

# **EFTPOS ACCESS AUSTRALIA LIMITED**

**ABN 99 119 811 344**

**A Company limited by Guarantee**

## **INTRODUCTORY GUIDE**

**to**

## **THE EFTPOS ACCESS CODE**

**Commencement Date: 15 September 2006**

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ABN 99 119 811 344**

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# INTRODUCTORY GUIDE TO THE EFTPOS ACCESS CODE

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## 1. INTRODUCTION TO THIS GUIDE, THE ACCESS CODE & CECS MANUAL

### 1.1 The Introductory Guide

The Introductory Guide clarifies and explains the requirements and processes contained in the Access Code, and to some extent, the CECS Manual. Its content is **guidance only** and does not bind the Administrator, Access Providers, Access Seekers or any other interested parties.

The first step in the Application Process (see Section 3.2 below) is for an Access Seeker to request (and the Administrator to provide) copies of the Access Code and the CECS Manual. Access Seekers must familiarise themselves with both of those documents and should not rely on this Introductory Guide in isolation.

### 1.2 The Access Code

The Access Code was developed by the Australian Payments Clearing Association Limited (APCA) in consultation with current and potential EFTPOS participants and the Reserve Bank of Australia (RBA). It is a voluntary self regulatory regime that facilitates equitable and practicable direct connection to the EFTPOS network.

Those seeking direct connection to the EFTPOS network (Access Seekers) are, if they meet the Eligibility Criteria, entitled to use the Access Code to gain access to the Standard Service. ***The Standard Service is described in Schedule 5 of the Access Code. Essentially it is a service to establish a direct connection to an Access Provider.***

Thus the Access Code provides eligible Access Seekers with:

- a right of access to the Standard Service;
- for a capped fee (the fee is capped by the RBA's EFTPOS Access Regime, refer Section 3.4);

- within certain specified timeframes<sup>1</sup>.

If an Access Seeker fails to satisfy the Eligibility Criteria after having established one or more connections under the Access Code then any Access Provider with whom the Access Seeker has established a direct connection under the Access Code may ***terminate its Access Agreement with the Access Seeker and disconnect the Access Seeker (or maintain the connection on commercial terms outside the scope of the Access Code)***. The Eligibility Criteria are discussed in more detail in Part 2.

Access Seekers that gain access to the Standard Service pursuant to the Access Code must become members of EFTPOS Access Australia Limited (EAAL) and agree to grant access to the Standard Service to other eligible Access Seekers (as an Access Provider) and contribute to EAAL's administration costs.

It is not mandatory for Access Seekers to use the Access Code; they may negotiate with Access Providers to establish direct connections outside of the Access Code. Indirect connection (for example switching or gateway services) is not covered by the Access Code and must be sought via commercial arrangements.

### **1.3 The CECS Manual**

APCA's Consumer Electronic Clearing Stream (CECS) Manual sets standards, policies and procedures to facilitate the conduct and, where applicable, settlement of the exchange of Items<sup>2</sup> between CECS Members and all aspects of the related clearing cycle, including:

- (a) procedures to promote the efficiency, security and integrity of such exchanges; and
- (b) specifications and standards for equipment utilised and cards issued by, and communications links and message formats between, those CECS Members which participate in Interchange Activities<sup>3</sup>.

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<sup>1</sup> not all timeframes are specified, some must be agreed by Access Seekers and Access Providers.

<sup>2</sup> A term defined in the CECS Regulations and/or Manual.

<sup>3</sup> A term defined in the CECS Regulations and/or Manual.

Whilst the Access Code does not require Access Seekers to become CECS Members, it does require certification in accordance with Part 2 of the CECS Manual (see Clause 5.2<sup>4</sup>) and compliance with any relevant obligations set out in the CECS Manual (see Clause 2.2(a)(vi)).

Thus in order to be an eligible Access Seeker under the Access Code, the Access Seekers' systems must comply, or be capable of complying, with the relevant requirements in the CECS Manual.

#### **1.4 No Agreement to engage in Interchange Activities**

Neither the Access Code nor CECS oblige Access Providers or other EFTPOS participants to engage in Interchange Activities with an Access Seeker. As such Access Seekers that are not party to agreements obliging Access Providers and other EFTPOS participants to engage in Interchange Activities (Interchange Agreements) need to secure those agreements via commercial negotiation with existing participants. The existence of Interchange Agreements with existing participants is not one of the Eligibility Criteria.

#### **1.5 The role of the Administrator, Access Seeker and Access Provider**

The Administrator, currently APCA, of the Access Code has a limited role in the various processes prescribed by the Access Code.

For example, the Administrator receives Application Forms and Confidentiality Deeds from Access Seekers and forwards them to Access Providers at appropriate times and, if required, provides assistance to develop a project plan for implementation of the Standard Service. However it does not, for example, assess an Access Seeker's compliance with the Eligibility Criteria<sup>5</sup> or an Access Provider's compliance with the Negotiation Process.

The processes prescribed by the Access Code in respect of access to the Standard Service are essentially between an Access Seeker and Access Provider. As such it is important that each Access Seeker and Access Provider is familiar with the

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<sup>4</sup> All references to Clauses are to the applicable clause in the Access Code.

<sup>5</sup> Unless appointed to resolve a dispute in respect thereof.

obligations that it is subjected to (and the applicable timeframes) by the Access Code.

The Administrator is not responsible for ensuring compliance with these processes and cannot enforce compliance with them. Non-compliance with the processes gives parties the right to invoke the dispute resolution process<sup>6</sup>.

## 2. ELIGIBILITY CRITERIA FOR ACCESS SEEKERS

The Eligibility Criteria for Access Seekers are set out in Clause 2.2(a) of the Access Code. The Application Form, which Access Seekers must complete to initiate the process to gain access to the Standard Service, also requires Access Seekers to provide statements and/or evidence of their compliance with the Eligibility Criteria. Clarification of the Eligibility Criteria and guidance as to the statements and/or evidence to be provided when completing the Application Form are set out below.

### 2.1 Number of Connections – Clause 2.2(a)(i) and (ii)

To satisfy the Eligibility Criteria an Access Seeker is required to maintain within 12 months of entering into its **first** Access Agreement<sup>7</sup>, connections under the Access Code to at least 2 Direct Connectors. **In addition**, an Access Seeker is required to maintain within 36 months of entering into its **first** Access Agreement, connections under the Access Code to at least 3 Direct Connectors OR connections under the Access Code to 4 Direct Connectors within 12 months of entering into its **third** Access Agreement.

That is, in order to satisfy the Eligibility Criteria an Access Seeker must have a 2<sup>nd</sup> connection to a Direct Connector within 12 months of entering into an Access Agreement for its 1<sup>st</sup> connection and, either its:

- 3<sup>rd</sup> connection within 36 months of entering into an Access Agreement for its 1<sup>st</sup> connection; or

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<sup>6</sup> See Clause 7 of the Access Code and Section 4 below.

<sup>7</sup> See section 3.5 below.

- 3<sup>rd</sup> connection at any time and its 4<sup>th</sup> connection within 12 months of entering into an Access Agreement for its 3<sup>rd</sup> connection.

***The number of connections criteria can only be satisfied with connections established under the Access Code. That is, it is not possible to count connections established outside of the Access Code, via normal commercial arrangements, or connections existing on the Commencement Date to satisfy the Eligibility Criteria.***

Once an Access Seeker has satisfied the above, it may establish any subsequent connections under the Access Code at any time (if it continues to satisfy the other Eligibility Criteria).

Clause 2.2(a)(iii) relieves the 8 initial Members of EAAL from compliance with this requirement because the connections they have at the Commencement Date can not be counted to satisfy the Eligibility Criteria.

Access Seekers are required to submit a Capability Statement with each Application Form describing, amongst other things, how they [will meet / have met]<sup>8</sup> this requirement.

As an Access Seeker is required to maintain within 12 months of entering into its *first* Access Agreement, connections to at least 2 Direct Connectors, it is expected (but not required) that an Access Seeker's first Application Form will be for connections to at least 2 Direct Connectors.

## **2.2 Solvency – Clause 2.2(a)(iv)**

To satisfy the Eligibility Criteria an Access Seeker must be solvent. That is an Access Seeker must be able to pay all of its debts as and when they are payable.

Financial information establishing solvency should be included with each Application Form. The simplest way for an Access Seeker to establish that it meets this requirement is to provide a copy of the Access Seeker's most recent audited financial statements, including an independent auditors report.

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<sup>8</sup> As applicable.

### **2.3 Other matters – Clause 2.2(a)(v), (vi) and (viii)**

To satisfy the Eligibility Criteria an Access Seeker must also:

- (a) Not be, and not have been within the previous two years, in material default of any Access Agreement with a Member, or any other agreement for the provision of access in respect of EFTPOS Transactions;
- (b) Comply, or within twelve 12 months of entering into an Access Agreement be capable of complying, with all the relevant obligations applicable to Members under the Access Code and any relevant obligations set out in the CECS Manual; and
- (c) Be either (i) a prudentially supervised ADI or (ii) a Self-Acquirer or Switch (not otherwise expressly acting as an Issuer or an Acquirer).

Access Seekers are required to include in their Capability Statement, statements affirming that they satisfy each of the above criteria with appropriate additional information.

Access Seekers should also note that, in addition to the requirement described in (b) above, the Implementation Process requires the systems that the Access Seeker intends to use for connecting to the systems of the Access Provider to have been certified by APCA in accordance with the requirements set out in Part 2 of the CECS Manual (as relevantly required depending on whether the Access Seeker will act as an Issuer, Acquirer and/or Switch)<sup>9</sup>.

### **2.4 Failure to satisfy Eligibility Criteria**

If an Access Seeker fails to satisfy the Eligibility Criteria then it is not entitled to access to the Standard Service under the Access Code.

This means that if an Access Seeker fails to satisfy the Eligibility Criteria after having established one or more connections under the Access Code then any Access Provider with whom the Access Seeker has established a direct connection under the Access Code may:

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<sup>9</sup> See additional information in Section 3.7.

- terminate its Access Agreement with the Access Seeker; and
- disconnect the Access Seeker (or maintain the connection on commercial terms outside the scope of the Access Code).

### **3. PROCESS AND STEPS REQUIRED TO BECOME A MEMBER AND GAIN ACCESS TO THE STANDARD SERVICE**

#### **3.1 Introduction**

The Access Code prescribes the following stages for gaining access to (and implementation of) the Standard Service:

- (a) the Application Process;
- (b) the Negotiation Process;
- (c) entering into an Access Agreement; and
- (d) the Implementation Process.

Membership of EFTPOS Access Australia Limited (EAAL) is mandatory for any Access Seeker that has completed the first 3 stages and entered into an Access Agreement for access to the Standard Service.

Schedule 3 contains a diagrammatic summary of these stages.

#### **3.2 The Application Process**

The Application Process is set out in Clause 3.4.

After having obtained copies of the Access Code and CECS Manual from APCA, Access Seekers are required to submit an Application Form<sup>10</sup> (and accompanying material – see Part 2 above) and, for each Access Provider from whom access is sought, an executed a Confidentiality Deed.

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<sup>10</sup> See Part 5 for details of the Application Fees.

APCA will then forward the Confidentiality Deeds to each Access Provider from whom access is sought for co-execution. Copies of the Application Form will be provided to Access Providers once they have executed the applicable Confidentiality Deed.

Information contained in the Application Form is Confidential Information and must not be disclosed by Access Providers in accordance with Clause 8.

The Application Process should take no more than 15 business days (plus APCA's administrative time) to complete.

### **3.3 Negotiation Process**

The Negotiation Process is set out in Clause 3.5 and commences when an Access Provider has received an Application Form lodged by an Access Seeker.

An Access Provider that has received an Application Form has 35 business days to either:

- inform the Access Seeker that, in the Access Provider's opinion, the Access Seeker does not meet the Eligibility Criteria; or
- provide to the Access Seeker an Access Seeker Information Package containing an Access Offer for provision of the Standard Service and any other relevant information.

An Access Offer must include the Access Providers Standard Access Terms (prepared in accordance with Schedule 3 of the Access Code), include Access Charges that comply with the RBA's Access Regime (see Section 3.4 below) and be capable of acceptance by the Access Seeker.

Upon receipt of an Access Seeker Information Package, an Access Seeker may either:

- accept the Access Offer, in which case the Access Seeker and the Access Provider must enter into an Access Agreement in substantially the same form as the Access Offer; or
- enter into negotiations, in accordance with Clause 3.5.4, as to the terms of the provision of the Standard Service.

If, at the conclusion of the negotiation period, the Access Seeker and Access Provider have not entered into an Access Agreement nor agreed to cease negotiations in respect of the provision of the Standard Service (ie the Access Seeker no longer seeks access to the Standard Service) then either the Access Seeker or the Access Provider may initiate the dispute resolution process described in Clause 7 of the Access Code.

The Negotiation Process should take no more than 95 business days to complete.

### **3.4 Access Charge**

The Access Charge, the amount that an Access Provider may charge an Access Seeker for provision of the Standard Service is not set by the Access Code. However the RBA's EFTPOS Access Regime provides that the Access Charge cannot exceed the RBA Benchmark.

Until 31 December 2009 the RBA Benchmark is **\$78,000**. That is, Access Seekers and Access Providers are free to negotiate any Access Charge (during the Negotiation Process) ***up to a maximum of \$78,000***.

### **3.5 Entering into an Access Agreement**

An Access Seeker and Access Provider will have entered into an Access Agreement following, either:

- an Access Seeker accepting an Access Offer;
- an Access Seeker and Access Provider reaching agreement on the terms of the provision of the Standard Service during the Negotiation Process; or

- the resolution of a dispute, in accordance with Clause 7, as to the terms of the provision of the Standard Service.

The Access Agreement must contain Standard Access Terms prepared in accordance with Schedule 3 to the Access Code.

The Access Agreement may contain Additional Terms in relation to the provision of services other than the Standard Service, provided that the Additional Terms are not inconsistent with, and do not derogate from, the rights given to an Access Seeker under the Standard Access Terms.

The Access Code does not regulate the rights of the Access Seeker and Access Provider in relation to Additional Terms and any disputes arising between the parties in relation to the Additional Terms must not be referred to the Dispute Resolution process in Clause 7.

### **3.6 Membership of EFTPOS Access Australia Limited**

Membership of EFTPOS Access Australia Limited (EAAL) is mandatory for any Access Seeker that has entered into an Access Agreement for provision of the Standard Service.

When an Access Seeker becomes a member of EAAL they agree to be bound by the Access Code and EAAL's Constitution. Therefore they are required to, amongst other things:

- grant access to the Standard Service to other Access Seekers (including existing Members that meet the Eligibility Criteria) in accordance with the terms of the Access Code; and
- contribute to the administration costs of EAAL<sup>11</sup>.

Each member of EAAL is entitled to participate in its governance in accordance with the Constitution and, in particular, to appoint a director to its board of directors.

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<sup>11</sup> see Section 5 below for more detail.

### 3.7 Implementation Process

The Implementation Process is set out in Clause 5 of the Access Code. It includes 4 steps: Planning, Certification (which is applicable to the Access Seeker only), Test Planning and Testing.

Step 1 – Planning: requires the Access Seeker and Access Provider to agree a Project Plan. The Project Plan should include all aspects of the provision of the Standard Service, including matters not expressly referred to in Clause 5 of the Access Code. For example, the Project Plan should cover establishing two production telecommunications links in accordance with the requirements of the CECS Manual and configuring hardware and software for back end processing (including development to support settlement).

The Access Code does not prescribe any parameters for the time periods in the Project Plan. However Clause 5.6 does state that when agreeing a Project Plan the Access Seeker and the Access Provider must have regard to any other Access Agreement(s) that may require the Access Provider to engage in a concurrent or overlapping Implementation process.

Step 2 – Certification: before proceeding to Steps 3 and 4 the Access Seeker must provide to the Access Provider a current certificate from APCA confirming that the systems the Access Seeker intends to use for connecting to the systems of the Access Provider have been certified in accordance with the requirements set out in Part 2 of the CECS Manual (as relevantly required depending on whether the Access Seeker will act as an Issuer, Acquirer or Switch).

***Access Seekers (who are not currently certified) should contact APCA as regards certification as soon as possible and well in advance of the Implementation Process. Initial certification requires, amongst other things, provision of a report from an acceptable independent auditor which may take some time to prepare.***

Step 3 – Test Planning: requires the Project Plan to be updated to include a Testing Timetable and a Testing Protocol. The Testing Timetable must provide that testing will be undertaken during a Testing Window, or at another time agreed between the Access Seeker and Access Provider.

The Access Seeker proposes the Testing Timetable and it must be approved by the Access Provider. An Access Provider cannot withhold its approval unreasonably. Clause 5.6 does however state that when proposing or approving an updated Project Plan the Access Seeker and the Access Provider must have regard to any other Access Agreement(s) that may require the Access Provider to engage in a concurrent or overlapping Implementation process.

Step 4 – Testing: the Access Seeker and the Access Provider must conduct tests in accordance with the Testing Timetable and Testing Protocol developed in Step 3. The Standard Access Terms (refer Schedule 3 of the Access Code) provide for the payment of liquidated damages if either the Access Seeker or Access Provider fail to make their systems available for testing in accordance with the Testing Timetable.

#### 4. DISPUTES

Any dispute:

- (a) between an Access Seeker and an Access Provider, in respect of the actual or prospective ability of the Access Seeker to meet or continue meeting the Eligibility Criteria;
- (b) between an Access Seeker and an Access Provider, arising in connection with the rights and obligations under the Access Code; or
- (c) between parties to an Access Agreement in relation to the rights and obligations of the parties under that Access Agreement but only if those rights and obligations are regulated under the Access Code;

**must** be determined by expert determination in accordance with Clause 7. Expert determination involves the appointment of an independent expert to resolve the dispute in a timely manner and on a confidential basis.

Parties considering invoking the process prescribed by Clause 7 should consider taking legal advice as to its operation and how to proceed.

## 5. FEES AND CHARGES

The following fees and charges are payable in relation to the Access Code and membership of EAAL.

	<b>Amount</b>	<b>When payable</b>
<b>Application Fee</b>	\$1,000 per connection sought	On lodgement of Application Form
<b>Membership Fee</b>	\$28,500	On becoming a Member of EAAL (required when an Access Agreement is entered into)
<b>Costs for provision of Standard Service</b>	To be negotiated with Access Provider but cannot exceed \$78,000 <sup>12</sup>	Prior to or on execution of Access Agreement
<b>Annual contribution to administration costs of EAAL</b>	These costs are divided amongst Members, 40% equally and 60% by number of direct connections to Members <sup>13</sup> .	Invoiced quarterly

<sup>12</sup> Set by the RBA Benchmark.

<sup>13</sup> The total running costs of EAAL are *estimated* to be \$213,044 for 2006/2007.

## 6. GLOSSARY

Terms used in this Introductory Guide and not defined below have the meanings given to them in the Access Code (see Part 13).

<b>Application Process</b>	The process described in Clause 3.4 of the Access Code
<b>Capability Statement</b>	The document that Access Seekers are required to submit with an Application Form
<b>Eligibility Criteria</b>	The criteria specified in Clause 2.2 of the Access Code
<b>Implementation Process</b>	The process described in Clause 5 of the Access Code
<b>Introductory Guide</b>	This Introductory Guide to the Access Code and the CECS Manual
<b>Negotiation Process</b>	The process described in Clause 3.5 of the Access Code

**SCHEDULE 1 - APPLICATION FORM<sup>1</sup>**

**EFTPOS ACCESS**

**MEMBERSHIP APPLICATION FORM**

The Secretary  
EFTPOS Access Australia Limited  
Level 6  
14 Martin Place  
Sydney NSW 2000

Name of Access Seeker .....

Place of Incorporation .....

ACN/ARBN/ABN .....

Registered Office Address/Principal Place  
of Business in Australia .....

Name of Contact Person .....

Telephone Number .....

Fax number .....

The abovenamed body corporate ("Access Seeker") seeks access to the  
Standard Service under the Access Code. Access is sought from the following  
Members of EFTPOS Access Australia Limited ("Access Providers")<sup>2</sup>:

.....  
.....  
.....

In consideration of this application, the Access Seeker provides the following  
information (the documents containing the required information must accompany  
the Application Form):

1. Financial information about the Access Seeker that shows the Access Seeker is solvent.

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<sup>1</sup> A word version of the Application Form can be downloaded from [www.eftposaccess.com.au](http://www.eftposaccess.com.au)

<sup>2</sup> Access Seekers must provide an executed Confidentiality Deed for each Access Provider from whom access to the Standard Service is sought.

2. Information about the proposed EFTPOS operations of the Access Seeker, including but not limited to:
  - (a) the scale of the operations, area of operations (eg. State based or national), roll out plan, growth plan and details of any other contracts already negotiated; and
  - (b) for each Access Provider the proposed time for Access Seeker to test its systems with the systems of the Access Provider and the proposed timing of implementation.
3. A capability statement showing how the Access Seeker will meet the eligibility criteria under the Access Code, including but not limited to, what resources the Access Seeker will have available and the capability of the Access Seeker to become an Access Provider.
4. In consideration of and subject to acceptance of this application, the Access Seeker represents, undertakes and agrees as follows:
5. For the purposes of paragraph 2 above, unless the Access Seeker and Access Provider agree otherwise, the time when the Access Seeker tests its systems with the systems of the Access Provider must:
  - (a) coincide with a Testing Window; and
  - (b) allow for at least six (6) months to pass between the time when the Access Seeker lodges the application form and the time when testing commences.
6. The Access Seeker agrees to observe and comply with the terms of the Access Code and agrees to become a Member upon entry into an Access Agreement. The Access Seeker hereby acknowledges receipt of a copy of the Constitution of EFTPOS Access Australia Limited, the Access Code and the CECS Manual.
7. The Access Seeker acknowledges that by lodging the Application Form, the Access Seeker agrees to enter into a contract with EFTPOS Access Australia Limited and with each of the Members from whom access is sought. Pursuant to which the Access Seeker agrees to observe and comply with the relevant obligations of Access Seekers under the Access Code.
8. The benefit of the rights and obligations contained herein extends not only to EFTPOS Access Australia Limited, but to every other Member who has agreed to observe and comply with the Constitution of the EFTPOS Access Australia Limited and the Access Code.
9. Terms not defined in this application have the same meaning as in the Access Code.

Dated: \_\_\_\_\_

**EXECUTED** by the **Access Seeker** by or in )  
the presence of: )

\_\_\_\_\_  
(Signature of Secretary/Director)

\_\_\_\_\_  
(Signature of Director)

\_\_\_\_\_  
(Full name of signatory)

\_\_\_\_\_  
(Full name of signatory)

**Notes:**

- I. Access Seekers should refer to the Introductory Guide for assistance with respect to completing the Application Form and lodgement or preparation of supporting documents.
- II. Applications should be executed in accordance with the following instructions:
  - (a) by two directors or a director and a company secretary of the Access Seeker; OR
  - (b) by affixing the Applicant's common seal witnessed by two directors or a director and a company secretary of the Access Seeker; OR
  - (c) under power of attorney, in which case the attorney must state that no notice of revocation of the power of attorney under which the application is signed has been received and an original power of attorney or certified copy should be enclosed for noting.
- III. EFTPOS Access Australia Limited may require additional supporting documentation to satisfy itself that the application has been duly executed by the Access Seeker. If this is the case, EFTPOS Access Australia Limited will contact the Access Seeker directly.

## SCHEDULE 2 – CONFIDENTIALITY DEED<sup>1</sup>

### EFTPOS ACCESS CODE

### CONFIDENTIALITY DEED

#### DATE

#### PARTIES

1 \_\_\_\_\_ (ACCESS PROVIDER)

2 \_\_\_\_\_ (ACCESS SEEKER)

#### THE PARTIES AGREE

#### DICTIONARY

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

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

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

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

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<sup>1</sup> A word version of the Confidentiality Deed can be downloaded from [www.eftposaccess.com.au](http://www.eftposaccess.com.au)

**Discloser** means a party disclosing the Confidential Information.

**Recipient** means a party receiving the Confidential Information.

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

- (b) Words capitalised in this Deed that are not defined in clause 1(a) above have the meaning given to them in clause 12 of the EFTPOS Access Code.

## **2 BACKGROUND**

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

## **3 RECIPIENT'S OBLIGATIONS**

### **3.1 Recipient must keep information confidential**

The Recipient must:

- (a) keep confidential all Confidential Information;
- (b) use all Confidential Information solely for the Approved Purpose and, for the avoidance of doubt, must not use the Confidential Information to compete against the Discloser; and
- (c) not copy or record in any other form any part of the Confidential Information except as is strictly necessary for the Approved Purpose and in accordance with this Deed.

### **3.2 Disclosure to Recipient Representatives**

The Recipient must:

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

### **3.3 Disclosure required by law**

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

### **3.4 Information in the public domain**

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

#### **4 RECIPIENT DOES NOT OWN THE INFORMATION**

The Recipient acknowledges that this agreement does not:

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

#### **5 RETURN OF INFORMATION**

##### **5.1 Recipient's rights may cease**

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

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

##### **5.2 Obligations continue**

The obligations of confidentiality under this agreement continue to apply for a period of 5 years after the date of this agreement to the Recipient even if:

- (a) the Approved Purpose is completed or terminated; and
- (b) the Recipient has returned, destroyed or deleted the Confidential Information in accordance with clause 5.1 (Return of information),

unless the parties have entered into an Access Agreement, in which case the obligations of confidentiality under this agreement are replaced by the obligations of confidentiality under the Access Agreement.

## **6 INDEMNITY**

### **6.1 Breach of agreement will damage Discloser**

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

### **6.2 Recipient indemnifies Discloser**

The Recipient indemnifies the Discloser and its Related Bodies Corporate and their respective officers, employees, and agents against any claim, liability, action, damage, loss, cost or expense sustained by any of them arising directly or indirectly from:

- (a) any breach by the Recipient of its obligations under this agreement; and
- (b) any act or omission of the Recipient's officers, employees, advisers, agents or contractors which, if done or omitted to be done by the Recipient, would be a breach of the Recipient's obligations under this agreement.

## **7 DISCLAIMER**

### **7.1 No representations**

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

### **7.2 Recipient releases Discloser**

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

### **7.3 Discloser contracts as trustee**

For the purposes of clause 7.1 (No representations) and 7.2 (Recipient releases Discloser), the Discloser contracts on its own behalf and as trustee of the benefit of the acknowledgment and release, for its Related Bodies Corporate and their respective officers, employees, advisers and agents.

**8 MISCELLANEOUS**

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

**SIGNED** as a Deed.

**SIGNED** by [ ] as authorised signatory for [*the Access Seeker*] in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Signature of

**SIGNED** by [ ] as authorised signatory for [*the Access Provider*] in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Signature of

### SCHEDULE 3 – SUMMARY OF PROCESS AND STEPS REQUIRED TO BECOME A MEMBER AND GAIN ACCESS TO THE STANDARD SERVICE

