



**17 October 2016**

**By email**

Ms Lyn Camilleri  
Director – Adjudication Branch  
Australian Competition and Consumer Commission  
Level 35  
360 Elizabeth Street

MELBOURNE VIC 3000

Dear Ms Camilleri

**New Payments Platform (NPP) Regulations – Application for Authorisation**

We refer to the meetings between the Australian Payments Clearing Association (**APCA**) and the ACCC in relation to the New Payments Platform (**NPP**) in April and December 2015.

As the ACCC is aware, the NPP will be an open access infrastructure for fast payments in Australia. The NPP is being developed to enable households, businesses and government agencies to make simply addressed payments, with near real-time funds availability to the recipient, on a 24/7 basis. The NPP infrastructure will support multiple 'overlay' services that can be independently developed to offer innovative payment services to end-users. NPP Australia Limited (**NPPA**) has been given the responsibility and oversight over the development and management of the NPP.<sup>1</sup>

NPPA has developed draft NPP Regulations to govern the rules of access and participation in the NPP, including high level obligations in relation to basic infrastructure transactions and settlement regulations. NPPA has also developed draft NPP Procedures covering operational or technical practices, procedures, standards and specifications, detailing how obligations in the NPP Regulations are to be met.

The proposed NPP Regulations contain suspension and termination provisions, eligibility requirements and settlement provisions which:

- (a) might be a cartel provision within the meaning of Division 1 of Part IV of the *Competition and Consumer Act 2010* (Cth) (**CCA**) and/or an exclusionary provision within the meaning of s4D of the CCA; or

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<sup>1</sup> Initially, development of the NPP was the responsibility of APCA. APCA provides administrative services to NPPA.

- (b) might have the purpose or likely effect of substantially lessening competition in a market within the meaning of s45 of the CCA; or
- (c) might constitute third line forcing within the meaning of s47(6) or 47(7) of the CCA.

Accordingly, NPPA seeks authorisations for Regulations 9.2-9.5 (inclusive) and Regulations 3.5(c), 4.3, 4.4, 4.5, 4.6(h), 7.1 and 7.3 of the NPP Regulations.

A submission in support of these applications is attached. The draft NPP Regulations are provided to the ACCC as part of the submissions.

We look forward to receiving your determination.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Lovney', with a stylized flourish at the end.

Adrian Lovney  
Chief Executive Officer  
NPP Australia Limited

# Form A

Commonwealth of Australia

*Competition and Consumer Act 2010 — subsections 88 (1A) and (1)*

## **EXCLUSIONARY PROVISIONS AND ASSOCIATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Competition and Consumer Act 2010* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act.
- to make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision within the meaning of section 45 of that Act.

*(Strike out whichever is not applicable)*

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

### **1. Applicant**

- (a) Name of Applicant:  
*(Refer to direction 2)*

A91560 NPP Australia Limited (ABN 68 601 428 737)

- (b) Description of business carried on by applicant:  
*(Refer to direction 3)*

Management, implementation, operation, governance and development of the New Payments Platform (NPP).

- (c) Address in Australia for service of documents on the applicant:

Vanessa Chapman, General Counsel, NPP Australia Limited, Level 6, 14 Martin Place, Sydney NSW 2000.

**2. Contract, arrangement or understanding**

- (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:  
*(Refer to direction 4)*

The proposed regulations of the applicant for the NPP (**Regulations**).

- (b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, exclusionary provisions and (if applicable) are, or would or might be, cartel provisions:  
*(Refer to direction 4)*

The following provisions contained within the Regulations:

**Regulation Provisions**

9.2-9.4 **9.2 Suspension**

- (a) The Board may suspend an NPP Participant (other than the RBA in its capacity as the operator of the FSS), Connected Institution or Overlay Service Provider for a specified or indefinite period of time in the following circumstances (each a “Suspension Event”):

(i) the relevant NPP Participant, Connected Institution or Overlay Service Provider is subject to prudential supervision, and the relevant supervisor requests such suspension;

(ii) by agreement with NPP Participant, Connected Institution or Overlay Service Provider concerned;

(iii) if the relevant NPP Participant, Connected Institution or Overlay Service Provider no longer satisfies the requirements for participation set out in Part 4 of these Regulations;

(iv) if the relevant NPP Participant, Connected Institution or Overlay Service Provider is in Material Breach of its obligations under the NPP Regulations or the NPP Procedures and fails to rectify the breach or provide an explanation of its conduct satisfactory to the Board (in its sole discretion) within 30 Business Days of receipt of a request from the Board to rectify the breach or provide such an explanation;

(v) an Insolvency Event, (not being an event that results in the automatic termination of participation rights pursuant to Regulation

9.5(a)(ii) or (iii), occurs in respect of the NPP Participant, Connected Institution or Overlay Service Provider concerned; or

(vi) if the NPP Participant, Connected Institution or Overlay Service Provider concerned engages in conduct reasonably regarded by the Board to be contrary to the interests of NPPA or which may adversely affect the NPP Basic Infrastructure.

(b) If an NPP Participant, Connected Institution or Overlay Service Provider is subject to prudential supervision by APRA then NPPA must give APRA reasonable notice of, and an opportunity to be heard at, any meeting at which it will consider suspending the NPP Participant pursuant to Regulation 9.2(a).

### **9.3 Effect of Suspension**

(a) NPPA must promptly notify a party which is suspended under Regulation 9.2 of the suspension, and the time and date upon which the suspension becomes effective. For the avoidance of doubt, NPPA may determine that suspension is immediately effective.

(b) Subject to Regulation 9.4, an NPP Participant or Connected Institution which is suspended under Regulation 9.2 is not entitled (including, without limitation, in any capacity as a Sponsor to an Identified Institution or other NPP Participant) to:

(i) connect to the NPP Basic Infrastructure; or

(ii) send or receive NPP Payments or Non-Value Messages.

(c) Upon suspension of an Overlay Service Provider, each NPP Participant which is a subscriber to the Overlay Service or which provides clearing and/or settlement services to OS Subscribers will cease to be entitled to send or receive OS Payments.

(d) An Overlay Service Provider who is suspended under Regulation 9.2 is not entitled to provide its Overlay Service/s to any OS Subscriber for the duration of the suspension.

(e) An NPP Participant, Connected Institution or Overlay Service Provider which is suspended under Regulation 9.2 is not excused from discharging its obligations under the NPP Regulations or the NPP Procedures.

(f) NPPA will notify SWIFT, the RBA (in its capacity as the provider of the FSS), all other NPP Participants and Connected Institutions and (other than

in the case of suspension of a particular Overlay Service Provider) all Overlay Service Providers, by the most expeditious means reasonably available of any suspension under Regulation 9.2.

#### **9.4 Conditions in lieu of Suspension**

If a Suspension Event occurs in respect of an NPP Participant, Connected Institution or Overlay Service Provider NPPA may (in lieu of suspending that person) impose such conditions on the participation or effect such variation of any provision of the NPP Procedures in relation to that person as may be reasonable and proportionate. The rights and obligations of the NPP Participant, Connected Institution or Overlay Service Provider under these Regulations will be subject to any such conditions or variation. NPPA may at any subsequent time vary or revoke any such conditions or variations.

#### **9.5 Termination**

(a) An NPP Participant (other than the RBA in its capacity as the operator of the FSS), Connected Institution or Overlay Service Provider ceases to be eligible to be a party to these Regulations 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 exercising its right to terminate the right of the person to be an NPP Participant, Connected Institution or Overlay Service Provider (as the case may be) in accordance with Regulation 9.5(d).

(b) An NPP Participant (other than the RBA in its capacity as the operator of the FSS), Overlay Service Provider or Overlay Service Provider may, by notice in writing to NPPA, resign, such resignation to become effective on the date which is [x] days from the date of the notice. The notice is irrevocable.

(c) An NPP Participant, Connected Institution or Overlay Service Provider may not resign except by giving notice in accordance with Regulation 9.5(b).

(d) The Board may, by notice in writing to an NPP Participant (other than the RBA in its capacity as the operator of the FSS), Connected Institution or Overlay Service Provider, terminate the right of that person to be an NPP Participant, Connected Institution or Overlay Service Provider (as the case may be) either with immediate effect or with effect from a specified time and / or on

a specified date, only if the following conditions have been fulfilled:

- (i) a Suspension Event has occurred in respect of that NPP Participant, Connected Institution or Overlay Service Provider and has not been remedied within a period determined by the Board following consultation with the NPP Participant, Connected Institution or Overlay Service Provider concerned; and
  - (ii) the Board has provided an opportunity for that NPP Participant, Connected Institution or Overlay Service Provider to make a submission to the Board regarding the Suspension Event and such proposed termination.
- (e) A notice given by the Board pursuant to Regulation 9.5(d) will include reasons for the Board's decision.
- (f) A notice given by the Board pursuant to Regulation 9.5(d) may be revoked by the Board at any time before it becomes effective.
- (g) Each NPP Participant acknowledges and agrees that upon resignation under Regulation 9.5(b) or termination of its right to be an NPP Participant under Regulation 9.5(d):
- (i) it will cease to be entitled to exercise the rights attaching to the Shares;
  - (ii) it remains bound by the Constitution; and
  - (iii) it may elect to redeem its Shares for the nominal redemption price in accordance with the Constitution.
- (h) Any resignation of an NPP Participant, Connected Institution or Overlay Service Provider, or any termination of the right of a person to be an NPP Participant, Connected Institution or Overlay Service Provider will not affect any right or liability arising under the NPP Regulations or the NPP Procedures before that resignation or termination takes effect or arising in respect of any act, matter or thing occurring prior to that time. An NPP Participant, Connected Institution or Overlay Service Provider who resigns pursuant to Regulation 9.5(b) or whose right to be an NPP Participant, Connected Institution or Overlay Service Provider is terminated pursuant to Regulation 9.5(d) will continue to be bound by the NPP Regulations and the NPP Procedures 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;

(ii) any right or liability under the NPP Regulations or the NPP Procedures which relates to or may arise at any future time from any breach of the NPP Regulations or the NPP Procedures which occurred prior to or on the date of termination; and

(iii) any fees, costs, charges and expenses which may be levied on, or which are to be reimbursed by, the NPP Participant, Connected Institution or Overlay Service Provider (as the case may be) in accordance with the NPP Regulations or the NPP Procedures 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.

(i) Without limiting the generality of Regulation 9.5(h), any resignation of an NPP Participant, or any termination of the right of any person to be an NPP Participant will not affect the obligations of the NPP Participant arising under the Constitution or the Shareholders Agreement, including its funding obligations under clause 6 of the Shareholders Agreement.

(j) Without limiting the generality of Regulation 9.5(h), any NPP Participant, Connected Institution or Overlay Service Provider who resigns or whose right to be a party, is terminated is not entitled to be repaid all or part of any fee, costs, charges or expenses (including NPPA's costs of implementing a requested any Minor Change or Major Change) which has been paid by it.

(k) On resignation or termination of an NPP Participant, Connected Institution or Overlay Service Provider (as the case may be), NPPA will as soon as practicable notify SWIFT, the RBA (in its capacity as the provider of the FSS) and all other NPP Participants, Connected Institutions, and (other than in the case of suspension of a particular Overlay Service Provider), all Overlay Service Providers by the most expeditious means reasonably available, of the resignation or termination specifying:

(i) the name of the resigning or terminated NPP Participant, Connected Institution or Overlay Service Provider; and

(ii) the date on which the resignation or termination will take, or has taken, effect.

(c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

The NPP, which will be an open access infrastructure for fast payments in Australia. The NPP is being developed to enable households, businesses and



government agencies to make simply addressed payments, with near real-time funds availability to the recipient, on a 24/7 basis. The NPP infrastructure will support multiple 'overlay' services that can be independently developed to offer innovative payment services to end-users.

- (d) The term for which authorisation of the provision of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

5 years. NPPA considers this to be an appropriate length of time, given the nature of the suspension and termination provisions in the Regulations for which authorisation is being sought.

### **3. Parties to the proposed arrangement**

- (a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

Please refer to **Annexure 1**.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:  
*(Refer to direction 5)*

In addition to those in Annexure 1, this application is also made on behalf of persons who may become participants to the NPP after the date of this application.

### **4. Public benefit claims**

- (a) Arguments in support of application for authorisation:  
*(Refer to direction 6)*

Please refer to **Annexure 2**.

- (b) Facts and evidence relied upon in support of these claims:

Please refer to **Annexure 2**.

### **5. Market definition**

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

*(Refer to direction 7)*

Please refer to **Annexure 2**.

**6. Public detriments**

- (a) Detriments to the public resulting or likely to result from the contract arrangement or understanding for which authorisation is sought, in particular the likely effect of the contract arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:  
*(Refer to direction 8)*

Please refer to **Annexure 2**.

- (b) Facts and evidence relevant to these detriments:

Please refer to **Annexure 2**.

**7. Contracts, arrangements or understandings in similar terms**

- (a) This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding:

- (b) Is this application to be so expressed?

This application is made in relation to all parties and potential parties to a contract, arrangement or understanding constituted by the Regulations. The Regulations are currently still in draft, but the final form of the Regulations (particularly in relation to the suspension and termination provisions) are unlikely to differ materially to the draft provided.

- (c) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:  
*(Refer to direction 9)*

Not applicable.

- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:  
*(Refer to direction 10)*

Please refer to **Annexure 1**.

- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

Not applicable.

**8. Joint Ventures**

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?

Yes.

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

No.

- (c) If so, by whom or on whose behalf are those other applications being made?

Not applicable.

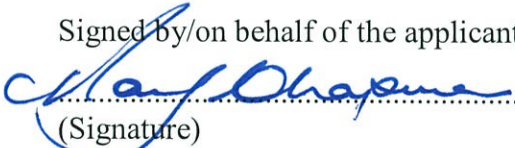
**9. Further information**

- (a) Name, postal address and telephone contact details of the person authorised by the applicant seeking authorisation to provide additional information in relation to this application:

Vanessa Chapman, General Counsel, NPP Australia Limited, Level 6, 14 Martin Place, Sydney NSW 2000

Dated 17 October 2016

Signed by/on behalf of the applicant

  
.....  
(Signature)

VANESSA CHAPMAN  
.....  
(Full Name)

NPP AUSTRALIA LIMITED  
.....  
(Organisation)

GENERAL COUNSEL  
.....  
(Position in organisation)

## DIRECTIONS

1. Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

In lodging this form, applicants must include all information, including supporting evidence, that they wish the Commission to take into account in assessing their application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which authorisation is sought.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, exclusionary provisions. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and
  - (b) to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
  6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
  7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for authorisation.

8. Provide details of the detriments to the public, including those resulting from any lessening of competition, which may result from the proposed contract, arrangement or understanding. Provide quantification of those detriments where possible.
9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.
10. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, and descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.

## Form B

Commonwealth of Australia

*Competition and Consumer Act 2010 — subsections 88 (1A) and (1)*

### AGREEMENTS AFFECTING COMPETITION OR INCORPORATING RELATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Competition and Consumer Act 2010* for an authorisation:

- ~~• to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act).~~
- ~~• to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act).~~
- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

*(Strike out whichever is not applicable)*

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

#### 1. Applicant

- (a) Name of Applicant:  
*(Refer to direction 2)*

A91561 NPP Australia Limited (ABN 68 601 428 737)

- (b) Short description of business carried on by applicant:  
*(Refer to direction 3)*

Management, implementation, governance and development of the New Payments Platform (NPP).

- (c) Address in Australia for service of documents on the applicant:

Vanessa Chapman, General Counsel, NPP Australia Limited, Level 6, 14 Martin Place, Sydney NSW 2000

**2. Contract, arrangement or understanding**

- (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:  
*(Refer to direction 4)*

The proposed regulations of the applicant for the NPP (**Regulations**).

- (b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, cartel provisions, or that do, or would or might, have the effect of substantially lessening competition:  
*(Refer to direction 4)*

The following provisions contained within the Regulations:

**Regulation Provisions**

9.2-9.4 **9.2 Suspension**

- (a) The Board may suspend an NPP Participant (other than the RBA in its capacity as the operator of the FSS), Connected Institution or Overlay Service Provider for a specified or indefinite period of time in the following circumstances (each a “Suspension Event”):

(i) the relevant NPP Participant, Connected Institution or Overlay Service Provider is subject to prudential supervision, and the relevant supervisor requests such suspension;

(ii) by agreement with NPP Participant, Connected Institution or Overlay Service Provider concerned;

(iii) if the relevant NPP Participant, Connected Institution or Overlay Service Provider no longer satisfies the requirements for participation set out in Part 4 of these Regulations;

(iv) if the relevant NPP Participant, Connected Institution or Overlay Service Provider is in Material Breach of its obligations under the NPP Regulations or the NPP Procedures and fails to rectify the breach or provide an explanation of its conduct satisfactory to the Board (in its sole discretion) within 30 Business Days of receipt of a request from the Board to rectify the breach or provide such an explanation;

(v) an Insolvency Event, (not being an event that results in the automatic termination of participation rights pursuant to Regulation

9.5(a)(ii) or (iii), occurs in respect of the NPP Participant, Connected Institution or Overlay Service Provider concerned; or

(vi) if the NPP Participant, Connected Institution or Overlay Service Provider concerned engages in conduct reasonably regarded by the Board to be contrary to the interests of NPPA or which may adversely affect the NPP Basic Infrastructure.

(b) If an NPP Participant, Connected Institution or Overlay Service Provider is subject to prudential supervision by APRA then NPPA must give APRA reasonable notice of, and an opportunity to be heard at, any meeting at which it will consider suspending the NPP Participant pursuant to Regulation 9.2(a).

### **9.3 Effect of Suspension**

(a) NPPA must promptly notify a party which is suspended under Regulation 9.2 of the suspension, and the time and date upon which the suspension becomes effective. For the avoidance of doubt, NPPA may determine that suspension is immediately effective.

(b) Subject to Regulation 9.4, an NPP Participant or Connected Institution which is suspended under Regulation 9.2 is not entitled (including, without limitation, in any capacity as a Sponsor to an Identified Institution or other NPP Participant) to:

(i) connect to the NPP Basic Infrastructure; or

(ii) send or receive NPP Payments or Non-Value Messages.

(c) Upon suspension of an Overlay Service Provider, each NPP Participant which is a subscriber to the Overlay Service or which provides clearing and/or settlement services to OS Subscribers will cease to be entitled to send or receive OS Payments.

(d) An Overlay Service Provider who is suspended under Regulation 9.2 is not entitled to provide its Overlay Service/s to any OS Subscriber for the duration of the suspension.

(e) An NPP Participant, Connected Institution or Overlay Service Provider which is suspended under Regulation 9.2 is not excused from discharging its obligations under the NPP Regulations or the NPP Procedures.

(f) NPPA will notify SWIFT, the RBA (in its capacity as the provider of the FSS), all other NPP Participants and Connected Institutions and (other than



in the case of suspension of a particular Overlay Service Provider) all Overlay Service Providers, by the most expeditious means reasonably available of any suspension under Regulation 9.2.

#### **9.4 Conditions in lieu of Suspension**

If a Suspension Event occurs in respect of an NPP Participant, Connected Institution or Overlay Service Provider NPPA may (in lieu of suspending that person) impose such conditions on the participation or effect such variation of any provision of the NPP Procedures in relation to that person as may be reasonable and proportionate. The rights and obligations of the NPP Participant, Connected Institution or Overlay Service Provider under these Regulations will be subject to any such conditions or variation. NPPA may at any subsequent time vary or revoke any such conditions or variations.

#### **9.5 Termination**

(a) An NPP Participant (other than the RBA in its capacity as the operator of the FSS), Connected Institution or Overlay Service Provider ceases to be eligible to be a party to these Regulations 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 exercising its right to terminate the right of the person to be an NPP Participant, Connected Institution or Overlay Service Provider (as the case may be) in accordance with Regulation 9.5(d).

(b) An NPP Participant (other than the RBA in its capacity as the operator of the FSS), Overlay Service Provider or Overlay Service Provider may, by notice in writing to NPPA, resign, such resignation to become effective on the date which is [x] days from the date of the notice. The notice is irrevocable.

(c) An NPP Participant, Connected Institution or Overlay Service Provider may not resign except by giving notice in accordance with Regulation 9.5(b).

(d) The Board may, by notice in writing to an NPP Participant (other than the RBA in its capacity as the operator of the FSS), Connected Institution or Overlay Service Provider, terminate the right of that person to be an NPP Participant, Connected Institution or Overlay Service Provider (as the case may be) either with immediate effect or with effect from a specified time and / or on

a specified date, only if the following conditions have been fulfilled:

- (i) a Suspension Event has occurred in respect of that NPP Participant, Connected Institution or Overlay Service Provider and has not been remedied within a period determined by the Board following consultation with the NPP Participant, Connected Institution or Overlay Service Provider concerned; and
  - (ii) the Board has provided an opportunity for that NPP Participant, Connected Institution or Overlay Service Provider to make a submission to the Board regarding the Suspension Event and such proposed termination.
- (e) A notice given by the Board pursuant to Regulation 9.5(d) will include reasons for the Board's decision.
- (f) A notice given by the Board pursuant to Regulation 9.5(d) may be revoked by the Board at any time before it becomes effective.
- (g) Each NPP Participant acknowledges and agrees that upon resignation under Regulation 9.5(b) or termination of its right to be an NPP Participant under Regulation 9.5(d):
- (i) it will cease to be entitled to exercise the rights attaching to the Shares;
  - (ii) it remains bound by the Constitution; and
  - (iii) it may elect to redeem its Shares for the nominal redemption price in accordance with the Constitution.
- (h) Any resignation of an NPP Participant, Connected Institution or Overlay Service Provider, or any termination of the right of a person to be an NPP Participant, Connected Institution or Overlay Service Provider will not affect any right or liability arising under the NPP Regulations or the NPP Procedures before that resignation or termination takes effect or arising in respect of any act, matter or thing occurring prior to that time. An NPP Participant, Connected Institution or Overlay Service Provider who resigns pursuant to Regulation 9.5(b) or whose right to be an NPP Participant, Connected Institution or Overlay Service Provider is terminated pursuant to Regulation 9.5(d) will continue to be bound by the NPP Regulations and the NPP Procedures 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;

(ii) any right or liability under the NPP Regulations or the NPP Procedures which relates to or may arise at any future time from any breach of the NPP Regulations or the NPP Procedures which occurred prior to or on the date of termination; and

(iii) any fees, costs, charges and expenses which may be levied on, or which are to be reimbursed by, the NPP Participant, Connected Institution or Overlay Service Provider (as the case may be) in accordance with the NPP Regulations or the NPP Procedures 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.

(i) Without limiting the generality of Regulation 9.5(h), any resignation of an NPP Participant, or any termination of the right of any person to be an NPP Participant will not affect the obligations of the NPP Participant arising under the Constitution or the Shareholders Agreement, including its funding obligations under clause 6 of the Shareholders Agreement.

(j) Without limiting the generality of Regulation 9.5(h), any NPP Participant, Connected Institution or Overlay Service Provider who resigns or whose right to be a party, is terminated is not entitled to be repaid all or part of any fee, costs, charges or expenses (including NPPA's costs of implementing a requested any Minor Change or Major Change) which has been paid by it.

(k) On resignation or termination of an NPP Participant, Connected Institution or Overlay Service Provider (as the case may be), NPPA will as soon as practicable notify SWIFT, the RBA (in its capacity as the provider of the FSS) and all other NPP Participants, Connected Institutions, and (other than in the case of suspension of a particular Overlay Service Provider), all Overlay Service Providers by the most expeditious means reasonably available, of the resignation or termination specifying:

(i) the name of the resigning or terminated NPP Participant, Connected Institution or Overlay Service Provider; and

(ii) the date on which the resignation or termination will take, or has taken, effect.

- (c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

The NPP, which will be an open access infrastructure for fast payments in Australia. The NPP is being developed to enable households, businesses and government agencies to make simply addressed payments, with near real-time funds availability to the recipient, on a 24/7 basis. The NPP infrastructure will support multiple 'overlay' services that can be independently developed to offer innovative payment services to end-users.

- (d) The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

5 years. NPPA considers this to be an appropriate length of time, given the nature of the suspension and termination provisions in the Regulations for which authorisation is being sought.

### **3. Parties to the proposed arrangement**

- (a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

Please refer to **Annexure 1**.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:  
*(Refer to direction 5)*

In addition to those in Annexure 1, this application is also made on behalf of persons who may become participants to the NPP after the date of this application.

### **4. Public benefit claims**

- (a) Arguments in support of authorisation:  
*(Refer to direction 6)*

Please refer to **Annexure 2**.

- (b) Facts and evidence relied upon in support of these claims:

Please refer to **Annexure 2**.

**5. Market definition**

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

*(Refer to direction 7)*

Please refer to **Annexure 2**.

**6. Public detriments**

- (a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:

*(Refer to direction 8)*

Please refer to **Annexure 2**.

- (b) Facts and evidence relevant to these detriments:

Please refer to **Annexure 2**.

**7. Contract, arrangements or understandings in similar terms**

This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.

- (a) Is this application to be so expressed?

This application is made in relation to all parties and potential parties to a contract, arrangement or understanding constituted by the Regulations. The Regulations are currently still in draft, but the final form of the Regulations (particularly in relation to the suspension and termination provisions) are unlikely to differ materially to the draft provided.

- (b) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:

*(Refer to direction 9)*

Not applicable.

- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

Please refer to **Annexure 1**.

- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

Not applicable.

## 8. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?

Yes.

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

No.

- (c) If so, by whom or on whose behalf are those other applications being made?

Not applicable.

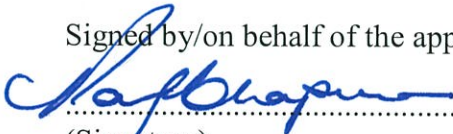
## 9. Further information

- (a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

Vanessa Chapman, General Counsel, NPP Australia Limited, Level 6, 14 Martin Place, Sydney, NSW 2000.

Dated 17 October 2016

Signed by/on behalf of the applicant



(Signature)

VANESSA CHAPMAN

(Full Name)

GENERAL COUNSEL, NPP AUSTRALIA LIMITED

(Position in Organisation)

## DIRECTIONS

1. Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

In lodging this form, applicants must include all information, including supporting evidence, that they wish the Commission to take into account in assessing the application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions. Provide details of those provisions of the contract, arrangement or understanding that do, or would or might, substantially lessen competition.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and
  - (b) to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
  6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.

7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the authorisation.
8. Provide details of the detriments to the public which may result from the proposed contract, arrangement or understanding including quantification of those detriments where possible.
9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.



# Form E

Commonwealth of Australia

*Competition and Consumer Act 2010 — subsection 88 (8)*

## EXCLUSIVE DEALING: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 88 (8) of the *Competition and Consumer Act 2010* for an authorisation under that subsection to engage in conduct that constitutes or may constitute the practice of exclusive dealing.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

### 1. Applicant

- (a) Name of applicant:  
(Refer to direction 2)

A91562 NPP Australia Limited (ABN 68 601 428 737)

- (b) Short description of business carried on by applicant:  
(Refer to direction 3)

Management, implementation, governance and development of the New Payments Platform (NPP).

- (c) Address in Australia for service of documents on the applicant:

Vanessa Chapman, General Counsel, NPP Australia Limited, Level 6, 14 Martin Place, Sydney NSW 2000

### 2. Contract, arrangement or understanding

- (a) Description of the conduct that would or may constitute the practice of exclusive dealing:  
(Refer to direction 4)

The proposed regulations of the applicant for the NPP (**Regulations**) set out various eligibility criteria and obligations on members that may require them acquiring a second good or service from an unrelated third party in order for them to use the NPP services.

In particular, these provisions may be construed as supply of NPP services (ie membership) on condition that the applicant also:

- (i) acquire services from SWIFT;
- (ii) acquire services from two network services providers (from a specified list of providers); and/or

(iii) acquire services from the RBA or another NPP Participant for the settlement of NPP payments.

These provisions may therefore constitute third line forcing within the meaning of s47(6) or 47(7) of the CCA.

The relevant draft provisions are set out below.

**Regulation Provision**

3.5(c) Each Full Participant and Settlement Participant must ensure that it is authorised by the RBA to use the FSS for settlement of NPP Payments.

**4.3 Eligibility – Full Participants**

To be a Full Participant a person must comply with the requirements of Regulation 4.2 and additionally:

- (a) be or become a SWIFT User or Domestic SWIFT User, and a BIC11 Holder;
- (b) enter into a Provisioning Agreement with NPPA;
- (c) enter into a Network Agreement with at least two Vendor Network Partners;
- (d) complete the On-Boarding Process with SWIFT;
- (e) comply with Connectivity Requirements set out in the NPP Procedures; and
- (f) be authorised by the RBA to use the FSS.

**4.4 Eligibility – Clearing Participants**

To be a Clearing Participant a person must comply with the requirements of Regulation 4.2 and additionally:

- (a) comply with all of the requirements set out in Regulation 4.3(a) to (e); and
- (b) enter into a proprietary arrangement with an NPP Participant to ensure that its NPP Payments are settled in accordance with Part 7 of these Regulations.

**4.5 Eligibility – Settlement Participants**

To be a Settlement Participant a person must comply with the requirements of Regulation 4.2 and additionally be authorised by the RBA to use the FSS.

**4.6(h) Eligibility – Connected Institutions**

To be a Connected Institution a person must:

...

(h) satisfy each of the requirements set out in Regulation 4.3(a) to (e).

7.1 Full Participants and Settlement Participants must be, and must remain, authorised by the RBA to use the FSS for settlement of Cleared NPP Payments.

7.3 **Settlement of NPP Payments**

Subject to Regulations 7.5 and 7.6, each Cleared NPP Payment must be submitted for settlement:

(a) via the FSS;

(b) by exchange of value by debiting and crediting of the ESAs of the NPP Participants responsible for settlement of the Cleared NPP Payment, which includes for the avoidance of doubt, any Settlement Participant appointed; and

(c) otherwise in accordance with all applicable laws and regulations and the applicable RITS Regulations.

(b) Description of the goods or services in relation to the supply or acquisition of which this application relates:

See above.

(c) The term for which authorisation of the conduct is being sought and grounds for supporting this period of authorisation:

Perpetual. This conduct is capable of receiving legal protection under the notification process, but NPPA has sought authorisation instead given authorisation is being sought in relation to other provisions in the NPP Regulations. However, there is no reason for not granting the same legal protection that could be afforded under the notification process, whereby legal protection is provided 14 days after lodgement of the notification and there is no set term for the protection.

**3. Parties to the proposed arrangement**

(a) Class or classes of persons to which the conduct relates:  
*(Refer to direction 5)*

All parties and potential parties to a contract, arrangement or understanding constituted by the Regulations.

(b) Number of those persons:

(i) At present time:

13

- (ii) Estimated within the next year:  
(Refer to direction 6)

Unlikely to be more than 13, but cannot be determined.

- (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:

Please refer to **Annexure 1**.

#### **4. Public benefit claims**

- (a) Arguments in support of authorisation:  
(Refer to direction 6)

Please refer to **Annexure 2**.

- (b) Facts and evidence relied upon in support of these claims:

Please refer to **Annexure 2**.

#### **5. Market definition**

Provide a description of the market(s) in which the goods or services described at 2 (b) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):  
(Refer to direction 7)

Please refer to **Annexure 2**.

#### **6. Public detriments**

- (a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the conduct on the prices of the goods or services described at 2 (b) above and the prices of goods or services in other affected markets:  
(Refer to direction 8)

Please refer to **Annexure 2**.

- (b) Facts and evidence relevant to these detriments:

Please refer to **Annexure 2**.

#### **7. Joint Ventures**

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?

Yes

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

No

(c) If so, by whom or on whose behalf are those other applications being made?

Not applicable


**8. Further Information**

(a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

Vanessa Chapman, General Counsel, NPP Australia Limited, Level 6, 14 Martin Place Sydney, NSW 2000.

Dated 17 October 2016

Signed by/on behalf of the applicant

  
.....  
(Signature)

VANESSA CHAPMAN  
.....  
(Full Name)

NPP AUSTRALIA LIMITED  
.....  
(Organisation)

GENERAL COUNSEL  
.....  
(Position in Organisation)

## DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business in the course of which the conduct is engaged in.
4. Provide details of the conduct (whether proposed or actual) which may constitute the practice of exclusive dealing in respect of which this authorisation is sought.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing — provide a true copy of the writing; and
  - (b) to the extent that any of the details have not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
  6. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
  7. Provide details of the market(s) likely to be effected by the conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the authorisation.
  8. Provide details of the detriments to the public which may result from the conduct including quantification of those detriments where possible.

# ANNEXURE 1

## Parties to the Proposed Arrangement

### PARTIES OR POTENTIAL PARTIES TO CONTRACT ARRANGEMENT OR UNDERSTANDING CONSTITUTED BY THE NEW PAYMENTS PLATFORM (NPP) REGULATIONS

#### MEMBERSHIP OF NPP

	Name of institution (all institutions listed are financial institutions)	Address
1.	Australia and New Zealand Banking Group Limited	Level 9, ANZ Centre Melbourne, 833 Collins Street, Docklands, NSW 3008
2.	Australian Settlements Limited	ASL House, 6C Geils Court, Deakin, ACT 2600
3.	Bendigo and Adelaide Bank Limited	The Bendigo Centre, PO Box 480, Bendigo, VIC 3550
4.	Citigroup Pty Limited	Level 15, 2 Park Street, Sydney, NSW 2000
5.	Commonwealth Bank of Australia	Ground Floor, Tower 1, 201 Sussex Street, Sydney, NSW 2000
6.	Cuscal Limited	Level 1, Margaret Street, Sydney, NSW 2000
7.	HSBC Bank Australia Limited	HSBC Centre, 580 George Street, Sydney, NSW 2000
8.	Indue Ltd	Level 3, 601 Coronation Drive, Toowong, QLD 4066
9.	ING Bank (Australia) Limited	140 Sussex Street, Sydney, NSW 2000
10.	Macquarie Bank Limited	1 Shelley Street, Sydney, NSW 2000
11.	National Australia Bank Limited	800 Bourke Street, Docklands, VIC 3008
12.	Reserve Bank of Australia	65 Martin Place, Sydney, NSW 2000
13.	Westpac Banking Corporation	Level 20, 275 Kent Street, Sydney, NSW 2000

Any other organisation which satisfies the eligibility criteria for participating membership of NPP as defined in the Regulations for NPP.

## ANNEXURE 2 – Application for authorisation

### 1 Background

The New Payments Platform (**NPP**) aims to increase the efficiency of electronic payments and to allow those payments to be completed in near real time (including at times outside standard banking hours), adding convenience to payers and payees as well as keeping in step with the present speed of commerce. The NPP is a multi-layered infrastructure that has been designed to promote competition and drive innovation in payment services, and also respond to the evolving needs of Australians in the digital economy, now and in the future.

The legal framework for the operation of the NPP includes:

- the NPP Regulations (that govern the rules of access and participation in the NPP, including high level obligations in relation to basic infrastructure, clearing transactions and settlement ); and
- the NPP Procedures (covering operational or technical practices, procedures, standards and specifications, detailing how obligations in the NPP Regulations are to be met).

The NPP Regulations and NPP Procedures have been developed by NPP Australia Limited (**NPPA**) with the support of the Australian Payments Clearing Association (**APCA**). APCA has been involved in the coordination of the industry effort to establish NPPA, and develop the NPP and the NPP Regulations. APCA has provided regular progress reports on the development of the NPP to the Australian Competition and Consumer Commission (**ACCC**). NPPA has now appointed its management personnel and assumes administrative responsibility for development of the NPP Regulations and for making this application.

### 2 Request for authorisation

NPPA seeks authorisation in respect of the following provisions in the NPP Regulations:

- suspension and termination provisions that enable NPPA to suspend or terminate a participant<sup>1</sup> in certain circumstances;
- SWIFT requirement provisions which require that certain participants to also be a member of SWIFT and enter into a network connection and services agreement with at least two network connectivity service providers; and
- Exchange Settlement Account (**ESA**) requirement provisions which require certain participants to settle NPP payments through the Fast Settlement Service (**FSS**) to be operated by the Reserve Bank of Australia (**RBA**) using their own ESA (or the ESA of other members).

#### 2.1 Suspension and termination provisions

The ability to suspend or terminate a participant is critical for ensuring that a clearing system can avoid systemic failure, and maintain efficiency and integrity even in circumstances where one or more participants in the system are unwilling or unable to meet their obligations to other participants.

NPPA submits that, to the extent (if any) that the relevant suspension and termination provisions (set out in response to Question 2 of Forms A and B) of the NPP Regulations:

- may be an exclusionary provision within the meaning of section 4D of the *Competition and Consumer Act 2010* (Cth) (**the Act**);
- may be a cartel provision within the meaning of section 44ZZRD of the Act; and/or

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<sup>1</sup> Please note that “participant” is used in the broad sense such that it covers NPP Participants, Connected Institutions and Overlay Services Providers as defined in the NPP Regulations.



- may have the purpose or likely effect of substantially lessening competition in a market within the meaning of section 45 of the Act,

such provisions in all the circumstances will result in a benefit to the public and that benefit outweighs any associated detriment.

## 2.2 Eligibility: SWIFT requirement provisions

SWIFT was appointed to build, deliver and support the “basic infrastructure” components of the NPP. Thus, in order to participate in the NPP system (and be able to send and receive messages using this basic infrastructure), participants will be required to become members of SWIFT (if they are not members already) and to set up connections with at least two network connectivity service providers (to facilitate communications and enable resilience in the system).

NPPA submits that to the extent (if any) that any of the eligibility provisions dealing with the requirement to be a member of SWIFT and establish network connection agreements with at least two service providers (set out in response to Question 2 of Form E) would or may constitute third line forcing within the meaning of sections 47(6) or 47(7) of the Act, such provision in all the circumstances will result in a net or overall benefit to the public.

## 2.3 Settlement: ESA requirement provisions

Using the FSS for settlement is integral to the design and operation of the NPP. Furthermore, using ESAs for the settlement of NPP payments is the most efficient, secure and cost-effective method to develop and implement the types of payments contemplated in the NPP.

The FSS is owned and operated by the RBA, and therefore NPP participation will mean that certain NPP participants will be required to be authorised by the RBA to use the FSS and an ESA (if they do not have that already).

NPPA therefore submits that to the extent (if any) that any of the settlement provisions requiring participation in the FSS and having access to a ESA for settlement (set out in response to Question 2 of Form E) would or may constitute third line forcing within the meaning of sections 47(6) or 47(7) of the Act, such provision in all the circumstances will result in a net or overall benefit to the public.

# 3 NPP and NPPA

## 3.1 NPP

As noted above, the NPP is the new infrastructure for Australia’s low-value payments. The NPP will be an open access infrastructure for fast payments, which will work using real time line by line settlement, rather than deferred net settlement, where participants’ ESAs are debited and credited at the time of clearing. The NPP is being developed via industry collaboration to enable households, businesses and government agencies to make simply addressed payments, with near real-time funds availability to the recipient, on a 24/7 basis. The NPP infrastructure will support multiple ‘overlay’ services that can be independently developed to offer innovative payment services through NPP Participants to end-users.

The NPP gives effect to the industry response to the RBA’s strategic objectives on payments innovation set out in the former Real Time Payments Committee’s<sup>2</sup> Proposal on innovation in the payments system.

The NPP is on track to be operational in the second half of 2017.

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<sup>2</sup> The Real Time Payments Committee was formed by APCA as an industry response to the RBA’s Conclusions to the Strategic Review of Innovation in the Payment Systems published in June 2012.

## 3.2 NPPA

NPPA is responsible for the oversight of the NPP program. NPPA's objectives (as noted in its Constitution) include establishing and operating the NPP in a manner that promotes the public interest by:

- ensuring the safe, reliable and efficient operation of the NPP;
- facilitating fair access to the NPP as a mutually owned utility infrastructure; and
- ensuring ongoing investment in the NPP to meet the changing needs of financial institutions and users of Australian payments systems.

Further background information is set out in the Appendix.

## 4 Relevant markets affected by the proposed conduct

The NPP will provide the infrastructure needed to facilitate a wide range of consumer, business and government payments. Its first overlay service - the Initial Convenience Service, to be provided by BPAY - will enable three types of service: "peer to peer" payments (eg, deployed through mobile channels); payments made with an accompanying document; and a "request to pay" service. It is expected that other overlay services will be offered by various commercial providers in due course.

The NPP will impact the entire payments system, as it is expected to provide the basic infrastructure needed to underpin the development of multiple overlay services and support multiple forms of payments well into the future.

## 5 Future with and without the proposed conduct

With the proposed conduct, the NPP is expected to operate efficiently and in a manner that is consistent with other Australian payment and clearing systems (including those administered by APCA) and systems in other jurisdictions, and in accordance with the policy objectives outlined by the RBA.

Without the proposed conduct, the NPP may not be able to operate in a way that meets its objectives and the objectives set out by the RBA. Customers and Australian businesses would be likely to miss out on all the opportunities that the NPP would offer (in terms of a fast, versatile, data-rich payment system).

## 6 Facts and evidence relied upon in support of grounds for authorisation

The NPP Regulations encompass membership criteria, suspension and termination provisions, clearing and settlement provisions, addressing service, procedures, incident and capacity management and dispute resolution. However, authorisation is only sought for the termination and suspension provisions and select parts of the eligibility criteria and settlement obligations.

### 6.1 NPP suspension and termination provisions

#### (a) Relevant provisions

The suspension and termination provisions are set out in Regulation 9.2-9.5 of the NPP Regulations. They enable NPPA to suspend or terminate a participant in certain circumstances.

#### (b) Background

Suspension and termination provisions are effectively "last resort" steps to be contemplated only if a participant's continuing participation would impair the efficiency and / or integrity of the system. They are intended to operate in a similar way to the suspension and termination provisions included in all of APCA's clearing system regulations. The APCA suspension and termination provisions have not

been used or specifically contemplated being used since APCA's establishment, yet they are considered necessary to safeguard the integrity and efficiency of payments clearing and settlement systems (eg, in case a participant becomes insolvent or unable to settle). They also provide a mechanism to ensure compliance with the Regulations and Procedures and to allow participants to have confidence in the system.

If triggered, the suspension and termination provisions have the effect of excluding the institution concerned from participating in, and receiving services through, the system. Potentially, an excluded institution might have difficulty engaging other participants and accordingly exclusion from the system may have an adverse impact on the institution concerned.

However, suspension can only occur in a limited range of circumstances (as set out in Regulation 9.2). Two of these are if a member's prudential supervisor requests suspension or if a member agrees to suspension. The circumstances in which NPPA can unilaterally suspend a participant are as follows:

- if a participant no longer satisfies the participation criteria;
- if a participant is in material breach of its obligations under the NPP Regulations or the NPP Procedures and fails to rectify the breach or provide a satisfactory explanation within a prescribed time period;
- if a participant suffers an insolvency event; or
- if a participant engages in conduct reasonably regarded by the Board to be contrary to the interests of NPPA or which may adversely affect the NPP Basic Infrastructure.

In lieu of suspending a participant, NPPA may impose conditions on the participation of that participant (including changing the capacity in which that participant may participate in the NPP, or varying any provision of the NPP Procedures as may be reasonable and proportionate).<sup>3</sup> The rights and obligations of that participant will then be subject to any such conditions or variations, which may be varied or revoked at any subsequent time by NPPA.

Termination of a participant<sup>4</sup> can follow suspension provided that any breach of the rules has not been remedied, the participant has been provided with the opportunity to make submissions to the Board regarding termination and the participant has been given written reasons for the termination. Otherwise, termination only occurs as a result of a participant resigning, becoming insolvent or ceasing to exist.

#### (c) Public benefit

The scope of the application of the suspension and termination provisions is limited to the minimum necessary to protect the efficiency and integrity of the NPP system.

NPP can play its part effectively only if its participants operate in accordance with NPPA's Constitution and the NPP Regulations and NPP Procedures. Suspension and termination provisions provide "last resort" sanctions to safeguard that important requirement. As in any set of rules or laws, sanctions are an important mechanism to foster compliance with the necessary rules that support the payment system. Without these safeguards, the efficacy and integrity of the NPP would be diminished and the confidence of participants of the NPPA would be reduced. At the extreme, this would compromise NPPA's ability to centrally coordinate standards for clearing and settlement of NPP transactions.

Similar provisions in other payment systems operated by APCA have been considered and authorised by the ACCC. In those decisions, the ACCC has accepted that without the ability of participants to self-enforce compliance with the standards established, the operational efficiency of

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<sup>3</sup> See Regulation 9.4.

<sup>4</sup> See Regulations 9.5.

payment system could be undermined and at the extreme, compromise the industry's ability to centrally coordinate the clearing and settlement of the relevant transactions.

## **6.2 Eligibility criteria**

### **(a) Relevant provisions**

Provisions 4.3(a), (c), 4.4(a); 4.6(h) of the Regulations require Full Participants, Clearing Participants or Connected Institutions to:

- become a SWIFT User or Domestic SWIFT User and a BIC11 Holder; and
- enter into a network connection and services agreement with at least two network connectivity service providers.

### **(b) Background**

The NPP consists of the basic infrastructure and overlay services. The basic infrastructure consists of: network services between platform participants; a switch or routing service; and an addressing service.

In the process of developing the NPP, NPPA signed a 12-year contract with global provider of secure financial messaging services Society for Worldwide Interbank Financial Telecommunication (ie, SWIFT) to design, build and operate the basic infrastructure. Specifically, SWIFT will build, deliver and support the networking services and switching services (and it also sub-contracted to Fiserv for the build, delivery and support of the addressing service).

While SWIFT will build the NPP infrastructure on a stand-alone basis, membership of SWIFT is needed because some services and components of the broader SWIFT network will be relied upon to facilitate participation in the NPP. For example, by becoming SWIFT members, participants will be able to be provisioned on the SWIFT network to send and receive financial messages, to gain access to the SWIFT management portal, to gain access to global case management tools, to gain access to reporting tools, etc.

Having two network connections, for its part, is necessary to ensure the communications infrastructure is highly available and highly resilient (ie, the second line will provide redundancy services).

SWIFT was appointed following a highly competitive and exhaustive global tender process. The process lasted 6 months and involved significant consultation and assessments to find the best solution (in terms of competency and resiliency) at the best price. SWIFT won the tender because of a combination of:

- competence, reliability and reputation;
- flexibility and willingness to work in partnership with NPPA;
- knowledge and experience providing services to the Australian payments system; and
- competitive cost proposition.

### **(c) Public benefits**

After a careful assessment, NPPA formed the view that the proposed arrangements – ie, providing for customised building of the basic infrastructure but also leveraging SWIFT's existing infrastructure and capability - provided an optimal solution for the NPP (in terms of technology and costs). Thus the main benefits associated with these requirements are linked to the benefits associated with successful and efficient implementation and operation of the NPP. Note that these benefits will be achieved without having to incur in the costs that would have followed if SWIFT had been required to

duplicate those systems and services that are intended to be shared between the NPP basic infrastructure and the SWIFT network.

Separately, having duplicate connections also provides benefits in terms of efficiency and reliability.

In this context, the NPP would not be able to function properly (if at all) without these requirements.

### **6.3 Settlement obligations**

#### **(a) Relevant provisions**

Provisions 7.1 and 7.3, 3.5(c), 4.3(f), 4.4(b), and 4.5 of the NPP Regulations provides that cleared NPP Payments must be settled via the FSS operated by the RBA using ESAs. Therefore:

- Full Participants<sup>5</sup> and Settlement Participants<sup>6</sup> must be, and must remain, authorised by the RBA to use the FSS for settlement of Cleared NPP Payments; and
- Clearing Participants<sup>7</sup> must enter into a proprietary arrangement with an authorised NPP Participant for settlement of its NPP Payments.

#### **(b) Background**

The RBA has developed the FSS specifically to settle NPP payments. As such, the FSS is an integral part of the arrangements that will allow NPP payments to be processed.

The FSS is a service forming part of the Reserve Bank Information and Transfer System (**RITS**). It is therefore expected that direct users of the FSS will be RITS members and as a result bound by the RITS Regulations. In this context, certain NPP participants are required to also become RITS members and be bound by these rules.

ESAs are used to give effect to final and irrevocable settlement of obligations in RITS. Having an ESA is a requirement associated with RITS' participation (and membership of RITS is compulsory for all ESA holders).

Given the above, certain participants in the NPP must either operate their own ESA or use another ESA holder as their settlement agent.

#### **(c) Public Benefit**

As noted above, settlement via an ESA is integral to the designed operation of the NPP (and to ensure that payments can be settled in a fast a secure manner). Without these requirements, the NPP would not function properly (if at all) and a fundamental change to the design and operation of the NPP would be required. The ESA requirement provisions therefore generate the public benefits that are derived from having the NPP and operating it in a secure manner.

Utilisation of RBA processes and infrastructure (ie, ESA and the FSS) is the most efficient, reliable and cost-effective method to develop and implement the NPP.

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<sup>5</sup> Being those that are connected to the NPP Basic Infrastructure and authorised by the RBA to use the Fast Settlement Service for settlement of NPP Payments.

<sup>6</sup> Being those that are not connected to the NPP Basic Infrastructure but are authorised by the RBA to use the FSS for settlement of NPP Payments.

<sup>7</sup> Being those that are connected directly to the NPP Basic Infrastructure for the purpose of sending and receiving NPP Payments and Non-Value Messages; but has not been authorised by the RBA to use the Fast Settlement Service (FSS) for settlement of NPP Payments.

## **7 Public Detriments**

### **7.1 Suspension and termination provisions**

The suspension and termination provisions, if triggered, have the effect of excluding the institution concerned from participating in and receiving services through the NPP. Because an excluded institution may have difficulty engaging other participants, exclusion from NPP may have an adverse impact on the institution concerned.

However, these provisions are “last resort” sanctions and similar sanctions in other clearing systems managed by APCA have not been used since APCA’s establishment. In fact, NPPA notes that similar suspension and termination provisions have been (and continue to be) authorised with respect to the Regulations in other APCA frameworks. As recognised by the ACCC in those determinations, although exclusion may have an adverse impact on the institution concerned, the suspension and termination provisions do not place unreasonable requirements on the relevant participants. Furthermore, to the extent that any anti-competitive detriment may arise in respect of a particular participant, this anti-competitive detriment does not affect competition itself, given the number of competing providers of such services.

In NPPA’s view, therefore, there are no likely public detriments. To the extent that a potential adverse impact upon a suspended or terminated participant was considered to be a public detriment, it would be minimal and would be outweighed by the public benefit associated with having a secure NPP.

### **7.2 Eligibility and settlement provisions**

As noted above, the SWIFT requirement provisions and the ESA requirement provisions are integral to the design and operation of the NPP.

NPPA does not consider that these requirements will impose a barrier to admission to the NPP. In particular:

- Becoming a SWIFT member does not impose unreasonable or onerous obligations. The process is reasonably straightforward and many APCA members (which will also become NPP participants) are members already. A similar requirement to acquire services from SWIFT and become members of SWIFT was included in the HVCS Regulations, and since the inception of the HVCS in 1997, each prospective member that has applied to join SWIFT as a member of SWIFT in connection with the HVCS has been admitted. There is no reason to believe that the case would not be the same for participation in the NPP.
- Similarly, membership of RITS and having an ESA is a common requirement for many payment and clearing arrangements. There is no reason to believe that this requirement will add any unreasonable burden or be a barrier to prospective participants.
- While the requirement to connect to at least two network connectivity service providers may increase costs to the relevant participants, contingency redundancy requirements are common features of electronic payment systems to meet availability and resiliency requirements and the benefit of (and requirement for) high availability and resilience far outweighs any public detriment that may arise from the requirement.

NPPA does not consider there are any likely significant public detriments resulting to the potential third line forcing provisions. In any case, any public detriment would be outweighed by the public benefit in the implementation and operation of the NPP (the operation of which relies on the relevant eligibility and settlement provisions).

## **Annexure**

### **Australian Payment Systems**

#### **(a) Background**

A payment is the transfer of a financial asset, of the kind generally used as a medium of exchange, from one person to another. Such assets are generally cash or obligations drawn on organisations which, in the normal course of their business, provide the means for their customers to transfer value to third parties.

The payments system is the institutional infrastructure which carries payment messages and transfers funds from one party's account to another party's account. It underpins commerce and is at the core of the financial system.

A payments system comprises payment instruments and delivery mechanisms. A payment instrument is the form that a payment message takes (such as a cheque or debit card) and is the means by which one party transfers value to a third party. Such a message is typically a request by one party (such as the drawer of a cheque) to another party (the drawee of the cheque) to pay a certain sum to a third party (the payee). A delivery mechanism is the means by which payment messages are carried from one point within the payments system to another.

Where both parties to a payment transaction maintain accounts with the same organisation, payment arrangements are relatively simple. The organisation debits the paying customer and credits the receiving customer. Where the parties to the payment instruction are customers of different organisations, a process, called "clearing and settling", is needed for both organisations to reflect the change in their customers' accounts and for value to pass between those organisations:

- Clearing is the cross-institutional exchange of individual payment messages for the purposes of obtaining settlement. It entails sorting, routing and exchanging payment instructions; verifying the integrity of the instructions and the accuracy of the sums involved; correcting the sums for errors and other adjustments and finally, determining net amounts which, once paid, will settle any resultant debt between the financial institutions involved. Clearing in Australia primarily governed by rules set out by APCA under its various clearing systems.
- Settlement is the exchange of value between organisations for the purpose of providing finality of payment for the obligations arising out of clearing. As a general rule, settlement between financial institutions for their obligations arising from domestic clearing of payment messages is effected through transfers of balances held by those institutions with the central bank of the country concerned. Settlement between financial institutions in Australia is achieved through transfers of their ESA balances held with the Reserve Bank of Australia.

#### **(b) Existing payment systems**

There are 4 existing payment systems currently administered by APCA. These systems relate to cheques (APCS), direct entry (BECS), cards in certain circumstances (IAC) and high value (HVCS). Each is managed by a committee reporting directly to APCA's Board. APCA provides the rules, procedures and decision-making structure that enable the transfer of value between providers of these payment services.

### **7.3 NPPA**

#### **(a) Overview**

NPPA was established in August 2014 as a joint venture company to assume the role of the Real Time Payments Committee and oversight and management of the NPP Program.

(b) Board

The NPPA Board was formed in December 2014 and is composed of four “High-banded” shareholder representatives – Australia and New Zealand Banking Group Limited, Commonwealth Bank of Australia, National Australia Bank Limited and Westpac Banking Corporation, the RBA and three elected directors (from Cuscal Limited, Bendigo & Adelaide Bank Limited and Citigroup Pty Limited – each of whom are “Medium-banded” shareholders), together with the chief executive officer of APCA (as the industry business sponsor) and an independent Chair. The APCA appointee was replaced by Adrian Lovney who was appointed as the inaugural chief executive officer of NPPA in September 2016.

The different bands of shareholding are determined based on the funding / subscription that those members invest in the NPP.

Each director, except for the chief executive officer, has one vote and decisions will be passed by a 66% majority.

(c) Regulatory Framework

The NPP Regulation and NPP Procedures operate as a multi-lateral contract – a set of obligations between each participant and NPPA, and between participants.

In addition to the NPP Regulations and the NPP Procedures, other key documents include:

- the constitution regulating the operation of NPPA; and
- the Shareholders Agreement that establishes who is a participant / shareholder and the obligations that follow from this.

Procedures and other technical specification documents developed by SWIFT for and in consultation with NPPA will then provide the detail around how these obligations will be met.

(d) Members

The current members and shareholders of NPPA include the company’s 12 founding members (Australia and New Zealand Banking Group Limited; Australian Settlements Limited; Bendigo and Adelaide Bank Limited; Citigroup Pty Ltd; Commonwealth Bank of Australia; Cuscal Limited; Indue Ltd; ING DIRECT; Macquarie Bank Limited; National Australia Bank Limited; Reserve Bank of Australia; and Westpac Banking Corporation) and HSBC Bank Australia Limited.

(e) Participation criteria

Participation in NPP is voluntary. To the extent that participants may be regarded as being necessary for business reasons, the participation criteria are inclusive and conditions of participation are solely directed to protecting the efficiency and integrity of the system.

There are various levels of participation:

- NPP Participants, of which there are three types: Full Participant, Clearing Participant and Settlement Participant.
  - Clearing Participants are connected directly to the NPP Basic Infrastructure for the purpose of sending and receiving NPP Payments and Non-Value Messages; but has not been authorised by the RBA to use the FSS for settlement of NPP Payments (and therefore uses the services of another NPP Participant to settle its NPP Payments);
  - Settlement Participants are not connected to the NPP Basic Infrastructure but are authorised by the RBA to use the FSS for settlement of NPP Payments; and



- Full Participants are those that are connected to the NPP Basic Infrastructure and authorised by the RBA to use the Fast Settlement Service for settlement of NPP Payments;
- Connected Institutions – being institutions that are connected to the NPP Basic Infrastructure solely for the purpose of sending and receiving Non-Value Messages, and which, for the avoidance of doubt, may also be an Overlay Service Provider. These are not ‘Participants’ as defined in the NPP Regulations; and
- Overlay Service Providers – being those authorised by NPPA to provide an Overlay Service, which is a payment service or payment-related service using the NPP Basic Infrastructure, to be provided by the Overlay Service Provider to Overlay Service Subscribers. These are not ‘Participants’ as defined in the NPP Regulations.

Various eligibility criteria is set out for each of the above participants to ensure that the participants of the NPP are able to meet standards reasonably required for the safe operation of the system. The process for admitting new participants is open and transparent.

Participation is currently limited to authorised deposit-taking institutions (and the RBA) and those connecting directly to the NPP system and/or those using their own ESA with the RBA to settle NPP transactions. Such companies also need to be a shareholder in NPPA. However:

- Access to the NPP is and will continue to be available to potential participants on reasonable and clearly understood terms. NPP is also intended to be a new platform rather than an augmentation or extension of other existing clearing systems and therefore participants can continue to use the other systems in lieu of the NPP;
- The NPP does not discriminate between different institutional types. Banks, non-bank financial institutions and other bodies corporate can participate provided they meet the required terms and conditions; and
- A secondary market will be developed following the establishment of the NPP. That is, other institutions will be able to offer their services to others that, for whatever reason, are unwilling or unable to operate as NPP participants. Therefore, the NPP will be highly accessible and may be used by institutions that do not actually connect to the system.

#### **7.4 APCA**

As noted above, APCA has assisted and facilitated development of the NPP Regulations and has overseen development of the system more generally.

APCA is an industry self-regulatory body with specific accountability for key parts of payments clearing and settlement arrangements in Australia. APCA’s charter, as set out in its Constitution, is to coordinate, manage and ensure the implementation and operation of effective payments clearing and settlement systems, policies and procedures. APCA does not process payments, but instead coordinates and manages payments clearing arrangements for each of the clearing systems it establishes. Broadly, they are responsible for technical and efficiency standards, operating procedures and policies, supervision of observance of the clearing system rules, assessment of clearing volumes, dispute resolution and approval of membership applications according to the rules. Individual institutions are responsible for their own clearing operations, and must conduct their operations according to APCA’s rules as set out in the Regulations and Procedures for each of APCA’s clearing systems in which they participate.

**FINAL DRAFT**

17 October 2016

Version 0.6.

**Regulations**

for

**NEW PAYMENTS PLATFORM**

**(NPP)**

Commenced [     ]

**REGULATIONS**  
**FOR**  
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**Part 1 PRELIMINARY****1.1 Definitions**

**ABN** means the Australian business number allocated by the ATO.

**ACN** means the Australian company number allocated by ASIC.

**ARBN** means the Australian registered body number allocated by ASIC.

**ARSN** means the Australian registered scheme number allocated by ASIC.

**Accession Agreement** means an agreement by which a prospective NPP Participant accedes to the Shareholders' Agreement.

**ACICA** has the meaning given in Regulation 12.7(f).

**ACICA Mediation Rules** has the meaning given in Regulation 12.7(f).

**Account** means an account with an ADI.

**Account Holder** means the person who owns, or is authorised to operate an Account.

**Account Number** means the number issued by an ADI to identify a particular Account.

**Additional Components** means software, hardware and Services which are additional to a connected NPP Participant's or Connected Institution's NPP Componentry entitlement under the MISD, and which may be acquired at the option of the connected NPP Participant or Connected Institution from NPPA under the Reseller Process.

**Additional Component Fees** means the fees for Additional Components set by the Board of NPPA.

**Addressing Lookup** means a request to look up and provide the Alias Address and Alias Name registered for a particular Alias Identifier.

**Addressing Service** means that component of the NPP Basic Infrastructure that enables registration of Alias Information and performance of Addressing Lookups.

**Addressing Service Management Portal** means the software application hosted by NPPA to enable lodgement of Addressing Service queries and generation of Addressing Service reports.

**ADI** means an authorised deposit-taking institution as defined in the *Banking Act 1959 (Cth)* or the RBA.

**ADI Identifier** means, in relation to a particular ADI or the RBA, the ADI's or RBA's BSB number or Issuer Identification Number.

**Admission Eligibility Requirements** means:

- (a) in the case of a prospective Full Participant, the requirements set out in Regulation 4.3;
- (b) in the case of a prospective Clearing Participant, the requirements described in Regulation 4.4;
- (c) in the case of a Settlement Participant, the requirements described in Regulation 4.5; and

- (d) in the case of a Connected Institution, the requirements described or referred to in Regulation 4.6(h).

**Alias Address** means the ADI Identifier and Account Number associated with an Alias.

**Alias Identifier** and **Alias** means a unique identifier for an Account such as:

- (a) the Account Holder's telephone number (including domestic and international landline and mobile numbers);
- (b) the Account Holder's email address;
- (c) the Account Holder's ABN, ACN, ARBN or ARSN;
- (d) the Account Holder's Organisation Identifier;

or any other unique identifier for an Account approved by NPPA for registration in the Addressing Service.

**Alias Information** means the Alias Identifier, Alias Address and Alias Name for an Account.

**Alias Registration Protocol** means the protocol established by NPPA to manage the initial registration of Alias Information which will apply on a transitional basis only.

**Alias Name** means a name, word, or any combination of alphanumeric and/or other approved characters to reasonably represent and identify an Account Holder, either generated for the Account Holder by the Registering Participant or selected by the Account Holder with Registering Participant approval.

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

**Applicant** means a prospective NPP Participant or Connected Institution.

**Application Fee** means the fee determined by NPPA to be payable by an Applicant upon lodgement of a Participation Application in accordance with Regulation 4.7.

**Approved Change** means a Change Proposal which has been approved by NPPA in accordance with the NPP Change Management Process.

**APRA** means the Australian Prudential Regulation Authority.

**ASIC** means the Australian Securities and Investments Commission.

**ATO** means the Australian Taxation Office.

**Australian AML/CTF Regime** means all obligations and requirements arising from the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) and all associated instruments, guidance notes and determinations.

**Australian Sanctions Regime** means all obligations and requirements arising from:

- (a) *Autonomous Sanctions Act 2011* (Cth); and
- (b) *Charter of the United Nations Act 1945* (Cth); and

**Back Office System** means, in relation to any NPP Participant (other than a Settlement Participant) or Connected Institution, its Payments Connector, together with the associated MQ Environment and any other component required to respond to received SCT Clearing Request PACS.008 within the time-out values specified in Part 3 of the NPP Procedures.

**Basic Single Credit Transfer** and **BSCT** means a credit payment message, other than an OS Payment or an IFTI Payment, sent by an NPP Participant via the NPP Basic Infrastructure for the benefit of a Payee with another NPP Participant or Identified Institution.

*Note: it is technically possible to use the NPP Basic Infrastructure for “on us” transactions, but these are not within the BSCT definition.*

**BIC8 Holder** means a body corporate which is the holder of a registered BIC8 issued by SWIFT.

**BIC11 Holder** means a body corporate which is the holder of a registered BIC11 issued by SWIFT.

**Board** means the board of directors of NPPA.

**Business Day** means a day other than a Saturday, Sunday or a public holiday in both Sydney and Melbourne, Australia.

**Certificate Authority Service** means a certificate authority service for the purpose of enabling NPP Participants and document hosts, which provide capability of retrieving documents in accordance with the Financial Institution to Document Host Interface Specification, to obtain digital certificates and copies of the root signing certificate.

**Certification Service** means a certification service for the purpose of certifying the compliance of NPP Participants and document hosts with the Financial Institution to Document Host Interface Specification.

**Certification Solution** means the certification solution comprising:

- (a) a Financial Institution to Document Host Interface Specification;
- (b) a Certification Service; and
- (c) a Certificate Authority Service.

**Change Proposal** means any:

- (a) prospective SWIFT software release under the Technology Maintenance Plan;
- (b) proposed functional change to the NPP Basic Infrastructure, including one proposed as a result of Technology Evolution, or arising out of NPPA’s Technology Evolution activities; or
- (c) proposed change to any NPP Message or to the NPP Message Set.

**Chief Executive Officer** means the chief executive officer of NPPA.

**Cleared** has the meaning given in Regulation 6.2(b).

**Clearing Abort Notification** means an NPP Message (pacs.002) generated by the Payer Participant PAG in the event that a Clearing Notification (pacs.002) is not received within the configured timeout value.



**Clearing Notification** means the NPP Message (pacs.002) initiated in response to a Clearing Request.

**Clearing Participant** means an NPP Participant which:

- (a) connects directly to the NPP Basic Infrastructure for the purposes of sending and receiving NPP Payments and Non-Value Messages; but
- (b) has not been authorised by the RBA to use the FSS for settlement of NPP Payments, but which has entered into an arrangement with another NPP Participant to settle its NPP Payments.

**Clearing Request** means the NPP Message (pacs.008) that initiates an NPP Payment.

**Commencement Date** means the date determined by the Board to be the date upon which these Regulations become effective and binding.

**Confidential Information** means any information in any form or medium in connection with the operation of the NPP Basic Infrastructure which is made available by NPPA, either directly or via SWIFT or the RBA, or by any NPP Participant, Connected Institution or Overlay Service Provider to any other NPP Participant, Connected Institution, Overlay Service Provider or NPPA from time to time, and includes without limitation:

- (a) data and information in NPP Payments and Non-Value Messages, the NPP Business Reference Data Tables and NPP Reports, and all information and data contained in them; and
- (b) any parts or provisions of the NPP Regulations, NPP Procedures or any ancillary documents or materials which NPPA determines to be desirable to be kept confidential in order to ensure the integrity or security of the NPP Basic Infrastructure.

*Note: Regulation 16.4 provides that Confidential Information may be disclosed to an existing or prospective Identified Institution in connection with the provision of NPP clearing and / or settlement services.*

**Connected Institution** means a body corporate which is connected to the NPP Basic Infrastructure solely for the purpose of sending and receiving Non-Value Messages, and which, for the avoidance of doubt, may also be an Overlay Service Provider.

**Connected Overlay Service Provider** means an Overlay Service Provider that is also a Connected Institution.

**Connection Window**, in relation to an Overlay Service, means the dates within the range specified by NPPA for the purpose of testing and commencing provision of the service.

**Connectivity Requirements** means the requirements set out in Part [X] of the NPP Procedures that relate to the installation, testing and certification of the NPP Participant's or Connected Institution's NPP Componentry and any Additional Components.

**Constitution** means the constitution of NPPA.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Defendant Participant** has the meaning given in Regulation 12.4(a).

**Disabling Event** means any:

- (a) Outage (other than an FSS Outage or NPPA scheduled maintenance) or processing, communications or other failure of a technical nature; or
- (b) data or security breach; or
- (c) inaccessibility (total or partial) to facilities by means of which NPP Payments or Non-Value Messages are sent and received;

which affects, or may affect, the ability of any NPP Participant to send or receive NPP Payments or Non-Value Messages, or of any Connected Institution to send or receive Non-Value Messages or of any Overlay Service Provider to provide its Overlay Service.

**Dispute** has the meaning given in Regulation 12.1(a)(i).

**Dispute Resolution Certificate** has the meaning given in Regulation 12.1(a)(i)(A).

**Domestic SWIFT User** means a body corporate that has been authorised by SWIFT to be a SWIFT member for the purposes of subscribing to SWIFT Services.

**Dormant Overlay Service** means an Overlay Service which is dormant, other than for the purposes of testing, for a period of two years or more.

**Duplicate Detection Window** means, in relation to any NPP Payment, the period of 48 hours after receipt by the Payee Participant of the initial Clearing Request.

**Duplicate Payment** means an NPP Payment which has the same Transaction ID as another NPP Payment (but which is not a Replay).

**ePayments Code** means the electronic payments code, administered by ASIC, which regulates electronic payment facilities in Australia.

**Error Payment** means an NPP Payment initiated by a Payer who is not a 'user' as that term is defined in the *ePayments Code*, which, as a result of the Payer's error, is directed to the wrong Account.

**ESA** means an exchange settlement account maintained by an NPP Participant with the RBA for the purpose of effecting settlement of, amongst other inter-institutional payment obligations, the obligations required by these Regulations to be settled via the FSS.

**Financial Institution to Document Host Interface Specification** means the interface specification for the interaction and messaging between document hosts and NPP Participants.

**FSS** means the Fast Settlement Service operated by the RBA as a part of RITS, for settlement of NPP Payments by NPP Participants.

**FSS Outage** means an Outage of the FSS.

**Full Participant** means an NPP Participant which:

- (a) connects directly to the NPP Basic Infrastructure for the purposes of sending and receiving NPP Payments and Non-Value Messages; and

(b) is authorised by the RBA to use the FSS for settlement of NPP Payments.

**Governance Band** has the meaning given in Schedule 1 to the Shareholders' Agreement.

**GST** has the meaning given in the GST Law. It 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 NPP Regulations or the NPP Procedures in connection with any Taxable Supply (other than amounts payable under Regulation [X] and the GST exclusive value of any non-monetary consideration provided in connection with the Supply.

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

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

**Identified Institution** means an institution that is not connected to the NPP Basic Infrastructure, but which has an arrangement with one or more NPP Participants to clear and/or settle NPP Payments on its behalf using the institution's BSB, associated BIC11 and payment routing information set out in the NPP Business Reference Data Tables.

**IFTI** means an International Funds Transfer Instruction, as that term is defined in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth).

**IFTI Payment** means a credit transfer initiated by an NPP Participant in relation to an IFTI, to direct that IFTI to another NPP Participant which may be the beneficiary institution, or an intermediary in the IFTI transfer chain.

**Implementation Date** means the date determined by NPPA to be the date which an OSP Applicant or Overlay Service Provider could commence implementation of its Project Plan for a new Overlay Service.

**Incident** means a Disabling Event, and any other incident or event of a similar nature as determined by NPPA or the NPP Incident Response Group.

**Incident Management Plans** means the plans and arrangements established by the NPP Incident Response Group for the management of Incidents.

**Incident Management Procedures** means the procedures set out in Part 7 of the NPP Procedures, and includes the framework set out in Appendix A to the NPP Procedures.

**Indeterminate Settlement Status** means, in relation to a Cleared NPP Payment:

- (a) that no Settlement Notification has been received by either the Payer Participant or the Payee Participant within the timeout values for Settlement Notifications prescribed by the NPP Procedures; and
- (b) that neither the Payer Participant nor the Payee Participant is able to confirm that Cleared NPP Payment as having been either settled or rejected by reference to the FSS; and

- (c) the Payer Participant PAG has not initiated a Settlement Abort Notification in relation to that Cleared NPP Payment.

**Initial Eligibility Requirements** means the administrative and regulatory eligibility requirements for participation set out in:

- (a) Regulation 4.2(a) and Regulations 4.2(c) to (h), for prospective NPP Participants; and
- (b) Regulation 4.6(a) to (g) for prospective Connected Institutions.

**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 an NPP Participant, a Connected Institution or an Overlay Service Provider be wound up;
- (b) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of an NPP Participant, a Connected Institution or an Overlay Service Provider, or one of them is appointed, whether or not under an order;
- (c) an NPP Participant, a Connected Institution or an Overlay Service Provider 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 (other than a solvent reconstruction) involving any of them;
- (d) an NPP Participant, a Connected Institution or an Overlay Service Provider resolves to wind itself up or otherwise dissolve itself, or gives notice of intention to do so;
- (e) an NPP Participant, a Connected Institution or an Overlay Service Provider is or states that it is unable to pay its debts when they fall due;
- (f) as a result of the operation of section 459F(1) of the Corporations Act or any corresponding legislation, an NPP Participant, a Connected Institution or an Overlay Service Provider is taken to have failed to comply with a statutory demand;
- (g) an NPP Participant, a Connected Institution or an Overlay Service Provider is, or makes a statement from which it may be reasonably deduced that the NPP Participant, the Connected Institution or the Overlay Service Provider is, the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act or any corresponding legislation;
- (h) an NPP Participant, a Connected Institution or an Overlay Service Provider takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to an NPP Participant, a Connected Institution or an Overlay Service Provider;
- (i) the Australian Prudential Regulation Authority or another body responsible for the prudential supervision of an NPP Participant, a Connected Institution or an Overlay Service Provider assumes management and control of that NPP Participant, Connected Institution or Overlay Service Provider;

- (j) to the extent not otherwise provided for above, an NPP Participant, a Connected Institution or an Overlay Service Provider 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.

**Intellectual Property Rights** means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, database rights, trademarks, trade secrets, know-how, confidential information, patents, inventions and discoveries and all other intellectual property as defined in article 2 of the conventions establishing the World Intellectual Property Organisations 1967.

**Interface Connection** means the connection of an NPP Participant's or Connected Institution's Back-Office System to the NPP Basic Infrastructure.

**Inter-organisation Compensation Rules** means the document published by APCA entitled 'Inter-organisation Compensation Rules' version E005 dated 13 May 2014, and does not include any other versions or variations other than those approved by NPPA under Regulation 6.10.

**Issuer Identification Number** means the unique identification number allocated to an NPP Participant or Identified Institution by an authorised Australian standards body under ISO/IEC 7812.

**KYC Due Diligence Framework** means a framework developed and implemented by each NPP Participant that contains the following features as a minimum:

- (a) identification of all relevant customer identification obligations under the Australian AML/CTF Regime;
- (b) risk assessment methodology in relation to each such identified obligation;
- (c) process for the identification and management of compliance with such identified obligations (for example, processes for the management of compliance with identified obligations including ongoing review of KYC/beneficial owner information, controls to protect against holding accounts in the name of a sanctioned entity);
- (d) process for engaging with Regulatory Authorities including to report and comply with requests for information;
- (e) process for implementation, monitoring and oversight of the framework; and
- (f) a process for establishing that each Identified Institution to which it provides NPP Payments clearing and / or settlement services has a similar framework in place for ensuring compliance with its own obligations under the Australian AML/CTF Regime.

**Level 1 Overlay Service** means a proposed Overlay Service which requires no changes to the NPP Basic Infrastructure, the Interface Connection or the NPP Core Clearing and Settlement Rules.

**Level 2 Overlay Service** means a proposed Overlay Service which requires Minor Change to the NPP Basic Infrastructure, the Interface Connection or the NPP Core Clearing and Settlement Rules.

**Level 3 Overlay Service** means an Overlay Service which requires Major Change to the NPP Basic Infrastructure, the Interface Connection or the NPP Core Clearing and Settlement Rules.

**Major Change** means any change to the NPP Basic Infrastructure, the Interface Connection or NPP Core Clearing and Settlement Rules required to support an Overlay Service, other than a Minor Change.

**Manuals** has the meaning given in clause 13(a) of the MISD and includes, without limitation:

- (a) the NPP Service Description;
- (b) the NPP User Documentation;
- (c) the NPP Escalation Manual; and
- (d) the NPP Configuration Browser,

**Material Breach** means any material breach of the NPP Regulations or the NPP Procedures, including any breach of the NPP Regulations or NPP Procedures which has the capacity to adversely affect the integrity or security of the NPP Basic Infrastructure.

**Member** means a preference shareholder in NPPA.

**Minor Change** means any change to the NPP Basic Infrastructure, the Interface Connection or the NPP Core Clearing and Settlement Rules required to support an Overlay Service, which does not require a re-orchestration of NPP Message flows, including, but not limited to, such changes as the addition of a data field in the NPP Message format.

**MISD or Master Infrastructure and Services Deed** means the deed dated 2 December 2014 between NPPA and SWIFT.

**Misdirected Payment** means an NPP Payment initiated by a Payer, using an Alias as a proxy for the destination Alias Address, which is directed to an incorrect Account because the Registering Participant has not correctly registered or maintained the Alias Information.

**Mistaken Payment** means an NPP Payment initiated by a Payer who is a 'user', as that term is defined in the *ePayments Code*, which, as a result of the Payer's error, is directed to the wrong Account, for example the Payer:

- (a) uses or inputs incorrect Payee Account details in the initiation message, either accidentally or because of being advised by the Payee of wrong Account details; or
- (b) selects the incorrect Payee from a list of potential payees.

**MQ Environment** means IBM WebSphere MQ middleware used for securely exchanging NPP Messages between the Payments Connector of NPP Participants and FSS and the NPP Basic Infrastructure.

**Network Agreement** means a network connection and services agreement entered into between an NPP Participant (other than a Settlement Participant) or a Connected Institution and a Vendor Network Partner.

**New Payments Platform** means the new payments platform developed and established under the MISD which:

- (a) facilitates on a 24x7 basis near real-time clearing and settlement of AUD NPP Payments which may be initiated using either an Alias or destination Account details;
- (b) facilitates on a 24x7 basis near real-time exchange of Non-Value Messages;
- (c) provides enhanced capability to exchange remittance information;
- (d) is accessible to all ADIs (and other approved entities) on an equitable basis;
- (e) is efficient, flexible and scalable, and has high levels of reliability and security; and
- (f) supports ongoing innovation in payment services including through enablement of multiple overlay services tailored to particular payment needs.

**Non-Value Message** means a non-value message, such as a payment initiation or inquiry message, which may be sent and received via the NPP Basic Infrastructure.

**NPPA** means NPP Australia Limited (ACN 601 428 737).

**NPPA Servicer** means APCA or such other servicer appointed by the Board to perform such services and on such other terms as considered appropriate by the Board.

**NPP Basic Infrastructure** means the New Payments Platform comprising the network, switching and addressing infrastructure and systems developed by or on behalf of NPPA which:

- (a) supports the exchange of Non-Value Messages between NPP Participants and Connected Institutions; and
- (b) facilitates the clearing and settlement of NPP Payments between NPP Participants.

**NPP Business Reference Data** means the information and data provided by NPP Participants to, and collated and maintained by, NPPA identifying:

- (a) NPP Participants, Connected Institutions, Identified Institutions and Overlay Service Providers and their associated BSBs, BIC8s for NPP Payment and Non-Value Message routing purposes, BIC11s (for NPP Participants only), Issuer Identification Numbers and other payment routing information;
- (b) NPP Participants' clearing and/ or settlement agency arrangements with Identified Institutions and other NPP Participants; and

(c) members of NPP CUGs.

**NPPA Business Reference Data Tables** means the database of NPP Business Reference Data which is maintained by NPPA.

**NPP Change Management Process** means the methodology and process established by NPPA for the evaluation and testing of Change Proposals and for the implementation of Approved Changes.

**NPP Closed User Group** or **NPP CUG** means a group of NPP Participants and/or Connected Institutions admitted by NPPA to use the NPP Basic Infrastructure for the purpose of sending and receiving NPP Payments or Non-Value Messages associated with a particular business service, and includes, in relation to:

- (a) any Overlay Service, the group of NPP Participants which are OS Subscribers, and/or which provide clearing and/or settlement services to OS Subscribers which are not NPP Participants, to that Overlay Service; and
- (b) IFTI Payments, the group of NPP Participants which have elected to use the NPP Basic Infrastructure to send and receive IFTI Payments.

**NPP Componentry** means the software, hardware and other Services provided by NPPA, to establish connectivity to the NPP Basic Infrastructure, including:

- (a) the Payments Gateway (PAG) licence ;
- (b) one or more hardware security modules (HSM);
- (c) the Alliance Gold Connectivity Pack;
- (d) the SWIFT Net Link base licence (SNL);
- (e) the Domestic Messaging Channel licence (DMC);
- (f) the SWIFT Alliance gateway (SAG); and
- (g) consultancy services as described in Schedule 8 of the MISD.

**NPP Componentry Fee** means:

- (a) in relation to NPP Componentry to be acquired by a prospective Connected Institution, the fee for NPP Componentry set by NPPA; and
- (b) in relation to NPP Componentry acquired by an NPP Participant, the Subscription Price for the Shares that the NPP Participant is required to subscribe for under the Shareholders Agreement.

**NPP Contacts Database** means the database maintained and published by NPPA containing details of the NPP Operational Managers and the NPP Incident Managers nominated by each NPP Participant, Connected Institution and Overlay Service Provider, and any other representatives of those parties as considered necessary by the Board.

**NPP Core Clearing and Settlement Rules** means:

- (a) the obligations to use the NPP Message Set, in accordance with the NPP Message Usage Guidelines (including obligations to apply NPP Message format and orchestration rules);



- (b) the addressing service usage rules specified in Part 8 of the Regulations and Part [ ] of the NPP Procedures;
- (c) the minimum message response times specified in Part 6 of the Regulations and Part [ ] of the NPP Procedures;
- (d) the requirement to settle via the FSS in accordance with Part 7 (other than regulation 7.2(f)) of the Regulations, and Part [ ] of the NPP Procedures;
- (e) the Incident management arrangements specified in Part 14 of the Regulations and Part [ ] of the NPP Procedures;
- (f) the Outage management requirements specified in Part 5 and 14 of the Regulations and Parts [ ] and [ ] of the NPP Procedures;
- (g) the requirements to use the investigation messages and process specified in Regulation 6.8 and Part 4 of the NPP Procedures; and
- (h) the obligation to apply Regulation 3.7(f) for the purposes of resolving which party has responsibility for administration of requirements in circumstances where both NPP Regulations or NPP Procedures and OS Rules potentially apply.

**NPP Incident Manager** means the representative of each NPP Participant, Connected Institution and Overlay Service Provider responsible for the management of all reporting and other activity in relation to resolution of an Incident.

**NPP Incident Response Group** means the standing sub-committee of the Board comprising representatives of NPPA, NPP Participants, SWIFT and RBA, established to manage and resolve Incidents.

**NPP Management Committee** means the standing sub-committee of the Board established according to its terms of reference to undertake day-to-day management and operations of the NPP Basic Infrastructure.

**NPP Message** means a financial message within the NPP Message Set formatted in accordance with ISO 20022.

**NPP Message Set** means the set of ISO 20022 messages approved and published by NPPA for use within the NPP Basic Infrastructure and includes, without limitation:

- (a) Clearing Request (pacs.008);
- (b) Clearing Notification (pacs.002);
- (c) Clearing Abort Notification (pacs.002);
- (d) Settlement Request (pacs.009);
- (e) Settlement Notification (pacs.002);
- (f) Settlement Abort Notification (pacs.002);
- (g) Payment initiation messages (pain.001, pain.002, pain.013 and pain.014);
- (h) Request for Payment Return (camt.056);
- (i) NPP Payment Return (pacs.004); and
- (j) [Investigations messages \(camt.035, camt.030 and camt.029\)](#).

**NPP Message Usage Guidelines** means the guidelines published by NPPA which describe how specific ISO20022 messages are to be used within NPP and which define the usage of specific message elements including value, optionality and conditionality.

**NPP Operational Manager** means the representative of each NPP Participant, Connected Institution and Overlay Service Provider who is responsible for day-to-day management and reporting in relation to the NPP Basic Infrastructure.

**NPP Ordering Portal** means the eOrdering Portal hosted by SWIFT, on behalf of NPPA, to enable current and prospective NPP Participants and Connected Institutions to order NPP Componentry and Additional Components.

**NPP Participant** means a Full Participant, a Clearing Participant or a Settlement Participant.

**NPP Payments** means Basic Single Credit Transfers, OS Payments, IFTI Payments and associated messages.

**NPP Payment Return** means a NPP Message (pacs.004) that a Payee Participant will send to effect a return of a settled Misdirected Payment, Mistaken Payment, Error Payment, Duplicate Payment or other settled NPP Payment which it determines to return (as an unsolicited Payment Return) or which it returns pursuant to a Payer Participant's Request for Payment Return (camt.056).

**NPP Procedures** means the technical, operational and security procedures prescribed by NPPA for the purposes of the NPP Basic Infrastructure.

**NPP Regulations** or **Regulations** means the rules prescribed by NPPA that establish the core obligations and rights between NPPA, NPP Participants, Connected Institutions and Overlay Service Providers, including, without limitation, the annexures and schedules to these Regulations, as amended from time to time. A reference to a particular Regulation has a corresponding meaning.

**NPP Reports** means the reports produced by SWIFT for NPPA pursuant to the MISD, and includes for the avoidance of doubt:

- (a) reports on NPP Participant PAG activity and FSS PAG activity;
- (b) multidimensional analytics on NPP traffic data; and
- (c) statistical reporting on Addressing Service usage; and
- (d) Leased Line Usage report (as defined in the MISD).

**NPP Rules Committee** means the standing sub-committee of the Board established according to its terms of reference for the purposes of monitoring and assessing the NPP Regulations and Procedures, and approving proposed amendments to them.

**NPP Testing Protocol** means the testing plans and protocols established by NPPA and/or SWIFT for testing software and logical connection of NPP Componentry and Additional Components to the NPP Basic Infrastructure.

**NPP Volumetric Model** means the model, and underlying methodology and approach, developed by NPPA to define the Target Transaction Throughput for the NPP Basic Infrastructure.

**On-Boarding Process** means the registration process through which NPP Participants and Connected Institutions register with SWIFT, either to become:

- (a) SWIFT Users or Domestic SWIFT Users, BIC11 Holders and subscribers to the PKI Management Service, or
- (b) in the case of Settlement Participants, to become BIC8 Holders;

to receive the benefit of the SWIFT Services applicable to those categories.

**Order** means an order submitted to NPPA pursuant to the Reseller Process.

**Organisation Identifier** means a name, word or any combination of alphanumeric or other approved characters which accurately represents the name of an Account Holder who is a business customer or organisation and which also contains:

- (a) a description of the business or organisation undertaking, campaign or product; and/or
- (b) the geographic location of the business or organisation including suburb/town and state.

**OS Rules** means Overlay Service Rules.

**OSP Applicant** means an applicant who wishes to become an Overlay Service Provider.

**OSP Application** means an application in the form of Annexure B made by an OSP Applicant.

**OSP Application Fee** means the fee determined by NPPA to be payable by an OSP Applicant upon lodgement of an OSP Application in accordance with Regulation 4.9.

**Outage** in relation to:

- (a) a Full Participant, Clearing Participant or Connected Institution, means a total or partial PAG outage or Back Office System outage, whether of an intermittent nature or not, which persists for a period of [xx] minutes or more; and
- (b) in relation to the FSS PAG, means an outage notified by the RBA to NPPA.

**Overlay Service** or **OS** means a payment service, or payment-related service, using the NPP Basic Infrastructure, to be provided by an Overlay Service Provider to Overlay Service Subscribers.

**Overlay Service Commencement Date** means the date determined by NPPA under Regulation 4.12 to be the earliest approximate date upon which a new Overlay Service could commence operation.

**Overlay Service Identifier** means the unique code allocated by NPPA to an Overlay Service to identify Overlay Service Payments.

**Overlay Service Payment** or **OS Payment** means an overlay service payment transaction, and associated messages, cleared and settled using the NPP Basic Infrastructure by an NPP Participant (which is either an OS Subscriber or a provider of NPP clearing and settlement services to an OS Subscriber) pursuant to scheme rules established by an Overlay Service Provider.

**Overlay Service Provider** or **OSP** means a person who is authorised by NPPA to provide an Overlay Service.

**Overlay Service Rules** or **OS Rules** means all of the commercial, technical and other terms and conditions upon which an OSP provides an Overlay Service to OS Subscribers.

**Overlay Service Subscriber** or **OS Subscriber** in relation to an Overlay Service means a subscriber to the Overlay Service.

**PAG** means the SWIFT payments gateway software running on an NPP Participant's (other than a Settlement Participant) or Connected Institution's or the RBA's FSS infrastructure.

**Participation Application** means application for participation as an NPP Participant or Connected Institution in the form set out in Annexure A to these Regulations.

**Participation Change** means the on-boarding by NPPA of a prospective NPP Participant or Connected Institution under these Regulations.

**Participation Change Date** means:

- (a) one of at least four dates in each calendar year specified by NPPA, by 30 September in the previous calendar year, as being the Participation Change dates for that calendar year; and
- (b) subject to at least 1 months' notice being given to all NPP Participants, Connected Institutions and Overlay Service Providers, any other date in a calendar year specified by NPPA as being a Participation Change Date for the purposes of these Regulations.

**Participant Documentation** means the Manuals and any technical or operational documentation provided by NPPA, either directly or via SWIFT, to NPP Participants and Connected Institutions, which is designated as such.

**Payee** means, in relation to an NPP Payment, the Account Holder of the destination Account.

**Payee Participant** in relation to an NPP Payment, means the NPP Participant to which the Clearing Request is directed.

**Payer** means, in relation to an NPP Payment, the Account Holder of the source Account.

**Payer Participant** in relation to an NPP Payment, means the NPP Participant which sends a Clearing Request.

**Payments Connector** means, in relation to any NPP Participant (other than a Settlement Participant) or Connected Institution, any internal system it operates to provide a business accept/reject response to an incoming NPP Payment or Non-Value Message within the timeframes prescribed by the NPP Procedures.

**PKI Management Service** means the NPP public key management infrastructure service provided by SWIFT to Domestic SWIFT Users and SWIFT Users.

**Prescribed Minimum** means the NPP Componentry and any Additional Components determined by NPPA from time to time to be the minimum required to support an NPP Participant's, or Connected Institution's, estimated NPP Payment and Non-Value Message volumes.

**Privacy Law** means the *Privacy Act 1988* (Cth).

**Project Plan** means the OSP's plan for on-boarding a new Overlay Service.

**Provisioning Agreement** means an agreement between an NPP Participant or a Connected Institution and NPPA to provide the NPP Componentry and any Additional Components necessary to establish, maintain and operate a connection to the NPP Basic Infrastructure.

**RBA** means the Reserve Bank of Australia.

**Reason Code** means a code, as set out in Appendix G of the NPP Procedures, which may be applied to an NPP Message indicating the reason for the rejection of Clearing Requests, Settlement Requests, Clearing Notifications or Settlement Notifications.

**Registering Participant** means the Full Participant or Clearing Participant which:

- (a) services the Account/s in relation to which Alias Information is registered, or to be registered, in the Addressing Service; or
- (b) provides NPP Payments clearing services to an Identified Institution or a Connected Institution which services the Account/s in relation to which the Registering Participant is contractually authorised, and entitled by these Regulations, to register, maintain and deregister Alias Information in the Addressing Service.

**Regulatory Authorities** means AUSTRAC (Australian Transaction Reports and Analysis Centre) and / or DFAT (Department of Foreign Affairs and Trade).

**Replay** means the resending of an NPP Message with the same Transaction ID.

**Request for Payment Return** means the NPP Message (camt.056) generated by a Payer Participant to request the return of a settled NPP Payment.

**Reseller Process** means the process established by NPPA to facilitate the ordering of NPP Componentry and Additional Components by connected NPP Participants, Connected Institutions, and eligible Applicants.

**Retry** means the resending of an NPP Message using the 35<sup>th</sup> character of the Transaction ID or Return ID to indicate that the message is being retried.

**Return ID** means the unique transaction reference assigned by the Payee Participant's Back Office System to each Payment Return sent from its PAG and which is to be included in all subsequent and associated NPP Messages

**RITS** means the Reserve Bank Information and Transfer System.

**RITS Regulations** means the rules prescribed by the RBA for the use of RITS.

**Sanctions Compliance Framework** means a framework developed and implemented by each NPP Participant that contains the following features as a minimum:

- (a) identification of all relevant obligations under the Australian Sanctions Regime;
- (b) risk assessment methodology in relation to each such identified obligation;
- (c) process for the identification and management of compliance with such obligations (for example, processes for the management of compliance with identified obligations including screening of NPP Messages), including the NPP Participant's approach to the taking of reasonable precautions and the exercise of due diligence;
- (d) process for engaging with Regulatory Authorities including to report breaches, comply with requests for information and seek permits;
- (e) process for implementation, monitoring and oversight of the framework; and
- (f) a process for establishing that each Identified Institution to which it provides NPP Payments clearing and / or settlement services has a similar framework in place for ensuring compliance with its own obligations under the Australian Sanctions Regime.

**Secretary** means the company secretary of NPPA.

**Settlement Abort Notification** means an NPP Message (pacs.002) generated by the Payer Participant PAG in the event that a Settlement Notification (pacs.002) is not received within the configured timeout value.

**Settlement Notification** means an NPP Message (pacs.002) generated by the FSS PAG and sent to the Payer Participant PAG and the Payee Participant PAG, which indicates the settlement status of a Cleared NPP Payment.

**Settlement Participant** means an NPP Participant which is not connected to the NPP Basic Infrastructure, but which is authorised by the RBA to use the FSS for settlement of NPP Payments.

**Settlement Request** means an NPP Message (pacs.009) generated by the Payer Participant PAG which contains details of the NPP Payment sent to the FSS PAG for settlement.

**Services** means those SWIFT Services which NPPA provides to NPP Participants and Connected Institutions.

**Shares** means redeemable preference shares in NPPA.

**Shareholders Agreement** means the agreement between NPPA and each Member dated 24 September 2014, as amended from time to time.

**Sponsor** means an NPP Participant which provides NPP Payments clearing and/or settlement services to an Identified Institution.

**STP Channel** means a straight-through-processing channel maintained and configured by an Overlay Service Provider for the purpose of providing an Overlay Service.

**Subscription Date** means the date determined by NPPA to be the date upon which payment of any Subscription Price is due.

**Subscription Price** means, in relation to a Participation Application submitted by a person who is not a Member, the subscription price for the Shares to be subscribed for by that person.

**Supply** has the meaning given in the GST Law.

**Suspension Event** has the meaning given in Regulation 9.2.

**SWIFT** means S.W.I.F.T. Domestic Australia Pty Limited (ACN 602 666 142).

**SWIFT SCRL** means S.W.I.F.T SCRL with registered address at Avenue Adele, 1, 1310 La Hulpe, Belgium (0413.330.856 – RPM Nivelles).

**SWIFT Services** means the services provided by SWIFT under the MISD to NPPA for the benefit of NPPA and the NPP Participants and Connected Institutions (which are defined therein as “Participants”).

**SWIFT User** means a body corporate that has been authorised by SWIFT SCRL as a “SWIFT User” in accordance with SWIFT SCRL’s internal rules.

**Target Transaction Throughput** means the target transaction and message throughput for the NPP Basic Infrastructure as defined by the NPP Volumetric Model.

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

**Taxable Supply** has the meaning given in Regulation 16.2(a).

**Technology Evolution** means any improvement, upgrade, supplement, modification, replacement, enhancement or other change to the systems, hardware, software, telecommunications systems and interfaces used in the NPP Basic Infrastructure and process and methods used to provide the SWIFT Services.

**Technology Maintenance Plan** means the NPP Basic Infrastructure maintenance plan established by SWIFT and approved by NPPA in accordance with clause 14.6 of the MISD, which sets out the requirements and timeframes for the release, testing and deployment of regular and ad hoc software patches and upgrades for the NPP Basic Infrastructure.

**Transaction Fees** means the NPP Basic Infrastructure usage fees payable by NPP Participants (other than Settlement Participants) and Connected Institutions, as determined by NPPA.

**Transaction ID** means the unique transaction reference assigned by the Payer Participant’s Back Office System to each Clearing Request sent from its PAG and which is to be included in all subsequent and associated NPP Messages.

**Transition Period** means the period from the Commencement Date until [ ].

**Vendor Network Partner** means a provider of network connectivity services, specified by SWIFT in the MISD.

**Withdrawal Date** has the meaning given in Regulation 12.3(d).

## 1.2 Interpretation

- (a) In the NPP Regulations and the NPP Procedures:
- (i) words importing any gender include the other genders;

- (ii) the word person includes an individual, a partnership, a joint venture, a firm, a body corporate, an unincorporated association, a government agency or an authority;
- (iii) the singular includes the plural and vice versa;
- (iv) writing and cognate expressions include all means (including without limitation any electronic form or medium) by which words are able to be reproduced in a tangible and permanently visible form;
- (v) references to a “document” include any notice, certificate, instrument, agreement or document in writing of any kind;
- (vi) a reference to a statute, code or the Corporations Act (or to a provision of a statute, code or the Corporations Act) means the statute, the code, the Corporations Act 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 or the provision;
- (vii) a reference to any document (including these NPP Regulations) is to that document including any variation or replacement of it;
- (viii) a regulation, annexure or schedule is a reference to a regulation in or annexure or schedule to the NPP Regulations unless otherwise specified;
- (ix) a particular person includes a reference to the person’s executors, administrators, successors and substitutes (including, persons taking by novation) and permitted assigns;
- (x) a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (xi) Australian dollars, dollars, \$, A\$ or AUD is a reference to the lawful currency of Australia;
- (xii) except as expressly provided, if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (xiii) a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (xiv) a party means a party to the NPP Regulations and the NPP Procedures;
- (xv) the words “include”, “including”, “for example” or “such as” are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (xvi) a reference to a time of day is a reference to Sydney time; and



- (xvii) a reference to accounting standards is a reference to the accounting standards as defined in the Corporations Act and a reference to an accounting term is a reference to that term as it is used in those accounting standard, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia.
- (b) Words defined in the Corporations Act have, unless the contrary intention appears, the same meaning in the NPP Regulations.
- (c) Headings are inserted for convenience and do not affect the interpretation of the NPP Regulations.
- (d) If the whole or any part of a provision of the NPP Regulations or the NPP Procedures is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of the NPP Regulations or the NPP Procedures has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This Regulation has no effect if the severance alters the basic nature of the NPP Regulations or is contrary to public policy.
- (e) Each reference in the NPP Regulations to any obligation of a person to comply with the NPP Regulations or the NPP Procedures or any other document is to be construed as an obligation to comply with those documents to which that person is a party.

### **1.3 Governing Jurisdiction**

- (a) The NPP Regulations and the NPP Procedures are governed by the law of New South Wales.
- (b) Each party:
  - (i) irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and courts of appeal from them; and
  - (iii) waives any right it has to object to an action being brought in those courts including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

### **1.4 Inconsistency**

- (a) If a provision of the Shareholders Agreement or the Constitution is inconsistent with a provision of the NPP Regulations or the NPP Procedures applicable to an NPP Participant, the provision of the Shareholders Agreement or the Constitution shall prevail.
- (b) If a provision of the NPP Procedures is inconsistent with a provision of the NPP Regulations, the provision of the NPP Regulations shall prevail.

- (c) Each NPP Participant, Connected Institution and Overlay Service Provider acknowledges and agrees that if a provision of the NPP Regulations or NPP Procedures relating to NPP Core Clearing and Settlement Rules is inconsistent with a provision of the OS Rules, the provision of the NPP Regulations or NPP Procedures shall prevail.

## **1.5 Obligations of Good Faith**

In exercising its rights and performing its obligations under these Regulations, each of NPPA, each NPP Participant, each Connected Institution and each Overlay Service Provider must act in good faith.

## **1.6 Commencement**

The NPP Regulations and the NPP Procedures take effect from the Commencement Date.

## **1.7 Effect of the NPP Regulations and the NPP Procedures**

- (a) The NPP Regulations and the NPP Procedures constitute a contract under seal between:
  - (i) NPPA on the one hand and each NPP Participant, each Connected Institution and each Overlay Service Provider on the other hand; and
  - (ii) NPP Participants, Connected Institutions and Overlay Service Providers.
- (b) The NPP Basic Infrastructure has been established for the benefit of NPP Participants, Connected Institutions and Overlay Service Providers who, and in consideration of becoming parties, acknowledge that they are bound to:
  - (i) comply with the provisions of the NPP Regulations and the NPP Procedures which are expressed to apply to them in that capacity; and
  - (ii) fulfil and perform every obligation and duty imposed on them by or pursuant to the NPP Regulations and the NPP Procedures.

## **1.8 NPP Participants, Connected Institutions and Overlay Service Providers act as Principals**

- (a) In incurring rights and obligations under the NPP Regulations and the NPP Procedures, each NPP Participant, each Connected Institution and each Overlay Service Provider acts as a principal, notwithstanding any other fact, matter or circumstance (including, without limitation, any actual or constructive notice of any agency or trustee relationship between an NPP Participant and any Identified Institution or another person or between a Connected Institution and another person or between an Overlay Service Provider and any other person).

- (b) No person other than the NPP Participant, Connected Institution, Overlay Service Provider or other party which assumes rights or incurs obligations under the NPP Regulations and the NPP Procedures (including any Identified Institution or any other person asserting rights as a principal on whose behalf such an NPP Participant or Connected Institution or Overlay Service Provider acts) may enforce those rights or assume those obligations.

## **1.9 Assignment and Transfer**

The rights and obligations of each NPP Participant, Connected Institution and Overlay Service Provider under the NPP Regulations and the NPP Procedures are incapable of being assigned (whether at law, in equity or otherwise, save where an NPP Participant or Connected Institution acquires an interest in another NPP Participant or Connected Institution through a takeover, scheme of arrangement or merger), charged, transferred or the subject of any trust or other fiduciary obligation which may affect or abrogate the personal liability of that NPP Participant or Connected Institution or Overlay Service Provider. No action which purports to do any of the foregoing shall affect in any manner the rights and obligations of an NPP Participant, Connected Institution or Overlay Service Provider under the NPP Regulations or the NPP Procedures.

## **1.10 RBA**

A reference in these NPP Regulations to an 'NPP Participant' (including any reference to a 'Full Participant') only includes the RBA in its capacity as a participant in the NPP and does not include the RBA in its capacity as the operator of the FSS / RITS or in its capacity as a regulator of the Australian payments system.

**The next page is 2.1**

## Part 2 SCOPE, DISCLAIMERS AND LIMITATION OF LIABILITY

This Part 2 sets out:

- scope of these Regulations;
- the limitation on NPPA liability in relation to its activities; and
- representation and warranties given by NPP Participants, Connected Institutions and Overlay Service Providers.

### 2.1 Scope

These Regulations prescribe the manner in which:

- (a) a person may become an NPP Participant, Connected Institution or Overlay Service Provider (Part 4);
- (b) admission and connection to the NPP Basic Infrastructure is effected (Part 5);
- (c) NPP Payments may be cleared (Part 6);
- (d) NPP Payments are to be settled (Part 7);
- (e) the Addressing Service may be accessed by NPP Participants and by Overlay Service Providers, and the purposes of access (Part 8);
- (f) a party may be suspended or terminated (Part 9); and
- (g) ancillary matters.

### 2.2 Liabilities of NPPA

It is expressly agreed and acknowledged that NPPA will not incur any financial liability to any NPP Participant, Connected Institution or Overlay Service Providers as a result of the operation and administration of the NPP Basic Infrastructure in accordance with these Regulations and the NPP Procedures.

### 2.3 Representations and Warranties

- (a) Each NPP Participant, Connected Institution and Overlay Service Provider represents and warrants to NPPA and to each other, both on the Commencement Date and on a continuing basis, that:
  - (i) it has not relied on any representation made by NPPA or any other NPP Participant, Connected Institution or Overlay Service Provider to induce it to become a party, or to clear and settle NPP Payments in accordance with these Regulations and the NPP Procedures;
  - (ii) it has made its own appraisal of the qualifications to be satisfied in order to become an NPP Participant, Connected Institution or Overlay Service Provider;
  - (iii) it has made (without reliance on or inducement to or from NPPA or any NPP Participant, Connected Institution or Overlay Service Provider) its own assessment and approval of the NPP Regulations and the NPP Procedures as being appropriate for the clearing and settlement of NPP Payments between NPP Participants;

- (iv) it has the power and authority to become a party to the NPP Regulations and NPP Procedures, and its obligations under the NPP Regulations and NPP Procedures are valid and binding, and are enforceable according to their terms;
  - (v) no Insolvency Event has occurred with respect to it;
  - (vi) it does not become an NPP Participant, Connected Institution or Overlay Service Provider as trustee; and
  - (vii) it has disclosed to NPPA all facts which are material to its Participation Application or OSP Application (as the case may be).
- (b) Each NPP Participant, Connected Institution and Overlay Service Provider acknowledges that each other party relies on the representations and warranties given by it in Regulation 2.3(a).
- (c) Each NPP Participant, Connected Institution and Overlay Service Provider agrees to notify NPPA of any matter or thing which would mean it could not truthfully repeat all the representations and warranties in Regulation 2.3(a) by reference to the then current circumstances.
- (d) NPPA and each other party is entitled to assume the correctness of any representation and warranty made by an NPP Participant, Connected Institution or Overlay Service Provider under these Regulations and is not required to conduct independent inquiries or to conduct searches of public registers to confirm the correctness of any such representation or warranty.

## 2.4 Disclaimers

- (a) Neither NPPA nor any of its officers, employees, representatives or agents has any duty or responsibility, either initially or on a continuing basis, to:
- (i) keep itself informed about the performance by NPP Participants, Connected Institutions or Overlay Service Providers of their respective obligations under the NPP Regulations and the NPP Procedures, provided that if NPPA becomes aware that an NPP Participant, Connected Institution or Overlay Service Provider has breached its obligations under the NPP Regulations or the NPP Procedures, NPPA will bring the matter to the attention of that NPP Participant, Connected Institution or Overlay Service Provider (as applicable) and may direct remediation of the breach and, in the case of a breach which is a Material Breach, may take action under Part 9 of these Regulations; or
  - (ii) keep itself informed about the financial condition, affairs or creditworthiness of any NPP Participant, Connected Institution or Overlay Service Provider; or
  - (iii) except as expressly provided by these Regulations or the NPP Procedures, provide any NPP Participant, Connected Institution or Overlay Service Provider with credit information or other information with respect to any other NPP Participant, Connected Institution or Overlay Service Provider.

- (b) Each Applicant, OSP Applicant, NPP Participant, Connected Institution and Overlay Service Provider acknowledges that no officer, employee, representative or agent of NPPA has any authority to make any representations or give any warranties in relation to the liability of NPPA with respect to the operation of the NPP Basic Infrastructure which are inconsistent with the Constitution, NPP Regulations and NPP Procedures.

## 2.5 Exclusions

Without limiting Regulation 2.2 or any other provision of the NPP Regulations, NPPA 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 NPP Participant, Connected Institution or Overlay Service Provider or any other person, other than NPPA, its officers, employees, representatives or agents (including without limitation any errors or delays, any breach of warranty or undertaking or representation, any breach of the NPP Regulations and the NPP Procedures or the terms of any other document relating to the NPP, any Insolvency Event, any settlement rejection or failure to settle for any obligation arising out of any Cleared NPP Payment, any fraud or any forgery);
- (b) the exercise, or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy under the NPP Regulations or the NPP Procedures;
- (c) any act or omission done by, or any refusal to do any act by NPPA, its officers, employees, representatives or agents in good faith and without negligence or in reasonable reliance on any act, conduct or consent of any other person or reasonably upon any instructions, information or document provided to NPPA, its officers, employees, representatives or agents by any other person;
- (d) any fraud on the part of any officer, employee, representative or agent outside the scope of their employment with NPPA, except to the extent to which NPPA would have been responsible at common law for such fraud;
- (e) the failure of NPPA, its officers, employees, representatives 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 NPPA;
- (f) the terms of any representation, instructions, information or document given to NPPA, its officers, employees, representatives or agents by any other person;
- (g) any error or omission in any document issued by NPPA, other than an error or omission resulting from a negligent act or omission of NPPA;

- (h) any technological failure of any sort (including without limitation any telephone, computer or electrical failure);
- (i) any unauthorised access or connection to the NPP Basic Infrastructure by any person, other than an officer, employee, representative or agent of NPPA;
- (j) any contractual arrangements between an NPP Participant, Connected Institution or Overlay Service Provider and another person;
- (k) any change in the status, financial condition, affairs or creditworthiness of an NPP Participant, Connected Institution, Overlay Service Provider or another person; or
- (l) any suspension of the NPP Basic Infrastructure by NPPA in accordance with the NPP Regulations and the NPP Procedures or any suspension of the FSS by the RBA.

## **2.6 Limit of Liability**

- (a) If, notwithstanding Regulations 2.1 to 2.45 inclusive, any liability is incurred by NPPA in relation to the NPP Basic Infrastructure, the aggregate amount of that liability in respect of all claims made by NPP Participants in respect of, or arising out of, any one event will not exceed:
  - (i) the highest Transaction Fee paid by any NPP Participant in accordance with these NPP Regulations during or in relation to the one month preceding the month in which the liability is incurred; or
  - (ii) during any period where Transaction Fees do not apply, the highest pro rata monthly capital contribution made by any NPP Participant during the year in which the liability is incurred.
- (b) Any claim made by any NPP Participant, Connected Institution or Overlay Service Provider against NPPA in relation to the NPP Basic Infrastructure must be made within six (6) months of the occurrence of the event which it is alleged gives rise to the claim against NPPA.
- (c) For the purposes of Regulation 2.5(a) all inter-related events which give rise to NPPA's liability under the NPP Regulations or the NPP Procedures or otherwise will be treated as one event.
- (d) If any 2 or more NPP Participants suffer losses which exceed the total limit specified in Regulation 2.5(a), the liability of NPPA to each of those NPP Participants in accordance with the NPP Regulations will be proportional to the total loss suffered by each of those NPP Participants respectively.

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**Part 3 GENERAL RIGHTS AND OBLIGATIONS**

This Part 3 sets out the general rights and obligations of NPPA, NPP Participants, Connected Institutions and Overlay Service Providers in relation to their dealings with NPPA and each other.

**3.1 NPPA**

- (a) NPPA is responsible for the operation of the NPP Basic Infrastructure.
- (b) Subject to the Constitution, the Shareholders Agreement, the MISD and these Regulations, NPPA has all rights and powers reasonably necessary or desirable to:
  - (i) facilitate fair access to the NPP Basic Infrastructure for eligible persons; and
  - (ii) ensure the safe, reliable and efficient operation of the NPP Basic Infrastructure.
- (c) NPPA will determine, and may periodically review, all fees payable by NPP Participants, Connected Institutions and Overlay Service Providers under these Regulations including, without limitation:
  - (i) the Application Fee and the OSP Application Fee payable by Applicants and OSP Applicants;
  - (iii) fees for NPP Componentry and Additional Components, payable by NPP Participants (other than Settlement Participants) and Connected Institutions;
  - (iii) Transaction Fees, which may be determined and levied periodically, payable by NPP Participants and Connected Institutions;
  - (iv) any fees associated with Addressing Service usage, including Addressing Lookup fees, payable by NPP Participants and Connected Institutions;
  - (v) any annual administration fees payable by all NPP Participants, Connected Institutions and Overlay Service Providers in relation to the general costs and expenses of managing and operating the NPP Basic Infrastructure; and
  - (vi) the dispute resolution fee for the purposes of Regulation 12.7.
- (d) NPPA will establish the NPP Management Committee, the NPP Incident Response Group and the NPP Rules Committee, and may establish such other committees and sub-committees as it determines necessary for the effective management and operation of the NPP Basic Infrastructure or for giving effect to the Regulations and the NPP Procedures. NPPA may determine the terms and conditions upon which such committees and sub-committees operate in its reasonable discretion.



- (e) To the extent that the NPP Regulations or NPP Procedures grant the Board of NPPA power to exercise discretion, such discretion must be exercised reasonably, in good faith and in accordance with the objects of NPPA.
- (f) NPPA may appoint an NPPA Servicer, or one or more agents to perform any or all of its functions, powers or responsibilities under these Regulations.
- (g) NPPA acknowledges and agrees that to the extent it obtains the benefit of any Service Credit from the Vendor in relation to a Service Level Default, it may, but is not obliged to, pass through or apply a proportionate amount of the Service Credit to each Full Participant or Clearing Participant which the Board determines to have been adversely affected by the Service Level Default. Capitalised terms used in this Regulation 3.1(g) not defined in this document, have the meaning given in the MISD.

### **3.2 FSS**

- (a) Each NPP Participant, Connected Institution and Overlay Service Provider acknowledges that the RBA is responsible for the availability and performance of the FSS, and that NPPA has no responsibility for, and makes no representation or warranty in relation to, the availability or performance of the FSS for settlement of NPP Payments.
- (b) NPPA is responsible for management of the NPP Basic Infrastructure in response to an FSS Outage.
- (c) In the event that NPPA is notified by the RBA of an FSS Outage, NPPA will promptly notify each NPP Participant, Connected Institution and Overlay Service Provider of the Outage and the estimated recovery time (if known).
- (d) Each NPP Participant, Connected Institution and Overlay Service Provider:
  - (i) acknowledges that NPPA may suspend the NPP Basic Infrastructure during an FSS Outage if it is advised by the RBA, or otherwise reasonably determines, that the Outage is likely to be protracted or to otherwise adversely impact NPPA, NPP Participants or the NPP Basic Infrastructure;
  - (ii) acknowledges that, unless and until it is notified by NPPA of any decision to suspend the NPP Basic Infrastructure, it is bound to comply with any Incident Management Plans arrangement prescribed by NPPA in accordance Part 13 of these Regulations and any applicable Incident Management Procedures set out in the NPP Procedures; and

- (iii) agrees that NPPA will not be liable to any NPP Participant, Connected Institution, Overlay Service Provider, OS Subscriber or any other person, whether in contract, tort or otherwise, for any direct or indirect loss, damages, expenses or claims which that NPP Participant, Connected Institution, Overlay Service Provider, OS Subscriber or any other person may suffer or incur as a result of any suspension, or failure to suspend, or any delay in suspension, of the NPP Basic Infrastructure during an FSS Outage.

### 3.3 General Obligations of Parties

Each NPP Participant, Connected Institution and Overlay Service Provider must:

- (a) comply with any applicable laws, the provisions of the NPP Regulations and the NPP Procedures which are expressed to apply to them in such capacity, including without limitation, any certification and connectivity requirements (if applicable) under the NPP Regulations and the NPP Procedures;
- (b) pay all fees, costs, charges and expenses which may be levied on, or which are to be reimbursed by, NPP Participants, Connected Institutions or Overlay Service Providers (as applicable) in accordance with the NPP Regulations;
- (c) if a Full Participant, Clearing Participant or Connected Institution, ensure that its connection to the NPP Basic Infrastructure does not adversely affect the integrity, security, efficiency, reliability or stability of the NPP Basic Infrastructure; and
- (d) comply with any written direction given by NPPA which NPPA determines is reasonably necessary to protect the security or integrity of the NPP Basic Infrastructure, including in relation to management of an operational suspension of the NPP Basic Infrastructure and operational resumption.

### 3.4 General Right of NPPA to Use NPP Reports

- (a) Each NPP Participant, Connected Institution and Overlay Service Provider acknowledges that:
  - (i) the NPP Basic Infrastructure provides for the automated generation of NPP Reports;
  - (ii) NPPA may use and disclose NPP Reports to its advisors, agents, directors, officers, employees, contractors and the RBA (including in the RBA's capacity as a regulator of the payments system) for the purposes of managing the business of NPPA and the NPP Basic Infrastructure, calculating any fees which may be payable by NPP Participants, Connected Institutions and Overlay Service Providers, assisting payments system oversight by the RBA and for ancillary purposes. For the avoidance of doubt, NPPA may not commercialise data contained in any NPP Report;

- (iii) without limiting the generality of Regulation 3.4(a)(ii), NPPA will provide any NPP Report which relates to OS Payments to the Overlay Service Provider, upon the Overlay Service Provider's written request; and
- (iv) NPPA makes no representation or warranty as to the accuracy or completeness of any NPP Report and expressly disclaims all liability, whether in contract or tort or otherwise, to any party to whom an NPP Report is provided, any NPP Participant, any Overlay Service Provider or OS Subscriber or any other person, which may arise as a result of any NPP Report being found to be inaccurate or incomplete.

### 3.5 Rights and Obligations of NPP Participants

- (a) Each Full Participant and Clearing Participant has:
  - (i) the right to send BSCTs and Non-Value Messages using the NPP Basic Infrastructure;
  - (ii) the obligations to:
    - (A) receive BSCTs and Non-Value Messages using the NPP Basic Infrastructure;
    - (B) use the NPP Basic Infrastructure to send and receive Non-Value Messages as prescribed and required by these Regulations and the NPP Procedures; and
    - (C) use the NPP Basic Infrastructure if return of NPP Payments is required.
  - (iii) if it has elected to join the NPP Closed User Group, designated by NPPA for IFTI Payments, the right to send and the obligation to receive IFTI Payments; and
  - (iv) if it has elected to be an OS Subscriber or a provider of clearing services to an OS Subscriber, the right to use the NPP Basic Infrastructure to send and receive OS Payments.

Nothing in these Regulations obliges any NPP Participant to be or to become an OS Subscriber or to become a member of an NPP Closed User Group for an Overlay Service.

- (b) Each Full Participant and Clearing Participant must comply with all of the technical connectivity requirements set out in Part 5 of these Regulations.
- (c) Each Full Participant and Settlement Participant must ensure that it is authorised by the RBA to use the FSS for settlement of NPP Payments.
- (d) Each NPP Participant acknowledges and agrees that, to the extent that it provides NPP Payment clearing and/or settlement services to Identified Institutions, it is responsible as principal in relation to:
  - (i) the accuracy and validity of all Alias Information it registers in its capacity as the Registering Participant, in the Addressing Service in accordance with Part 8 of these Regulations;
  - (ii) clearing NPP Payments in accordance with Part 6 of these Regulations; and

- (iii) settlement of NPP Payments in accordance with Part 7 of these Regulations.

### **3.6 Rights and Obligations of Connected Institutions**

- (a) Each Connected Institution has the right to use the NPP Basic Infrastructure to send, and the obligation to receive and respond to Non-Value Messages.
- (b) Each Connected Institution must comply with all of the technical connectivity requirements set out in Part 5 of these Regulations.

### **3.7 Rights and Obligations of Overlay Service Providers**

- (a) Each person that is accepted as an Overlay Service Provider pursuant to Part 4 of these Regulations must on and from acceptance:
  - (i) ensure that the use of the Overlay Service by NPP Participants which subscribe to the Overlay Service, or which provide third party clearing and/or settlement services to OS Subscribers, does not adversely affect the integrity, security, efficiency, reliability and stability of the NPP Basic Infrastructure;
  - (ii) promptly notify NPPA of the identity of each person who becomes an OS Subscriber, and provide NPPA with all information that NPPA may reasonably require for the purposes of monitoring and managing connections to and use of the NPP Basic Infrastructure promptly upon request; and
  - (iii) ensure that it satisfies the eligibility requirements set out in Part 4 of these Regulations on a continuing basis, including providing any additional evidence sought by NPPA upon a change of control of the Overlay Service Provider.
- (b) Each Overlay Service Provider acknowledges and agrees that:
  - (i) NPPA may determine that an Overlay Service is a Dormant Overlay Service and may take such action as may be authorised by Part 9 of these Regulations to maintain only active Overlay Services within the NPP Basic Infrastructure; and
  - (ii) its right to remain an Overlay Service Provider is subject to any determination which NPPA may make pursuant to Regulation [9.x].
- (c) Subject to Regulation 3.7(e), an Overlay Service Provider may:
  - (i) provide an Overlay Service using the NPP Basic Infrastructure to each OS Subscriber to that Overlay Service; and
  - (ii) by written notice to NPPA, cease to provide an Overlay Service. Such notice will become effective on the next scheduled update to the NPP Business Reference Data Tables.
- (d) An Overlay Service Provider may request NPPA to give, or procure, access to the Certification Solution on the following terms and conditions:

- (i) subject to acceptance of the commercial terms and conditions prescribed by NPPA or the Certification Solution providers pursuant to Regulation 3.7(d)(ii), NPPA will grant, or procure the grant of, a non-exclusive, revocable license to use the Certification Solution to any Overlay Service Provider (or an eligible OSP Applicant) which reasonably requires use of the Certification Solution for its Overlay Service;
  - (ii) any license granted or procured pursuant to Regulation 3.7(d)(i) will be subject to market commercial terms and on such conditions as NPPA or the Certification Solution provider may determine in their absolute discretion.
- (e) An Overlay Service Provider which elects to connect to the NPP Basic Infrastructure is a Connected Institution for the purposes of these Regulations and the NPP Procedures and is bound to comply with all of the obligations, and is entitled to exercise all of the rights, of Connected Institutions set out in these Regulations and the NPP Procedures. For the avoidance of doubt, nothing in these Regulations or the NPP Procedures obliges an Overlay Service Provider to become a Connected Institution.
- (f) Each Overlay Service Provider may determine the eligibility criteria for OS Subscribers in its absolute discretion, and is entitled to define, and exercise primary responsibility to administer, its OS Rules, provided however that:
  - (i) the Overlay Service Provider must not represent that any person, other than an NPP Participant, may connect to the NPP Basic Infrastructure to clear NPP Payments (including OS Payments) or may be authorised to use the FSS to settle NPP Payments (including OS Payments);
  - (ii) except as approved by NPPA in accordance with Part [x ] of the NPP Procedures, its OS Rules must not be inconsistent with NPP Core Clearing and Settlement Rules;
  - (iii) nothing in the OS Rules obliges or purports to oblige any NPP Participant to become a subscriber to any Overlay Service; and
  - (iv) nothing in the OS Rules will impose, or purport to impose, any liability upon NPPA;
  - (v) NPPA has primary administrative responsibility for NPP Core Clearing and Settlement Rules, whether replicated in OS Rules or incorporated by reference in OS Rules;
  - (vi) in circumstances where provisions of the NPP Regulations or NPP Procedures (other than provisions falling within the ambit of the NPP Core Clearing and Settlement Rules) and the OS Rules apply to a particular matter or issue, the Overlay Service Provider will exercise primary administrative responsibility subject to the Overlay Service Provider and NPPA consulting each other in good faith and working cooperatively to exercise their respective administrative responsibilities jointly should the Overlay Service Provider seek such assistance.

- (g) Each Overlay Service Provider represents and warrants to NPPA and to each NPP Participant that, except as approved by NPPA in accordance with Part [x ] of the NPP Procedures, its OS Rules are consistent with the NPP Core Clearing and Settlement Rules and otherwise comply with, and will remain compliant with the requirements set out in clause 3.7 (f).
- (h) Each Overlay Service Provider acknowledges that the NPP Regulations and NPP Procedures establish procedures and arrangements, which are additional to the NPP Core Clearing and Settlement Rules, for the effective and efficient resolution of a range of issues ancillary to the clearing and settlement of BSCTs between NPP Participants. To the extent that those procedures and arrangements could apply to OS Payments, each Overlay Service Provider agrees to give due consideration to them, and to utilize them as much as possible, whether by incorporation by reference or by inclusion with appropriate modification in its OS Rules.
- (i) Each Overlay Service Provider indemnifies and holds NPPA harmless against all direct losses, damages, liabilities, claims and expenses (including legal costs) (“**Loss**”) brought against or incurred by NPPA arising from or in connection with a breach of these Regulations or the NPP Procedures by the Overlay Service Provider or negligence of the Overlay Service Provider in connection with the performance of its obligations under these Regulations or the NPP Procedures, however such Losses arise, provided that:
- (i) if NPPA seeks to recover any amount under this indemnity, it must provide the Overlay Service Provider with written evidence of the amounts that are claimed; and
  - (ii) NPPA must use commercially reasonable efforts to mitigate its Loss in relation to any claim, and the Overlay Service Provider’s liability under this indemnity will be reduced to the extent that NPPA has failed to do so.
  - (iii) the Overlay Service Provider will have no liability for any special, incidental, indirect or consequential damages of any kind, including damages relating to lost profits or revenue, however caused in connection with these Regulations or the NPP Procedures; and
  - (iv) the maximum aggregate liability of each Overlay Service Provider for all Losses claimed by NPPA under this clause 3.7(i) is limited to \$5,000,000.
- (j) Any dispute between an Overlay Service Provider and NPPA as to the entitlement of NPPA to make a claim under this indemnity, the quantum of a claim or the performance by NPPA of its duty to mitigate its loss, or the adequacy of its efforts to do so, may be referred by either party for dispute resolution under Regulation 12.

**The next page is 4.1**

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## Part 4 PARTICIPATION

There are three types of NPP Participant:

- Full Participant
- Clearing Participant
- Settlement Participant

Each is bound by these Regulations and is required to become a Member of the Company.

NPPA will provide Members who are Full Participants and Clearing Participants with NPP Componentry to enable clearing of NPP Payments and Non-Value Messages.

Full Participants and Settlement Participants are required to have an active ESA.

Connected Institutions are entitled to acquire NPP Componentry and Additional Components and to connect to the NPP only for the purpose of initiating Non-Value Messages. To that extent they are also bound by the relevant NPP Regulations and NPP Procedures in relation to connection to the NPP Basic Infrastructure, but have no obligation under these Regulations to become Members of the Company.

Overlay Service Provider eligibility and access requirements are also set out in this Part.

### 4.1 Principles of Access to the NPP Basic Infrastructure

- (a) The NPP Basic Infrastructure has been established by NPPA, a mutually owned company, as a utility payments platform to facilitate on a 24x7 basis near real-time clearing and settlement of NPP Payments.
- (b) A person who satisfies the eligibility criteria and participation requirements applicable to:
  - (i) NPP Participants, will be entitled to access to the NPP Basic Infrastructure and / or (subject to authorisation of the RBA) to access the FSS, for the purposes of clearing and/or settling NPP Payments between them;
  - (ii) Connected Institutions, will be entitled to access the NPP Basic Infrastructure for the purposes of sending and receiving Non-Value Messages; and
  - (iii) Overlay Service Providers, will be entitled to provide approved Overlay Services to OS Subscribers via the NPP Basic Infrastructure.
- (c) The eligibility criteria and participation requirements set out in these Regulations have been established to facilitate fair and equitable access.

### 4.2 Eligibility – all NPP Participants

To be an NPP Participant a person must:

- (a) be the RBA or an ADI which carries on business at or through a permanent establishment in Australia;
- (b) be or become a Member and execute an Accession Agreement;
- (c) be able to comply with any applicable laws, the Constitution, the Shareholders Agreement, and all the provisions of the NPP Regulations and the NPP Procedures that are expressed to apply to that NPP Participant in the capacity in which it proposes to participate in the New Payments Platform;
- (d) agree to pay all fees, costs, charges and expenses which may be levied on, or which are to be reimbursed by, NPP Participants in accordance with the NPP Regulations;
- (e) agree that on becoming an NPP Participant, the NPP Regulations and the NPP Procedures will constitute a contract under seal between them and:
  - (i) NPPA; and
  - (ii) each current and future NPP Participant, Connected Institution and Overlay Service Provider;
- (f) agree to act in good faith in the exercise of its rights and performance of its obligations under these Regulations and the NPP Procedures;
- (g) demonstrate, to the reasonable satisfaction of NPPA that its business practices and operations will be sound and secure and will not adversely affect the integrity, security, efficiency, reliability or stability of the NPP Basic Infrastructure; and
- (h) be solvent (within the meaning given to that term in the Corporations Act) and otherwise able to meet the financial and other obligations imposed on NPP Participants by the NPP Regulations and the NPP Procedures.

#### **4.3 Eligibility – Full Participants**

To be a Full Participant a person must comply with the requirements of Regulation 4.2 and additionally:

- (a) be or become a SWIFT User or Domestic SWIFT User, and a BIC11 Holder;
- (b) enter into a Provisioning Agreement with NPPA;
- (c) enter into a Network Agreement with at least two Vendor Network Partners;
- (d) complete the On-Boarding Process with SWIFT;
- (e) comply with Connectivity Requirements set out in the NPP Procedures; and
- (f) be authorised by the RBA to use the FSS.

#### **4.4 Eligibility – Clearing Participants**

To be a Clearing Participant a person must comply with the requirements of Regulation 4.2 and additionally:

- (a) comply with all of the requirements set out in Regulation 4.3(a) to (e); and



- (b) enter into a proprietary arrangement with an NPP Participant to ensure that its NPP Payments are settled in accordance with Part 7 of these Regulations.

#### **4.5 Eligibility – Settlement Participants**

To be a Settlement Participant a person must comply with the requirements of Regulation 4.2 and additionally be authorised by the RBA to use the FSS.

#### **4.6 Eligibility – Connected Institutions**

To be a Connected Institution a person must:

- (a) be a body corporate which either carries on business at or through a permanent establishment in Australia or which has appointed an agent in Australia to receive notices on its behalf and act as its representative;
- (b) be able to comply with any applicable laws, the NPP Regulations and the NPP Procedures;
- (c) agree to pay all fees, costs, charges and expenses which may be levied on, or which are to be reimbursed by, Connected Institutions in accordance with the NPP Regulations;
- (d) agree that on becoming a Connected Institution, the NPP Regulations and the NPP Procedures will constitute a contract under seal between them and:
  - (i) NPPA; and
  - (ii) each current and future NPP Participant, Connected Institution and Overlay Service Provider;
- (e) agree to act in good faith in the exercise of its rights and performance of its obligations under these Regulations and the NPP Procedures;
- (f) demonstrate, to the reasonable satisfaction of NPPA that its business practices and operations will be sound and secure and will not adversely affect the integrity, security, efficiency, reliability or stability of the NPP Basic Infrastructure;
- (g) be solvent (within the meaning given to that term in the Corporations Act) and otherwise able to meet the financial obligations imposed on Connected Institutions by the NPP Regulations and the NPP Procedures; and
- (h) satisfy each of the requirements set out in Regulation 4.3(a) to (e).

#### **4.7 Application to become an NPP Participant or Connected Institution**

- (a) The Participation Application process for prospective NPP Participants and Connected Institutions is a two-part process designed to establish that an Applicant:
  - (i) satisfies the applicable Initial Eligibility Requirements;
  - (ii) satisfies the applicable Admission Eligibility Requirements and, in the case of an Applicant that is a prospective NPP Participant, satisfies the requirement to be a Member.

- (b) **Initial Eligibility Requirements:** Part 1 of the process to assess a Participation Application commences on the date of receipt by NPPA of a valid and completed Participation Application. Each Participation Application must be addressed to the Secretary of NPPA and must be substantially in the form of Annexure A or such other form that NPPA may approve from time to time. Applicants must:
- (i) comply with all the conditions of application as are specified in these Regulations;
  - (ii) provide sufficient information to demonstrate that the Applicant satisfies the applicable Initial Eligibility Requirements;
  - (iii) promptly supply any other information which NPPA may reasonably require for the purpose of determining whether the Applicant satisfies the Initial Eligibility Requirements ; and
  - (iv) pay the Application Fee to NPPA at the time of submission of the Participation Application.
- (c) All Participation Applications received by NPPA will be considered by the Board, which shall accept, on a preliminary basis, each Applicant which it reasonably determines satisfies the Initial Eligibility Requirements.
- (d) Within five Business Days of receipt of the Participation Application, the Secretary will notify the Applicant in writing:
- (i) of the Board's determination under Regulation 4.7(c); and
  - (ii) if the Board determines that an Applicant does not satisfy the Initial Eligibility Requirements, of the reasons for its determination and the review procedure available pursuant to Regulation 4.7(l).
- (e) **Subscription Process:** An Applicant that proposes to be an NPP Participant, which is notified that it satisfies the Initial Eligibility Requirements, must be, or become, a Member before its Participation Application is considered further. The Applicant acknowledges and agrees that its right to exercise the governance rights attaching to its Shares is conditional upon it satisfying the Admission Eligibility Requirements and being able to send and receive NPP Payments as contemplated by these Regulations and the NPP Procedures within two (2) years of the date of submission of its Participation Application.
- (f) To become a Member, a prospective NPP Participant must:
- (i) execute and deliver the Accession Agreement to the Secretary;
  - (ii) provide any information that NPPA reasonably requires to enable it to make the determination described in Regulation 4.7(f)(iii);
  - (iii) subscribe for the number of Shares which NPPA determines to be applicable to the prospective NPP Participant in accordance with the Governance Bands established by the Shareholders' Agreement; and
  - (iv) pay the Subscription Price, or any part of the Subscription Price determined by the Board to be payable, by the Subscription Date and accept delivery of the Shares.

- (g) **Provisioning NPP Componentry:** An Applicant that is a prospective Full Participant, Clearing Participant or Connected Institution that has been notified that it satisfies the Initial Eligibility Requirements and which has completed the subscription process described in Regulation 4.7(e) and (f) if applicable, must, (to the extent it has not already done so):
- (i) enter into a Provisioning Agreement;
  - (ii) submit an Order for the Prescribed Minimum amount of NPP Componentry;
  - (iii) in the case of an Applicant that is a prospective Connected Institution, pay the NPP Componentry Fee; and
  - (iv) engage on a proprietary basis with the RBA, SWIFT and Vendor Network Partners to establish the arrangements which comprise the Admission Eligibility Requirements.
- (h) **Admission Eligibility Requirements:** In order to complete its Participation Application, an Applicant must:
- (i) Submit a written notice in the form of Annexure C addressed to the Secretary which provides sufficient information to demonstrate that it satisfies all applicable Admission Eligibility Requirements; and
  - (ii) promptly supply any other information or document which NPPA may reasonably require for the purposes of determining whether the Applicant satisfies the Admission Eligibility Requirements.
- (i) Information and documents provided by an Applicant under Regulation 4.7(h) by way of completion of its Participation Application will be considered by the Board, which shall accept, subject to any conditions which it considers reasonably appropriate, each Applicant which it reasonably determines satisfies the applicable Admission Eligibility Requirements.
- (j) Within ten Business Days of receipt of information and documents provided to complete a Participation Application, the Secretary must promptly notify the Applicant in writing:
- (i) of the Board's determination under Regulation 4.7(i);
  - (ii) of any conditions of acceptance imposed by the Board; and
  - (iii) of the Participation Change Date on which the new NPP Participant or Connected Institution will commence participation or become connected; or
  - (iv) if the Board determines that an Applicant does not satisfy the Admission Eligibility Requirements, of the reasons for its determination and provide details of the review procedure available under Regulation 4.7(l).
- (k) An Applicant who has not been informed by the Secretary of the result of its Participation Application may withdraw the Participation Application at any time. No refund of the Application Fee (in whole or in part) will be made in respect of any withdrawn Participation Application.

- (l) If the Board determines that a Participation Application does not comply with the NPP Regulations or that an Applicant has not satisfied either the Initial Eligibility Requirements or the Admission Eligibility Requirements, the Secretary must notify the Applicant in writing and provide reasons for its determination. Any such Applicant is entitled:
  - (i) within 3 months to request that a sub-committee of the Board review the Participation Application (or relevant part) and its determination; or
  - (ii) at any time to lodge a fresh Participation Application (or relevant part) in accordance with the NPP Regulations, but will not be required to subscribe for Shares if it has already subscribed for Shares pursuant to Regulation 4.7(e) and (f).
- (m) An Applicant (which is a prospective Full Participant or Clearing Participant) which has failed to satisfy the Admission Eligibility Requirements by the date which is 2 years from the date of its first submission of a Participation Application:
  - (i) may not exercise the governance rights attaching to its Shares; and
  - (ii) remains bound by the Constitution; and
  - (iii) may elect to redeem its Shares for the nominal redemption price in accordance with, the Constitution.
- (n) The Secretary must promptly notify all NPP Participants, Overlay Service Providers and Connected Institutions of each successful Participation Application and the Participation Change Date on which the new NPP Participant or Connected Institution will commence participation or become connected.

#### **4.8 Eligibility to be an Overlay Service Provider**

To be eligible to be an Overlay Service Provider a person must:

- (a) be a body corporate which carries on business at or through a permanent establishment in Australia or which has appointed an agent in Australia to receive notices on its behalf and act as its representative;
- (b) propose to provide, and be capable of providing, an Overlay Service;
- (c) if the Overlay Service Provider proposes to be a Connected Institution:
  - (i) be able to satisfy all of the eligibility criteria for Connected Institutions set out in Regulation 4.6;
  - (ii) be able to comply with all of the requirements for establishing connectivity to the NPP Basic Infrastructure, set out in Part 5 of these Regulations and the NPP Procedures; and
  - (iii) be able to comply with any applicable laws, the NPP Regulations and the NPP Procedures, including without limitation, any certification requirements (if applicable);
- (d) agree to pay all fees, costs, charges and expenses which may be levied on, or which are to be reimbursed by, Overlay Service Providers and, if applicable, Connected Institutions, in accordance with these NPP Regulations;

- (e) agree that on acceptance of its Application, the NPP Regulations and the NPP Procedures will constitute a contract under seal between them and:
  - (i) NPPA; and
  - (ii) each current and future NPP Participant and Connected Institution;
- (f) demonstrate, to the reasonable satisfaction of NPPA that its business practices and operations, will be sound and secure and will not adversely affect the integrity, security, efficiency, reliability or stability of the NPP Basic Infrastructure; and
- (g) be solvent (within the meaning given to that term in the Corporations Act) and provide evidence that it has the requisite financial standing to perform all of the obligations imposed on Overlay Service Providers by the NPP Regulations and the NPP Procedures.

#### **4.9 Application to be an Overlay Service Provider**

- (a) A person who satisfies the eligibility criteria in Regulation 4.8 may apply in writing to become an Overlay Service Provider. OSP Applications must be in the prescribed form. An OSP Applicant must:
  - (i) comply with all the conditions of application specified in the NPP Regulations;
  - (ii) provide sufficient information to demonstrate that the OSP Applicant satisfies the requirements contained in Regulation 4.8;
  - (iii) subject to execution by NPPA and the OSP Applicant of a confidentiality undertaking, provide to NPPA:
    - (A) a technical specification for the proposed Overlay Service, including details of any Minor Change or Major Change which the OSP Applicant considers necessary to support the Overlay Service;
    - (B) a draft Project Plan for testing and implementing the Minor Change or Major Change if the OSP Application is approved; and
    - (C) a copy of the draft OS Rules for the Overlay Service;
  - (iv) promptly supply any other information which NPPA may reasonably require; and
  - (v) pay the OSP Application Fee to NPPA at the time of submission of the OSP Application.
- (b) OSP Applications received by NPPA will be considered by the Board within 5 Business Days of receipt, and the Board shall accept an OSP Application which it reasonably determines satisfies the criteria in Regulation 4.8 and which complies with the conditions specified in these NPP Regulations.
- (c) An OSP Applicant which has not been informed by NPPA of the result of its OSP Application may withdraw the OSP Application at any time. No refund of the OSP Application Fee (in whole or in part) will be made in respect of any withdrawn OSP Participation Application.

- (d) If an OSP Application does not comply with the NPP Regulations, NPPA must promptly notify the OSP Applicant of its decision and the reasons for its decision in writing. The OSP Applicant is entitled:
  - (i) within 3 months to request that a sub-committee of the Board review the decision; or
  - (ii) at any time to lodge a fresh OSP Application in accordance with the NPP Regulations.
- (e) If an OSP Application is accepted, NPPA must promptly notify the OSP Applicant in writing:
  - (i) that the OSP Application is accepted;
  - (ii) of the Board's determination under Regulation 4.11;
  - (iii) of the Implementation Date and the Overlay Service Commencement Date, determined by NPPA in accordance with Regulation 4.12;
  - (iv) if the Overlay Service is determined to be either a Level 2 Overlay Service or a Level 3 Overlay Service, of the Board's estimate of NPPA's costs and charges of implementing and testing the NPP Basic Infrastructure or Interface Connection modifications necessary to support the Overlay Service; and
  - (v) if the Overlay Service is determined to be a Level 2 or Level 3 Overlay Service, of:
    - (A) the additional terms and conditions of acceptance of the OSP Applicant's application, including the date/s for payment of the costs and charges described in paragraph (iv), which, subject to the OSP Applicant's acceptance, will bind the OSP Applicant as if set out in these NPP Regulations; and
    - (B) the date for acceptance of the additional terms and conditions. If the OSP Applicant does not provide written notice of acceptance of all of the additional terms and conditions by the date specified by NPPA in its notice, the OSP Application will be deemed to have been withdrawn by the OSP Applicant. No refund of the OSP Application Fee (in whole or in part) will be made in respect of any OSP Participation Application which is deemed to be withdrawn under this Regulation 4.9(f).
- (f) An OSP Applicant whose OSP Application is deemed to have been withdrawn in accordance with Regulation 4.9(e)(v)(B) may submit a new OSP Application following the deemed withdrawal. Any such new OSP Application must satisfy the requirements set out in Regulation 4.9(a), and will be assessed by the Board in accordance with Regulation 4.9(b)-(e).

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#### 4.10 New Overlay Services

- (a) An Overlay Service Provider which proposes to provide a new Overlay Service may apply to commence provision of that Overlay Service to OS Subscribers by submitting an application which satisfies the requirements set out in Regulation 4.9(a).
- (b) The provisions of Regulation 4.9 apply to an application made in respect of a new Overlay Service by an existing Overlay Service Provider as if each reference to “Application” in Regulation 4.9 were a reference to an application made under Regulation 4.10(a)

#### 4.11 Overlay Service Assessment

The Board will arrange for a technical assessment of the information provided under Regulation 4.9(a)(iii) to determine whether a proposed Overlay Service is either a Level 1 Overlay Service, a Level 2 Overlay Service or a Level 3 Overlay Service.

#### 4.12 Implementation Date and Overlay Service Commencement Date

- (a) The Board will determine the Implementation Date and an estimated Overlay Service Commencement Date, in relation to each new Overlay Service Provider and each new Overlay Service in accordance with the principles of efficiency, such that Overlay Services with similar requirements of the NPP Basic Infrastructure will be scheduled for implementation at or around the same time, and fairness, such that priority will be given to Applications in the order in which they are received, and with due consideration of the greater time required to implement more complex changes. Indicatively:
  - (i) the Implementation Date is the date which is five (5) Business Days following:
    - (A) in the case of a Level 1 Overlay Service or a Level 2 Overlay Service, the acceptance by the Board of the OSP Application; or
    - (B) in the case of a Level 3 Overlay Service, the acceptance by the Overlay Service Provider of NPPA’s additional terms and conditions of acceptance pursuant to Regulation 4.9(e)(v)(B); and
  - (ii) the Overlay Service Commencement Date for an approved Level 1 Overlay Service will be the date of the next scheduled NPP Business Reference Data Tables update following the Implementation Date;
  - (iii) the Overlay Service Commencement Date for an approved Level 2 Overlay Service will be no earlier than the next scheduled NPP Business Reference Data Tables update following the Implementation Date, subject to completion of testing by NPPA of all necessary NPP Basic Infrastructure or Interface Connection systems development or modification required to support that Overlay Service; and

- (iv) the Overlay Service Commencement Date for an approved Level 3 Overlay Service will be the date which the Board determines in good faith as appropriate having regard to the scope of NPP Basic Infrastructure or Interface Connection systems development or modification required to support that Overlay Service.
- (b) The Board may reasonably vary any date determined under Regulation 4.12(a) by notice in writing to the Overlay Service Provider.

#### 4.13 Overlay Service Implementation Process

- (a) **Project Planning, Testing and Certification:** following acceptance of its OSP Application, but prior to the Implementation Date, the Overlay Service Provider will submit to NPPA:
  - (i) in the case of a Level 1 Overlay Service Provider, evidence that it has obtained any applicable certification; and
  - (ii) in the case of either a Level 2 Overlay Service or a Level 3 Overlay Service, a draft Project Plan detailing specifications and reasonable timeframes for the NPP Basic Infrastructure or Interface Connection modifications requested, test planning, testing, certification of, and all other milestones up to and including the Overlay Service Commencement Date for, the Overlay Service for NPPA approval.
- (b) NPPA may determine to approve a draft Project Plan submitted under Regulation 4.13(a)(ii) in its discretion.
- (c) NPPA will use reasonable endeavours to support the implementation of a Project Plan approved under Regulation 4.13(c), but will not be liable to the Overlay Service Provider or any other person for failure to do so.
- (d) Each Overlay Service Provider acknowledges that it bears sole risk and responsibility in relation to the adequacy and performance of any requested Minor Change or Major Change and that NPPA makes no representation or warranty in relation to the adequacy or performance of the Overlay Service on the basis of such Minor Change or Major Change.
- (e) Each Overlay Service Provider acknowledges and agrees that all Intellectual Property Rights in the NPP Basic Infrastructure, and in any modification made to the NPP Basic Infrastructure pursuant to a Minor Change or Major Change requested by an Overlay Service Provider, including in materials developed by or on behalf of NPPA in contemplation of such requested change, vest in NPPA.
- (f) NPPA acknowledges and agrees that all Intellectual Property Rights associated with each Overlay Service (other than Intellectual Property Rights in the NPP Basic Infrastructure itself) including in materials developed by or on behalf of the Overlay Service Provider vest in the relevant Overlay Service Provider.
- (g) NPPA will grant to each Overlay Service Provider a non-exclusive, royalty-free licence for the term of the Overlay Service Provider's participation under these Regulations, to use and sub-license to its subcontractors such of NPPA's Intellectual Property Rights as NPPA determines reasonably necessary to enable the Overlay Service Provider to provide the Overlay Service.



**The next page is 5.1**

**Part 5 ADMISSION AND CONNECTION TO THE NPP BASIC INFRASTRUCTURE**

This Part 5:

- sets out the obligations of NPP Participants that connect to the NPP Basic Infrastructure and Connected Institutions to install and configure NPP Componentry to establish effective connection to the NPP Basic Infrastructure, to enable 24/7 capability and availability, comply with the NPPA Technology Maintenance Plan and comply with the requirements set out in the Manuals and Participant Documentation
- sets out the obligation of connected NPP Participants and Connected Institutions to notify NPPA (and SWIFT) of any connectivity outage
- sets out the powers of NPPA to manage the NPP Basic Infrastructure and NPP Closed User Groups, to direct connected NPP Participants and Connected Institutions to remediate technical defects
- describes the Reseller Process by which NPP Componentry and Additional Components may be acquired from NPPA
- sets out the obligations of Full Participants and Settlement Participants to establish effective FSS arrangements

**5.1 Obligation to Comply with Ordering Process and Connect to NPP Basic Infrastructure**

- (a) **Ordering NPP Componentry and Additional Components:** Each Full Participant, Clearing Participant and Connected Institution which has entered into a Provisioning Agreement is, for the term of that agreement, authorised by NPPA to access the NPP Ordering Portal for the purpose of preparing draft Orders for NPP Componentry, and for any Additional Components.
- (b) **Approval of Draft Orders:** Each Full Participant, Clearing Participant and Connected Institution acknowledges and agrees that:
  - (i) draft Orders must be approved by NPPA, such approval not to be unreasonably withheld, to be effective;
  - (ii) NPPA will have no obligation to approve an Order unless and until the applicable NPP Componentry Fee or Additional Component Fee is fully paid, and where an Order relates to Services to be provided on an annual or recurring basis and for which annual or recurring fees are payable, any approval given to the Order will be deemed to apply only to Services for which prior payment has been made; and
  - (iii) subject to NPPA consent and payment by the relevant Full Participant, Clearing Participant or Connected Institution of any break costs, additional costs or associated expenses, an Order may be varied or cancelled.

- (c) **Installation and Configuration of NPP Componentry and Interface Connection:** Each Full Participant, Clearing Participant and Connected Institution:
- (i) must ensure that its NPP Componentry, any Additional Components, its Payments Connector and its Interface Connection is installed, configured and satisfactorily tested in accordance with the NPP Procedures and the NPP Testing Protocol;
  - (ii) in the case of a Full Participant or a Clearing Participant, must subscribe to the NPP CUG, and to the NPP CUG for any Overlay Service to which it has subscribed, or in relation to which it provides, or proposes to provide, services to OS Subscribers;
  - (iii) acknowledges that only NPP Componentry and Additional Components are authorised for use in connection with the NPP Basic Infrastructure;
  - (iv) acknowledges that NPPA may by written notice direct a Full Participant, Clearing Participant or Connected Institution to disconnect, decommission or discontinue use of any unauthorised hardware or software deployed in connection with the NPP Basic Infrastructure; and
  - (v) undertakes to comply with any direction given by NPPA under Regulation 5.1(c)(iv) promptly following receipt of the written notice.
- (d) **Operation, Maintenance and Upgrades:** Each Full Participant, Clearing Participant and Connected Institution acknowledges and agrees that it must:
- (i) ensure that its NPP Componentry operates on a 24/7 basis, and its Back Office System is available and operates as prescribed by NPPA and in accordance these Regulations and the NPP Procedures;
  - (ii) comply with the Technology Maintenance Plan and the maintenance and upgrade procedures set out in Part 15 of these Regulations and Part [x] of the NPP Procedures; and
  - (iii) monitor its network connectivity, and all NPP Componentry and Additional Components for system error or exception alerts and act promptly to execute effective command and control actions in accordance with the NPP Procedures.
- (e) **FSS:** Each NPP Participant that is authorised by the RBA to use the FSS must:
- (i) comply with the RITS Regulations and FSS requirements prescribed by the RBA from time to time;
  - (ii) ensure that its FSS and related RITS arrangements are established, tested, maintained and operate in accordance with the NPP Regulations, NPP Procedures and all FSS requirements;
  - (iii) manage its ESA to effect settlement of NPP Payments on a 24/7 basis; and

- (iv) monitor its ESA, FSS messages, reports and alerts and apply intraday liquidity management tools and escalation procedures to effectively respond to and manage those messages, reports and alerts.

## 5.2 NPP Business Reference Data Tables

- (a) Each NPP Participant and Connected Institution must promptly provide NPP Business Reference Data to NPPA for itself and for each Identified Institution for which it provides clearing, settlement, Alias registration or other NPP services as Sponsor and ensure that such data is kept up to date.
- (b) NPPA will notify an Overlay Service Provider of any change to the NPP Business Reference Data, proposed by an NPP Participant or Connected Institution, which relates to its Overlay Service. The Overlay Service Provider must promptly notify NPPA if it considers the proposed change to the data is incorrect or inaccurate. NPPA will liaise with the NPP Participant or Connected Institution and the Overlay Service Provider to determine how or whether the proposed change requires correction or clarification.

## 5.3 Technical Requirements

Each Full Participant, Clearing Participant and Connected Institution acknowledges and agrees that:

- (a) its NPP Componentry and Additional Components, including any upgrade from time to time, together with any relevant components of its Back Office System, must at all times be compliant with the applicable minimum technical standards set out in Part [X] of the NPP Procedures, the Manuals and the Participant Documentation or as prescribed and published by NPPA from time to time; and
- (b) if it fails to comply with minimum technical standards NPPA may direct it to take corrective action and may operationally suspend the Full Participant, Clearing Participant or Connected Institution concerned pending implementation of such corrective action.

## 5.4 Obligation to Notify NPPA of Technical Defects, Malware and Security Breaches

Each NPP Participant, Connected Institution and Overlay Service Provider must comply with Part [x] of the NPP Procedures in relation to reporting and management of technical and security defects and, without limitation:

- (a) must provide the names and business contact details of its NPP Operational Managers and NPP Incident Managers to NPPA for inclusion in the NPP Contacts Database and ensure those details are kept up to date;
- (b) must disclose its SWIFT User profile information (if applicable), or procure the disclosure of it by SWIFT, to NPPA and the RBA for purposes of giving effect to Incident management arrangements;

- (c) must promptly notify NPPA in writing of the occurrence of any Disabling Event, data breach or other security breach in its Back Office System, Payments Connector, PAG or MQ Environment which could materially affect the security or integrity of the NPP Basic Infrastructure, and provide full details of the source and extent of the breach, the remedial actions it has taken and promptly provide any other information which NPPA may reasonably request in response;
- (d) consents to the disclosure by NPPA of that notification to each other NPP Participant, Connected Institution, Overlay Service Provider, the RBA and the NPPA Servicer; and
- (e) must upon becoming aware of a Disabling Event or security or data breach of the type described in Regulation 5.4(c), immediately take all action reasonably necessary to manage and minimise the impact of such Disabling Event, security breach or data breach on NPPA, other NPP Participants, Connected Institutions and Overlay Service Providers, including (if reasonably necessary and subject to providing prior written notice of its intention to do so to NPPA) suspending its connection to the NPP Basic Infrastructure.

## 5.5 Technical Support and Problem Management

- (a) NPPA will procure, for the benefit of each NPP Participant and each Connected Institution, unlimited 24/7 multi-channel technical support services in relation to NPP Componentry and any Additional Components and an annual health check of its production environment to identify potential security, availability and performance risks.
- (b) Each NPP Participant and Connected Institution:
  - (i) must comply with the problem management and technical resolution procedures described in Part [x] of the NPP Procedures;
  - (ii) must promptly implement all material corrective action required as a result of its annual health check; and
  - (iii) acknowledges that NPPA may suspend the connection of an NPP Participant or Connected Institution to the NPP Basic Infrastructure pending implementation of all recommendations for corrective action.

## 5.6 Management of NPP Basic Infrastructure and Unplanned Connection Outage Management

Each NPP Participant, Connected Institution and Overlay Service Provider acknowledges and agrees that NPPA:

- (a) may schedule NPP Basic Infrastructure periodic system upgrades and emergency remedial repairs, during which an NPP Participant's or Connected Institution's connectivity to the NPP Basic Infrastructure may be disrupted;
- (b) may temporarily suspend the NPP Basic Infrastructure if the Board determines that suspension is reasonably necessary to protect the security or integrity of the NPP Basic Infrastructure;

- (c) may temporarily suspend the connection of a Connected Institution, including an Overlay Service Provider that is a Connected Institution, to the NPP Basic Infrastructure, such that the suspended Connected Institution may not send or receive Non-Value Messages during the period of the suspension, if the Connected Institution suffers an Outage or if the Board otherwise determines that such suspension is reasonably necessary to protect the security or integrity of the NPP Basic Infrastructure;
- (d) may temporarily suspend the connection of an NPP Participant to the NPP Basic Infrastructure, such that the suspended NPP Participant may not send or receive NPP Payments, including OS Payments, during the period of the suspension, if the NPP Participant suffers an Outage or if the Board otherwise determines that such suspension is reasonably necessary to protect the security or integrity of the NPP Basic Infrastructure;
- (e) may direct a suspended NPP Participant or Connected Institution to take corrective action to address the causes of an Outage;
- (f) may not reinstate a suspended NPP Participant or Connected Institution unless and until it is reasonably satisfied that the causes of the Outage or the circumstances giving rise to suspension have been rectified;
- (g) will promptly notify the RBA, SWIFT and all NPP Participants, Connected Institutions and Overlay Service Providers of any temporary suspension and reinstatement effected pursuant this Regulation 5.6;
- (h) makes no representation or warranty under these Regulations to any NPP Participant, Connected Institution or Overlay Service Provider in relation to the availability of the NPP Basic Infrastructure, connectivity to the NPP Basic Infrastructure or connection service levels; and
- (i) is not liable under these Regulations to any NPP Participant, Connected Institution, Overlay Service Provider or any other person for any loss, costs or expenses suffered or claims arising in relation to any disruption to connectivity to the NPP Basic Infrastructure.

## **5.7 NPP Closed User Group Management**

- (a) Each NPP Participant, Connected Institution and Overlay Service Provider acknowledges that:
  - (i) NPPA is the administrator of the NPP Closed User Groups and is responsible for the management of the NPP Closed User Groups and may establish new NPP Closed User Groups and disable NPP Closed User Groups as it determines reasonably necessary;
  - (ii) in the event of suspension or termination of any NPP Participant or Connected Institution pursuant to these Regulations, for whatever reason, NPPA will take immediate steps to remove that NPP Participant or Connected Institution from each NPP Closed User Group of which it is a member;

- (iii) in the event of suspension or termination of any Overlay Service Provider pursuant to these Regulations, for whatever reason, NPPA will take immediate steps to disable the NPP Closed User Group referable to that Overlay Service, such that OS Payments between members of that NPP Closed User Group may not be sent or received; and
  - (iv) NPPA may reinstate an NPP Closed User Group, or a suspended user to an NPP Closed User Group, if it is reasonably satisfied that the reasons for the suspension of the NPP Participant, Connected Institution or Overlay Service Provider (as relevant) have been rectified.
- (b) The Secretary must promptly notify the RBA, SWIFT and all NPP Participants, Connected Institutions and Overlay Service Providers and the NPPA Servicer of action taken by NPPA to disable or reinstate any NPP Closed User Group or to suspend or reinstate any member of an NPP Closed User Group.

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**Part 6 NPP PAYMENTS CLEARING**

This Part 6:

- Sets out the obligations of, and operational undertakings given by, Full Participants and Clearing Participants in relation to compliance with minimum standards for NPP Payments
- clarifies the proprietary rights of NPP Participants in relation to the posting of BSCT value to Accounts
- sets out the rights and obligations of NPP Participants in relation to NPP Payment returns and to the resolution of Misdirected Payments, Mistaken Payments, Error Payments and Duplicate Payments
- sets out the obligations of NPP Participants in relation to implementation of and compliance with effective sanctions and KYC frameworks.

**6.1 Eligible Payments**

- (a) Only Full Participants and Clearing Participants are authorised to clear NPP Payments using the NPP Basic Infrastructure.
- (b) The Payer Participant must ensure that each NPP Payment:
  - (i) is denominated in AUD;
  - (ii) originates from, and is destined for, an Australian domiciled Account;
  - (iii) is formatted and constructed in accordance with the NPP Message format and NPP Message Usage Guidelines;
  - (iv) includes a Transaction ID;
  - (v) if it is an OS Payment, includes the applicable Overlay Service Identifier in the header of the Clearing Request; and
  - (vi) if it is an IFTI Payment, includes the IFTI code in the header of the Clearing Request.
- (c) Each NPP Participant acknowledges and agrees that:
  - (i) a Payer Participant must not submit a BSCT Clearing Request with a zero value amount; and
  - (ii) a Payee Participant is obliged to reject any BSCT Clearing Request, and must not submit an NPP Payment Return, with a zero value.
- (d) Each NPP Participant:
  - (i) acknowledges that it is responsible for:
    - (A) its compliance; and
    - (B) satisfying itself that each Identified Institution to which it provides NPP Payments clearing and / or settlement services as a Sponsor has a framework in place for ensuring compliance;



- with all relevant regulatory requirements arising from the Australian Sanctions Regime in relation to NPP Payments and Non-Value Messages;
- (ii) must have a Sanctions Compliance Framework applicable to NPP Payments and Non-Value Messages and to review that framework, at a minimum, on an annual basis;
  - (iii) must provide an annual attestation, given by a senior officer, such as the head of risk or head of compliance, to NPPA to the effect that:
    - (A) the Sanctions Compliance Framework is in operation and has been reviewed within the preceding 12 months; and
    - (B) the NPP Participant is effectively implementing the requirements of its Sanctions Compliance Framework;
  - (iv) acknowledges that it is responsible for:
    - (A) its compliance; and
    - (B) satisfying itself that each Identified Institution to which it provides NPP Payments clearing and / or settlement services as Sponsor has a framework in place for ensuring compliance with all regulatory requirements arising from the Australian AML/CTF Regime in relation to NPP Payments and Non-Value Messages;
  - (v) must have a KYC Due Diligence Framework applicable to users of NPP Payments and review this at a minimum on an annual basis;
  - (vi) must provide an annual attestation, given by a senior officer such as the head of risk or head of compliance to NPPA, to the effect that:
    - (A) the KYC Due Diligence Framework is in operation and has been reviewed within the preceding 12 months; and
    - (B) the NPP Participant is effectively implementing the requirements of its KYC Due Diligence Framework.
- (e) NPPA will maintain a register of all attestations given under (d)(iii) and (d)(vi), and will make this register available to all NPP Participants.

## 6.2 Irrevocability

- (a) The Payer Participant may not cancel or recall a Clearing Request once the message is input into the Payer Participant's PAG.
- (b) An NPP Payment is deemed to be cleared at the point of the receipt by the Payer Participant of a Clearing Notification, initiated by the Payee Participant, with a status code indicating acceptance ("**Cleared**").
- (c) The Payer Participant's PAG will automatically generate a Settlement Request for submission to the FSS in respect of each Cleared NPP Payment for settlement in accordance with Part 7 of these Regulations.

- (d) A Cleared NPP Payment is irrevocable when settled by the FSS. Settlement is confirmed by receipt by the Payer Participant and the Payee Participant of a Settlement Notification initiated by the FSS indicating successful settlement.
- (e) Each Payer Participant and Payee Participant acknowledges and agrees that a Cleared NPP Payment which is rejected by the FSS is deemed to be immediately void.
- (f) Each NPP Participant acknowledges and agrees that:
  - (i) nothing in these Regulations or the NPP Procedures obliges the Payee Participant, or any Identified Institution for which it acts, to apply a Cleared NPP Payment to an Account prior to settlement; and
  - (ii) in the event of receipt of a Settlement Notification indicating FSS rejection of a Cleared NPP Payment, the Payer Participant:
    - (A) will not be liable to discharge any obligation to the Payee Participant or to the Payee in respect of that Cleared NPP Payment; and
    - (B) is solely responsible for determining whether to Replay or Retry the Cleared NPP Payment.

### 6.3 Payee Participant's Rights and Obligations

Each Payee Participant acknowledges and agrees that:

- (a) it must respond to each Clearing Request within the configurable time out values prescribed by NPPA, by initiating either:
  - (i) a Clearing Notification indicating acceptance of the Clearing Request; or
  - (ii) a Clearing Notification indicating rejection of the Clearing Request, and include a valid and applicable Reason Code within the message; and
- (b) subject to the minimum Payee notification requirements for BSCTs set out in Part of the NPP Procedures, it may determine service level standards and operational procedures for the application of Cleared BSCTs to Accounts and Payee notifications on a proprietary basis.

### 6.4 Duplicate Payments and other Payer Participant Processing Errors

- (a) It is the responsibility of the Payer Participant to implement effective procedures to ensure that Duplicate Payments are not sent from its PAG, and to ensure that if a Duplicate Payment is identified during the Duplicate Detection Window, it is not submitted for settlement.
- (b) Each Payee Participant is required to implement an effective procedure to identify Duplicate Payments and Replays received during the Duplicate Detection Window, and respond to these as described in Part 3.21 of the NPP Procedures.
- (c) Each Payer Participant acknowledges and agrees that:

- (i) while it may request return of a settled Duplicate Payment or other settled NPP Payment sent as a result of Payer Participant error pursuant to Regulation 6.5(c), the return of any such settled payment is at the discretion of the Payee Participant; and
- (ii) it bears full liability to compensate the Payer for the value of any settled Duplicate Payment or other NPP Payment sent as a result of Payer Participant error.

## 6.5 Mistaken Payments, Error Payments, Misdirected Payments and Duplicate Payments

- (a) **Mistaken Payments:** Where a Payer Participant determines that a settled NPP Payment is, or is likely to be, a Mistaken Payment:
  - (i) it must request return of that NPP Payment from the Payee Participant by initiating a Request for Payment Return within the timeframe specified in Part [x] of the NPP Procedures;
  - (ii) the Payee Participant must:
    - (A) acknowledge the Request for Payment Return within the timeframe specified by Part [x] of the NPP Procedures;
    - (B) use reasonable endeavours to assess and determine whether the NPP Payment subject of the NPP Payment Return is a Mistaken Payment;
    - (C) advise the Payer Participant whether and when an NPP Payment Return will be effected, within the timeframe specified in Part [x] of the NPP Procedures; and
    - (D) effect any necessary NPP Payment Return within the timeframe specified in Part [x] of the NPP Procedures; and
  - (iii) provided the Payee Participant has used reasonable endeavours to assess whether an NPP Payment is a Mistaken Payment before effecting an NPP Payment Return, the Payer Participant indemnifies and holds the Payee Participant harmless against any direct and indirect loss, damages, charges, expenses, fees or claim which the Payee Participant suffers or incurs as a result of the return of the Mistaken Payment, provided that:
    - (A) the Payee Participant must provide the Payer Participant with written evidence of the amounts that are claimed; and
    - (B) the Payee Participant must use commercially reasonable efforts to mitigate its loss, and the Payer Participant's liability under this indemnity will be reduced to the extent the Payee Participant has failed to do so.

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- (iv) If the Payee Participant fails to use reasonable endeavours to assess whether an NPP Payment is a Mistaken Payment before effecting an NPP Payment Return in relation to it, the Payer Participant is not liable to indemnify the Payee Participant under this Regulation 6.5(a), and any direct or indirect loss, damages, charges, fees or claim which the Payee Participant incurs as a result of the return of the Mistaken Payment is borne by the Payee Participant.
- (b) **Misdirected Payments:** Where a Payer Participant determines that a settled NPP Payment is a Misdirected Payment:
- (i) it may request return of the Misdirected Payment from the Payee Participant by initiating a Request for Payment Return ; and
- (ii) the Payee Participant must:
- (A) acknowledge the Request for Payment Return within the timeframe specified by Part of the NPP Procedures;
- (B) use reasonable endeavours to assess and determine whether the NPP Payment subject of the Request for Payment Return is a Misdirected Payment; and
- (C) if satisfied that it is a Misdirected Payment, effect an NPP Payment Return within the timeframe specified in Part [x] of the NPP Procedures.
- Note: the indemnity in Regulation 8.4(h) will apply to a Misdirected Payment which is the result of a failure by the Registering Participant to accurately register Alias Information referable to the Account Holder.
- (c) **Duplicate Payments, Payer Participant Processing Errors and Error Payments:** Where a Payer Participant determines that a settled NPP Payment is either a settled Duplicate Payment, an Error Payment or has been sent as a result of its own error:
- (i) it may request return of such payment from the Payee Participant by initiating a Request for Payment Return; and
- (ii) the Payee Participant:
- (A) must acknowledge the Request for Payment Return within the timeframe specified by Part [x ] of the NPP Procedures;
- (B) must use reasonable endeavours to assess and determine whether the NPP Payment subject of the Request for Payment Return is a Duplicate Payment or Error Payment or has otherwise been sent as a result of Payer Participant error; and

- (C) may, if satisfied that it is a Duplicate Payment or Error Payment or otherwise sent as a result of Payer Participant error, effect an NPP Payment Return within the timeframe specified in Part [x] of the NPP Procedures; and

*Note: Any notification of, or other arrangements with, Payee customers regarding return of a settled NPP Payment, beyond any obligation imposed on the Payee Participant by statute, the common law or the NPP Regulations or NPP Procedures, is a proprietary matter for the Payee Participant.*

- (iii) if the Payee Participant in good faith and without negligence returns a Duplicate Payment or an Error Payment or an NPP Payment sent as a result of Payer Participant error, then the Payer Participant indemnifies and holds the Payee Participant harmless against any direct loss, damages, charges, expenses, fees or claim which the Payee Participant suffers or incurs as a result of the return of the Duplicate Payment or Error Payment, provided that:
  - (A) the Payee Participant must provide the Payer Participant with written evidence of the amounts that are claimed; and
  - (B) the Payee Participant must use commercially reasonable efforts to mitigate its loss, and the Payer Participant's liability under this indemnity will be reduced to the extent the Payee Participant has failed to do so.

## 6.6 Unsolicited Returns

A Payee Participant may only return a Cleared NPP Payment by initiating an NPP Payment Return which complies with the requirements set out in Part [X] of the NPP Procedures.

*Note: It is up to each NPP Participant to determine whether and how its Account Holders are to be notified, or whether prior authorisation should be obtained in relation to, the return of NPP Payments.*

*Any notification of return, or other arrangements with Account Holders regarding the return of a Duplicate Payment, Mistaken Payment, Error Payment or Misdirected Payment or an unsolicited return, beyond any obligation otherwise imposed on the Payee Participant by statute, common law, these Regulations or the NPP Procedures is a proprietary matter for the Payee Participant.*

## 6.7 Adjustments between NPP Participants

- (a) NPP Participants must implement effective reconciliation procedures for NPP Payments.
- (b) If an NPP Participant identifies a discrepancy between exchanges of NPP Payments and associated settlement balances for any particular period, it must promptly notify its counterparty and provide written details of the discrepancy.
- (c) The parties must adjust for agreed discrepancies by bilateral agreement.

**6.8 General Investigations**

- (a) Each NPP Participant undertakes to apply the procedures and NPP Messages prescribed by Part 4 of the NPP Procedures for the investigation and resolution of Duplicate Payments, Mistaken Payments, Misdirected Payments, Error Payments and other NPP Payment clearing errors.
- (b) NPP Participants agree to cooperate and act in good faith to investigate and resolve Duplicate Payments, Mistaken Payments, Misdirected Payments, Error Payments and other NPP Payments clearing errors.

**6.9 [Redacted]**

**6.10 Inter-organisation Compensation Rules**

- (a) All NPP Participants must comply with the practices and procedures set out in the Inter-organisation Compensation Rules, in respect of compensation matters arising from the clearing of NPP Payments between them.
- (b) A reference in the Inter-organisation Compensation Rules to a “Participating System” will be taken to include a reference to the system constituted by the NPP Basic Infrastructure and the operation of these Regulations.
- (c) The NPP Management Committee may review and vary the compensation adjustments that are expressed in the Inter-organisation Compensation Rules to be subject to periodic review, to determine whether those compensation adjustments continue to adequately reflect the principles upon which the Inter-organisation Compensation Rules are based. The NPP 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 the NPP.
- (d) The arrangements between an NPP Participant and any Identified Institution or Connected Institution for which it provides NPP Payment clearing and / or settlement services in relation to obligations to compensate another NPP Participant pursuant to the Inter-organisation Compensation Rules are proprietary.

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## Part 7 NPP PAYMENTS SETTLEMENT

This Part 7 sets out the obligations of NPP Participants to:

- have arrangements in place to enable settlement of Cleared NPP Payments via the FSS; and
- submit Settlement Requests for Cleared NPP Payments for settlement in the FSS.

### 7.1 FSS

Full Participants and Settlement Participants must be, and must remain, authorised by the RBA to use the FSS for settlement of Cleared NPP Payments.

### 7.2 Configuration of PAG to Support Settlement Messages

Each Full Participant and Clearing Participant must configure its PAG such that:

- (a) for each Cleared NPP Payment, a Settlement Request is automatically generated and submitted to the FSS within the configurable time out values prescribed by the NPP Procedures;
- (b) it is able to receive Settlement Notifications and associated notifications and messages from the FSS; and
- (c) it is able to queue Settlement Requests

### 7.3 Settlement of NPP Payments

Subject to Regulations 7.5 and 7.6, each Cleared NPP Payment must be submitted for settlement:

- (a) via the FSS;
- (b) by exchange of value by debiting and crediting of the ESAs of the NPP Participants responsible for settlement of the Cleared NPP Payment, which includes for the avoidance of doubt, any Settlement Participant appointed; and
- (c) otherwise in accordance with all applicable laws and regulations and the applicable RITS Regulations.

### 7.4 Settlement Irrevocable

- (a) A Cleared NPP Payment is irrevocable upon settlement in the FSS in accordance with this Part 7 and the RITS Regulations.
- (b) Rejection of a Settlement Request by the FSS automatically voids the associated Cleared NPP Payment.

### 7.5 Contingency Settlement Arrangements

During an FSS Outage, Full Participants and Clearing Participants must implement arrangements established by the NPP Incident Response Group pursuant to Part 13 of the Regulations and Part [ ] of the NPP Procedures.



**7.6 Indeterminate Settlement Status**

Each NPP Participant and Overlay Service Provider acknowledges and agrees that in the event of a Cleared NPP Payment having an Indeterminate Settlement Status, the Payer Participant is obliged to settle for the Cleared NPP Payment in accordance with the arrangements set out in Part [x] of the NPP Procedures.

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**Part 8 [Redacted]**

**Part 8 [Redacted]**

**Part 8 [Redacted]**

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**Part 9 SUSPENSION AND TERMINATION**

This Part 9 sets out the rights of NPPA to suspend and terminate NPP Participants, Connected Institutions or Overlay Service Providers and the circumstances in which the rights may be exercised.

**9.1 Notification of breach**

Each NPP Participant, Connected Institution and Overlay Service Provider must as soon as practicable notify NPPA if it becomes aware of:

- (a) a Material Breach of the NPP Regulations or NPP Procedures by themselves; or
- (b) any Insolvency Event in respect of itself or any other NPP Participant, Connected Institution or Overlay Service Provider.

**9.2 Suspension**

- (a) The Board may suspend an NPP Participant, Connected Institution or Overlay Service Provider for a specified or indefinite period of time in the following circumstances (each a “**Suspension Event**”):
  - (i) the relevant NPP Participant, Connected Institution or Overlay Service Provider is subject to prudential supervision, and the relevant supervisor requests such suspension;
  - (ii) by agreement with NPP Participant, Connected Institution or Overlay Service Provider concerned;
  - (iii) if the relevant NPP Participant, Connected Institution or Overlay Service Provider no longer satisfies the requirements for participation set out in Part 4 of these Regulations;
  - (iv) if the relevant NPP Participant, Connected Institution or Overlay Service Provider is in Material Breach of its obligations under the NPP Regulations or the NPP Procedures and fails to rectify the breach or provide an explanation of its conduct satisfactory to the Board (in its reasonable discretion) within 30 Business Days of receipt of a request from the Board to rectify the breach or provide such an explanation;
  - (v) an Insolvency Event, (not being an event that results in the automatic termination of participation rights pursuant to Regulation 9.5(a)(ii) or (iii), occurs in respect of the NPP Participant, Connected Institution or Overlay Service Provider concerned; or
  - (vi) if the NPP Participant, Connected Institution or Overlay Service Provider concerned engages in conduct reasonably regarded by the Board to be contrary to the interests of NPPA or which may adversely affect the NPP Basic Infrastructure.

- (b) If an NPP Participant, Connected Institution or Overlay Service Provider is subject to prudential supervision by APRA then NPPA must give APRA reasonable notice of, and an opportunity to be heard at, any meeting at which it will consider suspending the NPP Participant pursuant to Regulation 9.2(a).

### 9.3 Effect of Suspension

- (a) NPPA must promptly notify a party which is suspended under Regulation 9.2 of the suspension, and the time and date upon which the suspension becomes effective. For the avoidance of doubt, NPPA may determine that suspension is immediately effective.
- (b) Subject to Regulation 9.4, an NPP Participant or Connected Institution which is suspended under Regulation 9.2 is not entitled (including, without limitation, in any capacity as a Sponsor to an Identified Institution or other NPP Participant) to:
  - (i) connect to the NPP Basic Infrastructure; or
  - (ii) send or receive NPP Payments or Non-Value Messages.
- (c) Upon suspension of an Overlay Service Provider, each NPP Participant which is a subscriber to the Overlay Service or which provides clearing and/or settlement services to OS Subscribers will cease to be entitled to send or receive OS Payments.
- (d) An Overlay Service Provider who is suspended under Regulation 9.2 is not entitled to provide its Overlay Service/s to any OS Subscriber for the duration of the suspension.
- (e) An NPP Participant, Connected Institution or Overlay Service Provider which is suspended under Regulation 9.2 is not excused from discharging its obligations under the NPP Regulations or the NPP Procedures.
- (f) NPPA will notify SWIFT, the RBA , all other NPP Participants and Connected Institutions and (other than in the case of suspension of a particular Overlay Service Provider) all Overlay Service Providers, by the most expeditious means reasonably available of any suspension under Regulation 9.2.

### 9.4 Conditions in lieu of Suspension

If a Suspension Event occurs in respect of an NPP Participant, Connected Institution or Overlay Service Provider NPPA may (in lieu of suspending that person) impose such conditions on the participation or effect such variation of any provision of the NPP Procedures in relation to that person as may be reasonable and proportionate. The rights and obligations of the NPP Participant, Connected Institution or Overlay Service Provider under these Regulations will be subject to any such conditions or variation. NPPA may at any subsequent time vary or revoke any such conditions or variations.

### 9.5 Termination

- (a) An NPP Participant, Connected Institution or Overlay Service Provider ceases to be eligible to be a party to these Regulations 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 exercising its right to terminate the right of the person to be an NPP Participant, Connected Institution or Overlay Service Provider (as the case may be) in accordance with Regulation 9.5(d).
- (b) An NPP Participant, Connected Institution or Overlay Service Provider may, by notice in writing to NPPA, resign, such resignation to become effective on the date which is [x] days from the date of the notice. The notice is irrevocable.
- (c) An NPP Participant, Connected Institution or Overlay Service Provider may not resign except by giving notice in accordance with Regulation 9.5(b).
- (d) The Board may, by notice in writing to an NPP Participant (other than the RBA in its capacity as the operator of the FSS), Connected Institution or Overlay Service Provider, terminate the right of that person to be an NPP Participant, Connected Institution or Overlay Service Provider (as the case may be) either with immediate effect or with effect from a specified time and / or on a specified date, only if the following conditions have been fulfilled:
  - (i) a Suspension Event has occurred in respect of that NPP Participant, Connected Institution or Overlay Service Provider and has not been remedied within a period determined by the Board following consultation with the NPP Participant, Connected Institution or Overlay Service Provider concerned; and
  - (ii) the Board has provided an opportunity for that NPP Participant, Connected Institution or Overlay Service Provider to make a submission to the Board regarding the Suspension Event and such proposed termination.
- (e) A notice given by the Board pursuant to Regulation 9.5(d) will include reasons for the Board's decision.
- (f) A notice given by the Board pursuant to Regulation 9.5(d) may be revoked by the Board at any time before it becomes effective.
- (g) Each NPP Participant acknowledges and agrees that upon resignation under Regulation 9.5(b) or termination of its right to be an NPP Participant under Regulation 9.5(d):
  - (i) it will cease to be entitled to exercise the rights attaching to the Shares;
  - (ii) it remains bound by the Constitution; and
  - (iii) it may elect to redeem its Shares for the nominal redemption price in accordance with the Constitution.

- (h) Any resignation of an NPP Participant, Connected Institution or Overlay Service Provider, or any termination of the right of a person to be an NPP Participant, Connected Institution or Overlay Service Provider will not affect any right or liability arising under the NPP Regulations or the NPP Procedures before that resignation or termination takes effect or arising in respect of any act, matter or thing occurring prior to that time. An NPP Participant, Connected Institution or Overlay Service Provider who resigns pursuant to Regulation 9.5(b) or whose right to be an NPP Participant, Connected Institution or Overlay Service Provider is terminated pursuant to Regulation 9.5(d) will continue to be bound by the NPP Regulations and the NPP Procedures 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;
  - (ii) any right or liability under the NPP Regulations or the NPP Procedures which relates to or may arise at any future time from any breach of the NPP Regulations or the NPP Procedures which occurred prior to or on the date of termination; and
  - (iii) any fees, costs, charges and expenses which may be levied on, or which are to be reimbursed by, the NPP Participant, Connected Institution or Overlay Service Provider (as the case may be) in accordance with the NPP Regulations or the NPP Procedures 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.
- (i) Without limiting the generality of Regulation 9.5(h), any resignation of an NPP Participant, or any termination of the right of any person to be an NPP Participant will not affect the obligations of the NPP Participant arising under the Constitution or the Shareholders Agreement, including its funding obligations under clause 6 of the Shareholders Agreement.
- (j) Without limiting the generality of Regulation 9.5(h), any NPP Participant, Connected Institution or Overlay Service Provider who resigns or whose right to be a party, is terminated is not entitled to be repaid all or part of any fee, costs, charges or expenses (including NPPA's costs of implementing a requested any Minor Change or Major Change) which has been paid by it.
- (k) On resignation or termination of an NPP Participant, Connected Institution or Overlay Service Provider (as the case may be), NPPA will as soon as practicable notify SWIFT, the RBA (in its capacity as the provider of the FSS) and all other NPP Participants, Connected Institutions, and (other than in the case of suspension of a particular Overlay Service Provider), all Overlay Service Providers by the most expeditious means reasonably available, of the resignation or termination specifying:
- (i) the name of the resigning or terminated NPP Participant, Connected Institution or Overlay Service Provider; and
  - (ii) the date on which the resignation or termination will take, or has taken, effect.



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**Part 10 NPP PROCEDURES**

This Part 10 sets out the process for amendment of NPP Procedures.

**10.1 NPP Procedures**

- (a) NPPA will determine and publish from time to time the NPP Procedures containing practices, procedures, standards and/or specifications relating to all or any aspects of the NPP Basic Infrastructure.
- (b) Each NPP Participant, Connected Institution and Overlay Service Provider agrees and acknowledges that it is bound by the NPP Procedures expressed to apply to them in such capacity, as amended from time to time in accordance with these Regulations.

**10.2 Amendment of NPP Procedures**

- (a) The NPP Rules Committee may vary any practice, procedure, standard or specification previously determined and published under Regulation 10.1(a), provided that if such variation relates to a matter which is required by the Constitution to be approved by a Members' resolution, or to a matter which the NPP Rules Committee considers to be a matter of principle or to be a fundamental term, such variation must also be approved in accordance with the Constitution and any necessary consequential amendments to the NPP Regulations made as applicable.
- (b) The Chief Executive Officer is authorised to make any variation of a grammatical, cosmetic, typographical or minor nature to the NPP Procedures previously determined and published under Regulation 10.1(a) which, in the reasonable opinion of the Chief Executive Officer, will not prejudice any NPP Participant, Connected Institution or Overlay Service Provider, NPPA or NPP Basic Infrastructure operations.
- (c) The effective date for a variation made under:
  - (i) Regulation 10.2(a) may be determined by the NPP Rules Committee, having regard to the potential operational and implementation impacts of the variation on NPP Participants, Connected Institutions and Overlay Service Providers. Variations approved by the NPP Rules Committee must not apply retrospectively; and
  - (ii) Regulation 10.2(b) may be determined by the Chief Executive Officer.
- (d) Any variation made by the NPP Rules Committee pursuant to Regulation 10.2(a) or by the Chief Executive Officer pursuant to Regulation 10.2(b) must be notified to NPPA at the board meeting following the variation.
- (e) Any variation to the NPP Procedures will be published by NPPA in accordance with Regulation 10.1(a) and will include an editorial note setting out the effective date of the variation.

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## Part 11 AMENDMENTS TO NPP REGULATIONS

This Part 11 sets out the process for amendment of NPP Regulations.

### 11.1 Approval Process for Amendments to Regulations

- (a) These Regulations may be amended from time to time by NPPA, provided that:
  - (i) the NPP Rules Committee recommends the amendment; and
  - (ii) the Board:
    - (A) approves the amendment; or
    - (B) in the case of an amendment of the type requiring Member approval in accordance with the Constitution, recommends the amendment to Members for approval; and
  - (iii) if the amendment is of the type requiring Member approval in accordance with the Constitution, such approval is first given;
- (b) Approved amendments to the Regulations will become effective on the date they are notified to all NPP Participants, Connected Institutions and Overlay Service Providers or such later date as the Board may determine appropriate.
- (c) Any amendment to these Regulations published by NPPA must contain an editorial note setting out the effective date of such amendment.
- (d) Each NPP Participant, Connected Institution and Overlay Service Provider agrees and acknowledges that it is bound by the NPP Regulations expressed to apply to them in such capacity, as amended from time to time in accordance with these Regulations.

**The next page is 12.1**

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**Part 12 BREACHES OF REGULATIONS, DISPUTES AND APPEALS**

This Part 12 sets out the requirements for internal Dispute resolution.
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**12.1 Definitions and Interpretation**

(a) The following words have the following meaning in this Part 12 unless the contrary intention appears.

(i) Dispute means a dispute or difference between:

- (A) the NPPA, any sub-committee established by NPPA, any delegate of any such sub-committee and any NPP Participant, Connected Institution or Overlay Service Provider, which for the purposes of this Part only includes persons/entities that have made an application under Part 4 of these Regulations; or
- (B) two or more NPP Participants, Connected Institutions or Overlay Service Providers

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

- (C) arising out of, or in any way connected with, an non-compliance with the Constitution (insofar as it applies to the operation or management of the NPP Basic Infrastructure), these Regulations or the NPP Procedures;
- (D) arising out of, or in any way connected with, any decision of NPPA or any sub-committee of NPPA or any delegate of such sub-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, Regulation 9.5; or
- (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 the NPP Regulations or the NPP Procedures, other than sums due in relation to the subscription for Shares, which will be resolved in accordance with the dispute resolution procedures in the Shareholders Agreement;

other than a dispute arising out of or connected in any way with those matters, which is required by the terms of the Shareholders Agreement to be resolved in accordance with that agreement.

(ii) Dispute Resolution Certificate means a certificate evidencing a determination made under this Part 12 signed by the chairman of the NPP Management Committee or more than 50% of members of the NPP Management Committee.

- (b) A reference in this Part 12 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.

## **12.2 Resolution of Disputes**

- (a) Subject to Regulation 12.7, all Disputes must be referred in writing to a meeting of the NPP Management Committee for determination by the NPP Management Committee. A determination of the NPP Management Committee in relation to a Dispute must be evidenced by a Dispute Resolution Certificate and a determination so evidenced will be binding upon all parties to the Dispute, including, without limitation, any NPP Participant, Connected Institution or Overlay Service Provider which, subsequently to the occurrence of the events giving rise to the Dispute, resigns as an NPP Participant, Connected Institution or Overlay Service Provider pursuant to Regulation 9.5(b) or whose membership is terminated pursuant to Regulation 9.5(d).
- (b) Subject to Regulation 12.7 no proceedings, other than proceedings for urgent interlocutory injunction or similar interim relief, 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 NPP Management Committee pursuant to Regulation 12.2; and
  - (ii) the Dispute has been determined by the NPP Management Committee; and
  - (iii) the determination has been evidenced by a Dispute Resolution Certificate in accordance with Regulation 12.2.
- (c) Subject to the Constitution and the Shareholders Agreement, nothing in this Part 12 affects the right of NPPA, or of any NPP Participant, Connected Institution or Overlay Service Provider to submit to mediation or arbitration, or to commence proceedings in relation to, any dispute, matter or issue which does not fall within the definition of a Dispute.

## **12.3 Dispute Resolution Fee and Costs**

- (a) Subject to Regulation 12.3(c), each NPP Participant, Connected Institution or Overlay Service Provider party to a Dispute which is referred to the NPP Management Committee pursuant to Regulation 12.2 or to the Board pursuant to Regulation 12.8 must:
  - (i) pay to NPPA, within 10 Business Days of the date on which the Dispute is first referred to the NPP Management Committee, a dispute resolution fee which, subject to review and variation by NPPA will be \$5,000; and

- (ii) pay to NPPA, within 10 Business Days of determination of the Dispute by the NPP Management Committee, and (in such proportions as the NPP Management Committee shall determine are reasonable and appropriate in all the circumstances) all costs and expenses incurred by the NPPA 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, accountancy or other technical advice and administrative costs reasonably incurred by NPPA).
- (b) For the avoidance of doubt, the NPP Management Committee may determine that all costs and expenses referred to in Regulation 12.3 (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 NPP Management Committee, they may withdraw the Dispute from the NPP Management Committee by each giving written notice of withdrawal to NPPA.
- (d) If a Dispute is withdrawn from the NPP Management Committee pursuant to Regulation 12.3(c); and the parties concerned have agreed, confidentially or otherwise, as to the apportionment among them of costs and expenses referred to in Regulation 12.3(a)(ii), then the parties involved must notify NPPA in writing, within 5 Business Days of the date on which all notices of withdrawal of the Dispute under this Regulation 12.3(c) have been received by NPPA (the “**Withdrawal Date**”) of the agreed apportionment of those costs and expenses and the NPPA will render invoices in accordance with the notified agreed apportionment payable within 10 Business Days of the Withdrawal Date.
- (e) If a Dispute has been withdrawn by the parties concerned pursuant to Regulation 12.3(c) and those parties have not reached agreement as to the apportionment of NPPA’s costs and expenses connected with referral of the Dispute or have not notified NPPA of any agreed apportionment of those costs and expenses in accordance with Regulation 12.3(d), NPPA may render to those parties invoices for recovery of those costs and expenses requiring each party to pay to NPPA within 10 Business Days of the Withdrawal Date an equal portion of those costs and expenses.
- (f) NPPA 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 NPPA’s costs and expenses, but excluding the fact that a settlement has been agreed, and may not disclose that information to any NPP Participant, Connected Institution or Overlay Service Provider or NPP Management Committee member without the consent of the parties to the Dispute.

## 12.4 Commencement of Proceedings

- (a) If an NPP Participant, Connected Institution or Overlay Service Provider (in this Regulation, the "**Defendant Participant**") fails or refuses to give effect to a determination of the NPP Management Committee in relation to a Dispute to which this Regulation applies, which determination is evidenced by a Dispute Resolution Certificate, then the NPP Management Committee may resolve that proceedings be commenced and prosecuted against the Defendant Participant by NPPA in its own right.
- (b) Alternatively, any aggrieved NPP Participant, Connected Institution or Overlay Service Provider which was a party to these Regulations and the NPP Procedures at the date of issue of the relevant Dispute Resolution Certificate (other than the Defendant Participant) may commence proceedings against the Defendant Participant and request the assistance of NPPA in relation to such proceedings in which event the NPP Management Committee may require NPPA to provide whatever administrative assistance the NPP Management Committee determines should be rendered by NPPA to facilitate the conduct of such proceedings.
- (c) If the NPP Management Committee resolves that proceedings be commenced by NPPA against the Defendant Participant, or if, in the opinion of the NPP Management Committee it is desirable for NPPA to render administrative assistance to facilitate the conduct of proceedings by any NPP Participant, Connected Institution or Overlay Service Provider which was a party to these Regulations and the NPP Procedures at the date of issue of the relevant Dispute Resolution Certificate (other than the Defendant Participant), then every NPP Participant, Connected Institution and Overlay Service Provider irrevocably authorises NPPA to commence such proceedings or render such administrative assistance.

## 12.5 Costs

All:

- (a) costs (including costs as between solicitor and own client) and disbursements incurred by the NPPA in relation to any proceedings commenced and prosecuted in accordance with Regulation 12.4;
- (b) administrative costs reasonably incurred by NPPA in relation to any such proceedings;
- (c) costs (including disbursements) and damages which may be awarded against NPPA in relation to any such proceedings (or be payable by NPPA as the result of any settlement of any such proceedings); and
- (d) liabilities and losses arising from any such proceedings which are suffered or incurred by NPPA,

are to be treated as costs and expenses of administration of, or incurred in connection with, the management and operation of the NPP Basic Infrastructure for the purposes of Regulation 3.1(c) and are to be taken into account in calculating, in good faith, the periodic fees payable by all NPP Participants, Connected Institutions and Overlay Service Providers pursuant to Regulation 3.1(c).

## **12.6 Reimbursement of Expenses**

If any proceedings are commenced by any one or more NPP Participants, Connected Institutions or Overlay Service Providers pursuant to this Part 12, and NPPA renders administrative assistance pursuant to Regulation 12.4(c) to facilitate the conduct of those proceedings, then any award of damages or costs in favour of that or those parties must first be applied to reimburse NPPA for all costs incurred by it in rendering such administrative assistance.

## **12.7 Reference to the Board or to Mediation**

- (a) The provisions of this Regulation 12.7 apply notwithstanding anything to the contrary in Part 12.
- (b) Prior to the NPP Management Committee taking any preliminary or other action pursuant to Regulation 12.2 in relation to a Dispute, an NPP Participant, Connected Institution or Overlay Service Provider party to that Dispute may refer that Dispute either directly to the Board for determination by the Board or to mediation in accordance with Regulation 12.7(f), in which case the Dispute will not be referred to the NPP Management Committee for its determination.
- (c) Within 3 months of the date of a Dispute Resolution Certificate, an NPP Participant, Connected Institution or Overlay Service Provider party to the relevant Dispute may refer that Dispute to the Board by way of a request for a review of the determination of the NPP Management Committee (which determination is evidenced by that Dispute Resolution Certificate) for further determination by the Board.
- (d) A determination of the Board in relation to a Dispute referred to it under this Regulation 12.7 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 an NPP Participant, Connected Institution or Overlay Service Provider pursuant to Regulation 9.5(b) or whose membership is terminated pursuant to Regulation 9.5(d)), until such time as a court of law or equity otherwise orders.
- (e) Where a determination of the Board is made and evidenced in accordance with Regulation 12.7, Regulations 12.1 to 12.7 inclusive will apply as if a determination of the Board in relation to a Dispute is a determination of the NPP Management Committee in relation to that Dispute and the powers and duties of the NPP Management Committee under those Regulations are powers and duties of the Board.



- (f) An NPP Participant, Connected Institution or Overlay Service Provider who is party to a Dispute may refer the Dispute to mediation in accordance with the Australian Centre for International Commercial Arbitration (“**ACICA**”) mediation rules (“**ACICA Mediation Rules**”) on the following terms:
- (i) the mediation is to be conducted by ACICA in Sydney;
  - (ii) the parties will agree on the appointment of a mediator. If the parties do not agree on the mediator to be appointed within 10 Business Days of either party referring the Dispute to mediation, then the mediator is to be appointed by ACICA in accordance with the ACICA Mediation Rules; and
  - (iii) the mediation process will terminate within one month of the appointment of the mediator, upon which either party will be entitled to commence court proceedings in relation to the Dispute.

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## Part 13 INCIDENT MANAGEMENT

This Part 13 sets out the obligations of NPP Participants, Connected Institutions and Overlay Service Providers to:

- comply with Incident Management Plans established, and instructions given, by the NPP Incident Response Group in the event of particular Incidents, which may include suspension of usual procedures, directions to implement flow and/or value controls and directions to queue Settlement Requests.
- comply with the NPP Procedures in relation to Incidents generally.

### 13.1 NPP Incident Response Group

- (a) The NPP Incident Response Group has, subject to its terms of reference, all powers and functions reasonably necessary to ensure the orderly management and operation of the NPP Basic Infrastructure in the event of an Incident, which includes power to:
- (i) establish and publish Incident Management Plans;
  - (ii) declare Incidents for the purpose of giving effect to Part X of the NPP Procedures (Incident Management Procedures) (either in whole or in part);
  - (iii) direct NPP Participants, Connected Institutions and Overlay Service Providers to give effect to Incident Management Plans (in whole or in part); and
  - (iv) exercise any of the powers of NPPA to act or give a direction under Part 5 of these Regulations for the purpose of management of an Incident.
- (b) Each NPP Participant, Connected Institution and Overlay Service Provider must comply with Incident Management Plans, the Incident Management Procedures and any reasonable direction given in writing by the NPP Incident Response Group for the purpose of management of an Incident.

### 13.2 Incident Management Plans

The NPP Incident Response Group may, to the extent to which it considers it necessary to do so, formulate and approve Incident Management Plans and may amend such plans from time to time. Incident Management Plans will:

- (a) apply during:
- (i) any Disabling Event; and
  - (ii) any other event or circumstance determined by NPPA or the NPP Incident Response Group as being an event or circumstance which is an Incident for the purposes of these Regulations and the NPP Procedures;
- (b) be additional to any other matter contained in the Part X of the NPP Procedures (Incident Management Procedures); and

- (c) be effective on and from the date NPPA publishes them (or amendments to them) from time to time and for the period which NPPA or the NPP Incident Response Group determines them to be effective.

**13.3 Incident Management Procedures**

Each NPP Participant, Connected Institution and Overlay Service Provider must comply with Part X of the NPP Procedures (in whole or in part) upon receipt of written notice, which may include email or SMS notice, of an Incident declared by the NPP Incident Response Group.

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## Part 14 CAPACITY MANAGEMENT

This Part 14 sets out the obligations of Full Participants, Clearing Participants and Connected Institutions to provide information and otherwise comply with NPPA's requirements with respect to BAU capacity planning and coordination, volume management and provisioning of NPP Componentry including any subsequently acquired Additional Components, to support capacity plans.

### 14.1 Volume Forecasts

Each Full Participant, Clearing Participant and Connected Institution acknowledges and agrees that:

- (a) NPPA is responsible for developing and maintaining the methodology for the NPP Volumetric Model and determining the Target Transaction Throughput for the NPP Basic Infrastructure;
- (b) NPPA is responsible for determining the frequency and content of NPP Basic Infrastructure volume forecasts to be provided by Full Participants, Clearing Participants and Connected Institutions;
- (c) NPPA will request Full Participants, Clearing Participants and Connected Institutions to calculate, provide and regularly update NPP volume forecasts, and the assumptions on which such forecasts are based, for the purposes of developing and maintaining the NPPA Volumetric Model; and
- (d) it will provide NPPA with all such requested information in the format and within the timeframes prescribed by Part 8.4 of the NPP Procedures.

### 14.2 Capacity Planning

Each Full Participant, Clearing Participant and Connected Institution acknowledges and agrees that:

- (a) NPPA is responsible for NPP Basic Infrastructure capacity planning and management;
- (b) NPPA may provide aggregated and anonymised capacity planning information to Full Participants, Clearing Participants and Connected Institutions to assist those parties with their own capacity planning activities; and
- (c) it will comply with any reasonable direction given by NPPA in accordance with its capacity management plans, provided however, that if it disagrees with either the requirement for, or substance of, the direction it may invoke the dispute resolution process set out in Regulation 12, in which case its obligation to comply with the direction is suspended pending resolution.

**14.3 No Disclosure**

NPPA acknowledges that the volume forecasts and capacity planning information provided by NPP Participants, Connected Institutions and Overlay Service Providers pursuant to this Regulation 14 constitute commercially confidential information which is valuable to the provider of the information, and undertakes to ensure that such information is not disclosed except as permitted by Regulation 14.2(b).

**14.4 Volume Management**

Each Full Participant, Clearing Participant and Connected Institution acknowledges and agrees that:

- (a) NPPA may, from time to time, direct it to impose value limits and volume controls in relation to NPP Payments, Non-Value Messages and Addressing Service activity, to ensure the orderly operation of the NPP Basic Infrastructure; and
- (b) it will promptly comply with any such direction, and maintain such controls until directed by NPPA to do otherwise.

**14.5 Obligations for Provisioning**

Each Full Participant, Clearing Participant and Connected Institution:

- (a) acknowledges that the NPP Basic Infrastructure has been, and its Back Office Systems and Payments Connector must be, and both must remain, sized to support the Target Transaction Throughput defined in the NPPA Volumetric Model applicable to it, as set out in the NPP Procedures, Appendix E;
- (b) must ensure that, at all times, its NPP Componentry and any Additional Components meets the Prescribed Minimum;
- (c) must, upon written request by NPPA from time to time, provide independent certification of its compliance with Regulation 14.4(b);
- (d) acknowledges that NPPA may, from time to time, direct it to take remedial action to ensure its compliance with Regulation 14.4(b), and agrees to comply with any such direction within a reasonable timeframe.

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**Part 15 MAINTENANCE**

Part 5 sets out the obligations of NPP Participants and Connected Institutions to comply on a continuing basis with the technical connectivity requirements set out in the Manuals and the Participant Documentation.

This Part 15 sets out the ongoing obligations of NPP Participants and Connected Institutions to comply with all software maintenance directions and instructions given by NPPA directly or via SWIFT and to implement Approved Changes.

**15.1 Change Proposals and Approved Changes**

- (a) NPPA will provide NPP Participants, Connected Institutions and Overlay Service Providers with periodic reports of its Technology Evolution activities and with full details of any Change Proposal.
- (b) NPPA will consult, and take into account the views of, SWIFT, the RBA, NPP Participants, Connected Institutions and Overlay Service Providers on Change Proposals.

**15.2 Software Maintenance**

- (a) Each NPP Participant and Connected Institution must implement any software maintenance, upgrade or patch prescribed by NPPA in accordance with the Technology Maintenance Plan.
- (b) Each NPP Participant and Connected Institution must implement and support, including by way of building, testing and implementation of changes to Back Office Systems, each Approved Change in accordance with the directions and instructions given by NPPA.

**15.3 Coordination**

Each NPP Participant and Connected Institution acknowledges that NPPA is responsible for assessing and approving Change Proposals and for coordinating testing and implementation of Approved Changes, and agrees to comply with all reasonable directions given by NPPA for the purposes of performance of those responsibilities.

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**Part 16 MISCELLANEOUS****16.1 Notices**

- (a) Unless expressly provided otherwise in these Regulations or the NPP Procedures, all notices, certificates, consents, approvals, waivers and other communications, including operational memoranda ("**Notices**") in connection with these Regulations or the NPP Procedures must be:
- (i) in writing;
  - (ii) in English; and
  - (iii) if given by a body corporate, signed by a person or persons authorised to act on its behalf.
- (b) A Notice may be given to any person pursuant to these Regulations either by:
- (i) serving it personally (including delivery by courier); or
  - (ii) sending by email to the Secretary at the email address supplied by NPPA (if NPPA is the recipient), or to the email address supplied by the person to NPPA for the giving of Notices; or
  - (iii) by publishing the Notice on NPPA's extranet or website in a manner accessible by the person receiving notice.
- (c) Publication of a Notice on NPPA's extranet or website must be accompanied by an email (or other electronic communication) to the recipient(s) of the Notice advising of the publication.
- (d) Where a Notice is sent by email (whether or not also published on NPPA's extranet or website), the Notice is deemed to be served on the earlier of when the email is opened by the recipient and the Business Day following its despatch (provided the sender does not receive a delivery failure or out of office message).

**16.2 Gross up for GST- Supplies**

- (a) If:
- (i) NPPA or an NPP Participant, Connected Institution or Overlay Service Provider (each a "Supplier") makes a Supply to an NPP Participant, Connected Institution or Overlay Service Provider (each a "Recipient") under the NPP Regulations or the NPP Procedures; and
  - (ii) the Supplier is required to pay GST under the GST Law in respect of that Supply ("Taxable Supply"), then
- the Recipient must pay the Supplier 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 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 this regulation 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 10 Business Days).

### 16.3 Set Off

Nothing in the NPP Regulations shall be construed so as to negate or exclude any right of set-off which may otherwise arise.

### 16.4 Confidentiality

- (a) All Confidential Information is confidential to the provider of that information and its employees and each recipient of Confidential Information must ensure that Confidential Information is kept secure, not disclosed to any other person or used for any purpose except:
  - (i) to any existing, prospective or potential Identified Institution to which that recipient provides or proposes to provide NPP clearing and / or settlement services;
  - (ii) to any existing, prospective or potential contractors or consultants and any participants in a tender process initiated by or for that recipient;
  - (iii) with the consent of the provider of that information (which consent must not be unreasonably withheld);
  - (iv) (in the case of statistics) on a basis which does not identify the provider of the information or any individual;
  - (v) 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;
  - (vi) in connection with legal proceedings or disputes in which the recipient is a party;
  - (vii) if the information is generally and publicly available;
  - (viii) its legal advisers and auditors for the purpose of considering or advising upon the Confidential Information; or
  - (ix) 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 disclosure by a recipient (the “**First Recipient**”) of Confidential Information to a further recipient (the “**Second Recipient**”) pursuant to subparagraphs (a)(i), (a)(ii), (a)(iv), (a)(v) and (a)(vii) above, the First Recipient must prior to disclosure:
  - (i) advise NPPA and the provider of the Confidential Information in writing; and

- (ii) obtain from the Second Recipient an undertaking to abide by the requirements to this Regulation 16.3. The undertaking obtained should, wherever possible, be enforceable directly by NPPA and the provider.

### **16.5 Exclusion of Fiduciary and Trustee Relationships**

No party shall, by reason only of the NPP Regulations, NPP Procedures or another document relating to the NPP, have a fiduciary relationship with, or be trustee for, a NPP Participant, Connected Institution or Overlay Service Provider or another person unless expressly agreed.

### **16.6 Statistics and Information**

- (a) Without limiting Part 14 of these Regulations, if requested in writing by NPPA, each NPP Participant, Connected Institution and Overlay Service Provider must promptly provide all information in relation to that party's NPP activities, including NPP Payment volumes and values, reasonably requested by NPPA.
- (b) Each NPP Participant acknowledges that NPPA may arrange with the RBA for the supply:
  - (i) by RBA to NPPA of statistical data concerning the value and number of NPP Payments processed in the FSS; and
  - (ii) by NPPA to RBA of statistical data concerning the value and number of NPP Payments exchanged via the NPP Basic Infrastructure.
- (c) Each NPP Participant acknowledges to NPPA for the benefit of the RBA and to the RBA itself that it unconditionally authorises and consents to disclosure by the RBA to NPPA of the statistical data referred to in Regulation 16.6(b)(i), or any of that data, (in any format whatsoever) for any purpose whatsoever in connection with the operation and management of the NPP Basic Infrastructure by NPPA, or with these Regulations or the NPP Procedures.
- (d) Each NPP Participant, Connected Institution and Overlay Service Provider authorises and consents to the disclosure of the statistical data referred to in this Regulation 16.6(b)(ii) or any of that data, (in any format whatsoever) by NPPA to the RBA.
- (e) Statistical data and other data collected by NPPA in accordance with this Regulation 16.6 may only be used in connection with the operation and management of the NPP Basic Infrastructure by NPPA, or with these Regulations or the NPP Procedures for purposes approved by NPPA from time to time.

### **16.7 Indemnity**

Every person who is or has been a member of the NPP Management Committee, the NPP Incident Response Group, the NPP Change Management Committee or any other sub-committee of the Board is entitled to be indemnified out of the property of NPPA 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) NPPA is forbidden by statute to indemnify the person against the liability or legal costs; or
- (d) an indemnity by NPPA of the person against the liability or legal costs would, if given, be made void by statute.

### **16.8 Insurance**

NPPA 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 NPP Management Committee, the NPP Incident Response Group, the NPP Change Management Committee or any other sub-committee of the Board against liability incurred by the person in that capacity, including a liability for legal costs, unless:

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