted with the relevant supervisor regarding such termination; and
 - (iii) the Board has provided an opportunity for that Framework Participant to make submissions to the Board regarding such termination.
- (e) The Board is not obliged to give any reasons for such decision and may revoke any such notice at any time before it becomes effective.
- (f) Any resignation or termination of the membership of a Framework Participant shall not affect any right or liability arising under the Constitution, these Regulations or the Procedures prior to the time such resignation or termination takes effect or arising in respect of any act, matter or thing occurring prior to that time.

- (g) A Framework Participant who resigns pursuant to Regulation 5.17(b) or whose membership is terminated pursuant to Regulation 5.17(d) shall continue to be bound by the Constitution and these Regulations in respect of:
 - (i) any act, matter or thing occurring prior to the time such resignation or termination takes effect or as a result of such resignation or termination; and
 - (ii) any fees, costs, charges and expenses which may be levied on, or which are to be reimbursed by, Framework Participants in accordance with these Regulations in respect of periods which commence prior to the time such resignation or termination takes effect or which relate to any such act, matter or thing.

5.18 Effect of Termination

- (a) The Secretary must immediately notify the System Administrator and all Framework Participants (by the most expeditious means available) of any termination or resignation of membership under Regulation 5.17.
- (b) Subject to any rights of set-off, counterclaim or combination which are available at law, upon any resignation or termination of the membership of a Framework Participant:
 - (i) the resigning or terminating Framework Participant must immediately pay all sums of money (if any) owed by it to any other Framework Participant in respect of obligations arising from the exchange of payments; and
 - (ii) all sums of money (if any) owed to it by any other Framework Participant in respect of all such payments exchanged must be paid by that other Framework Participant to the resigning or terminating Framework Participant.
- (c) Any Framework Participant which resigns or whose membership is terminated immediately ceases to be entitled to effect exchanges in the HVCS in accordance with these Regulations and the Procedures.
- (d) A Framework Participant which resigns or whose membership is terminated is not entitled to be repaid all or part of any entrance, operating or other fee which has been paid by it.

The next page is 6.1

PART 6 FEES**6.1 Corporate Fees**

Each Framework Participant must pay the fees for Voting Members set out in the Constitution, consisting of:

- (a) a base corporate fee charged annually by the Company in an equal amount to each Voting Member, in an amount determined annually by the Board; and
- (b) a proportionate corporate fee charged annually to each Voting Member, in an amount determined annually by the Board and calculated by reference to a Voting Member's PSMS.

6.2 Framework Fees

In addition to the fees referred to in Regulation 6.1, the Framework Participants in HVCS must pay a Framework fee, which is determined annually by the Board and charged annually in an equal amount to each Framework Participant in HVCS.

6.3 Entrance Fees

Amended
effective
1/7/14

- (a) An applicant whose application for membership is accepted must pay an entrance fee to the Company. The entrance fees are displayed on the Company's extranet and indexed annually in accordance with Regulation 6.7.
- (b) A new Framework Participant may not participate in HVCS until the entrance fee is paid to the Company.

6.4 Development Recoupment Fees

Deleted
effective
1/7/14

6.5 Payments for HVCS Establishment Contributions

Deleted
effective
1/7/14

6.6 Time for Payment of Fees

- (a) The Company must provide a Framework Participant with 30 days' notice of the fees payable under PART 6.
- (b) Once paid those fees are not refundable.

6.7 Indexation

- (a) The entrance fee payable under Regulation 6.3, the fee payable under Regulation 6.8 and the dispute resolution fee specified in Regulation 13.3 are to be indexed on an annual basis. The Management Committee at its first meeting following publication of the Consumer Price Index for the September quarter (as defined in "C" below) shall determine the indexed amount of each such fee to apply during the next calendar year. The indexed amount shall be the amount represented by A (rounded in the manner set out below) in the formula:

$$A = B \times ((100 + C) / 100)$$

- (b) where:
- (i) B is the amount of such fee immediately preceding such determination (disregarding any rounding in the manner set out below which was applied to that fee); and
 - (ii) C is the Consumer Price Index, All Groups Percentage Changes (change from corresponding quarter of previous year - weighted average of 8 capital cities) figure in respect of the September quarter for the previous calendar year, in the form appearing in the quarterly publication entitled Consumer Price Index (Catalogue No. 6401.0) published by the Australian Bureau of Statistics. In the event that such figure is not published and is not otherwise available or that compilation of such figure is suspended or discontinued, C shall mean such figure published in an official publication or otherwise officially released by the Australian Bureau of Statistics (or mathematically derivable from such officially published or released figure) which in the opinion of the Management Committee represents the percentage change in the cost of living between the September quarter for the previous calendar year and the corresponding quarter for the immediately preceding calendar year.
- (c) The amount represented by A in the above formula shall be rounded to the nearest:
- (i) \$100 in the case of the entrance fee payable by Framework Participants (\$50 being rounded up); and
 - (ii) \$10 in the case of the dispute resolution fee (\$5 being rounded up).

6.8 Disputes

Each Framework Participant must also pay to the Company the fees, costs and expenses stipulated in PART 13.

6.9 Mergers, Acquisitions and Re-organisations

Where, by takeover, merger or other action, an existing Framework Participant becomes a Subsidiary of or is otherwise acquired by another body corporate or that Framework Participant's business is assumed by another body corporate which is a Related Body Corporate of that Framework Participant or another body corporate formed as a result of that action (in this Regulation, that other body corporate being an "Owner") and the Owner applies for Membership as a Framework Participant within 12 months of such occurrence and is accepted as a Framework Participant, the Management Committee may (but is not obliged to do so), upon receipt of such information as the Management Committee may reasonably require, waive the fee which would otherwise be payable by the Owner pursuant to Regulation 6.3.

6.10 Gross up for GST Supplies by the Company

- (a) If:
- (i) the Company makes a Supply to a Framework Participant (in its capacity as Framework Participant) under the Constitution, these Regulations or the Procedures; and
 - (ii) the Company is required to pay GST under the GST Law in respect of that Supply (a "Taxable Supply"), then,
- the Framework Participant must pay to the Company an additional amount equal to the GST Exclusive Consideration multiplied by the GST Rate, without deduction or set-off of any other amount.
- (b) The Company must issue a Tax Invoice to each Framework Participant for the GST on each Taxable Supply and must include in the Tax Invoice all particulars required by the GST Law.
- (c) The Framework Participant must pay the additional amount payable under Regulation 6.10 at the same time and manner as the GST Exclusive Consideration (or, if the GST Exclusive Consideration is not payable, within 14 days).

6.11 Supplies between Members

- (a) If a Framework Participant makes a Supply to another Framework Participant, each in its capacity as a Framework Participant, and the Framework Participant making the Supply ("the Supplier") is required to pay GST under the GST Law in respect of that Supply, (a "Taxable Supply"), then the Framework Participant receiving the Supply ("the Recipient") must pay to the Supplier an additional amount equal to the GST Exclusive Consideration for the supply multiplied by the GST Rate, without deduction or set-off of any other amount.

- (b) The Supplier must issue a Tax Invoice to the Recipient in respect of each Taxable Supply and must include in the Tax Invoice all particulars required by the GST Law.
- (c) The Recipient must pay the additional amount payable under Regulation 6.11 at the same time and manner as the GST Exclusive Consideration is payable or to be provided (or if the GST Exclusive Consideration is not payable, within 14 days).

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PART 7 MANAGEMENT COMMITTEE

7.1 Composition

- (a) Subject to Article 10.3 of the Constitution (Composition of Committees of Management), Regulation 1.3 and Regulation 7.2, the following persons are entitled to be members of the Management Committee of the HVCS if appointed, nominated or elected in the manner set out in these Regulations:
 - (i) if the Directors so elect, one person appointed by the Board under Article 10.3 of the Constitution;
 - (ii) subject to Regulation 7.1(f), a person nominated by each Framework Participant which has at least 5% of HVMS;
 - (iii) subject to Regulation 7.1(e) three persons elected in a ballot by all Framework Participants which are not entitled to nominate or elect a member of the Management Committee under any other provision of this Regulation 7.1(a);
 - (iv) during the first phase of the Grandfathering Period, one person nominated by the Framework Participants collectively which are Building Society Members;
 - (v) during the first phase of the Grandfathering Period, one person nominated by the Framework Participants collectively which are Credit Union Members;
 - (vi) during the second phase of the Grandfathering Period, one person nominated by the Framework Participants collectively which constitute the Mutuels Group; and
 - (vii) a person nominated by the Reserve Bank if a representative of the Reserve Bank has not been nominated in accordance with another provision of this Regulation 7.1(a).
- (b) A Framework Participant may become eligible or cease to be eligible to nominate a member of the Management Committee under Regulation 7.1(a)(ii), as a result of a calculation of HVMS.
- (c) Building Society Members collectively and Credit Union Members collectively may cease to be eligible to nominate a member of the Management Committee under Regulations 7.1(a)(iv) and (v) if the first phase of the Grandfathering Period ends in accordance with the Constitution, and the Mutuels Group may cease to be eligible to nominate a member under Regulation 7.1(a)(vi) if the second phase of the Grandfathering Period ends.

- (d) The changes to the Management Committee which may result from the changes in eligibility described in Regulations 7.1(b) and (c) will become effective at the conclusion of the next annual general meeting of the Company following:
 - (i) the calculation of HVMS – in relation to Regulation 7.1(b) and
 - (ii) the expiry of those phases of the Grandfathering Period – in relation to Regulation 7.1(c).
- (e) If the first phase of the Grandfathering Period ends, the number of persons the Framework Participants may elect under Regulation 7.1(a)(iii):
 - (i) is increased to four during the second phase of the Grandfathering Period; and
 - (ii) is increased to five if the Grandfathering Period expires.
- (f) During the Grandfathering Period, a Framework Participant which has at least 5% of HVMS and which is a Building Society Member or a Credit Union Member may not nominate a member of the Management Committee under Regulation 7.1(a)(ii).
- (g) If the Grandfathering Period expires, a Framework Participant which is a Building Society Member or a Credit Union Member has the same rights as all other Framework Participants under Regulations 7.1(a)(ii) and (iii) to nominate, or participate in a ballot to elect, a member of the Management Committee.
- (h) If a Framework Participant or group of Framework Participants which has a right to nominate a member under Regulation 7.1(a), does not nominate in accordance with Regulation 7.3, that Framework Participant may exercise the right of nomination at a later date.

7.2 Term of Office

- (a) Except as provided in Regulation 7.10, the term of office of a person appointed, nominated or elected as a member of the Management Committee commences at the conclusion of the relevant annual general meeting of the Company.
- (b) Subject to Article 10.5 of the Constitution (Removal of Members of a Committee of Management) and Regulations 7.1(d) and 7.10, the term of office of each member of the Management Committee expires at the conclusion of the third annual general meeting of the Company following the appointment of that member. A retiring member of the Management Committee may be re-appointed or re-elected, as the case may be.

7.3 Nominations and Election Processes

- (a) Each nomination of a member of the Management Committee under Regulation 7.1 must be in writing signed by the Framework Participant entitled to nominate, or an authorized representative of the group of Framework Participants which are collectively entitled to nominate, that member of the Management Committee and endorsed with the nominee's consent.
- (b) A nomination under Regulation 7.1 must be made not later than 7 days (or such short period as the chairman of the Management Committee may accept in any particular case) prior to the date of the annual general meeting of the Company at which the terms of office of the existing members of the Management Committee expire. The Secretary will call for such nominations as soon as practicable after the Board determines the date on which the relevant annual general meeting will be held.
- (c) A ballot under Regulation 7.1(a)(iii) will be conducted in accordance with the processes for election determined by the Board, including the conduct of elections, nomination of candidates and method of voting.

7.4 Member Unable or Unwilling to Act

- (a) If any member of the Management Committee is so located or circumstanced that it is not reasonably practicable for any necessary notice or other communication to be given to that member in relation to the meetings, deliberations or other affairs of the Management Committee or for that member to attend any one or more meetings of the Management Committee (in this Regulation, an "Inability"), then that member (or if that member is employed by a Framework Participant, that Framework Participant) may nominate another person who is qualified to be a member of the Management Committee to be an alternate member of the Management Committee for so long as the Inability subsists.
- (b) Any such nomination must be in writing and forwarded to the Secretary.
- (c) An alternate member may exercise any powers which the member may exercise and is deemed for all purposes to be a member of the Management Committee during the period of the Inability.

7.5 Powers and Duties

- (a) Subject to the Constitution, the Directors delegate to the Management Committee such of their powers, other than powers required by law to be dealt with by the Directors as a Board, as necessary, desirable or expedient to enable the Management Committee to properly perform its obligations under the Constitution. Subject to Regulation 7.5(b), the Board delegates to the Management Committee such of its powers, other than powers required by law to be dealt with by the Board, which are necessary to enable the Management Committee to properly perform its obligations under these Regulations.

- (b) The Board may impose such conditions or restrictions as it thinks fit (whether by giving directions or otherwise) on the exercise of the powers delegated to the Management Committee pursuant to Regulation 7.5(a).
- (c) In the performance of their duties, the members of the Management Committee must observe the same standards as are imposed on the Directors and in particular, each member of the Management Committee must:
 - (i) at all times act honestly in the exercise of his or her powers and the discharge of the duties of his or her office;
 - (ii) at all times exercise a reasonable degree of care and diligence in the exercise of his or her powers and the discharge of his or her duties;
 - (iii) not make improper use of information acquired by virtue of his or her position as a member of the Management Committee to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the Company;
 - (iv) not make improper use of his or her position as a member of the Management Committee to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the Company.
- (d) This Regulation 7.5 has effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person by reason of the person's office as a member of the Management Committee and does not prevent the institution of any civil proceedings in respect of a breach of such a duty or in respect of such a liability.
- (e) In addition to any other rights, powers and privileges to which he or she may be entitled:
 - (i) each member of the Management Committee shall be at liberty to convey to the Framework Participants which nominated, or the Framework Participants of the group which collectively elected, that member, such reports of the deliberations and decisions of the Management Committee which such member may think fit. Such member may also in his or her absolute discretion (but without imposing any obligation to do so) seek expressions of opinion from those Framework Participants; and
 - (ii) the chairman of the Management Committee shall be at liberty to convey to any Framework Participant such reports of the deliberations and decisions of the Management Committee which the chairman may think fit. The chairman may also in his or her absolute discretion (but without imposing any obligation to do so) seek an expression of opinion from any Framework Participant.

7.6 Responsibilities

- (a) The Management Committee shall be responsible for the effective operation and management of the HVCS, including without limitation:
 - (i) technical and efficiency standards;
 - (ii) the amendment of the fees and charges payable by Framework Participants pursuant to PART 6 (other than those in Regulations 6.1 and 6.2);
 - (iii) operating procedures and policies;
 - (iv) subject to a Framework Participant being entitled to refer any dispute (whether initially or by way of a request for a review of a decision of the Management Committee) to the Board, the resolution of disputes by arbitration or otherwise between Framework Participants;
 - (v) supervision of the observance by Framework Participants of these Regulations and the Procedures;
 - (vi) the other matters expressly referred to in these Regulations or the Procedures; and
 - (vii) such other matters as the Board may consider necessary, desirable or expedient for the better and more secure, efficient and equitable operation of HVCS.

- (b) In discharging its responsibilities under the Constitution, these Regulations and the Procedures, the Management Committee may delegate its powers, duties and authorities to one or more sub-committees of the Management Committee or, with the consent of the Chief Executive Officer, to the Chief Executive Officer. However, in any such case the Management Committee will remain accountable to the Board for the proper discharge and performance of those powers, duties and authorities.

7.7 Calculation of High Value Market Share

The respective percentage shares of HVMS for each Framework Participant will be calculated as follows:

- (a) the Company will collect data annually in relation to the volume and value of each Framework Participant's annual transaction activity in HVCS on a national basis;

- (b) the volume and value of a Framework Participant's transactions in HVCS will be weighted, with volume weighted at 65% and value weighted at 35%;

- (c) the Company must calculate the respective HVMS for each Framework Participant at least annually prior to the annual general meeting of the Company;
- (d) each calculation of HVMS must be promptly notified by the Secretary to all Framework Participants.
- (e) each calculation of HVMS made in good faith is conclusive and supersedes any previous calculation.

7.8 Proceedings

- (a) The person (if any) appointed by the Board under Article 10.3 of the Constitution (Composition of Committees of Management) shall act as chairman of the Management Committee. That person does not have a deliberative vote.
- (b) If the Board has not appointed a person under Article 10.3 of the Constitution, the chairman will be that member of the Management Committee selected for the time being by the Board in accordance with Article 10.4 of the Constitution (Chair of Committee of Management). That person retains a deliberative vote, but has no casting vote.
- (c) The Management Committee may meet and adjourn as it thinks proper. The chairman of the Management Committee may at his or her discretion (and shall at the request in writing of any 2 members of the Management Committee) convene meetings of the Management Committee.
- (d) Except as provided to the contrary in these Regulations or the Procedures or unless such notice is waived by all members of the Management Committee, 7 days' notice of each meeting of the Management Committee shall be given to each member at his or her usual business address. The Secretary should ensure that each member of the Management Committee has received notice of each meeting. The non-receipt of notice of a meeting of the Management Committee by, or the accidental omission to give notice of a meeting of the Management Committee to, a member does not invalidate any resolution passed at the meeting of the Management Committee.
- (e) Where a meeting of the Management Committee is held and the chairman is not present within 15 minutes from the time appointed for the commencement of the meeting or is unable or unwilling to act, the members present may elect one of their number to be chairman of the meeting. The person elected as chairman retains his or her deliberative vote, when acting in that capacity.
- (f) The quorum for a meeting of the Management Committee is 75% of the number of members of the Management Committee for the time being.

- (g) Questions arising at a meeting of the Management Committee are to be answered in the affirmative if a simple majority of votes is cast in favour of the question. Any such decision is for all purposes a decision of the Management Committee.
- (h) A declaration by the chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minutes of the proceedings of the Management Committee is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

7.9 Voting Entitlement

- (a) Subject to Regulations 1.2(e) and 5.12, each member of the Management Committee will be entitled to cast the following votes at meetings of the Management Committee:
 - (i) the member appointed under Regulation 7.1(a)(i), no vote; and
 - (ii) each other member has an entitlement equal to the HVMS of the Framework Participant, or the Framework Participant constituency, which nominated or elected that member, subject to Regulation 7.9(b).
- (b) The HVMS represented by each member elected under Regulation 7.1(a)(iii) is the total HVMS of the Framework Participant constituency represented by that member, divided by the number of members for that constituency.
- (c) HVMS is calculated in accordance with Regulation 7.7 and accordingly the number of votes to which a member of the Management Committee is entitled may change during that member's term of office. Any such change is to take effect at the first Management Committee meeting following the calculation of HVMS.

Amended
effective
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7.10 Vacation of Office

- (a) The office of a member of the Management Committee becomes vacant if:
 - (i) that member dies or becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
 - (ii) that member resigns his or her office by notice in writing to the Secretary;
 - (iii) that member is absent without the consent of the chairman of the Management Committee from meetings of the Management Committee held during a period of 6 months;

PART 7 MANAGEMENT COMMITTEE

- (iv) that member is removed by the Board in accordance with Article 10.5 of the Constitution (Removal of Members of a Committee of Management);
 - (v) that member is removed by the Framework Participant which nominated the member pursuant to Regulation 7.1(a)(ii) or (vii);
 - (vi) that member is removed by the group of Framework Participants which nominate that member pursuant to Regulations 7.1(a)(iv), (v) or (vi);
 - (vii) in the case of a member elected pursuant to Regulation 7.1(a)(iii), who:
 - (A) was an officer or employee of a Framework Participant in the electing constituency at the time of election, that member ceases to be an officer or employee of that Framework Participant or any other Framework Participant in the electing constituency; or
 - (B) held a professional position at the time of election, that member ceases to practise in the profession,

unless the Management Committee determines, in its discretion, that the cessation is unlikely to impair the member's capacity to perform his or her duties as a member of the Management Committee;
 - (viii) the Framework Participant entitled to nominate, or each Framework Participant forming the group entitled to nominate or elect, that member ceases to be a Framework Participant; or
 - (ix) the Framework Participant entitled to nominate, or each Framework Participant forming the group entitled to nominate, that member becomes a Subsidiary of another Framework Participant.
- (b) A notice of removal under Regulation 7.10(a) takes effect upon its receipt by the Secretary and must be in writing and signed:
- (i) in relation to Regulation 7.10(a)(iii) or (iv), by the chairman of the Management Committee;
 - (ii) in relation to Regulation 7.10(a)(v) by the Framework Participant entitled to effect such removal; and
 - (iii) in relation to Regulation 7.10(a)(vi) by an authorised representative of the group of Framework Participants entitled to effect the removal.
- (c) Where the office of a member of the Management Committee becomes vacant pursuant to Regulations 7.10(a)(i) to (vii), then:
-

- (i) the Framework Participant which nominated the retiring or removed member (or in the case of a vacancy in the office of chairman, the Board) may nominate a different person as a replacement member of the Management Committee in the same manner as prescribed in Regulation 7.3; or
 - (ii) the Secretary must arrange for a vote of the Framework Participant constituency referred to in Regulation 7.1(a)(iii) to take place no later than the date of the next annual general meeting to elect a new person as a replacement member, and the voting entitlement of the retiring or removed member is re-allocated equally among the remaining elected members until the election is held.
- (d) The person who is nominated or elected as a replacement member of the Management Committee shall only hold office for the remaining term of the retiring or removed member. The term of office of a replacement member of the Management Committee commences on receipt of the nomination pursuant to Regulation 7.10(c)(i) or upon declaration of an election held in accordance with Regulation 7.10(c)(ii). Such a person is eligible for re-appointment or re-election.

7.11 Written Resolution

- (a) If all the members of the Management Committee who are eligible to vote on a resolution have signed a document containing a statement that they are in favour of a resolution of the Management Committee in terms set out in the document, a resolution in those terms is deemed to have been passed at a meeting of the Management Committee held on the day on which the document was last signed by a member of the Management Committee.
- (b) For the purposes of Regulation 7.11(a), two or more separate documents containing statements in identical terms each of which is signed by one or more members of the Management Committee who are eligible to vote on the resolution are together deemed to constitute one document containing a statement in those terms signed by those members of the Management Committee on the respective days on which they signed the separate documents.

7.12 Meetings Defined

For the purposes of these Regulations, a meeting of the Management Committee means:

- (a) a meeting of the Management Committee assembled in person on the same day at the same time and place; or

- (b) the members of the Management Committee communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion notwithstanding they (or one or more of them) are not physically present in the same place, and a member participating in the meeting under this paragraph is deemed to be present (including for the purposes of constituting a quorum) and entitled to vote at the meeting.

7.13 Validity of Acts

All acts done by any meeting of the Management Committee or by any person acting as a member are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a member or to act as a member, or that a person so appointed was disqualified, as valid as if the person had been duly appointed and were qualified to be a member of the Management Committee.

7.14 Appointment of Secretary

- (a) There must be at least one Secretary of the Management Committee who is to be appointed by the Chief Executive Officer. The Chief Executive Officer may remove a Secretary from office at any time.
- (b) The Secretary is vested with the powers, duties and authorities specified in these Regulations and the Procedures. In addition and with the consent of the Chief Executive Officer, the Management Committee may vest in the Secretary such additional powers, duties and authorities as it may from time to time determine.
- (c) The Secretary is entitled to attend all meetings of the Management Committee and all meetings of Framework Participants and may be heard on any matter.
- (d) The Secretary must prepare minutes of each meeting of the Management Committee for approval by the chairman of the Management Committee. All minutes approved by the chairman must be forwarded to each member of the Management Committee.

7.15 Chief Executive Officer

The Chief Executive Officer is entitled to attend all meetings of the Management Committee and all meetings of Framework Participants and may be heard on any matter.

7.16 Discretion as to Short Notice

The Management Committee may from time to time consider the merits of and at its discretion approve an application by any Framework Participant to, in any particular case:

- (a) shorten any period of notice required to be given by any person under Regulation 5.17(b); or
- (b) shorten any period of time referred to in Regulation 5.7(c).

The next page is 8.1

PART 8 MEETINGS OF FRAMEWORK PARTICIPANTS

8.1 HVCS Meetings and the Annual HVCS Meeting

- (a) HVCS must, in addition to any other HVCS meeting held by it, hold a HVCS meeting of the Framework Participants to be called the annual HVCS meeting, at least once in every calendar year and within the period of 5 months after the end of each of the Company's financial years, provided that the HVCS is not obliged to hold an annual HVCS meeting in the first calendar year in which the HVCS takes effect.
- (b) The purpose of the annual HVCS meeting is to provide a forum for Framework Participants to discuss any aspect of the operations of the HVCS, the current level of fees payable pursuant to PART 6 (other than those in Regulations 6.1 and 6.2) and any other matters relevant to membership of the HVCS.

8.2 HVCS Meeting

The Directors or the Management Committee may whenever they think fit convene a HVCS meeting.

8.3 Notice of HVCS Meeting

- (a) At least 14 days' notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) specifying:
 - (i) the place, day and the hour of the HVCS meeting; and
 - (ii) in the case of special business, the general nature of that business,must be given to all Framework Participants, all members of the Management Committee, and all Directors.
- (b) The non-receipt of notice of a HVCS meeting by, or the accidental omission to give notice of a HVCS meeting to, a Framework Participant does not invalidate any resolution passed at the HVCS meeting.

8.4 Special Business of HVCS Meeting

All business that is transacted at a HVCS meeting is special with the exception of the matters referred to in Regulation 8.1.

8.5 Requisitioned Meeting

In addition to the HVCS meetings convened under Regulations 8.1 and 8.2, the Management Committee must, on the requisition of 3 or more Framework Participants which are entitled to cast not less than 10% of the total votes of all Framework Participants on a poll at a HVCS meeting, immediately convene a HVCS meeting to be held as soon as practicable but, in any case, not later than 2 months after the receipt by the Management Committee of the requisition.

8.6 Objects of Requisitioned Meeting

The requisition for a HVCS meeting must state the objects of the HVCS meeting and must be signed by the requisitionists and forwarded to the Secretary. A requisition may consist of several documents in like form each signed by one or more of the requisitionists.

8.7 Convening Requisitioned Meeting

If the Management Committee does not, within 21 days after the deposit of the requisition, proceed to convene a HVCS meeting the requisitionists or any of them having more than one-half of the total voting rights of the requisitionists, may themselves, in the same manner as nearly as possible as that in which meetings are to be convened by the Management Committee, convene a meeting, but a meeting so convened may not be held after the expiration of 3 months from the date the requisition is delivered to the Secretary.

8.8 Expenses of Requisitioned Meeting

Any reasonable expenses incurred by the requisitionists by reason of the failure of the Management Committee to convene a HVCS meeting must be paid to the requisitionists by the Company.

8.9 Postponement or Cancellation of Meeting

- (a) The Board or the Management Committee convening a HVCS meeting may postpone or cancel that HVCS meeting whenever they think fit (other than a meeting convened as the result of a requisition under Regulation 8.5 or by requisitionists under Regulation 8.7). The Board or the Management Committee postponing or cancelling a HVCS meeting must give as much notice as is possible in all the circumstances of the postponement or cancellation of that HVCS meeting to all persons entitled to receive notices of that HVCS meeting.
- (b) The non-receipt of notice of a postponement or cancellation by, or the accidental failure to give notice of a postponement or cancellation to, a Framework Participant does not invalidate the postponement or cancellation.

PART 8 MEETINGS OF FRAMEWORK PARTICIPANTS

8.10 Attendance at HVCS Meetings

- (a) Any Framework Participant may attend any HVCS meeting by appointing:
 - (i) a proxy;
 - (ii) an attorney; or
 - (iii) a person authorised by resolution of its directors or other governing body to act on its behalf at a particular HVCS meeting or at all meetings of the Framework Participants.
- (b) Unless the contrary intention appears, a reference to a Framework Participant in the succeeding provisions of this PART 8 means a Framework Participant, a proxy, an attorney or a person appointed under Regulation 8.10(a).

8.11 Quorum

No business may be transacted at any HVCS meeting unless a quorum is present comprising Framework Participants who are entitled in accordance with Regulation 8.15 to cast not less than 50% of the total votes of all Framework Participants on a poll.

8.12 Failure to Achieve Quorum

- (a) Where a HVCS meeting is convened in accordance with Regulation 8.5 or 8.7 and a quorum is not present within 30 minutes from the time appointed for the HVCS meeting, the HVCS meeting must be dissolved.
- (b) Where a HVCS meeting is convened in any other case and a quorum is not present within 30 minutes from the time appointed for that HVCS meeting:
 - (i) the HVCS meeting must be adjourned to such day, time and place as the Management Committee determines or if no determination is made by them to the same day in the next week at the same time and place; and
 - (ii) if at the adjourned HVCS meeting a quorum is not present within 30 minutes from the time appointed for that HVCS meeting the HVCS meeting must be dissolved.

8.13 Appointment and Powers of Chairman of a HVCS Meeting

- (a) The chairman of the Management Committee must preside as chairman at every HVCS meeting.

PART 8 MEETINGS OF FRAMEWORK PARTICIPANTS

- (b) Where a HVCS meeting is held and the chairman of the Management Committee is not present within 15 minutes from the time appointed for the commencement of the meeting or is unable or unwilling to act, the members of the Management Committee present must elect one of their number to be chairman of the meeting, or, if no such member is present or if all such members present decline to take the chair, the Framework Participants present must elect a proxy, an attorney or a person acting on behalf of a Framework Participant pursuant to Regulation 8.10(a) as chairman of the meeting.

8.14 Adjournment of HVCS Meeting

- (a) The chairman of the meeting may, with the consent of any HVCS meeting at which a quorum is present, and must if so directed by the HVCS meeting, adjourn the HVCS meeting from time to time and from place to place, but no business may be transacted at any adjourned HVCS meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (b) When a HVCS meeting is adjourned for 30 days or more, notice of the adjourned HVCS meeting must be given as in the case of an original HVCS meeting.
- (c) Except as provided by Regulation 8.14(b), it is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned HVCS meeting.

8.15 Voting at HVCS Meeting

- (a) At any HVCS meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by:
- (i) the chairman of the meeting; or
 - (ii) a Framework Participant.
- (b) Unless a poll is properly demanded, a declaration by the chairman of the meeting that a resolution has on a show of hands been carried, or carried unanimously or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the HVCS, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

8.16 Passing of Resolutions

A resolution is taken to be carried if more than 50% of the total votes cast in respect of the resolution are cast in favour of the resolution. The chairman of the meeting shall not have a casting vote.

8.17 Poll

- (a) If a poll is properly demanded, it must be taken in such manner and (subject to Regulation 8.17(b) either at once or after an interval or adjournment or otherwise as the chairman of the meeting directs. The result of the poll is the resolution of the HVCS meeting in respect of the matter for which the poll was demanded.
- (b) A poll demanded on the election of a chairman of the meeting or on a question of adjournment must be taken immediately.
- (c) The demand for a poll may be withdrawn.

8.18 Voting Entitlement

A Framework Participant's voting entitlement is equal to its percentage share of HVMS.

8.19 Objection to Voting Qualification

- (a) An objection may be raised to the qualification of a voter, or the number of votes which a voter can cast, only at the HVCS meeting or adjourned HVCS meeting before the vote objected to is given or tendered.
- (b) Any such objection must be referred to the chairman of the meeting, whose decision is final.
- (c) A vote not disallowed under such an objection is valid for all purposes.

8.20 Appointment of Proxy

- (a) An instrument appointing a proxy must be in writing under the hand of the appointor or of its attorney duly authorised in writing or, if the appointor is a corporation, either under seal or under the hand of an officer or attorney duly authorised.
- (b) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument.
- (c) An instrument appointing a proxy is deemed to confer authority on the proxy to demand or join in demanding a poll.
- (d) An instrument appointing a proxy must be in the form approved by the Management Committee from time to time.
- (e) A proxy may vote on a show of hands or on a poll.

8.21 Deposit of Proxy and Other Instruments

An instrument appointing a proxy is not to be treated as valid unless the instrument, and an original or certified copy of the power of attorney or other authority (if any) under which the instrument is signed, is or are received by the Secretary before the time for holding the HVCS meeting or adjourned HVCS meeting at which the person named in the instrument proposes to vote.

8.22 Validity of Vote in Certain Circumstances

A vote given in accordance with the terms of an instrument of proxy or of a power of attorney is valid notwithstanding the revocation of the instrument (or of the authority under which the instrument was executed) or of the power, if no intimation in writing of the revocation or transfer has been received by the Secretary before the commencement of the HVCS meeting or adjourned HVCS meeting at which the instrument is used or the power is exercised.

8.23 Entitlement to Speak

Each Director and each member of the Management Committee is entitled to attend all HVCS meetings and is entitled to speak at those meetings.

8.24 Written Resolution

A resolution in writing signed by the Framework Participants entitled to cast more than 90% of all votes which could be cast at a HVCS meeting is as valid and effectual as if it had been passed at a HVCS meeting duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more Framework Participants.

The next page is 9.1

PART 9 CONTINGENCY ARRANGEMENTS

9.1 Contingency Procedures

The Procedures set out arrangements which are to apply if a Contingency occurs.

9.2 Contingency Plans

The Management Committee may to the extent to which it considers it necessary to do so, formulate and approve contingency plans and may amend such plans from time to time. Contingency plans will:

- (a) apply during:
 - (i) a Disabling Event; and
 - (ii) any other event or circumstance determined by the Management Committee as being an event or circumstance which is a Contingency for the purposes of these Regulations and the Procedures;
- (b) be additional to any other matter contained in the Procedures; and
- (c) be effective on and from the date the Company publishes them (or amendments to them) from time to time.

9.3 Notification of Contingencies

If a Contingency occurs in respect of any Framework Participant, that member must immediately notify particulars of that Contingency in accordance with the Procedures.

The next page is 10.1

PART 10 SETTLEMENT

10.1 Settlement

Subject to any inconsistent provisions of these Regulations or the Procedures applicable during Contingencies, settlement of payments through HVCS is to occur:

- (a) in real time;
- (b) by exchange of value by debiting and crediting of Exchange Settlement Accounts in accordance with Reserve Bank policy;
- (c) by using the RITS/RTGS System; and
- (d) otherwise in accordance with all applicable laws and regulations and the applicable RITS Regulations,

except when the RITS/RTGS System is for whatever reason unavailable to settle payments on a Real Time Gross Settlement basis.

10.2 Settlement not effected on RTGS basis

Settlement arrangements applicable when settlement of payments through HVCS is not effected on a Real Time Gross Settlement basis are set out in Parts 9 and 10 of the Procedures.

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PART 11 PROCEDURES**11.1 Procedure for Clearings and Settlements**

The conduct of clearings effected between Framework Participants and the settlement of balances arising as a result of exchanges of payments between Framework Participants must be undertaken in accordance with the practices, procedures, standards and specifications determined and published by the Management Committee from time to time. Such practices, procedures, standards and specifications may relate to all or any aspects of the clearing cycle (including, without limitation, the matters specifically referred to in Regulation 2.1).

11.2 Additional Procedural Requirements for Compensation

- (a) In addition to and except to the extent inconsistent with the Constitution, these Regulations or the Procedures, each Framework Participant must comply with the practices and procedures set out in the document (as amended or replaced) known as the Inter-organisation Compensation Rules, ("Inter-organisation Compensation Rules"), in respect of compensation matters arising from the payments in HVCS between Framework Participants.
- (b) A reference in the Inter-organisation Compensation Rules to a Participating System will be taken to be a reference to HVCS.
- (c) The Management Committee shall be responsible for reviewing, at least once during each calendar year, the compensation adjustments that are expressed in the Inter-organisation Compensation Rules to be subject to periodic review, to determine whether those adjustments continue adequately to reflect the published principles or policies. The Management Committee may, unless the Board (having been notified) determines otherwise, publish a variation to any such compensation adjustment to apply for the time being for the purposes of HVCS.

11.3 Amendment of Procedures

- (a) The Management Committee may vary any practice, procedure, standard or specification previously determined and published under Regulation 11.1, provided that if such variation relates to a matter of principle or a fundamental term such variation must also be:
 - (i) approved by the chairman of the Management Committee and the Chief Executive Officer;
 - (ii) approved by the Board; or
 - (iii) in accordance with (or a consequence of) an amendment to these Regulations,

and provided that any variation of a grammatical, cosmetic, typographical or minor nature to the Procedures previously determined and published under Regulation 11.1 which, in the reasonable opinion of the Chief Executive Officer, will not prejudice any Framework Participant or the conduct of exchanges or other operations in connection with the HVCS, may be made by the Chief Executive Officer.

- (b) Any variation made by the Chief Executive Officer must be notified to the Management Committee within 30 days of the making of the variation. The Management Committee must publish all variations from time to time in accordance with Regulation 11.1.

11.4 Suspension of Procedures

The Procedures relating to any particular APCA PDS or the HVCS in general may be suspended in the whole or in part by the Chief Executive Officer with the approval (howsoever obtained) or by the direction (howsoever given) of so many of the members of the Management Committee as are collectively entitled to a majority of votes at meetings of the Management Committee, provided that the power of suspension conferred by these Regulations is not to be exercised where the exigency which has occurred or is apprehended, and which would otherwise necessitate or justify a total or partial suspension of the Procedures, is one for which provision is already made by the Procedures.

11.5 Notification of Suspension of Procedures

In the event of a suspension of the Procedures, the Chief Executive Officer must promptly advise the Framework Participants of such decision and of any express arrangements for deferral of the kind referred to in Regulation 11.6 known to the Chief Executive Officer.

11.6 Position During Suspension of Procedures

- (a) During a suspension of the Procedures pursuant to Regulation 11.4, but subject to any express arrangements among any particular Framework Participants for deferral of exchanges, Framework Participants must:
 - (i) to the extent possible, effect exchanges in accordance with the normal procedures;
 - (ii) to the extent to which normal exchange procedures are precluded by such suspension, effect exchanges in such manner as the Chief Executive Officer from time to time directs; and
 - (iii) to the extent to which normal settlement procedures are precluded by such suspension, settle their balances bilaterally in respect of each day's exchanges on the business day next following such exchanges.

- (b) The Chief Executive Officer may, if he or she deems fit, direct that any meeting of the Management Committee which is rendered necessary for the purpose of giving any direction or directions of the kind referred to in Regulation 11.6(a) may be convened on 24 hours' notice (unless such notice is waived by all members of the Management Committee).
- (c) If any Framework Participant desires to enter into express arrangements for deferral of exchanges or settlement with other Framework Participants but is unable to reach agreement with such Framework Participants, that Framework Participant may refer the matter to the Management Committee. The Management Committee after considering all submissions which all Framework Participants concerned may wish to place before it, may formulate the terms of an arrangement for deferral which shall be binding on all Framework Participants concerned immediately upon such terms being notified to them by the Secretary. Such terms shall be deemed to be an express arrangement for deferral within the meaning of this Regulation 11.6.
- (d) The Chief Executive Officer may, if he or she deems fit, direct that any meeting of the Management Committee which is rendered necessary by a reference of the kind referred to in this Regulation may be convened on 24 hours' notice (unless such notice is waived by all members of the Management Committee).

11.7 Removal of Suspension of Procedures

Any suspension of the Procedures determined upon pursuant to Regulation 11.4 may be removed by the Chief Executive Officer with the approval (howsoever obtained) or by the direction (howsoever given) of so many of the members of the Management Committee as are collectively entitled to a majority of votes at meetings of the Management Committee. The Chief Executive Officer must promptly advise the Framework Participants of every such removal.

11.8 Financial Claims Scheme – Explanatory Preamble

- (a) Regulation 11.9 provides a set of supplementary rules (“FCS Rules”) to deal with an FCS Declaration. Subject to the exceptions set out in Regulation 11.9, the FCS Rules apply to all Framework Participants.
- (b) The Company has published a set of End of Day (“EOD”) Balance Guidelines for Single Customer View (“SCV”) Calculation to assist Framework Participants in preparing for and dealing with the occurrence of an FCS Declaration. Framework Participants should ensure that they have a continuing full understanding of the FCS Rules and the Guidelines. The Guidelines, which may be amended from time to time, can be found on the Company’s extranet.

11.9 FCS Processing Requirements

- (a) Upon the occurrence of an FCS Declaration the membership of the Declared Member is automatically suspended, a Suspension Event is taken to have occurred in relation to the Declared Member, and the provisions of Regulations 5.11 to 5.16 inclusive apply as though automatic suspension under this Regulation 11.9 were a suspension under Regulation 5.10.
- (b) Upon suspension of membership of the Declared Member under Regulation 11.9(a) further exchanges of payments between the Declared Member and each other Framework Participant (but not between Framework Participants) pursuant to these Regulations and the Procedures are automatically suspended.
- (c) Following suspension of exchanges between the Declared Member and each other Framework Participant under Regulation 11.9(a) and except as may be required in accordance with Regulations 5.11 to 5.16 inclusive, Framework Participants are not responsible for any failure to conduct further exchanges of payments with the Declared Member or to perform other obligations arising from the exchange of payments with the Declared Member (excluding any such obligations under PART 12).
- (d) To the extent it is legally able to do so, each Framework Participant must act in accordance with this PART 11, with PART 8 of the EOD Balance Guidelines for SCV Calculation as that part applies to the remediation processing of HVCS payments and with any communications protocol approved by the Company for the purposes of this Regulation 11.9.

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PART 12 FAILURE TO SETTLE

12.1 Explanatory Preamble

The Company has published a set of FTS Guidelines to assist Framework Participants in preparing for and dealing with the occurrence of an FTS Event (or Potential FTS Event). Framework Participants should ensure that they have a continuing full understanding of the FTS Rules and the FTS Guidelines. The FTS Guidelines, which may be amended from time to time, can be found on the Company's extranet.

12.2 Application of Part

- (a) In a Real Time Gross Settlement environment all payments in the HVCS are either settled or rejected by the Reserve Bank prior to delivery, which precludes an FTS Event where the RITS/RTGS System is functioning normally and those payments are settled on a Real Time Gross Settlement basis.
- (b) However, an FTS Event could occur in the event of a failure of or disruption to the RITS/RTGS System which prevents settlement on a Real Time Gross Settlement basis.
- (c) This PART 12 applies in respect of any FTS Event which occurs when the RITS/RTGS System is not effecting settlement of payments on a Real Time Gross Settlement basis.

12.3 FTS Event

An FTS Event occurs where a Framework Participant fails to settle for the obligations incurred by it under:

- (a) these Regulations and the Procedures; or
- (b) the regulations and the procedures or manual for any other Clearing System which include provisions which:
 - (i) govern the conduct of settlement when a member of that Clearing System (the "Clearing System Defaulter") fails to settle its settlement obligations under that Clearing System; and
 - (ii) provide at least once on each business day for bilateral netting of settlement of amounts owed to or by that Clearing System Defaulter as a result of the exchange of payment instructions in accordance with those regulations and the procedures.

12.4 **Deferral of Settlement**

If the Reserve Bank or the Company becomes aware of a Potential FTS Event or a Disabling Event, the Company or the Reserve Bank (in each case in consultation with the other) may defer until a later time the time prescribed for any settlement affected or potentially affected by that Potential FTS Event or a Disabling Event. In addition, in such circumstances, the Chief Executive Officer may take such other action as is permitted by PART 11 of these Regulations.

12.5 **Suspension**

- (a) If an FTS Event occurs, further exchanges of payments between the Defaulter and Survivors (but not between Survivors) pursuant to these Regulations and the Procedures are automatically suspended.
- (b) Upon the suspension of exchanges between the Defaulter and the Survivors under Regulation 12.5(a), the membership of the Defaulter in the High Value Clearing System (CS4) is also suspended and subject to the provisions of this PART 12 the provisions of Regulations 5.11 to 5.16 inclusive apply as though the automatic suspension under this Regulation 12.5 were a suspension under Regulation 5.10.

12.6 **Responsibility for Further Exchanges**

- (a) Following suspension of exchanges between the Defaulter and Survivors under Regulation 12.5 and except as may be required in accordance with Regulations 5.11 to 5.16 inclusive, Survivors are not responsible for any failure to conduct further exchanges of payments with the Defaulter or to perform other obligations arising from the exchange of payments with the Defaulter (excluding any such obligations under this PART 12).
- (b) Where following an FTS Event a Framework Participant becomes a Defaulter and exchanges with the Defaulter are suspended in the High Value Clearing System (CS4), then any payments already lodged within the High Value Clearing System (CS4) and the subject of a Failed Settlement may be exchanged bilaterally and the obligations arising from such exchanges (and any obligations arising from payments already exchanged within the High Value Clearing System (CS4) and the subject of the Failed Settlement) may be netted at least once on each business day between the Defaulter and a Survivor unless the Survivor indicates otherwise. However a Survivor which conducts such exchanges and netting and suffers any liability or loss as a result of such conduct has no recourse to the Company, or to any other Survivor, under these Regulations or the Procedures or the regulations or the procedures or the manual for any other Clearing System with respect to that liability or loss.

12.7 Netting with Defaulter

Netting of any amounts owing to the Defaulter by Survivors and by the Defaulter to Survivors in connection with the Failed Settlement is to take place at least once on each business day on a bilateral net basis between the Defaulter and each Survivor at such time and in such manner as the Defaulter and the Survivor determine.

12.8 Cross Clearing System Netting Provision

At least once on each business day, the amount owed to a Survivor by the Defaulter or by a Survivor to the Defaulter pursuant to Regulation 12.7 is to be netted with each other bilateral net amount owed to that Survivor by the Defaulter or by that Survivor to the Defaulter in each other Clearing System in which any such bilateral net amount is owed following an FTS Event in that Clearing System. Settlement of the resulting net amount is to take place at such time and in such manner as the Defaulter and the Survivor determine.

12.9 Time and Manner of Revised Settlement

- (a) If an FTS Event occurs then on the day of the occurrence of that FTS Event, a multilateral net settlement figure for each Survivor will be recalculated by the Reserve Bank for a Revised Settlement using the settlement figures that were used to calculate the multilateral net settlement positions for the Failed Settlement but excluding all amounts due to or from the Defaulter.
- (b) On the day on which settlement figures are recalculated in accordance with Regulation 12.9(a), the Reserve Bank will notify each Survivor, via RITS, of the multilateral net amount due to or by that Survivor as part of the Revised Settlement.
- (c) On the day of notification under Regulation 12.9(b), each Survivor must settle for the revised amount of its settlement obligations (if any) calculated by the Reserve Bank. This obligation is discharged either on settlement of the Survivor's final net allocated cross Clearing System national settlement position in accordance with the Procedures or if the Survivor's final net allocated cross Clearing System national settlement position is zero.

12.10 Framework Participants' Obligations

To the extent it is legally able to do so, each Framework Participant must act in accordance with this PART 12 in the event that a Framework Participant is unable to discharge at the prescribed time the obligations incurred as a result of the exchange of payments in accordance with these Regulations and the Procedures.

12.11 No Effect On Other Clearing Systems

Except as expressly provided, this PART 12 does not apply to, and in no way affects, any rights or obligations arising under the regulations or the procedures or the manual for or in respect of the operations of any other Clearing System operated by, or under the auspices of, the Company.

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PART 13 BREACHES OF REGULATIONS AND DISPUTES

13.1 Resolution of Disputes

- (a) Subject to Regulations 13.4 and 13.5, all Disputes must be referred in writing to a meeting of the Management Committee for determination by the Management Committee. A determination of the Management Committee in relation to a Dispute must be evidenced by a Certificate and a determination so evidenced will be binding upon all parties to the Dispute (including, without limitation, any Framework Participant which, subsequently to the occurrence of the events giving rise to the Dispute, resigns as a Framework Participant or whose membership is terminated pursuant to Regulation 5.17).
- (b) Subject to Regulations 13.4(a)(iii), (iv) and 13.5 and except in the circumstances referred to in Regulations 13.4(a)(i) and (ii), no proceedings may be commenced in any court of law or equity or otherwise in relation to any Dispute unless:
 - (i) the Dispute has first or already been referred to the Management Committee pursuant to Regulation 13.1;
 - (ii) the Dispute has been determined by the Management Committee; and
 - (iii) the determination has been evidenced by a Certificate in accordance with Regulation 13.1.

13.2 Dispute Resolution Fee and Costs

- (a) Subject to Regulation 13.2(c), each Framework Participant party to a Dispute which is referred to the Management Committee pursuant to Regulation 13.1 or to the Board pursuant to Regulation 13.5 (whether initially or by way of review) must:
 - (i) pay to the Company within 14 days of the date on which the Dispute is first referred to the Management Committee or the Board a dispute resolution fee which, subject to Regulation 6.7, shall be \$1,000; and
 - (ii) pay to the Company within 14 days of determination of the Dispute by the Management Committee and (in such proportions as the Management Committee shall determine are reasonable and appropriate in all the circumstances) all costs and expenses incurred by the Company in relation to that referral (including, without limitation, all costs and expenses (on a solicitor and own client basis) incurred in obtaining legal, financial, actuarial or accountancy advice and administrative costs reasonably incurred by the Company).

PART 13 BREACHES OF REGULATIONS AND DISPUTES

- (b) For the avoidance of doubt, the Management Committee may determine that all costs and expenses referred to in Regulation 13.2(a)(ii) are to be paid by any one party to the relevant Dispute.
- (c) If the parties to a Dispute settle the Dispute prior to determination of it by the Management Committee, they may withdraw the Dispute from the Management Committee by each giving written notice of that withdrawal to the Secretary.
- (d) If a Dispute is withdrawn from the Management Committee pursuant to Regulation 13.2(c) and the parties concerned have agreed, confidentially or otherwise, as to the apportionment among them of costs and expenses referred to in Regulation 13.2(a)(ii), then the parties involved may notify the Company in writing, within 7 days of the date on which all notices of withdrawal of the Dispute under this Regulation 13.2(d) are received by the Secretary (the "Withdrawal Date") of the agreed apportionment of those costs and expenses and the Company will render invoices in accordance with the notified agreed apportionment payable within 14 days of the Withdrawal Date.
- (e) If a Dispute has been withdrawn by the parties concerned pursuant to Regulation 13.2(c), and those parties have not reached agreement as to the apportionment of the Company's costs and expenses connected with referral of the Dispute or have not notified the Company of any agreed apportionment of those costs and expenses in accordance with this Regulation, the Company may render to those parties invoices for recovery of those costs and expenses requiring each party to pay the Company within 14 days of the Withdrawal Date an equal portion of those costs and expenses.
- (f) The Company must keep confidential to itself and its employees and advisers all information provided to it with respect to settlement of a Dispute, including without limitation, information about any agreement between the parties to the Dispute as to apportionment of the Company's costs and expenses, but excluding the fact that a settlement has been agreed, and may not disclose that information to any Framework Participant or Management Committee member without the consent of the parties to the Dispute.

13.3 Commencement of Proceedings

- (a) This Regulation applies to all Disputes, other than:
 - (i) a determination to which Regulation 13.4 applies if that determination relates to a question concerning the efficiency of the methods and procedures used by a Framework Participant in relation to the exchange of payments or the return or rejection of invalid payments; and

PART 13 BREACHES OF REGULATIONS AND DISPUTES

- (ii) any other determination to which Regulation 13.4 applies if the Management Committee certifies in writing that in its opinion the relevant Dispute is one to which it is inappropriate for this Regulation 13.3 to apply.
- (b) If a Framework Participant (in this Regulation, the "Defendant Framework Participant") fails or refuses to give effect to a determination of the Management Committee in relation to a Dispute to which this Regulation applies, which determination is evidenced by a Certificate, the Management Committee may resolve that proceedings be commenced and prosecuted against the Defendant Framework Participant by the Company in its own right.
- (c) Alternatively, any aggrieved Framework Participant which was a Framework Participant at the date of issue of the relevant Certificate (other than the Defendant Participant Member) may commence proceedings against the Defendant Framework Participant and request the assistance of the Company in relation to such proceedings in which event the Management Committee may require the Company to provide whatever administrative assistance the Management Committee determines should be rendered by the Company to facilitate the conduct of such proceedings.
- (d) If the Management Committee resolves that proceedings be commenced by the Company against the Defendant Framework Participant or if, in the opinion of the Management Committee it is desirable for the Company to render administrative assistance to facilitate the conduct of proceedings by one or more Framework Participants which were Framework Participants at the date of issue of the relevant Certificate (other than the Defendant Framework Participant), then every Framework Participant irrevocably authorises the Company to commence such proceedings or render such administrative assistance respectively.
- (e) The following costs are to be treated as costs and expenses of the operation of the Company:
 - (i) costs (including costs as between solicitor and own client) and disbursements incurred by the Company in relation to any proceedings commenced and prosecuted in accordance with this Regulation;
 - (ii) administrative costs reasonably incurred by the Company in relation to any such proceedings;
 - (iii) costs (including disbursements) and damages which may be awarded against the Company in relation to any such proceedings (or be payable by the Company as the result of any settlement of any such proceedings); and

PART 13 BREACHES OF REGULATIONS AND DISPUTES

- (iv) liabilities and losses arising from any such proceedings which are suffered or incurred by the Company.
- (f) If any proceedings are commenced by a Framework Participant or Framework Participants pursuant to this PART 13, and the Company renders administrative assistance pursuant to Regulation 13.3 to facilitate the conduct of those proceedings, then any award of damages or costs in favour of that or those Framework Participants must first be applied to reimburse the Company for the costs incurred by it in rendering such administrative assistance.

13.4 Efficiency Disputes

- (a) No Dispute of the type referred to in paragraph (g) of the definition of "Dispute" contained in Regulation 1.1 shall be submitted to the Management Committee for determination under Regulation 13.1:
 - (i) if the determination of the Management Committee would, or would purport to, affect the rights or liabilities of any customer of the Framework Participants or the Appointors concerned in the Dispute; or
 - (ii) if, or to the extent that, the matter is capable of resolution by an application of objective requirements or provisions contained in published established practices followed by members of the industry generally and there is no disagreement on any question of fact relevant to such requirements or provisions; or
 - (iii) unless and until the parties to the Dispute have tried to resolve the Dispute by discussion and negotiation between them; or
 - (iv) unless and until the Dispute has been submitted by the parties to, if relevant, a delegate of the Management Committee for an investigation of the facts and for the formulation, and forwarding to the Management Committee and to each of the parties to the Dispute, of an outline of its understanding of such facts together with an expression of its opinion as to the manner in which the Dispute might be resolved.
- (b) In determining any Dispute which is brought before it under Regulation 13.4, the Management Committee may call upon the parties to furnish it with such information and documents as it may reasonably deem necessary to enable it to adjudicate upon the Dispute.
- (c) In all cases where a loss has to be met by reason of:
 - (i) a conflict of opinion as to which of the parties to the Dispute was responsible for the loss; or
 - (ii) the inability of any one or more of the parties to obtain reimbursement from or recourse against a customer,

the Management Committee will have authority to determine where the loss, and how the apportionment of the loss, will fall having regard to the merits of the individual case.

13.5 Reference to the Board

- (a) Notwithstanding anything to the contrary in this PART 13:
- (i) prior to the Management Committee taking any preliminary or other action pursuant to Regulation 13.1 in relation to a Dispute, a Framework Participant party to that Dispute may refer that Dispute directly to the Board for determination by the Board in which case the Dispute will not be referred to the Management Committee for its determination; and
 - (ii) within 3 months of the date of a Certificate, a Framework Participant party to the relevant Dispute may also refer that Dispute to the Board by way of a request for a review of a determination of the Management Committee (which determination is evidenced by that Certificate) for further determination by the Board.
- (b) A determination of the Board in relation to a Dispute referred to it under this Regulation 13.5 must be evidenced by a resolution of the Board and a Certificate and a determination so evidenced will be binding upon all parties to the Dispute (including, without limitation, any body corporate which, subsequently to the occurrence of the events giving rise to the Dispute, resigns as a Framework Participant pursuant to Regulation 5.17(b) or whose membership is terminated pursuant to Regulation 5.17(a)) until such time as a court of law or equity otherwise orders.
- (c) Where a determination of the Board is made and evidenced in accordance with Regulation 13.5, Regulations 13.1 to 13.4 inclusive will apply as if a determination of the Board in relation to a Dispute is a determination of the Management Committee in relation to that Dispute and the powers and duties of the Management Committee under those Regulations are powers and duties of the Board.

The next page is 14.1

PART 14 NOTICES

- (a) A notice may be given by the Company to any Framework Participant or other person receiving notice under these Regulations either by:
 - (i) serving it personally; or
 - (ii) sending it by post, telex or facsimile transmission to the address shown in the Register or the address supplied by that person to the Company for the giving of notices; or
 - (iii) sending an electronic mail message to an email address supplied by the Framework Participant or that person to the Company for the giving of notices or by publishing the notice on the Company's extranet or website in a manner accessible by the Framework Participant or that person receiving notice.
- (b) Publication on the Company's extranet or website must be accompanied by an electronic communication to the recipient(s) of the notice advising of the publication.
- (c) Where a notice is sent by post, service of the notice is deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and the notice is deemed to have been served on the business day after the date of its posting.
- (d) Where a notice is sent by telex or facsimile transmission, service of the notice is deemed to be effected by properly addressing the telex or facsimile transmission and transmitting same and to have been served in the case of a facsimile transmission on the business day following its despatch, and in the case of a telex transmission on the business day following receipt by the sender of the answerback of the addressee.
- (e) Where a notice is sent by electronic mail or published on the Company's extranet or website, the notice is deemed to be served on the business day following its despatch or publication.
- (f) This PART 14 does not apply with respect to PART 12.

The next page is 15.1

PART 15 MISCELLANEOUS

15.1 Statistics

- (a) Each Framework Participant must at the request of the Management Committee or the Company provide to the Company all reasonable information relating to that Framework Participant's volumes of payments, values of payments and other matters relevant to the HVCS.
- (b) The Company may arrange with the Reserve Bank for the supply to the Company of statistical data concerning payments processed in the RITS/RTGS System.
- (c) Nothing in this Regulation 15.1 requires disclosure by any Framework Participant, or the Reserve Bank, of any particulars of any customer or client of any Framework Participant. Each Framework Participant acknowledges to the Company for the benefit of the Reserve Bank that the member unconditionally authorises and consents to release by the Reserve Bank to the Company of the statistical data referred to in this Regulation 15.1, or any of that data, (in any format whatsoever) for any purpose whatsoever in connection with these Regulations or HVCS, including without limitation for the purposes of Regulation 7.7.
- (d) Statistical data collected by the Company in accordance with this Regulation 15.1 may only be used for purposes approved by the Management Committee from time to time.

15.2 BSB Numbers

- (a) The Company has assumed responsibility for the allocation of BSB Numbers and agrees to allocate BSB Numbers on a basis which is consistent with the policies of the Company as determined from time to time.
- (b) Any such allocation must provide that the allottee can only use a new BSB Number with effect from the relevant commencement date notified by the Secretary in accordance with Regulation 5.7.
- (c) Where the business of a Framework Participant is acquired or assumed by an existing Framework Participant, a related body corporate subsequently accepted as a Framework Participant or a body corporate formed as the result of a merger or amalgamation and subsequently accepted as a Framework Participant (each an "Acquirer") and the first-mentioned Framework Participant:
 - (i) ceases to exist;
 - (ii) if it is a Framework Participant, gives notice to the Company of its resignation as a Framework Participant in accordance with these Regulations; or

- (iii) notifies the Company in writing that it consents to the re-allocation of its BSB Number to the Acquirer,

the Acquirer is entitled, on written request to the Company, to use the BSB Number of the first-mentioned Framework Participant with effect from a commencement date approved by the Management Committee and advised to Framework Participants by the Secretary.

15.3 Set-Off

Except as expressly provided for in PART 12, nothing in these Regulations shall be construed so as to negate or exclude any right of set-off which may otherwise arise.

15.4 Amendments

- (a) These Regulations may be amended from time to time in accordance with Article 10.8 of the Constitution (Amendment of Regulations), which requires that:
 - (i) the Management Committee recommends the amendments;
 - (ii) a meeting of the Framework Participants approves the amendments by resolution at a meeting convened in accordance with PART 8;
 - (iii) the Board approves the amendments; and
 - (iv) the amendments cannot become effective before they are approved by the Board.
- (b) Any amendment to these Regulations must contain an editorial note setting out the effective date of such amendment.

15.5 Exclusion of Fiduciary and Trustee Relationships

Subject to PART 6 neither the Company nor another person shall by reason of these Regulations or another document relating to the HVCS have a fiduciary relationship with, or be trustee for, a Framework Participant or another person unless expressly agreed.

15.6 Representations and Warranties

The Company is entitled to assume the correctness of any representation or warranty made by a Framework Participant and is not required to conduct independent enquiries or to conduct searches of public registers to confirm the correctness of any representation or warranty.

15.7 Confidentiality

- (a) All Confidential Information is confidential to the recipient of that information and its employees and each such recipient must ensure that Confidential Information is not disclosed to any other person except:
- (i) any existing, prospective or potential contractors or consultants and any participants in a tender process initiated by or for that recipient;
 - (ii) with the consent of the provider of that information (which consent must not be unreasonably withheld);
 - (iii) (in the case of statistics) on a basis which does not identify the provider of the information;
 - (iv) 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;
 - (v) in connection with legal proceedings or disputes in which the recipient is a party;
 - (vi) if the information is generally and publicly available;
 - (vii) its legal advisers and auditors for the purpose of considering or advising upon the Confidential Information; or
 - (viii) to a Related Body Corporate of the recipient.
- (b) Except to the extent that it would contravene a law or stock exchange listing requirement, in respect of a disclosure by a recipient (the First Recipient) of Confidential Information to a further recipient (the Second Recipient) pursuant to subparagraphs (i), (iv), (v) and (viii) above, the First Recipient must prior to disclosure:
- (i) advise APCA in writing; and
 - (ii) obtain from the Second Recipient an undertaking to abide by the requirements of this Regulation 15.7. The undertaking obtained should, wherever possible, be enforceable directly by APCA.

15.8 Expenditure

The expenses incurred by the Management Committee, any sub-committee of the Management Committee, any member of those committees or any other person in the performance of their duties under these Regulations and the Procedures must be in accordance with the financial budgets of the Company which have been approved by the Board or otherwise determined by the Board or the Chief Executive Officer (either specifically or on a general basis).

15.9 Indemnity

Every person who is or has been a member of the Management Committee is entitled to be indemnified out of the property of the Company against:

- (a) every liability incurred by the person in that capacity (except a liability for legal costs); and
- (b) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity,

unless:

- (c) the Company is forbidden by statute to indemnify the person against the liability or legal costs; or
- (d) an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by statute.

15.10 Insurance

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a member of the Management Committee against liability incurred by the person in that capacity, including a liability for legal costs, unless:

- (a) the Company is forbidden by statute to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by statute.

The next page is A1.1

ANNEXURE 1 MEMBERSHIP APPLICATION FORM

ANNEXURE 1 MEMBERSHIP APPLICATION FORM
(Regulation 5.4)

To: The Secretary
Australian Payments Clearing
Association Limited
Level 6
14 Martin Place
Sydney NSW 2000

Re: High Value Clearing System (CS4)

From: Full Name of Applicant: _____

ACN / ARBN: _____

Place of Incorporation: _____

Registered Office Address / Principal
Place of Business in Australia: _____

Name of Framework Participant
Representative: _____

Telephone Number: () _____

Email Address: _____

Preferred Start Date: _____

This is the preferred date on which the Applicant wishes to be admitted as a Framework Participant of the HVCS.

The abovenamed body corporate ("**Applicant**") hereby applies for membership as a Framework Participant in the High Value Clearing System (CS4) and membership as a Voting Member of Australian Payments Clearing Association Limited, a company limited by guarantee. The Applicant agrees that if this application is accepted then subject to and in consideration of that acceptance:

ANNEXURE 1 MEMBERSHIP APPLICATION FORM

1. The Applicant will observe and comply with the Constitution of Australian Payments Clearing Association Limited, the Regulations for the High Value Clearing System (CS4) and the Procedures (as defined in those Regulations) in force from time to time. The Applicant hereby acknowledges receipt of a copy of the Constitution, the Regulations and the Procedures as currently in force.
2. The Applicant will observe and comply with the requirements and directions of the Company and any relevant statutory authority in force from time to time relating to the High Value Clearing System (CS4).
3. The Applicant undertakes not to adversely affect the integrity of payments sent and received between Framework Participants or the settlement of those payments (or otherwise introduce a significant new risk into the High Value Clearing System (CS4)) after becoming a Framework Participant.
4. The Applicant undertakes to comply with the technical and operational standards applicable to the High Value Clearing System (CS4) generally and to the APCA PDS specified in the annexure to this application which are contained in the Regulations and the Procedures.
5. The Applicant gives the acknowledgments and undertakings set out in the annexure to this application and agrees to comply with the terms and conditions of use of any service provided to, or to APCA on behalf of, Framework Participants by any Service Provider in connection with the APCA PDS specified or otherwise referred to in the annexure to this application.
6. The Applicant undertakes not to impair the overall efficiency of the High Value Clearing System (CS4) after becoming a Framework Participant.
7. The Applicant undertakes to pay the fees and other amounts payable under the Regulations by a Framework Participant.
8. The rights and obligations contained herein shall enure not only to the Company, but to every other Framework Participant who has agreed to observe and comply with the Constitution, the Regulations and the Procedures.
9. The following information is enclosed with this application to demonstrate that the Applicant satisfies the applicable requirements for membership which are contained in Regulation 5.2:

[list information and documents enclosed with the application]

Terms not defined in this application have the same meaning as in the Regulations for the High Value Clearing System (CS4).

Dated: []

EXECUTED by **THE APPLICANT** by or)
in the presence of:)

Signature of Secretary/Director

Signature of Director

Full name of signatory

Full name of signatory

ANNEXURE 1 MEMBERSHIP APPLICATION FORM

This annexure is to be used with the HVCS membership application form if the applicant proposes to use the SWIFT PDS.

ANNEXURE TO APPLICATION FOR MEMBERSHIP OF THE HIGH VALUE CLEARING SYSTEM (CS4)

SWIFT PDS _____

Name of Applicant: _____

Prime SWIFT Address: _____

Other SWIFT Address: _____

Preferred Participant Start Date: _____

In addition to any rights and obligations contained in the Applicant's application for membership of the High Value Clearing System (CS4) to which this annexure is appended (the "Application"), the Applicant further agrees that if the Application is accepted then subject to and in consideration of that acceptance:

- (a) The Applicant acknowledges that:
 - (i) the proper operation of the SWIFT FIN Copy Service ("FIN Copy") is subject to any and all Framework Participants which use the SWIFT PDS ("Clearing Entities") being fully informed of all operational parameter values as specified in the FIN Copy Service Profile ("FIN Copy Profile") annexed to the SWIFT Service Agreement and having duly and in a timely manner implemented those parameter values and any changes to those parameter values notified by the Company from time to time;
 - (ii) the Company has notified the Applicant of the FIN Copy operational parameter values as specified in the FIN Copy Profile;
 - (iii) the Applicant is informed of and understands the consequences (if any) with respect to the Applicant's use of, and/or the operation of, FIN Copy;
 - (iv) the Applicant has received from the Company a copy of the SWIFT Service Agreement and understands that the Applicant will be bound by the terms and conditions for use of FIN Copy as set out in that agreement and that after duly completing the requirements for membership of the High Value Clearing System (CS4) and SWIFT's requirements for use of FIN Copy, SWIFT will be able to enforce those terms and conditions directly against the Applicant;

ANNEXURE 1 MEMBERSHIP APPLICATION FORM

- (v) subject to the provisions of the Regulations and the Procedures and the SWIFT Service Agreement, the Company has sole discretion to allow any SWIFT User to enter or re-enter the APCA Closed User Group (as defined in the SWIFT Service Agreement) (“Closed User Group”) and to withdraw any Clearing Entity from that Closed User Group;
 - (vi) subject to the provisions of the Regulations and the Procedures and the SWIFT Service Agreement, the Company may manage and monitor the Closed User Group in any manner as may in the Company’s opinion be required for the performance of the Company’s obligations under the SWIFT Service Agreement and the proper operation of FIN Copy;
 - (vii) the Company has previously notified the Applicant and the Applicant understands that termination of FIN Copy for any reason automatically terminates the provision of FIN Copy within the Closed User Group; and
 - (viii) the Company has advised the Applicant of, and the Applicant is aware of, the obligations of confidentiality under the SWIFT Service Agreement, in particular but without limitation the confidentiality obligations set out in Article 13 of the Constitution of that agreement.
- (b) The Applicant undertakes to comply with the terms and conditions for use of FIN Copy as set out in the Regulations and the Procedures and the SWIFT Service Agreement, including without limitation the conditions for payment of charges for use of FIN Copy.

Terms not defined in this annexure have the same meanings as in the Application.

Notes:

Applications should be completed in accordance with the following instructions:

- (a) by two directors or a director and a company secretary of the Applicant; OR
- (b) by affixing the Applicant’s common seal witnessed by two directors or a director and a company secretary of the Applicant; OR
- (c) under power of attorney, in which case the attorney must state that no notice of revocation of the power of attorney under which the application is signed has been received and an original power of attorney or certified copy should be enclosed for noting

APCA may require additional supporting documentation to satisfy itself that the application has been duly executed by the Applicant. If this is the case, APCA will contact the Applicant directly.

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ANNEXURE 2 CONFIDENTIALITY AGREEMENT
(Regulation 5.4)

THIS AGREEMENT is made on:

BETWEEN: **AUSTRALIAN PAYMENTS CLEARING ASSOCIATION LIMITED**, ABN 12 055 136 519, a company incorporated in the Australian Capital Territory and having its registered office at Level 6, 14 Martin Place, Sydney NSW 2000 ("**APCA**")

AND: **[NAME OF INSTITUTION]** ("**Clearing Entity**")

RECITALS

- A. APCA is responsible for implementing and administering a system (the "HVCS") for exchange and clearance of domestic high value payments among APCA's members.
- B. APCA has entered or will enter into an agreement ("Service Agreement") with the Society for Worldwide Interbank Financial Telecommunication s.c ("SWIFT") pursuant to which SWIFT will provide certain services to APCA in connection with APCA's HVCS.
- C. It is a term of the Service Agreement that APCA keeps confidential certain information of a confidential nature of which it has or might become aware in connection with the Service Agreement.
- D. Under the Service Agreement APCA may disclose that confidential information to the Clearing Entity provided that it also keeps the information confidential.
- E. It will probably be necessary for APCA to disclose to the Clearing Entity, on a confidential basis, other information of a confidential nature in connection with the HVCS and the Clearing Entity's membership of and participating in the HVCS.

INTERPRETATION

The following words have these meanings in this Agreement:

"**SWIFT PDS**" means the electronic payment delivery system forming part of APCA's domestic high value clearing system using SWIFT's FIN Copy Service;

"**FIN Copy Service**" means the message transport and processing service provided by SWIFT to APCA under the Service Agreement;

"**Relevant Jurisdiction**" means the Commonwealth of Australia, any State or Territory of Australia and any jurisdiction the laws of which govern the incorporation or other constitution of, or prudential supervisory arrangements for, the Clearing Entity or any Related Body Corporate;

“Related Body Corporate” means a related body corporate, within the meaning of that term in the Corporations Law, of the Clearing Entity;

“RTGS System” means the settlement system established and operated, or to be established and operated, by the Reserve Bank for, among other things, real time gross settlement of payment obligations.

In this Agreement unless the contrary intention appears:

- (a) a reference to this Agreement or another instrument or document includes any variation or replacement of any of them; and
- (b) the singular includes the plural and vice versa; and
- (c) the word “person” includes a firm, a body corporate, an unincorporated association or an authority; and
- (d) a reference to a person includes a reference to the person’s executors, administrators, successors, substitutes (including without limitation, persons taking by novation) and assigns; and
- (e) a reference to any law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.

CONFIDENTIAL INFORMATION

In this Agreement, “Confidential Information” means any information of a secret, confidential or otherwise commercially sensitive nature of which a person has become or becomes aware in connection with the HVCS, the Service Agreement or the SWIFT PDS. Confidential Information includes, without limiting the generality of the foregoing, the following:

- (a) the Service Agreement; and
- (b) any functional specifications produced in whole or in part by or on behalf of SWIFT or APCA in connection with the SWIFT PDS; and
- (c) any project plan produced in whole or in part by or on behalf of SWIFT or APCA in connection with the SWIFT PDS.

NON-DISCLOSURE

In consideration of, among other things, APCA providing to the Clearing Entity, or ensuring that the Clearing Entity is provided with, certain Confidential Information in connection with the Clearing Entity’s existing or proposed membership of and participation in the HVCS, from the date of this agreement and during the term of the Service Agreement and thereafter, the Clearing Entity must:

ANNEXURE 2 CONFIDENTIALITY AGREEMENT

- (a) not use or exploit the Confidential Information for its own purposes, other than in connection with its participation in the HVCS or its use of the SWIFT PDS or the RTGS System; and
- (b) not disclose the Confidential Information to any other person other than on the terms of this Agreement; and
- (c) ensure that its employees, permitted sub-licensees, agents, contractors, consultants and assignees do not use or exploit or disclose the Confidential Information other than on the terms of this Agreement; and
- (d) take reasonable measures to protect the Confidential Information and keep it secure from unauthorised persons; and
- (e) inform APCA immediately if:
 - (i) it becomes aware or suspects that there has been a breach of the Clearing Entity's obligations under this Agreement; or
 - (ii) disclosure of any of the Confidential Information is required by any law of any Relevant Jurisdiction or by any supervisory authority which is responsible for prudential supervision of the Clearing Entity or any Related Body Corporate.

EXCEPTIONS TO NON-DISCLOSURE

The Clearing Entity may disclose any of the Confidential Information to any of its employees, permitted sub-licensees, agents, contractors, consultants and assignees to whom that disclosure may be reasonably necessary or desirable in connection with the HVCS, Service Agreement, SWIFT PDS or RTGS System. However, before disclosing any Confidential Information to any employee, sub-licensee, agent, contractor, consultant or assignee, the Clearing Entity must make sure that the person to whom disclosure is to be made:

- (a) is aware of the Clearing Entity's obligations under this Agreement; and
- (b) will keep that information confidential in accordance with those obligations.

The Clearing Entity does not under this Agreement have to treat as confidential:

- (a) information which is or becomes part of the public domain, except information that is or becomes so because it has been disclosed in breach of this Agreement; or
- (b) information which is or becomes available from another person who is in possession of it lawfully and can disclose it on a non-confidential basis; or
- (c) information which is required to be disclosed because:

ANNEXURE 2 CONFIDENTIALITY AGREEMENT

- (i) of any law of any Relevant Jurisdiction, in which event the Clearing Entity must endeavour to ensure that such disclosure is limited in any way which APCA reasonably requests to the extent permitted by that law; or
- (ii) any supervisory authority which is responsible for prudential supervision of the Clearing Entity or any Related Body Corporate requires such disclosure.

INDEMNITY

The Clearing Entity indemnifies APCA and agrees to keep APCA indemnified in respect of all loss, damage, expense and costs arising because the Clearing Entity does not observe the conditions of this Agreement for any reason.

This indemnity is a continuing and separate obligation and survives termination of this Agreement however caused.

GENERAL

Entire Agreement

Apart from any confidentiality provisions contained in the Service Agreement to which the Clearing Entity might become a party, this Agreement contains the entire agreement on the subject matter between APCA and the Clearing Entity and takes the place of any other statements or understandings about the Confidential Information.

Waiver and Variation

A provision of or a right created under this Agreement may not be:

- (a) waived, except in writing signed by the party granting the waiver; or
- (b) changed, except in writing signed by APCA and the Clearing Entity.

Remedies Cumulative

The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

Failure or delay by APCA in exercising any right or remedy under this Agreement does not mean that APCA has waived the right or cannot exercise it later.

Governing Law

The Agreement is governed by the laws in force in New South Wales. APCA and the Clearing Entity irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of New South Wales and courts entitled to hear appeals therefrom.

EXECUTED as an agreement

ANNEXURE 2 CONFIDENTIALITY AGREEMENT

Signed for **AUSTRALIAN PAYMENTS
CLEARING ASSOCIATION LIMITED**)
ABN 12 055 136 519 by:)

its authorised representative in the)
presence of:)

Signature of Witness:)

Name of Witness:)

Address of Witness)

By executing this Agreement the signatory)
warrants that the signatory is duly authorised)
to execute this Agreement on behalf of)
**AUSTRALIAN PAYMENTS CLEARING)
ASSOCIATION LIMITED**

Signed for **[NAME OF INSTITUTION]**)
by:)

its authorised representative in the)
presence of:)

Signature of Witness:)

Name of Witness:)

Address of Witness)

By executing this agreement the signatory)
warrants that the signatory is duly)
authorised to execute this Agreement on)
behalf of **[NAME OF INSTITUTION]**

-- END --