
Memorandum of Understanding

For participants in the Superannuation
Transaction Network

Version 5.1

Made between

Gateway Network Governance Body Ltd

and

the **Gateway Operators** described in clause 2(a)

Contents

	Page
1	Defined terms and interpretation
1.1	Definitions in the Dictionary
1.2	Interpretation
1.3	Inconsistencies
2	Application and effect
3	Acceptance as Gateway Operator
3.1	Eligibility
3.2	Application
4	Role of GNGB
5	Rights and obligations
5.1	Obligations of Gateway Operators
5.2	Rights to Exchange
	Messages
6	Gateway Operators Meetings
6.1	Gateway Operators Meetings
6.2	Postponement or Cancellation of Meeting
6.3	Other meetings
7	Amendment of MoU and Gateway Standard
7.1	Amendment of MoU
7.2	Amendment of Gateway Standard
8	Liability
8.1	Representations and Warranties
8.2	Disclaimers
8.3	Exclusions
9	Disputes between Gateway Operators
9.1	Acknowledgement
9.2	Resolution of GO Disputes
9.3	GNGB Board Escalation
9.4	Dispute Resolution Fees and Costs
9.5	Commencement of Proceedings

9.6	Costs	15
9.7	Distribution of Recoveries	15
10	Disputes involving GNGB	16
10.1	Application	16
10.2	Escalation and discussion	16
10.3	Mediation	16
10.4	Legal proceedings	17
10.5	Injunctive or declaratory relief	17
11	Remedies	17
11.1	Notification and Identification of Default Events	17
11.2	GNGB Assessment of Default Events	17
11.3	Notification of Default Events	18
11.4	Probation	18
11.5	Probation for New Gateway Operators	19
11.6	Effect of Probation	20
11.7	Conditions for probation	20
11.8	Termination	20
12	Fees 23	
12.1	Annual Fees	23
12.2	Gross up for GST Supplies by GNGB	24
13	Confidentiality	25
14	Miscellaneous	25
14.1	Notices	25
14.2	Provision of information	26
14.3	General	26
Schedule 1	— Dictionary	28
Schedule 2	— Application	33
Schedule 3	— Fee apportionment - Year 1	35

Date:

Parties

Made between the **Parties**, a **Party** being GNGB and each Gateway Operator whose Application has been accepted by GNGB in accordance with clause 2.0 of this MoU.

Background

- A The Data and Payment Standard is a statutory instrument that establishes the Australian Government legislated standard for superannuation data and payments. It was developed to ensure that employers and trustees of APRA-regulated superannuation entities comply with certain requirements in relation to the processing of Superannuation Transactions.
- B The Gateway Network Governance Body (**GNGB**) was established in October 2016 to provide a formal self-governance regime and framework for Gateway Operators providing services to employers and superannuation funds for the purposes of meeting the requirements of the Data and Payment Standard,
- C This Memorandum of Understanding (**MoU**), as amended from time to time in accordance with its terms:
 - (i) regulates participation in the Superannuation Transaction Network between Gateway Operators (and associated activities, including connecting to, exchanging Superannuation Transaction Messages over and communicating with other Gateway Operators using, the Superannuation Transaction Network);
 - (ii) implements the self-governance framework, which will regulate participation in the Superannuation Transaction Network to be administered by GNGB and address related matters; and
 - (iii) implements, and requires each Gateway Operator to comply with, the Gateway Standard and any other instrument or document issued by GNGB under this MoU from time to time.

The parties agree

1 Defined terms and interpretation

1.1 Definitions in the Dictionary

A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Schedule 1 (**Dictionary**), has the meaning given to it in the Dictionary;
- (b) which is defined in the Superannuation Legislation, but is not defined in the Dictionary, has the meaning given to it in the Superannuation Legislation; and
- (c) which is defined in the Gateway Standard, but is not defined in the Dictionary or the Superannuation Legislation, has the meaning given to it in the Gateway Standard.

1.2 Interpretation

The interpretation clause in Schedule 1 (**Dictionary**) sets out rules of interpretation for this MoU.

1.3 Inconsistencies

If a provision of this MoU is inconsistent with a provision of the **Gateway Standard**, the following descending order of priority will prevail:

- (a) this MoU; and
- (b) the **Gateway Standard**.

2 Application and effect

- (a) This MoU is legally binding on each Gateway Operator whose Application has been accepted by GNGB.
- (b) An Application is accepted by GNGB providing written notice of such acceptance to the relevant Gateway Operator, and takes effect from the date specified in that notice as provided in clause 3.2.
- (c) This MoU, together with the **Gateway Standard**, takes effect:
 - (i) as a contract under seal between:
 - (A) GNGB and each Gateway Operator; and
 - (B) collectively, and as between each of them, those Gateway Operators whose Application has been accepted by GNGB; and
 - (ii) in either scenario, on and from the date that GNGB accepts the relevant Gateway Operator's Application as contemplated in clause 3.2.
- (d) This MoU continues in respect of each such party until such time as that party's participation in this MoU is terminated in accordance with its terms. The termination of a Gateway Operator does not affect the effectiveness or validity of the contract created by this MoU in respect of the continuing parties.
- (e) Each Gateway Operator acknowledges that it is bound to comply with, and fulfil and perform, the obligations and duties imposed on it by or pursuant to this MoU and the **Gateway Standard**.
- (f) This version of the MoU takes effect in accordance with clause 7.1(a) at the time determined according to that clause, and replaces and supersedes its previous versions. In respect of a new Gateway Operator that is not a party to the existing *Memorandum of Understanding for Participants in the Superannuation Transaction Network - Version 4* dated 22 September 2016 but whose Application is accepted by GNGB after the date of notification of amendment of the MoU under clause 7.1(a) and before the date such notification is to come into effect under clause 7.1(b), that Gateway Operator will be subject to Version 4 dated 22 September 2016 until the date that such notification comes into effect (under clause 7.1(b), following which date this version of the MoU will apply to that Gateway Operator.

3 Acceptance as Gateway Operator

3.1 Eligibility

To be a Gateway Operator a person must:

- (a) agree to comply with any applicable laws, this MoU and the Gateway Standard;
- (b) agree to pay all fees, costs, charges and expenses which may be levied on, or which are to be reimbursed by, Gateway Operators in accordance with clause 12 of this MoU;
- (c) agree that on becoming a Gateway Operator, this MoU and the Gateway Standard will constitute a contract under seal between it and:
 - (i) GNGB; and
 - (ii) each current and future Gateway Operator;
- (d) demonstrate, to the reasonable satisfaction of GNGB, that its business practices and operations will be sound and secure and will not adversely affect the integrity, security, efficiency, reliability and stability of the Superannuation Transaction Network;
- (e) 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 Gateway Operators by this MoU and the Gateway Standard;
- (f) meet any other entry criteria prescribed within the Gateway Standard; and
- (g) submit a completed Application which is accepted by GNGB.

3.2 Application

- (a) Applications must be addressed to GNGB and must be substantially in the form of Schedule 2 to this MoU or such other form that GNGB may approve from time to time.
- (b) GNGB will not unreasonably withhold approval of Applications by any Applicant who fulfils the eligibility criteria described in clause 3.1.
- (c) Applicants must:
 - (i) comply with all the conditions of application as are specified in this MoU;
 - (ii) provide sufficient information to demonstrate that the Applicant satisfies the requirements contained in clause 3.1; and
 - (iii) promptly supply any other information which GNGB may reasonably require, provided that such information is reasonably required by GNGB in relation to the Superannuation Transaction Network or operation of GNGB or this MoU and will be treated by GNGB in accordance with such privacy requirements and commercial confidentiality conditions as reasonably specified by the relevant Applicant.

- (d) An Applicant who has submitted an Application to participate but has not been informed by GNGB of the result of its Application may withdraw the Application at any time prior to its acceptance by GNGB.
- (e) Where GNGB accepts an Application pursuant to clause 2(b) and this clause 3.2, GNGB must:
 - (i) also promptly notify all other Gateway Operators who are (at that time) parties to this MoU of each new successful Application and the date on which the new Gateway Operator will be entitled to commence participation in the Superannuation Transaction Network; and
 - (ii) provide a written notice to the Applicant that their Application has been accepted and specify the effective date, on and from which effective date that Applicant will be a Gateway Operator.
- (f) If an Application is not accepted the GNGB must notify the Applicant in writing within 10 days of GNGB making that decision. Any such Applicant is entitled:
 - (i) to challenge that decision within 3 months pursuant to clause 10; or
 - (ii) at any time to lodge a fresh Application for participation in accordance with this MoU.

4 Role of GNGB

The parties acknowledge that GNGB may, in its role in managing the integrity of the Superannuation Transaction Network, in accordance with this MoU and the Gateway Standard, undertake initiatives or take steps to promote some or all of the following:

- (a) the efficiency and effectiveness of the Superannuation Transaction Network;
- (b) compliance with Superannuation Transaction Network governance arrangements, including with this MoU and the Gateway Standard as validly amended from time to time;
- (c) engagement with the Superannuation Transaction Network, as specified in access rules and criteria (including this MoU and the Gateway Standard as amended from time to time), and the management of entry and exit of Gateway Operators;
- (d) security of the Superannuation Transaction Network through the specification of minimum requirements as set out in this MOU and the Gateway Standard to be met by Gateway Operators and monitoring and enforcement of those requirements;
- (e) referral of Data and Payment Standard technical matters to the ATO for resolution, where appropriate;
- (f) engagement with industry and government bodies in respect of any emerging legislative or technological changes that may impact the Superannuation Transaction Network;
- (g) continuous improvement of the Superannuation Transaction Network;
- (h) management of an active stakeholder engagement model and regular consultation at strategic and operational levels;

- (i) should unforeseen circumstances arise (including, for example, legal or regulatory changes and/or a direction or communication from a regulator or applicable governmental body), activities relating to the orderly disengagement from the arrangements described in this MoU in connection with termination, closure or evolution in scope or function of the Superannuation Transaction Network; and
- (j) identification, consideration and pursuit of further activities that leverage the capabilities of the GNGB, where it is in the interests of Members and Gateway Operators, as determined by the Board.

5 Rights and obligations

5.1 Obligations of Gateway Operators

Gateway Operators must:

- (a) comply with any applicable laws, this MoU and the Gateway Standard;
- (b) pay all fees, costs, charges and expenses which may be levied on, or which are to be reimbursed by, Gateway Operators in accordance with clauses 9.7 and 12 of this MoU;
- (c) not adversely affect the integrity, security, efficiency, reliability and/or stability of the Superannuation Transaction Network;
- (d) supply GNGB with all information requested by GNGB from time to time, within a reasonable time from the date of the request, provided that such information is reasonably required by GNGB in relation to the Superannuation Transaction Network or operation of GNGB or this MoU and will be treated by GNGB in accordance with such privacy requirements and commercial confidentiality conditions as reasonably specified by the relevant Applicant or Gateway Operator; and
- (e) use best endeavours to attend Gateway Operators Meetings as outlined in clause 6 (**Gateway Operators Meetings**).

5.2 Rights to Exchange Messages

- (a) Subject to clause 5.2(b), Gateway Operators may only use the Superannuation Transaction Network to exchange (including, sending or receiving) Superannuation Transaction Messages with a person who is, at the time of such exchange, also a Gateway Operator under this MoU, in accordance with the applicable requirements described in this MoU or the Gateway Standard.
- (b) Nothing in clause 5.2(a) will prevent a Gateway Operator from exchanging (including, sending or receiving) messages relating to a Superannuation Transaction:
 - (i) with a person who is not also a Gateway Operator under this MoU, but solely to the extent such exchange is required to be made with that person, in a particular format, so that a Superannuation Entity on whose behalf that Gateway Operator is acting in connection with that exchange of messages remains in compliance, in relation to that exchange, with the Superannuation Industry (Supervision) Act 1993 (Cth), any associated regulations or standards made under it or other applicable legislation;
 - (ii) with the Australian Taxation Office, in connection with the Superannuation Transaction Network and related services; or

- (iii) with the prior consent of GNGB.
- (c) Without limiting clauses 8.2 or 8.3 in any way, each Gateway Operator who exchanges messages relating to a Superannuation Transaction with a person who is not also a Gateway Operator under this MoU pursuant to clause 5.2(b)(i) assumes all risk and responsibility in connection with that exchange.

6 Gateway Operators Meetings

6.1 Gateway Operators Meetings

- (a) The parties will use their reasonable endeavours to cause to occur regular Gateway Operators Meetings, comprising a representative from each Gateway Operator who is a party to this MoU from time to time and such other representatives nominated from GNGB (which will typically include at least a person nominated by GNGB to act as chairperson and another to act as meeting secretary) (**Gateway Operators Meeting**). Such meetings may occur regularly with such frequency as determined and notified by GNGB, having reasonable regard to the submissions of each Gateway Operator.
- (b) GNGB may, on no less than 10 Business Days' written notice to all Gateway Operators, convene a Gateway Operators Meeting. An agenda and relevant supporting documents are required to be issued to each other Gateway Operator and GNGB by any person seeking to raise a particular issue for discussion 5 Business Days before each meeting.
- (c) Both GNGB and Gateway Operators are entitled to attend all Gateway Operators Meetings and may be heard on any matter.
- (d) The purpose of a Gateway Operators Meeting is to provide a forum for GNGB and each Gateway Operator to discuss any aspect of the operation of the Superannuation Transaction Network and any other matters relevant to participation in this MoU.

6.2 Postponement or Cancellation of Meeting

GNGB may postpone or cancel a Gateway Operators Meeting as it considers appropriate. In postponing or cancelling a Gateway Operators Meeting, GNGB must give as much notice as is reasonably possible in all the circumstances of the postponement or cancellation of that Gateway Operators Meeting, to all participants in that Gateway Operators Meeting.

6.3 Other meetings

- (a) The parties may agree to convene other meetings or working groups (such as technical or operational sub-committees) as may be necessary or desirable from time to time, having regard to the promotion of the objectives described in the Background to this MoU and with the consent of GNGB. Such consent will not be unreasonably withheld by GNGB, however GNGB shall be entitled (but not required) to attend or not attend any such additional meeting or groups as it determines.
- (b) Nothing in this clause 6 precludes the Gateway Operators from holding other meetings without the participation of GNGB.

7 Amendment of MoU and Gateway Standard

7.1 Amendment of MoU

- (a) Subject to obtaining the approval of the GNGB Board (by way of 75% majority), GNGB may amend this MoU from time to time by providing no less than 6 months' notice to each Gateway Operator, unless a shorter timeframe is otherwise agreed by all Gateway Operators at a Gateway Operators Meeting, (which notice may be given by way of sending a notice to each Gateway Operator and publishing such amendments on the website maintained by GNGB).
- (b) Any amendments made pursuant to clause 7.1(a) take effect on and from the expiry of the notice period set out in clause 7.1(a).

7.2 Amendment of Gateway Standard

- (a) Subject to obtaining the approval of the GNGB Board by way of 75% majority, GNGB may amend and publish from time to time the **Gateway Standard** containing practices, procedures, standards and/or specifications relating to all or any aspects of the Superannuation Transaction Network.
- (b) GNGB will procure that any amendment made to the **Gateway Standard** by GNGB is notified to Gateway Operators no less than 6 months' prior to that variation taking effect. GNGB will publish all amendments to the **Gateway Standard** on the GNGB website.
- (c) The **Gateway Standard** may also be amended through the following Binding Implementation Practice Process (**BIP**) process:
 - (i) any Gateway Operator who is a current participant in the Superannuation Transaction Network may prepare a change proposal detailing proposed amendments to the then current version of the Gateway Standard and table that change proposal at a Gateway Operators Meeting for discussion and review;
 - (ii) the attendees of that Gateway Operators Meeting may (in that meeting or, if further time for consideration and internal consultation is required, in a subsequent meeting) approve the adoption of that change proposal by a 75% special majority of those Gateway Operators Meeting attendees and prepare and submit a BIP process change proposal, recommending that the such change proposal be adopted, to the GNGB Executive Officer for review and ratification by GNGB; and
 - (iii) GNGB may, subject to its review of the revised BIP proposal to ensure consistency with the objectives set out in the Background to this MoU and consider impacts on the Superannuation Transaction Network, ratify the adoption of the BIP by notice to each Gateway Operator.
- (d) Amendments to the **Gateway Standard** made through the BIP process will not be subject to the notice period in clause 7.2(b) but will be effective on notification by GNGB of ratification, which notification will specify the date on which the variation to the Gateway Standard takes effect.
- (e) Each Gateway Operator acknowledges that it is bound by the **Gateway Standard**, as amended from time to time.

8 Liability

8.1 Representations and Warranties

- (a) Each Gateway Operator represents and warrants to each other Gateway Operator that:
 - (i) it has not relied on any representation made by any other party to induce it to become a Gateway Operator;
 - (ii) it has the power and authority to enter into this MoU and comply with its obligations under it and the **Gateway Standard** and it will comply with, and fulfil and perform, the obligations and duties imposed on it by or pursuant to this MoU and the **Gateway Standard**, in accordance with all applicable laws;
 - (iii) it has made its own appraisal of the criteria to be satisfied in order for a person to become a Gateway Operator and (without reliance on or inducement from any other person) its own assessment and approval of this MoU and the **Gateway Standard**;
 - (iv) its obligations under this MoU and the **Gateway Standard** are valid and binding and are enforceable against it according to their terms;
 - (v) no Insolvency Event has occurred with respect to it and there are no reasonable grounds to suspect that it is unable to pay its debts as and when they are due and payable;
 - (vi) except to the extent disclosed to, and accepted by, GNGB in the relevant Gateway Operator's Application, it does not become Gateway Operator as trustee; and
 - (vii) it has disclosed to GNGB all facts relating to it, this MoU and the **Gateway Standard** and all things in connection with them which are material to the assessment of the nature and amount of risk undertaken by the other Gateway Operators if it were to become a Gateway Operator and take any act in connection with the Superannuation Transaction Network.
- (b) Each Gateway Operator acknowledges that:
 - (i) the integrity, reliability and security of the Superannuation Transaction Network is dependent on the performance and conduct of its participants, including Gateway Operators;
 - (ii) it might have liability, for a breach by it of this MoU or the **Gateway Standard**, to another Gateway Operator; and
 - (iii) each other party relies on the representations and warranties in clause 8.1.
- (c) Each Gateway Operator agrees to notify GNGB of anything that happens which would mean it could not truthfully repeat all the representations and warranties in clause 8.1(a) by reference to the then current circumstances.
- (d) Each Gateway Operator agrees to ensure adequate resources (including human, capital and technological) and appropriate licensing to undertake its obligations as required by this MoU, are maintained at all times.

- (e) The GNGB agrees to ensure adequate resources (including human, capital and technological) and appropriate licensing to undertake its obligations as required by this MoU, are maintained at all times.

8.2 Disclaimers

- (a) Each party agrees that neither GNGB, nor any of its officers, employees or agents has any duty or responsibility, either initially or on a continuing basis, to:
 - (i) keep itself informed about the performance by a Gateway Operator of its obligations as a Gateway Operator, or under this MoU and the **Gateway Standard**, provided that if GNGB becomes aware that a Gateway Operator has breached its obligations under this MoU or the **Gateway Standard**, GNGB will bring the matter to the attention of that Gateway Operator;
 - (ii) keep itself informed about the financial condition, affairs or creditworthiness of any Gateway Operator or its standing as a Gateway Operator; or
 - (iii) provide any Gateway Operator with credit or other information with respect to any other Gateway Operator.
- (b) Each Gateway Operator acknowledges that no officer, employee or agent of GNGB has any authority to make any representations or give any warranties in relation to the liability of GNGB with respect to the operation of the Superannuation Transaction Network which are inconsistent with the express terms of this MoU and the **Gateway Standard**.

8.3 Exclusions

Without limiting clause 8.1 and to the greatest extent permissible by applicable laws, GNGB will not be liable for any loss to any person (including Gateway Operators) 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 (including through negligence), including out of or in connection with:

- (a) any act or omission by any Gateway Operator or any other person (including without limitation any errors or delays, any breach of warranty or undertaking or representation, any breach of this MOU or the **Gateway Standard** or the terms of any other document relating to the Superannuation Transaction Network, any Insolvency Event or any failure to settle any obligations arising out of any transaction);
- (b) the exercise of, attempted exercise of, failure to exercise or delay in exercising, a right or remedy under this MoU and the **Gateway Standard**;
- (c) any act or omission done by, or any refusal to do any act by, GNGB, its officers, employees or agents or reliance on any act, conduct or consent of any other person or on any instructions, information or document provided to GNGB, its officers, employees or agents by any other person;
- (d) the failure of GNGB, its officers, employees or agents to receive or enact any instructions, information or document from any other person;
- (e) the terms of any representation, instructions, information or document given to GNGB, its officers, employees or agents by any other person;
- (f) any error or omission in any document issued by GNGB;

- (g) any technological failure of any sort (including without limitation any telephone, computer or electrical failure);
- (h) any unauthorised access to, or participation in the Superannuation Transaction Network by any person;
- (i) any contractual arrangements between any Gateway Operator and another person;
- (j) any change in the status, financial condition, affairs or creditworthiness of a Gateway Operator or another person, including without limitation in its capacity as a Gateway Operator; or
- (k) any termination or closure of the Superannuation Transaction Network by GNGB in accordance with this MoU.

9 Disputes between Gateway Operators

9.1 Acknowledgement

Each Disputing Party acknowledges and agrees that:

- (a) the dispute resolution procedures set out in clause 9 of this MoU are intended to provide a transparent and consultative process for the resolution of GO Disputes between Gateway Operators arising out of, or in connection with, this MoU and the Gateway Standard; and
- (b) it will at all times act in good faith and, to the greatest extent practicable, in accordance with the spirit of the intention set out in clause 9.1(a) in relation to the resolution of a GO Dispute.

9.2 Resolution of GO Disputes

- (a) Where a Gateway Operator considers that a GO Dispute has arisen, that Gateway Operator must (unless such action is not reasonably appropriate having regard to the nature and seriousness of the GO Dispute) initially use reasonable efforts to engage with its applicable counterpart or contact person at the other Gateway Operator(s) to explore whether it can be quickly and expeditiously resolved through brief commercial or operational discussions. If that Gateway Operator reasonably believes it cannot be so resolved (or if it is not so resolved), that Gateway Operator may at any time provide written notice specifying the nature of that GO Dispute, including reasonable particulars of the GO Dispute, to the other Disputing Party (or Disputing Parties) involved in the GO Dispute (**GO Dispute Notice**).
- (b) Representatives of the Disputing Parties must make all reasonable efforts to meet and attempt to resolve the GO Dispute for a period of at least 10 Business Days commencing on receipt of the GO Dispute Notice.
- (c) If the Disputing Parties fail to resolve the GO Dispute as contemplated in clause 9.2(b) within a period of 10 Business Days commencing on the receipt of the GO Dispute Notice, the Chief Executive Officer(s) of the Disputing Parties (or their nominees) must meet and attempt to resolve the GO Dispute.
- (d) Subject to clause 9.3(e), if a GO Dispute has not been settled or resolved by the date that is 20 Business Days after the receipt of the GO Dispute Notices, a Disputing party may either:

- (i) refer that GO Dispute in writing to the GNGB Board for determination in accordance with clause 9.3, which notice must include reasonable particulars of the GO Dispute and be provided to the GNGB Executive Officer; or
 - (ii) pursue any other means available to it to resolve the GO Dispute, which may include the commencement of legal action in respect of that GO Dispute.
- (e) The GNGB Board may publish additional procedures which set out further details, processes or logistics which the parties will comply with in relation to the resolution process for GO Disputes which will be consistent with this clause 9.2.
- (f) Nothing in this clause 9.2 prevents a party seeking injunctive or other urgent equitable relief.

9.3 GNGB Board Escalation

- (a) If a GO Dispute is referred to the GNGB Board pursuant to clause 9.2(d)(i), the GNGB Board may, in its absolute discretion:
- (i) either:
 - (A) consider a GO Dispute referred to it pursuant to clause 9.3(a) at the next available meeting of the GNGB Board; or
 - (B) form a temporary GNGB Board sub-committee (having regard to those persons on the Board who are likely to have appropriate skills and expertise to contribute to the resolution of a particular GO Dispute, the nature of the relevant GO Dispute, its subject matter and any conflicts of interest) to consider the GO Dispute referred to it pursuant to clause 9.3(a),

and the GNGB Board or sub-committee (as applicable) will consider the GO Dispute and, by written notice to the relevant Disputing Parties, make a determination as to the GO Dispute as set out in clause 9.3(c); or
 - (ii) determine that the nature of the GO Dispute is outside the scope of the GNGB's administration of this MoU and notify the Disputing Parties of that determination.
- (b) In considering a GO Dispute under clause 9.3(a)(i), the GNGB Board or sub-committee (as applicable) will undertake reasonable consultation with, and accept and consider submissions from, all relevant Disputing Parties and may in its discretion seek input and/or advice from any subject matter expert, advisor or other third party to inform its consideration.
- (c) In making a determination pursuant to clause 9.3(a)(i), GNGB Board or sub-committee (as applicable) may, in its absolute discretion:
- (i) make a binding determination to resolve the GO Dispute (or particular aspects of the GO Dispute);
 - (ii) make non-binding recommendations to the Disputing Parties regarding the GO Dispute (or particular aspects of the GO Dispute); or
 - (iii) determine that the nature of the GO Dispute (or particular aspects of the GO Dispute) is outside the scope of the GNGB's administration of this MoU,

and the GNGB Board or sub-committee (as applicable) will notify the Disputing Parties of that determination in writing in a timeframe commensurate with the impact of the determination and the nature of the GO Dispute. For clarity, a determination under this clause 9.3(c) may comprise any one, or a combination of, the elements described in paragraphs (i)-(iii) above.

- (d) If the GNGB Board or sub-committee (as applicable):
 - (i) makes a binding determination pursuant to clause 9.3(c)(i), then that determination will be binding upon all relevant Disputing Parties (including, without limitation, any Gateway Operator which, subsequently to the occurrence of the events giving rise to the GO Dispute, resigns as a Gateway Operator pursuant to clause 11.8(b) or whose participation in this MoU is terminated pursuant to clause 11.8(d)) in respect of the GO Dispute (or the particular aspects of the GO Dispute, if applicable);
 - (ii) makes non-binding recommendations pursuant to clause 9.3(c)(ii), then the Disputing Parties must have reasonable and good faith regard to those recommendations, but may otherwise pursue any other means available to it to resolve the GO Dispute (or the particular aspects of the GO Dispute, if applicable), including by commencing legal action in respect of that GO Dispute; and
 - (iii) determines that the nature of the GO Dispute (or the particular aspects of the GO Dispute, if applicable) is outside the scope of the GNGB's administration of this MoU pursuant to clause 9.3(a)(ii) or 9.3(c)(iii), then the Disputing Parties may pursue any other means available to it to resolve the GO Dispute (or the particular aspects of the GO Dispute, if applicable), including by commencing legal action in respect of that GO Dispute.
- (e) If the relevant Disputing Parties settle the GO Dispute prior to determination of it by the GNGB Board (or sub-committee, if applicable), they may withdraw the GO Dispute from the GNGB Board (or sub-committee, if applicable) by each giving written notice of that withdrawal to GNGB.
- (f) The GNGB Board may publish additional procedures which set out further details, processes or logistics which the parties will comply with in relation to the referral of GO Disputes to the GNGB Board.

9.4 Dispute Resolution Fees and Costs

- (a) Subject to clauses 9.4(b), 9.6 and 9.7 (and unless otherwise determined in the future by the GNGB Board in accordance with the GNGB Constitution), each Disputing Party who is a party to a GO Dispute which is referred to the GNGB Board pursuant to clause 9.2(d)(i) must each bear their own fees and costs incurred by it in connection with the administration, conduct or handling of that GO Dispute.
- (b) For the avoidance of doubt, clause 9.4(a) will not prevent the GNGB Board (or a sub-committee, if applicable) making a determination that certain costs and expenses incurred by a Disputing Party in connection with a GO Dispute are to be paid, in whole or in part, by another Disputing Party to that GO Dispute (as part of its determination of that GO Dispute).
- (c) The GNGB Board (or sub-committee, if applicable) will be required to keep confidential all information provided to it with respect to settlement of a GO Dispute, including without limitation, information about any agreement between the Disputing Parties as to apportionment of GNGB's costs and expenses, but (in

GNGB's discretion) excluding the fact that a settlement has been agreed and the outcome of any relevant determination in accordance with clause 9.4(d)..

- (d) GNGB may, in its discretion, publish or communicate the outcome of any GO Dispute that has been submitted to the GNGB Board for determination (including in connection with the issuing of notices concerning compliance with this MoU or its subject matter).

9.5 Commencement of Proceedings

- (a) If a Gateway Operator fails or refuses to give effect to a binding determination of the GNGB Board (or sub-committee, if applicable) in relation to a GO Dispute pursuant to clause 9.3(c)(i) GNGB may, in its absolute discretion, treat such failure or refusal as a Default Event in relation to that Gateway Operator as set out in clause 11.
- (b) Any aggrieved Gateway Operator which was a Gateway Operator at the date of issue of the relevant binding determination (other than the non-complying Gateway Operator) may commence proceedings against the non-complying Gateway Operator. For clarity, GNGB has no obligation to commence or conduct any such proceedings.

9.6 Costs

All:

- (a) costs (including costs as between solicitor and own client) and disbursements incurred by GNGB in relation to any proceedings commenced and determined in accordance with clause 9.5;
- (b) administrative costs reasonably incurred by GNGB in relation to any such proceedings;
- (c) costs (including disbursements) and damages which may be awarded against GNGB in relation to any such proceedings (or be payable by GNGB 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 GNGB,

are to be treated as costs and expenses of administration, or incurred in connection with this MoU for the purposes of clause 12.1 and are to be taken into account in calculating the Annual Fees as determined pursuant to that clause 12.1.

9.7 Distribution of Recoveries

If any proceedings are commenced by a Gateway Operator or Gateway Operators pursuant to this clause 9, and GNGB renders administrative assistance pursuant to clause 9.5 to facilitate the conduct of those proceedings, then any award of damages or costs in favour of that or those Gateway Operators must first be applied to reimburse GNGB for those costs incurred by it in rendering such administrative assistance.

10 Disputes involving GNGB

10.1 Application

This clause 10 (**Disputes involving GNGB**) does not apply to disputes or differences in connection with termination of a Gateway Operator under clause 11.8(e) (including subject matters relating to a termination notice given to that Gateway Operator or the validity or effectiveness of such termination), which the parties acknowledge must be dealt with exclusively pursuant to the processes described in clause 11.8 (**Termination**).

10.2 Escalation and discussion

In the event of a dispute or difference between any Gateway Operator (or multiple Gateway Operators) and GNGB arising out of, or in any way connected with, this MoU or the Gateway Standard (excluding a dispute of the kind referred to in clause 10.1 (**Application**)) (**GNGB Dispute**), that GNGB Dispute will be addressed in accordance with the following process:

- (a) the Gateway Operator(s) claiming that a GNGB Dispute has arisen must initially use reasonable efforts to **engage with the Executive Officer of GNGB** to explore whether it can be quickly and expeditiously resolved through clarifications, guidance or other communications with GNGB;
- (b) if the Gateway Operator(s) reasonably believes it cannot be so resolved (or if it not so resolved) by way of the initial discussions referred to in clause 10.2(a), the Gateway Operator(s) must give written notice to GNGB specifying the nature and particulars of the dispute (**GNGB Dispute Notice**);
- (c) within 5 Business Days of receipt of the GNGB Dispute Notice, the nominated representatives of each of the Gateway Operator(s) and GNGB must meet and attempt to resolve the dispute within 10 Business Days of receipt of the GNGB Dispute Notice; and
- (d) if the Gateway Operator(s) and GNGB fail to resolve the dispute within 10 Business Days of the receipt of the GNGB Dispute Notice, the Chief Executive Officer(s) of the Gateway Operator(s) (or their nominee) together with the Chair of the GNGB (or his or her nominee) must meet and attempt to resolve the dispute within 20 Business Days of receipt of the GNGB Dispute Notice.

10.3 Mediation

- (a) If a GNGB Dispute remains unsatisfied notwithstanding the elapsing of 20 Business Days following the receipt of the relevant GNGB Dispute Notice and the completion of the escalation and discussion processes described in clause 10.2 (**Escalation and discussion**), the relevant Gateway Operator(s) who has (or have) initiated the GNGB Dispute that remains unresolved may at any time thereafter refer that GNGB Dispute to mediation by an independent mediator, by way of a written notice of dispute issued to the Australian Disputes Centre (with written copy to the GNGB) that complies with the requirements for such a notice as specified in then-current Australian Disputes Centre Guidelines for Commercial Mediation (**Mediation Guidelines**).
- (b) A mediation process initiated under clause 10.3(a) must be conducted in accordance with the procedural, cost and other requirements as set out in the Mediation Rules.

10.4 Legal proceedings

Subject to clause 10.5 (**Injunctive or declaratory relief**), a Gateway Operator must not commence legal action relating to any dispute or difference between it and GNGB in connection with this MoU or its subject matter unless it has first attempted to resolve that dispute in accordance with the processes described in this clause 10 (**Disputes involving GNGB**) including by completing the mediation process described in clause 10.3.

10.5 Injunctive or declaratory relief

Nothing in this clause 10 (**Disputes involving GNGB**) prevents:

- (a) a party seeking urgent injunctive or declaratory relief from a court without first having attempted to resolve the dispute in accordance with this clause 10 (**Disputes involving GNGB**); or
- (b) GNGB and a Gateway Operator meeting at any time to seek to resolve a GNGB Dispute.

11 Remedies

11.1 Notification and Identification of Default Events

- (a) Each Gateway Operator must as soon as practicable notify GNGB if they become aware of:
 - (i) a breach of this MoU or the **Gateway Standard** by itself or another Gateway Operator; or
 - (ii) any Insolvency Event in respect of itself or another Gateway Operator; or
 - (iii) a failure or refusal to give effect to a binding determination of the GNGB Board (or sub-committee, if applicable) in relation to a GO Dispute pursuant to clause 9.3(c)(i),(each such circumstance being a **Default Event**).
- (b) In addition to receiving notifications from Gateway Operators pursuant to clause 11.1(a), GNGB may also itself identify facts or circumstances constituting a Default Event, or a reasonably suspected Default Event, in its role in managing the integrity and security of the Superannuation Transaction Network.
- (c) GNGB may also, in its discretion, receive and consider information from any third party concerning Default Events, or suspected Default Events, in respect of any Gateway Operator.

11.2 GNGB Assessment of Default Events

- (a) GNGB may investigate, in a manner it sees fit and within GNGB's sole and absolute discretion, any notification to it, or identification by it, of a Default Event in respect of a Gateway Operator, to assess the potential or actual impact on the Superannuation Transaction Network and other Gateway Operators.
- (b) An assessment of the kind described in clause 11.2(a) will be made by GNGB having regard to the risk impact the Default Event would or could cause to the Superannuation Transaction Network or any other Gateway Operator. In

considering and developing its assessment, GNGB may (without limitation) have regard to matters of the following kind:

- (i) Any actual or potential loss of Superannuation Transaction Network data caused or contributed to by the Default Event;
 - (ii) The extent to which the Default Event indicates that a Gateway Operator's arrangements in monitoring and maintaining compliance with this MoU and the Gateway Standards, are inadequate;
 - (iii) The number or frequency of similar previous Default Events that the Gateway Operator(s) has been subject to; and
 - (iv) The extent to which the Default Event causes operational impacts to other Gateway Operators or Superannuation Transaction Network participants.
- (c) The assessment described in clause 11.2(a) will inform GNGB's decisions in relation to appropriate actions to be taken by it in relation to the relevant Default Event. For clarity however, the determination in relation to those actions to be taken will ultimately be determined by GNGB in its sole and absolute discretion and GNGB may also consider factors other than those contemplated in clauses 11.2(a) and 11.2(b) in the course of making decisions in relation to the relevant Default Event.
- (d) GNGB will notify the outcomes of its assessment of a Default Event to the Gateway Operator(s) who are the subject of that assessment. Where GNGB has made a determination under clause 11.3 to also notify other persons of that Default Event in respect of that Gateway Operator, it will also notify that Gateway Operator of such determination *(and use its reasonable endeavours to do so in advance of, or at least at the same time as, its notification to the relevant other person)*

11.3 Notification of Default Events

Where GNGB receives a notice of the kind contemplated in clause 11.1(a) or information of the kind described in clause 11.1(c) or becomes aware of a Default Event as contemplated in clause 11.1(b), GNGB may if it so determines (but is not obliged to) notify ATO, APRA, one or more Gateway Operators and/or (as reasonably determined to be appropriate by GNGB) any other third parties, following assessment of the impact of the applicable Default Event in accordance with clause 11.2.

11.4 Probation

- (a) GNGB may place a Gateway Operator on probation for a specified or indefinite period of time in the following circumstances (each a **Probation Event**):
- (i) by agreement with the Gateway Operator concerned;
 - (ii) if the Gateway Operator no longer satisfies:
 - (A) clause 3.1(a) in a material respect; or
 - (B) all other applicable requirements for participation in this MoU as set out in clause 3.1 (other than clause 3.1(a));
 - (iii) if the Gateway Operator breaches a material obligation under this MoU or the Data and Payment Standard;

- (iv) if the Gateway Operator engages in conduct regarded by GNGB to be contrary to the efficient, reliable and secure operation of the Superannuation Transaction Network;
 - (v) if the Gateway Operator has committed repeated breaches of this MoU or the Gateway Standard in a systemic fashion; or
 - (vi) if GNGB has a right to terminate the Gateway Operator's participation in this MoU under clause 11.8.
- (b) When placing a Gateway Operator on probation, GNGB will provide the Gateway Operator notice of commencement of probationary status that:
- (i) specifies the relevant Probation Event;
 - (ii) requires that Probation Event to be rectified to the satisfaction of GNGB within a specified timeframe; and
 - (iii) sets a period (including an indefinite period) of probation that GNGB considers (in its absolute discretion) appropriate in the context of the Probation Event.
- (c) GNGB is not required to revoke any probationary status placed on a Gateway Operator until GNGB is satisfied (in its absolute discretion) that the relevant Probation Event has been sufficiently remedied and the Gateway Operator has demonstrated full compliance with its obligations under this MoU and the Gateway Standard for an appropriate probationary period.
- (d) Should the Gateway Operator demonstrate full compliance with its obligations under this MoU and the Gateway Standard for the appropriate probationary period as contemplated in paragraph (c) above, the GNGB shall not unreasonably refuse revocation of the probationary status.

11.5 Probation for New Gateway Operators

- (a) New Gateway Operators (being persons who, at the time of Application, are not parties to the existing Memorandum of Understanding described in clause 2(f)) will be required to undertake the initial on-boarding processes and procedures set out in the Gateway Standard, as published by GNGB from time to time. Such new Gateway Operators will be treated as on probation for the purposes of this clause 10 (**Remedies**), until (subject to clause 11.5(b)), the occurrence of all of the following:
- (i) 3 months of continuous and materially incident or materially fault-free transacting in the Superannuation Transaction Network by that Gateway Operator;
 - (ii) the submission by that new Gateway Operator, on request by GNGB, of evidence of its completion of all on-boarding processes and procedures set out in the Gateway Standards, as may be changed from time to time by GNGB and evidence of the successful completion of an information technology security audit to a standard stipulated by GNGB; and
 - (iii) GNGB notifying the new Gateway Operator that the new Gateway Operator is no longer on probation.
- (b) GNGB may, in its discretion, extend the period of the probationary status for any new Gateway Operator.

11.6 Effect of Probation

- (a) A Gateway Operator who is on probation will be subject to heightened monitoring and scrutiny by GNGB of the Gateway Operator's performance of its obligations under this MoU and the Gateway Standard during the relevant probationary period.
- (b) In connection with the heightened monitoring and scrutiny contemplated in clause 11.6(a) above, GNGB may request that the Gateway Operator provide GNGB with, and the Gateway Operator must provide within the timeframes requested by GNGB, such regular reporting, access to premises and personnel, and other information as reasonably requested by GNGB.
- (c) A Gateway Operator who is placed on probation under clause 11.4 is entitled to continue to exchange Superannuation Transaction Messages with any other Gateway Operator, provided it has completed prescribed on-boarding activity, to the satisfaction of GNGB.
- (d) A Gateway Operator who is placed on probation under clause 11.4 (**Probation**) is not excused from discharging its obligations under this MoU or the Gateway Standard.
- (e) GNGB may, in its sole discretion, notify the ATO, APRA, one or more Gateway Operators and/or any other third parties as determined appropriate by GNGB if any Gateway Operator is placed on probation under clause 11.4 (**Probation**). For clarity, each party acknowledges that the fact that a Gateway Operator has been placed on probation will not be considered Confidential Information.

11.7 Conditions for probation

- (a) If a Probation Event occurs in respect of a Gateway Operator, GNGB may, in connection with placing the Gateway Operator on probation, impose conditions on the participation in this MoU of the Gateway Operator to the extent that GNGB considers necessary to address the Probation Event and the relevant Gateway Operator's conduct in connection with this MoU.
- (b) The rights and obligations of that Gateway Operator under this MoU and/or the Gateway Standard shall be subject to any such conditions.
- (c) Any such conditions imposed by GNGB will only have effect during the relevant probationary period and GNGB will revoke such conditions when the Gateway Operator's probationary status is revoked.

11.8 Termination

- (a) A Gateway Operator ceases to be a Gateway Operator on:
 - (i) resignation;
 - (ii) GNGB terminating that Gateway Operator's participation in this MoU in accordance with clause 11.8(d);
- (b) A Gateway Operator may, by notice in writing to GNGB, resign as a Gateway Operator either with immediate effect or subject to notice of a period determined by GNGB. The Gateway Operator may revoke any such notice at any time before it becomes effective, provided that it gives GNGB reasonable prior notice of such revocation.

- (c) A Gateway Operator may not resign except by giving notice in accordance with clause 11.8(b);
- (d) GNGB may, by notice in writing to a Gateway Operator, terminate the Gateway Operator's participation in this MoU and the Superannuation Transaction Network under this MoU, if:
 - (i) a Probation Event has occurred in respect of that Gateway Operator and the facts or circumstances giving rise to that Probation Event have not been remedied, or a plan for rectification agreed, to the satisfaction of GNGB (in its reasonable discretion) within 30 days of GNGB notifying the Gateway Operator of the relevant facts or circumstances giving rise to that Probation Event and requiring it to be remedied;
 - (ii) the Gateway Operator has been placed on probation under clause 11.4 and, during the relevant probationary period, another Probation Event occurs in respect of the Gateway Operator (whether or not that event is the same or different category of event as the Probation Event that led to the probation) and the facts or circumstances giving rise to that original Probation Event have not been remedied or a plan put in place to remedy the Probation Event to the satisfaction of GNGB (in its discretion) within 30 Business Days of GNGB notifying the Gateway Operator of the relevant facts or circumstances giving rise to that Probation Event and requiring it to be remedied;
 - (iii) GNGB has determined that the Gateway Operator's continued role as a participant in this MoU would adversely impact the operation, integrity or reputation of the Superannuation Transaction Network or any part of it, or have an adverse impact on another Gateway Operator or GNGB;
 - (iv) the Gateway Operator engages in fraud; or
 - (v) an Insolvency Event occurs in respect of the Gateway Operator.

provided that in the case of clauses 11.8(d)(i), 11.8(d)(ii) 11.8(d)(iii), , such termination shall not be immediate but will be effective on the date that is 30 Business Days after the date of GNGB's written notice of termination (with the period between the date of GNGB's written notice of termination and the date that is 30 Business Days after that date being the **Pending Termination Period**).

- (e) During the first 10 Business Days of the Pending Termination Period, the Gateway Operator who is subject to such notice of termination is entitled to make any written submissions to GNGB setting out its reasons for why the relevant termination should not become effective. GNGB agrees to have reasonable regard to those written submissions and may, after considering them, revoke its Termination Notice by a further written notice to the relevant Gateway Operator given at any time prior to the end of the 15th Business Day within the Pending Termination Period, which revocation will stop the relevant notice of termination becoming effective. For clarity, the decision as to whether to revoke such a Termination Notice will always be in GNGB's sole discretion, however GNGB agrees to have good faith regard to such written submissions by the relevant Gateway Operator.
- (f) Without limiting a Gateway Operator's rights to make written submissions to GNGB as contemplated under clause 11.8(e), a Gateway Operator who is subject to a notice of termination may within the first 10 Business Days of the applicable Pending Termination Period, as an alternative to or in addition to making such written submissions, refer that termination to binding arbitration by an independent arbitrator, by way a written notice of arbitration issued to the Australian Disputes Centre (with written copy to the GNGB) that complies with the requirements for

such a notice as specified in the ADC Rules for Domestic Arbitration. Such arbitration must be conducted:

- (i) by a single independent arbitrator mutually agreed by the relevant Gateway Operator and GNGB and, where one cannot be agreed, an arbitrator appointed by the ADC;
- (ii) in accordance with the ADC Rules for Domestic Arbitration;
- (iii) subject to clause 11.8(g), within the period ending on the last day of the Pending Termination Period, with the arbitrator instructed to conclude its assessment and hand down its determination on or before that last day;
- (iv) in Sydney, Australia; and
- (v) in the English language,

with the Gateway Operator, as claimant, paying ADC's registration fees as required under the ADC Rules for Domestic Arbitration but with the Gateway Operator and GNGB otherwise each bearing their own costs in respect of the arbitration process, unless otherwise determined by the arbitrator.

- (g) In the event that the arbitrator appointed pursuant to clause 11.8(f), GNGB and the Gateway Operator subject to the notice of termination each agree that an arbitration process initiated under clause 11.8(f) will not be concluded before the expiry of the Pending Termination Period, GNGB will consider extending the Pending Termination Period for an additional period, totalling a sum of no more than 45 Business Days, to allow for the completion of the arbitration process within the Pending Termination Period, provided that GNGB will act reasonably in considering whether or not to extend the Pending Termination Period in this circumstance.
- (h) GNGB will communicate to the relevant Gateway Operator any reasons for a decision to terminate it. Without limiting the revocation procedure contemplated in clause 11.8(e) or any arbitration process that may have been initiated under clause 11.8(f), GNGB may revoke any such notice at any time before it becomes effective.
- (i) During the Pending Termination Period and notwithstanding any written submissions provided under clause 11.8(e) or any arbitration process that may have been initiated under clause 11.8(f), GNGB may invoke the business continuity procedures of the Superannuation Transaction Network to protect the Superannuation Transaction Network from immediate harm, resulting in potential disconnection of the Gateway Operator which is subject to the Termination Notice.
- (j) Any Gateway Operator subject to a notice of termination pursuant to clause 11.8(d) (**Termination Notice**), notwithstanding any written submissions provided under clause 11.8(e) or any arbitration process that may have been initiated under clause 11.8(f), will be required to provide a disconnection plan (**Termination Plan**) to the GNGB promptly after receipt of the Termination Notice. The Termination Plan must be mutually agreed by both the Gateway Operator and the GNGB and will set out the procedures to be followed by the Gateway Operator for the agreed period before that Gateway Operator disconnects from the Superannuation Transaction Network. The Gateway Operator must comply with the agreed Termination Plan. If the Termination Plan cannot be mutually agreed by the relevant Gateway Operator and GNGB within 20 Business Days of receipt by the Gateway Operator of the Termination Notice, the timeframe for disconnection of that Gateway Operator from the Superannuation Transaction Network will be subject to GNGB discretion (which timeframe may be with immediate effect).

- (k) Any resignation or termination of a Gateway Operator's participation in this MoU shall not affect any right or liability arising under this MoU or the **Gateway Standard** before that resignation or termination takes effect or arising in respect of any act, matter or thing occurring prior to that time. A Gateway Operator who resigns pursuant to clause 11.8(b) or whose participation in this MoU is terminated pursuant to clause 11.8(d) will continue to be bound by this MoU and the **Gateway Standard** 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 this MoU or the **Gateway Standard** which relates to or may arise at any future time from any breach of this MoU or the **Gateway Standard** 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, Gateway Operators in accordance with this MoU or the **Gateway Standard** 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.
- (l) A Gateway Operator who resigns or whose participation in this MoU is terminated is not entitled to be repaid all or part of any entrance, operating or other fee which has been paid by it.
- (m) A Service Provider who resigns as a Gateway Operator or whose participation in this MoU is terminated is obliged to immediately notify any Superannuation Entities (to whom they supply services in relation to the Superannuation Transaction Network) of the resignation or termination, specifying the date upon which the termination will take, or has taken effect.
- (n) On termination of a Gateway Operator's participation in this MoU, GNGB will as soon as practicable notify all other Gateway Operators (and may in its sole discretion also notify the ATO and APRA) of the termination specifying:
 - (i) the name of the Gateway Operator whose participation in this MoU has been terminated; and
 - (ii) the date on which the termination will take, or has taken, effect

and may (without limiting any obligations of the terminated Gateway Operator to comply with its legal, contractual or other obligations owed to third parties) also require the terminated Gateway Operator to, in which case the Gateway Operator must, as soon as practicable, notify its customers and clients of such termination.

12 Fees

12.1 Annual Fees

- (a) Each Gateway Operator must pay to GNGB an annual operating fee (**Annual Fee**) representing a pre-determined share per Gateway Operator of the costs or anticipated costs of administering this MoU over the relevant period.

The aggregate Annual Fees payable by all Gateway Operators in any financial year from 1 July to 30 June under this MoU will not exceed the lesser of:

- (i) 15% of the total operating costs of GNGB (including all costs and expenses of administration, and/or costs and expenses incurred in connection with this

MoU and/or the Gateway Standard) incurred by GNGB in that same financial year; and

(ii) \$242,000

unless a higher aggregate Annual Fee is determined and approved by the GNGB Board in accordance with the GNGB Constitution.

(b) Each Gateway Operator's individual portion of the Annual Fee will be determined as:

(i) detailed in Schedule 3 (**Fee apportionment**); or

(ii) otherwise as:

(A) agreed in writing between all Gateway Operator representative directors on the GNGB Board; and

(B) ratified and notified by GNGB to all Gateway Operators as an updated version of Schedule 3 (**Fee apportionment**),

which updated version will take effect as a variation to the existing Schedule 3 (**Fee apportionment**) of this MoU on the date of such notification by GNGB.

(c) The Annual Fee is payable in the manner and at the times determined by GNGB and notified to Gateway Operators from time to time.

(d) The amount set out in clause 12.1(a)(ii) is to be indexed on an annual basis by GNGB by reference to annual increases in the Consumer Price Index (Australia) compared to the then previous financial year. Any such indexation will be recorded as part of the annual budget setting process by GNGB Board.

12.2 Gross up for GST Supplies by GNGB

If:

(a) GNGB makes a Supply to a Gateway Operator (in its capacity as a Gateway Operator) under this MoU or the Gateway Standard; and

(b) GNGB is required to pay GST under the GST Law in respect of that Supply (a **Taxable Supply**),

then:

(c) the Gateway Operator must pay to GNGB an additional amount equal to the GST Exclusive Consideration multiplied by the GST Rate, without deduction or set-off of any other amount;

(d) GNGB must issue a Tax Invoice to each Gateway Operator for the GST on each Taxable Supply and must include in the Tax Invoice all particulars required by the GST Law; and

(e) the Gateway Operator must pay the additional amount payable under clause 12.2(c) at the same time and manner as the GST Exclusive Consideration (or, if the GST Exclusive Consideration is not payable, within 14 days).

13 Confidentiality

- (a) A party may only use the Confidential Information of another for the purposes of exercising their rights and performing their respective obligations under this MoU and, subject to clause 13(b), must keep that Confidential Information confidential.
- (b) A party may disclose the Confidential Information of another party:
 - (i) to those of its personnel who need to know such Confidential Information and have agreed to keep such Confidential Information confidential;
 - (ii) to the extent required by law; or
 - (iii) with the prior written consent of the party whose Confidential Information is to be disclosed.
- (c) Each party acknowledges that monetary damages may not be a sufficient remedy for a breach of its obligations under this clause 13 (**Confidentiality**) and that the party whose Confidential Information is the subject of a breach of this clause 13 is entitled to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.
- (d) Each party acknowledges that the fact of its participation in the arrangements described in this MoU is not confidential and consents to the publication of their Gateway Operator names and contact details in the Public Gateway Operator List published by GNGB on a website administered by GNGB.
- (e) Upon termination of this MoU (except to the extent permitted to be retained under the formal self-governance industry regime which will terminate this MoU by replacing it), each party must immediately return all Confidential Information of another party to that party, which is in the first-named party's possession or control.
- (f) GNGB will require any committee or working group constituted and/or appointed by the GNGB Board to only use Confidential Information supplied to it for the purposes of performing its role, and otherwise treat such Confidential Information in accordance with the requirements set out in this clause 13

14 Miscellaneous

14.1 Notices

- (a) A notice may be given by GNGB to any Gateway Operator or other person receiving notice under this MoU either by:
 - (i) serving it personally; or
 - (ii) sending it by post to the address shown in the Public Gateway Operator List or the address supplied by that person to GNGB for the giving of notices; or
 - (iii) sending an electronic mail message to an email address supplied by the Gateway Operator or that person to GNGB for the giving of notices.
- (b) Where a notice is sent by post, service of the notice is deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and the notice is deemed to have been served on the 5th Business Day after the date of its posting.

- (c) Where a notice is sent by electronic mail, the notice is deemed to be served on the Business Day following its dispatch or publication.

14.2 Provision of information

- (a) Each Gateway Operator must at the request of GNGB provide to GNGB all reasonable information relating to that Gateway Operator's transaction volumes, transaction values, data volumes, file volumes and other matters relevant to the Superannuation Transaction Network and the Gateway Operator's use of it.
- (b) On a written request from an Auditor, each Gateway Operator must provide to the Auditor, without unnecessary delay, any information and documents in the possession or control of that Gateway Operator that the Auditor reasonably requires to conduct an audit and which reasonably relate to that Gateway Operator's participation in the Superannuation Transaction Network or its rights or obligations under this MoU or the Data and Payment Standard.

14.3 General

- (a) Subject to clause 14.3(b), a Gateway Operator must not assign or transfer this MoU or otherwise deal with the benefit of or a right under it without the prior written consent of each other Gateway Operator and GNGB (and then subject to such conditions or requirements as GNGB may impose or permit to be imposed).
- (b) Notwithstanding clause 14.3(a), a Gateway Operator may assign or transfer this MoU without the consent of the other Gateway Operators and GNGB:
 - (i) where that assignment or transfer is to another Gateway Operator who is already bound by this MoU; or
 - (ii) in connection with a sale of all or substantially all of its assets to another entity with the skills, capacity and financial standing to assume and perform the transferring Gateway Operator's obligations under this MoU, and who accepts the transferring Gateway Operator's obligations under this MoU.
 - (iii) to a Related Body Corporate with the skills, capacity and financial standing to assume and perform the transferring Gateway Operator's obligations under this MoU, and who accepts the transferring Gateway Operator's obligations under this MoU.
- (c) Where a Gateway Operator assigns or transfers this MoU with regard to 14.3(a) or 14.3(b), the Annual Fee will be taken as paid in respect of the assignee Gateway Operator, for the period of time the Annual Fee paid by the assigning Gateway Operator is deemed valid.
- (d) Where a Gateway Operator incurs obligations under this MoU, that Gateway Operator assumes those obligations as principal, notwithstanding any fact, matter or circumstance.
- (e) No Gateway Operator has authority to bind any other Gateway Operator or GNGB.
- (f) This MoU is governed by the laws in force in the State of New South Wales and the parties submit to the exclusive jurisdiction of the courts of that state and the courts that hear appeals from those courts.
- (g) The MoU together with the Gateway Standard, is the entire agreement between the parties about their subject matter and replaces all previous agreements, understandings, representations and warranties about that subject matter.

- (h) Nothing in this MoU shall be construed so as to negate or exclude any right of set-off which may otherwise arise.
- (i) No party shall, by reason only of this MoU, Gateway Standard or another document relating to the Superannuation Transaction Network, have a fiduciary relationship with, or be trustee for, a Gateway Operator or another person unless expressly except to the extent disclosed to, and accepted by, GNGB in the relevant Gateway Operator's Application.
- (j) GNGB is entitled to assume the correctness of any representation or warranty made by a Gateway Operator and is not required to conduct independent inquiries or to conduct searches of public registers to confirm the correctness of any representation or warranty.

Schedule 1 — Dictionary

1 Dictionary

In this MoU:

Annual Fee has the meaning given to it in clause 12.1(a).

Applicant means the party identified in that field in the Application.

Application means the application form through which a Gateway Operator requests to become a party to this MoU, in the form set out in Schedule 2 (**Application**).

APRA means the Australian Prudential Regulation Authority.

Auditor means the audit firm (within the Corporations Act definition) appointed as auditor by GNGB.

Beneficiary means a member of a Superannuation Entity.

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

Confidential Information means (whether or not in material form and whether or not disclosed before or after the date of execution of this MoU) any information of whatever kind disclosed by a party to this MoU to another party, under or in relation to this MoU:

- (a) that is by its nature confidential;
- (b) that is designated by the party disclosing such information as confidential; or
- (c) where the party receiving such information knows or reasonably ought to know that the information is confidential,

but does not include information that:
 - (d) is published or has otherwise entered the public domain without a breach of this MoU;
 - (e) is obtained from a third party who is under no obligation of confidence in relation to that information; or
 - (f) is independently developed or obtained without breach of this MoU.

Contribution means the superannuation contributions paid by an employer to a Superannuation Entity on behalf of a Beneficiary.

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

Data and Payment Standard means the *Superannuation Data and Payment Standards 2012*, as issued, amended or updated from time to time.

Default Event has the meaning given to it in clause 11.1(a), being, in relation to a Gateway Operator:

- (a) a breach of this MoU or the **Gateway Standard** by that Gateway Operator; or
- (b) any Insolvency Event in respect of that Gateway Operator; or
- (c) that Gateway Operator's failure or refusal to give effect to a binding determination of the GNGB Board (or sub-committee, if applicable) in relation to a GO Dispute pursuant to clause 9.3(c)(i)

Disputing Party means a Gateway Operator that is a party to a GO Dispute.

Gateway means a Superannuation Transaction Network entry and/or exit point operated by, or on behalf of, a Superannuation Entity or an employer for the purpose of routing, and/or switching the data comprised in or exchanged in connection with a Superannuation Transaction Message. This excludes any Superannuation Entity's or employer's internal or private gateway which operation (including exchanges of messages) is contained exclusively within the relevant Superannuation Entity's or employer's network boundary.

Gateway Operator means any person or entity which operates or supplies functions and services in relation to a Gateway, or intends to, such as Gateway-related data and messaging services within the Superannuation Transaction Network, and has acceded to this Memorandum of Understanding.

Gateway Standard means the document entitled Superannuation and Data and Gateway Services Standards for Gateway Operators transacting within the Superannuation Transaction Network as issued, amended or updated from time to time in accordance with this MoU.

Gateway Operators Meeting has the meaning given to it in clause 6.1(a).

GNGB means Gateway Network Governance Body Limited (ABN 93 615 159 101)

GNGB Board means the board of GNGB, as established pursuant to the GNGB Constitution.

GNGB Constitution means the Constitution of Gateway Network Governance Body Limited dated 22 September 2016.

GNGB Dispute has the meaning given to it in clause 10.2, being a dispute or difference between any Gateway Operator (or multiple Gateway Operators) and GNGB arising out of, or in any way connected with, this MoU or the **Gateway Standard** (excluding a dispute of the kind referred to in clause 10.1 (**Application**)) (**GNGB Dispute**).

GNGB Dispute Notice has the meaning given to it in clause 10.2(b), being written notice to GNGB from a Gateway Operator or Gateway Operators setting out the nature and particulars of a GNGB Dispute.

GO Dispute means a dispute or difference between two or more Gateway Operators, arising out of, or in any way connected with, this MoU or the **Gateway Standard**.

GO Dispute Notice has the meaning given to it in clause 9.2(a), being written notice specifying the nature of that GO Dispute, including reasonable particulars of the GO Dispute.

GST Exclusive Consideration means any amount payable (or deemed to be payable) under this MoU or the **Gateway Standard** in connection with any Taxable Supply (other than amounts payable under clause 12.2(e)) 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.

Insolvency Event means, in relation to a Gateway Operator:

- (a) an application is made to a court for an order or an order is made that a Gateway Operator be wound up;
- (b) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of a Gateway Operator, or one of them is appointed, whether or not under an order;
- (c) a Gateway Operator enters into, or resolves to enter into, a scheme of arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;
- (d) a Gateway Operator resolves to wind itself up or otherwise dissolve itself, or gives notice of intention to do so;
- (e) a Gateway Operator 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, a Gateway Operator is taken to have failed to comply with a statutory demand;
- (g) a Gateway Operator is, or makes a statement from which it may be reasonably deduced that the Gateway Operator is, the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act or any corresponding legislation;
- (h) a Gateway Operator takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a Gateway Operator;
- (i) the body responsible for the prudential supervision of a Gateway Operator assumes management and control of that Gateway Operator; or
- (j) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Member means a person or entity whose name is entered in the member's register of GNGB, including co-sponsor members, associate co-sponsor members and gateway members.

Pending Termination Period has the meaning given in clause 11.8(d).

Probation Event has the meaning given in clause 11.4.

Public Gateway Operator List means a public list of all Gateway Operators who are a party to this MoU, as maintained and updated from time to time by GNGB.

Rollover means the rollover or transfer of a Rollover Superannuation Benefit from one Superannuation Entity to another Superannuation Entity.

Rollover Superannuation Benefit has the meaning given to that term in Section 306.10 of the *Income Tax Assessment Act 1997* (Cth).

Superannuation Entity means those regulated superannuation entities which are subject to the Data and Payment Standard.

Superannuation Legislation means the *Superannuation Industry (Supervision) Act 1993* (Cth), the *Retirement Savings Accounts Act 1997* (Cth) and their associated subordinate legislation or regulations, as amended from time to time.

Superannuation Transaction means any and/or all of the data transactions required to execute a Rollover or a Contribution in accordance with the Data and Payment Standard.

Superannuation Transaction Message means a message within the Superannuation Transaction Network relating to a Superannuation Transaction.

Superannuation Transaction Network means the network used to send and receive Superannuation Transaction Messages between Gateway Operators under this MoU.

Tax Invoice means a valid tax invoice for the purposes of the GST Law.

2 Interpretation

In this MoU the following rules of interpretation apply unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of this MoU;
- (b) the singular includes the plural and vice versa;
- (c) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- (d) a reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
 - (ii) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
 - (iii) a party includes its successors and permitted assigns;
 - (iv) a document includes all amendments or supplements to that document;
 - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this MoU;
 - (vi) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced;
 - (vii) an agreement includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing; and
 - (viii) a monetary amount is in Australian dollars;

- (e) an agreement on the part of two or more persons binds them jointly and severally;
- (f) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
- (k) A reference in this MoU (including clauses 9 (**Disputes between Gateway Operators**)) and 11 (**Remedies**) 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; and
- (g) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this MoU or any part of it.

Schedule 2 — Application

To: Executive Officer, Gateway Network Governance Body (GNGB)

Re: Gateway Operator Application

From:

Full Name of Applicant _____

ABN _____

Place of Incorporation _____

Registered Office Address/ _____

Principal Place of Business in Australia _____

Postcode _____

Contact details:

Name of Contact Person: _____

Telephone Number: _____

Fax number: _____

Preferred Start Date: _____

(This is the preferred date on which the Applicant wishes to be admitted as a Gateway Operator and bound by the MoU).

1. The above-named person or entity ("Applicant") hereby applies to be accepted as a Gateway Operator.
2. The Applicant acknowledges that:
 - the document entitled 'Memorandum of Understanding For Participants in the Superannuation Transaction Network' (**MoU**) and the **Gateway** Standard referenced in the MoU constitute a contract under seal between:
 - GNGB and each Gateway Operator; and
 - each Gateway Operator; and
 - the MoU and the **Gateway** Standard have been established for the benefit of the Gateway Operators and any future Gateway Operators.
3. The Applicant acknowledges and agrees that if this application is accepted then subject to and in consideration of that acceptance:
 - they are bound to:
 - comply with the MoU and the **Gateway** Standard; and
 - fulfil and perform every obligation and duty imposed on them by or pursuant to the MoU and the **Gateway** Standard.
 - the rights and obligations contained herein shall endure not only to the Applicant, but to every other Gateway Operator who has agreed to observe and comply with the MoU and **Gateway** Standard.
4. The following information is enclosed with this application to demonstrate that the Applicant satisfies the applicable requirements for participation in this MoU which are contained in clause 3 of the MoU.

5. Capitalised terms used in this application have the corresponding meanings given in the MoU.

[list information and documents enclosed with the application]

EXECUTED by THE APPLICANT

by or in the presence of:

)
)
)
)

.....
(Signature of Secretary/Director)

.....
(Signature of Director)

.....
(Full name of signatory)

.....
(Full name of signatory)

Schedule 3 — Fee apportionment - Year 1

Threshold (Transactions in and out)	Tier	%
over 16 mil	1	40%
3 mil - 16mil	2	40%
under 3 mil	3	20%
		100%

Principles:

- The Gateway Operator assignment to a particular tier is to be established on a yearly basis by GNGB, based on transaction volumes. GNGB shall collect directly from the Gateway Operator the amount payable.
- Any movement during the year is ignored until the next annual review.
- The amount payable by the tier is divided by the number of Gateway Operators that fall within the tier
- Any Gateway Operator leaving the network during the year is not entitled to a refund.
- Any new Gateway Operator will automatically be allocated to Tier 3 in its first year or part year once it commences transacting rather than pro rata expected transactions
- The Structure (number and threshold) of the tiers is subject to review and is determined by the Gateway Operators
- No single Gateway Operator shall pay more than 20% of the total fee unless there are fewer than 5 Gateways.
- At all times, Gateway Operators will ensure adequate coverage of total Annual Fee as set out in Clause 12.1
- Should the number of Gateway Operators within a Tier change by more than 25% then the tier structure shall be reviewed by the Gateway Operators at that time and notified to GNGB prior to March, in order to take effect the following period.