

15 July 2016

Mr Baethan Mullen  
Acting General Manager, Adjudication  
Australian Competition and Consumer Commission  
GPO Box 3131  
Canberra ACT 2601

Dear Mr Mullen,

### **Gateway Network Governance Body - Application for Authorisation**

I/We refer to the previous correspondence from Clayton Utz dated 18 March 2016 and the subsequent meeting held with the ACCC on 5 April 2016.

As foreshadowed, an application for ACCC Authorisation under section s 91 of the *Competition and Consumer Act 2010 (Cth)* (the **Act**) is hereby submitted.

Five industry associations (the “**co-sponsors**”), representing the key industry stakeholder groups (Gateway Operators, APRA regulated funds, Employers and Software Providers) have been working with the ATO in relation to the handover of the stewardship of the Superannuation Transaction Network (**STN**) and have agreed to the establishment of a new self-regulatory body to assume responsibility for the governance and oversight of the STN from the **last quarter of 2016**.

The self-regulatory body has not yet been incorporated but, for the purposes of this application, will be referred to as the **Gateway Network Governance Body (GNGB)**.

The intended structure will be contractual in nature, i.e. an update to the existing Memorandum of Understanding between Gateway Operators which, when executed will form a binding and enforceable agreement between Gateway Operators and the GNGB (**New MoU - See Appendix D of the Supporting Submission**).

This submission is made by Association of Superannuation Funds Australia (**ASFA**) on behalf of the GNGB and the parties outlined in appendix A of the Supporting Submission.

The application includes the following:

- Form A - Exclusionary provisions and associated cartel provisions
- Form B - Agreements affecting competition or incorporating related cartel provisions
- A submission in support of these applications, including interested parties, copies of the New and Current MoU documents, Gateway Standard, as well as letters of support from the ATO and other interested parties and details of the consultation which has already been conducted across the superannuation industry in relation to this application.

The Constitution of GNGB is currently being finalised and will be provided to you as soon as it is available.

Authorisation is sought to make and give effect to the following provisions of the New MoU:

- application by Gateway Operators - **clause 2**;
- acceptance of Gateway Operators by GNGB - **clause 4**;
- role of GNGB concerning access and entry and exit of Gateways to or from the New MOU – **clause 5(c)**;
- fees - **clause 6.1 and 12**;
- rights to exchange messages using the STN- **clause 6.2**;
- dispute resolution - **clause 10**; and
- remedies for noncompliance with STN procedures including probation and termination - **clause 11**.

In addition, Interim Authorisation is sought as from 1 September 2016 for the parties and GNGB to make and give effect to the provisions of clauses 2, 4 and 5(c) of the New MoU, which deal with applications by and acceptance of parties as member Gateway Operators by GNGB. Please refer to section 8 of the submission which explains the basis of the application for interim authorisation.

There are no claims for confidentiality in respect of the application, submission and attachments and there is no objection to copies being placed on the public register.

We have arranged for EFT payment of the \$9000 filing fee to your account .

We look forward to hearing from you in due course and would be happy to meet with you to discuss any aspects of the application.

Yours sincerely,

A handwritten signature in blue ink that reads "Pauline B Vamos". The signature is written in a cursive style with a large initial 'P' and 'V'.

Pauline Vamos  
Chief Executive Officer

# **Form A**

Commonwealth of Australia

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

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

To the Australian Competition and Consumer Commission:

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

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

*(Strike out whichever is not applicable)*

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

## 1. Applicant

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

A91548 The **Association of Superannuation Funds of Australia** ABN 29 002 786 290 (**ASFA**), on behalf of the **Gateway Network Governance Body (GNGB)** and the parties outlined in **Appendix A** of the **attached Supporting Submission** that have consented to the application being lodged on their behalf, as well as any other organisation in the future which satisfies the eligibility criteria for membership of GNGB, and becomes a party to the *Memorandum of Understanding For participants in the Superannuation Transaction Network (New MoU)*, a copy of which is included as **Appendix D** to the **attached Supporting Submission**.

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

The primary activities of GNGB are to provide governance oversight to the network for transmission of electronic data messages in the superannuation environment in Australia – referred to as the *Superannuation Transaction Network (STN)*.

Refer to **sections 2.4** and **3.1** of the **Supporting Submission** for further detail.

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

c/- Michael Corrigan, Partner  
Clayton Utz  
Level 15, 1 Bligh Street,  
Sydney NSW 2000  
mcorrigan@claytonutz.com

## 2. Contract, arrangement or understanding

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

Authorisation is sought for GNGB and the Gateway Operators to make and give effect to the following provisions of the proposed *Memorandum of Understanding For participants in the Superannuation Transaction Network (New MoU)*:

- application and effect - **clause 2**;
- acceptance by GNGB of applicant parties as Gateway Operators - **clause 4**;

- role of GNGB concerning access and entry and exit of Gateway Operators to or from the New MoU – **clause 5(c)**
- fees - **clause 6.1 and 12;**
- rights to use the STN to exchange messages - **clause 6.2;**
- dispute resolution - **clause 10;** and
- remedies for non-compliance by Gateway Operators with STN procedures, including probation and termination - **clause 11.**

Gateway Operators who apply to be members of GNGB will be bound by the New MoU upon acceptance of the application by GNGB.

Refer to **section 3.1** of the **Supporting Submission** for further detail.

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

The relevant provisions noted above and contained in the New MoU which will bind Gateway Operators who contract with GNGB in relation to the STN. See **Supporting Submission.**

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

The STN consists of a series of "gateways", which are network entry and/or exit points, operated by 'Gateway Operators' for, or on behalf of employers and superannuation funds, for the purpose of routing, switching and packaging the data comprised in 'rollover messages' or 'contributions' passing between employers and funds, being Superannuation Transaction Messages.

Superannuation Transaction Messages are messages that pass between Gateway Operators and are required for a superannuation rollover (fund to fund transfer of super benefits) or contribution (employer to fund payment of employee super contributions) in compliance with a delegated legislative instrument, being the *Superannuation Data and Payment Standards 2012 (Data and Payment Standards)*.

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

**5 years**

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

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

Refer to **Appendix A** of the **Supporting Submission**.

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

*(Refer to direction 5)*

Any other Gateway Operator or other organisation that becomes bound by the New MoU in the future.

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

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

Refer to **section 5** of the **Supporting Submission**.

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

Refer to **section 5** of the **Supporting Submission**.

### **5. Market definition**

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

*(Refer to direction 7)*

Refer to **section 4** of the **Supporting Submission**.

## 6. Public detriments

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

Refer to **section 6** of the **Supporting Submission**.

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

Refer to **section 6** of the **Supporting Submission**.

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

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

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

This application is made on behalf of GNGB and all parties or potential parties that will become members of GNGB and bound by the New MoU as outlined in 2 (a).

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

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

*(Refer to direction 9)*

Not applicable

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

*(Refer to direction 10)*

Not applicable

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

Not applicable

**8. Joint Ventures**

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

No

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

No

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

Not applicable

**9. Further information**

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

c/- Michael Corrigan, Partner

Clayton Utz

Level 15, 1 Bligh Street,

Sydney NSW 2000

Dated 12 July 2016

Signed by/on behalf of the applicant



.....  
(Signature)

PAULINE VAMOS

(Full Name)

ASFA

(Organisation)

CEO

(Position in organisation)



## **DIRECTIONS**

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

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

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

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

In providing these details:

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

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

## **Form B**

Commonwealth of Australia

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

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

To the Australian Competition and Consumer Commission:

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

*(Strike out whichever is not applicable)*

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

## 1. Applicant

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

A91549 **The Association of Superannuation Funds of Australia** ABN 29 002 786 290 (ASFA), on behalf of the **Gateway Network Governance Body (GNGB)** and the parties outlined in **Appendix A** of the **attached Supporting Submission** that have consented to the application being lodged on their behalf, as well as any other organisation in the future which satisfies the eligibility criteria for membership of GNGB and becomes a party to the *Memorandum of Understanding For participants in the Superannuation Transaction Network (New MoU)*, a copy of which is included as **Appendix D** to the **attached Supporting Submission**.

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

The primary activities of GNGB are to provide governance oversight to the network for transmission of electronic data messages in the superannuation environment in Australia – referred to as the *Superannuation Transaction Network (STN)*.

Refer to **sections 2.4** and **3.1** of the **Supporting Submission** for further detail.

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

c/- Michael Corrigan, Partner  
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mcorrigan@claytonutz.com

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- application and effect - **clause 2**;
- acceptance of applicant parties as Gateway Operators by GNGB - **clause 4**;
- role of GNGB concerning access and entry and exit of Gateway Operators to or from the New MoU – **clause 5(c)**
- fees - **clause 6.1 and 12**;
- rights to use the STN to exchange messages - **clause 6.2**;
- dispute resolution - **clause 10**; and
- remedies for non-compliance by Gateway Operators with STN procedures, including probation and termination - **clause 11**.

Gateway Operators who apply to be members of GNGB will be bound by the New MoU upon acceptance of the application by GNGB.

Refer to **section 3.1** of the **Supporting Submission** for further detail.

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

The relevant provisions noted above and contained in the New MoU which will bind Gateway Operators who contract with GNGB in relation to the STN. See **Supporting Submission**.

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

The STN consists of a series of "gateways", which are network entry and/or exit points, operated by 'Gateway Operators' for, or on behalf of employers and superannuation funds, for the purpose of routing, switching and packaging the data comprised in 'rollover messages' or 'contributions' passing between employers and funds, being Superannuation Transaction Messages.

Superannuation Transaction Messages are messages that pass between Gateway Operators and are required for a superannuation rollover (fund to fund transfer of super benefits) or contribution (employer to fund payment of employee super contributions) in compliance with a delegated legislative instrument, being the *Superannuation Data and Payment Standards 2012 (Data and Payment Standards)*.

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

**5 years**

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

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

Refer to **Appendix A** of the **Supporting Submission**.

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

*(Refer to direction 5)*

Any other Gateway Operator or other organisation that becomes bound by the New MoU in the future.

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

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

Refer to **section 5** of the **Supporting Submission**.

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

Refer to **section 5** of the **Supporting Submission**.

### **5. Market definition**

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

*(Refer to direction 7)*

Refer to **section 4** of the **Supporting Submission**.

## 6. Public detriments

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

*(Refer to direction 8)*

Refer to **section 6** of the **Supporting Submission**.

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

Refer to **section 6** of the **Supporting Submission**.

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

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

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

This application is made on behalf of GNGB and all parties or potential parties that will become members of GNGB and bound by the New MoU as outlined in 2(a).

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

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

*(Refer to direction 9)*

Not applicable

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

Not applicable

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

Not applicable

## 8. Joint Ventures

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

No

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

No

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

Not applicable

**9. Further information**

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

c/- Michael Corrigan, Partner

Clayton Utz

Level 15, 1 Bligh Street,

Sydney NSW 2000

Dated 12 July 2016

Signed by/on behalf of the applicant



.....  
(Signature)

PAULINE VAMOS

(Full Name)

ASFA

(Organisation)

CEO

(Position in organisation)



## **DIRECTIONS**

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

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

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

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

In providing these details:

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

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

**The Association of Superannuation Funds of  
Australia (ASFA) on behalf of the Gateway Network  
Governance Body (GNGB) and others**

**Submission to the Australian Competition and  
Consumer Commission**

in support of the Application for Authorisation and Interim  
Authorisation

29 July 2016

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# 1 Introduction

This submission is made by the applicant, the Association of Superannuation Funds of Australia (**ASFA**) on behalf of key superannuation industry stakeholder groups (Gateway Operators, APRA regulated funds, Employers and Software Providers) who support the establishment of a new industry structure having oversight of the system for the transmission of electronic data messages in the superannuation environment in Australia – referred to as the **Superannuation Transaction Network (STN)**.

Superannuation Transaction Messages are messages that pass between Gateway Operators in the STN which are required for a superannuation rollover (fund to fund transfer of super benefits) or contribution (employer to fund payment of employee super contributions) in compliance with the *Superannuation Data and Payment Standards 2012 (Data and Payment Standards)*.

The Australian Taxation Office (**ATO**) is the interim steward of the STN. The ATO has been tasked by the Assistant Treasurer to work with industry on the development and handover of this role to an industry-sponsored body by mid-2016.

Five industry associations (the “**co-sponsors**”), representing the key industry stakeholder groups (Gateway Operators, APRA regulated funds and Software Providers) have been working with the ATO in relation to the handover of the stewardship of the STN and have agreed to the establishment of a new self-regulatory body to assume responsibility for the governance and oversight of the STN.

The self-regulatory body has not yet been incorporated but, for the purposes of this application, will be referred to as the **Gateway Network Governance Body (GNGB)**.

The co-sponsors have formed the **GNGB Design Working Group** for the purposes of establishing the GNGB, and transferring oversight activities from the ATO to the GNGB. The ATO is providing co-ordination support to the Working Group and is participating to provide its experience and knowledge around current arrangements as interim steward of the STN.

The intended governance and oversight structure will be contractual in nature, i.e., an updated version of the existing Memorandum of Understanding (**Current MoU**) which, when executed will form a binding and enforceable agreement between Gateway Operators and the GNGB (**New MoU - See Appendix E**).

On behalf of the GNGB and Gateway Operators, ASFA wishes to seek authorisation for certain aspects of the New MoU in accordance with s 91 of the *Competition and Consumer Act 2010* (Cth) (the **Act**).

Authorisation is sought to make and give effect to the following provisions of the New MoU:-

- application and effect - **clause 2**;
- acceptance of applicant parties as Gateway Operators by GNGB - **clause 4**;
- role of GNGB concerning access and entry and exit of Gateway Operators to or from the New MoU – **clause 5(c)**;
- fees - **clause 6.1 and 12**;
- rights to use the STN - **clause 6.2**;
- dispute resolution - **clause 10**; and

- remedies for non-compliance by Gateway Operators with STN procedures including probation and termination - **clause 11**.

### **1.1 Interim authorisation**

This application also includes an application for Interim Authorisation as from **1 September 2016** for the parties and GNGB to make and give effect to the provisions of clause 2, 4 and 5(c) of the New MoU, which deal with applications by and acceptance of parties as Gateway Operators by GNGB.

This interim approval is required to allow transitional steps to be taken by GNGB at an early stage to seek, consider and accept applications by Gateway Operators to be bound by the New MoU, in order to assist in a smooth transition from the Current MoU and from ATO oversight. The need for these transitional steps being authorised on an interim basis pending the substantive authorisation decision on the entire application is supported by the ATO (refer to ATO Support Document – **Appendix G**). The ATO has an obligation to handover its current role and the transition is proposed to begin before final authorisation is available. Further details of this application are set out at section 8 below.

## **2 Background**

### **2.1 SuperStream Reforms**

In December 2010, the Commonwealth Government announced the Stronger Super Reforms in response to the recommendations of the Super System Review ("**Cooper Review**"). This included support for the SuperStream recommendations which aim to enhance the 'back office' of APRA-regulated superannuation funds.

SuperStream includes measures for electronic registration, contributions and transfers transactions to reduce the costs and complexity arising from manual processing, lack of standardised formats, and poor and incomplete data.

While there will be additional costs on industry in the short term, the reforms are expected to deliver significant benefits over the longer term for the superannuation industry and ultimately, for fund members, through greater efficiency and reduced processing costs for contributions and rollovers (fund to fund transfers of member account balances).

A digital framework is increasingly necessary given the volume of messages and movement of employees who may change their employers and superannuation funds a number of times over their working life.

As part of the Stronger Super reforms, the ATO was tasked with facilitating the introduction of the Government's SuperStream measures, which has led to the development of a mandated set of common rules for sending registration, contribution and rollover data messages electronically (the **Data and Payment Standards**).

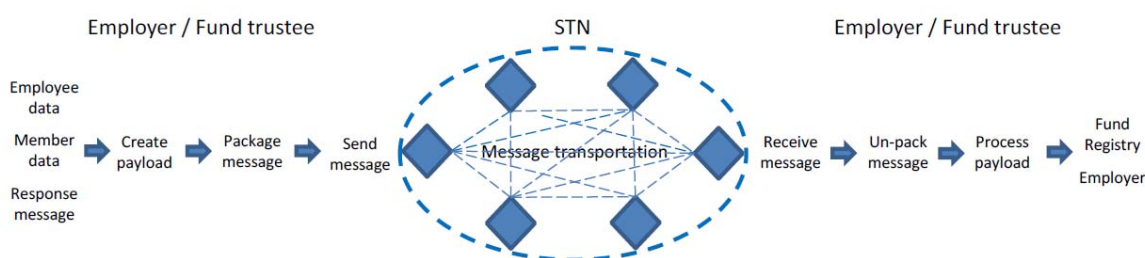
### **2.2 Superannuation Transaction Network (STN)**

The STN consists of a number of "Gateways", which are network entry and/or exit points, operated by 'Gateway Operators' for, or on behalf of, employers and superannuation funds, for the purpose of receiving, routing, switching and packaging the mandated data required in

'rollover' or 'contributions' messages passing between employers and funds, being **Superannuation Transaction Messages**.

Superannuation Transaction Messages are messages that pass between Gateway Operators and are required for a superannuation registration, rollover or contribution in compliance with the Data and Payment Standards. However the Data and Payment Standards do not mandate operating or security standards for members of the STN.

Federal Government superannuation transactions, such as co-contributions or allocation of lost monies, are also gradually being implemented making government an emerging additional key stakeholder group.



### 2.3 Existing Governance Arrangements

Within the superannuation industry, there are two key stakeholder groups that are regulated by law:

- Employers are regulated by the ATO and have obligations to comply with Superannuation Guarantee legislation. This includes strict obligations with respect to the timeliness of contributions.
- Superannuation Funds are regulated by APRA and have to comply with a myriad of superannuation legislation including the *Superannuation Industry (Supervision) Act 1993 Cth (SIS Act)*.

Additionally, by law, both employers and funds are required to comply with the *Data and Payment Standards*, which are delegated legislation under the *SIS Act*, which mandate that Superannuation transactions must be sent and/or received in a prescribed electronic format. In order to fulfil their compliance obligations, employers and funds use the STN.

The key stakeholders in the STN are Gateway Operators.

Gateway Operators are not regulated by the *SIS Act* or the *Data and Payment Standards* but work co-operatively with each other, through an interim consensual arrangement, being the [Memorandum of Understanding for participants in the Superannuation Transaction Network \(Current MoU - See Appendix E\)](#). Under the Current MoU, Gateway Operators make certain commitments to each other regarding various matters, including compliance with the arrangement described in the Current MoU as the *Superannuation Data and Gateway Services Standards for Gateway Operators (the Gateway Standard - See Appendix F)*.

The ATO and the Working Group have identified various risks for employers and super funds which are created by this informal arrangement, including:

- inability to meet their obligations due to the reliance on an unregulated network;



- the need for the funds, employers and industry generally to be assured the STN is reliable, secure and efficient;
- the lack of enforceability of the Current MoU; and
- the absence of any body to oversee and monitor compliance with the Current MoU, once the ATO finishes its stewardship.

The Assistant Treasurer has directed that the ATO facilitates industry collaboration to assume responsibility for that supervisory role, and so this requires enhanced industry arrangements which are intended to be addressed by the New MoU.

Since its implementation in 2013, the Current MoU has worked well in fulfilling its primary purpose of supporting the key stakeholders to meet their SuperStream implementation compliance obligations within a short timeframe. However these interim arrangements embody the inherent constraints of an arrangement which was established to set up and commission the STN prior to the establishment of an entity to perform the role of GNGB. As such, they require updating to address a range of key matters which are needed for an effective longer term self-governance regime.

The approach which has been adopted is to replace the Current MoU with a formal self-governance industry regime that will recognise the entity appointed to act as GNGB and regulate participation in the STN between Gateway Operators.

## **2.4 Role of the GNGB**

The establishment of the GNGB closes the regulatory and other gaps identified in the Current MoU and in doing so, provides employers and funds with the assurance that the network they use is reliable, secure and efficient, thus mitigating those risks.

The New MoU does not make any changes to the current Gateway Standard. Rather, it creates an additional layer of compliance oversight, design enhancements and procedures for enforcement around the Gateway Standard to enhance adherence to those standards.

Clause 5 of the New MOU describes the proposed role of GNGB as follows, covering the scope for developments of improvements in the STN:

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

- 1 *the efficiency and effectiveness of the Superannuation Transaction Network;*
- 2 *compliance with Superannuation Transaction Network governance arrangements, including with this MoU and the Gateway Standard as validly amended from time to time;*
- 3 *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;*
- 4 *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;*
- 5 *referral of Data and Payment Standard technical matters to the ATO for resolution, where appropriate;*

- 6 *engagement with industry and government bodies in respect of any emerging legislative or technological changes that may impact the Superannuation Transaction Network;*
- 7 *continuous improvement of the Superannuation Transaction Network; and*
- 8 *management of an active stakeholder engagement model and regular consultation at strategic and operational levels.*

While the ATO will continue to be responsible for the administration and enforcement of the *Data and Payment Standards*, the GNGB will be responsible for ensuring that participants in the STN meet the **Gateway Standard** (for Gateway Operator to Gateway Operator data exchange) which it expects to do through collaboration, oversight and consultation with its members. The New MoU and the establishment of GNGB have the support of the ATO, per **Appendix G**.

Self-regulation will also require some form of compliance oversight and enforcement mechanism if it is to be effective, which is addressed in the New MoU. The GNGB will use those mechanisms to ensure conformance with the *Gateway Standard* to protect the integrity of the network and maintain its smooth operation for the benefit of funds, employers and members. The intention is that the GNGB will only use its enforcement mechanisms as a last resort and where other approaches have failed. This form of enforcement is explored further at subparagraph 3.1(c) below.

The GNGB will be required by its Constitution and the New MoU to apply good governance principles and practices to ensure the STN operates in an efficient, reliable and secure manner.

## **2.5 GNGB Legal Structure and Membership**

The GNGB will be incorporated as a not-for-profit, public company, limited by guarantee with a constitution setting out the powers, objects and structure of the company, including the establishment and composition of the Board of Directors and Company Secretary. A copy of the Constitution is currently being finalised and will be provided to the ACCC as soon as it is available.

The following key stakeholder sectors will be represented on the Board of Directors in addition to an independent Chair. All nine directors will have equal voting rights:

- **Superannuation Funds – 3 directors**
- **Gateway Operators – 3 directors**
- **Employers – 1 director**
- **Software Providers – 1 director**
- **Independent Chair**

In addition, the ATO & APRA will be invited as observers to GNGB Board meetings where required.

The proposed GNGB membership structure will have three categories of membership:

- **Co-Sponsor members** – made up of the four sponsoring industry association organisations;
- **Associate Co-Sponsor member** – being Gateway Association Transaction Exchange (**GATE**), the Industry Association for Gateway Operators; and

- **Gateway members** – Gateway Operators participating in the STN (being those who have signed up to the STN MoU).

## 2.6 **GNGB Funding**

The ATO has set aside \$2.0 million, in the form of a grant, for the setup and initial operations of the GNGB for approximately the first two years (until no later than June 2018). At the completion of the grant, funding will move to an agreed industry self-funded model to be managed by the GNGB.

The proposed long term industry funded model, agreed by the stakeholders involved, is to split the annual GNGB funding requirement between APRA regulated funds (85%) and Gateway Operators (15%). GNGB will determine these fees on a cost recovery basis. It is proposed that the collection of the "APRA regulated funds" portion of the funding will utilise the existing APRA Levy collection mechanism which will require an amendment to current legislation. This method of collection has been supported by Treasury and the Assistant Treasurer in order to progress the necessary Government approval and legislative changes.

The remaining 15% of funding will be split between participating Gateway Operators using a methodology developed and proposed by Gateway Operators and agreed by GNGB. Based on this agreed methodology the GNGB will invoice Gateway Operators directly on an annual basis. See **clause 12** of the New MoU in **Appendix D**.

## 3 **Conduct for which authorisation is being sought**

### 3.1 **New MoU**

The New MoU (see unexecuted copy in **Appendix D**) will provide for Gateway Operators to make a commitment to each other and the GNGB to meet certain minimum standards in participating in the STN as outlined in the New MoU. The New MoU has been significantly enhanced to address key matters which are currently not addressed in its current substantive terms.

The New MoU will be utilised to bind the GNGB with the Gateway Operators and the Gateway Operators to each other, the latter relationship being adopted from the Current MoU. The New MoU will continue to refer to the Gateway Standard as the technical capabilities required for network operation.

Gateways will be invited to apply to be **Gateway Operators**. They will be bound by the New MoU upon acceptance of their application by the GNGB.

The New MoU will provide for (among others) the following:

#### **a) *The role and rights of GNGB***

The role of GNGB is described in the New MoU as undertaking initiatives or taking steps to promote some or all of the goals listed in paragraph 2.4 above.

#### **b) *Matters relating to eligibility for admission as a Gateway Operator and participation and discontinuance of participation in the STN***

Acceptance as a Gateway Operator under the New MoU will be open to any Gateway Operator applicant as long as they agree to the criteria specified in the New MoU.

A Gateway Operator applicant must agree to basic criteria including compliance with the New MoU and the Gateway Standard, agree to pay all relevant levies and fees, be financially solvent and submit a completed application form.

Eligibility will not be constrained in any other way. The Board of GNGB will be responsible for accepting Gateways Operator applications.

**c) *Powers of probation and termination of participation by Operators that do not comply with the STN procedures***

GNGB will oversee compliance by Gateway Operators with the Gateway Standard in the interests of all users and of the security and efficient operation of the STN.

After consultation and giving notice requiring any non-compliance to be addressed, GNGB will have powers under the New MoU to place a non-compliant Gateway Operator on probation for a specified or indefinite period of time in circumstances including:

- by agreement with the Gateway Operator;
- if the Gateway Operator no longer satisfies all applicable requirements for participation in this MoU;
- if the Gateway Operator breaches a material obligation under the MoU or the Gateway Standard; or
- if the Gateway Operator engages in conduct regarded by GNGB to be contrary to the efficient, reliable and secure operation of the STN.

GNGB may, by notice in writing to a Gateway Operator, terminate the Gateway Operator's participation in the New MoU and the STN if:

- a **Probation Event** has occurred in respect of that Gateway Operator and the facts or circumstances giving rise to that Probationary Event have not been remedied to the satisfaction of GNGB within 30 days;
- the Gateway Operator has been placed on probation and another Probation Event occurs in respect of the Gateway Operator and the facts or circumstances giving rise to that Probationary Event have not been remedied to the satisfaction of GNGB within 30 Business Days;
- the Gateway Operator engages in fraud;
- an Insolvency Event occurs in respect of the Gateway Operator; or
- GNGB has determined that the Gateway Operator's continued role as a participant would adversely impact the operation, integrity or reputation of the STN or any part of it, or have an adverse impact on another Gateway Operator or GNGB.

**d) *Meetings of GNGB and Gateway Operators***

Meetings of the parties to the New MoU (the **Gateway Operator Meetings**) are to be held regularly with such frequency as determined and notified by GNGB, having reasonable regard to the submissions of each Gateway Operator.

The purpose of a Gateway Operator Meeting is to provide a forum for GNGB and each Gateway Operator to discuss any aspect of the operation of the STN and any other matters relevant to participation in the MoU.

**e) *Further matters concerning governance and liability***

Parties to the New MoU will warrant to each other Gateway Operator certain representations including that they will comply with, and fulfil and perform, the obligations and duties imposed on it by or pursuant to the New MoU and the Gateway Standard, in accordance with all applicable laws.

**f) *Breaches by Gateway Operators***

Any Gateway Operator may report breaches of the New MoU or the Gateway Standard by another Gateway Operator to the GNGB. Certain processes are then to be followed by the GNGB to investigate the complaint, consult with the Gateway Operator concerned and if not resolved, this may lead prior to the termination or placing on probation of that Gateway Operator, pursuant to the dispute resolution process.

**g) *The process for resolution of disputes***

Disputes will be referred in writing to a resolution sub-committee appointed by and convened at the direction of the GNGB Board (**Resolutions Group**), for determination by that Resolutions Group. A determination of the Resolutions Group in relation to a Dispute must be evidenced by a Dispute Resolution Certificate and a determination so evidenced will be binding upon all parties to the Dispute.

**h) *Appeals process***

If a party to a dispute disagrees with a determination of the Resolutions Group that party may refer the dispute to the GNGB Board for determination and if required may also be referred to arbitration by an independent arbitrator.

**i) *Industry consultation over the New MoU***

An extensive consultation process was undertaken to develop the New MoU GNGB governance framework – refer to **Appendix C**.

### **3.2 *Parties engaging in the Proposed Conduct***

The founding parties to the New MoU are included in **Appendix A**.

These parties share a common interest in the efficient, reliable and secure operation of the STN and they represent the interests of gateways, employers, software service providers and superannuation funds.

## 4 Area(s) of competition/relevant market(s)

### 4.1 Markets

This application relates to the following markets which are considered to be national in scope:

- a) the market for the supply of retail superannuation services by Australian superannuation funds to fund members, who will benefit from the enhanced STN in terms of greater efficiency of rollover and other messages;
- b) the market for the supply by Gateway Operators of messaging services to Australian Superannuation funds and employers, who will directly participate in and benefit from the STN.

### 4.2 How the STN will develop with or without the proposed conduct?

Without the New MoU, governance of the STN will continue *as per* the Current MoU, which, for example, does not contain adequate enforcement provisions. There is concern that, if the Current MoU continues:

- a) The current protections available to superannuation funds and employers in the transfer of funds by Gateway Operators will be less effective than those proposed under the New MoU. Creating a governance framework which allows for disciplinary measures (including probation and termination) provides additional incentives for Gateway Operators to adhere to the New MoU and Gateway Standard, ensuring the maximisation of protections benefiting all stakeholders, being government, employer, superannuation funds and consumer groups.
- b) The current non-statutory supervisory burden on the ATO under the Current MoU will continue. The ATO is currently responsible for oversight and governance of the STN and is doing so at a significant cost to Government. Alternatively, should the ATO cease its current interim stewardship arrangements without establishing an ongoing governance framework, the STN network would operate with no oversight to manage or mitigate system risk or to seek improvements. The introduction and the implementation of the New MoU, guided by the ATO allows oversight of STN Gateway Operators to shift to industry under a 'user pays' model, decreasing the governance burden currently carried by government.
- c) Less accountability and transparency in Gateway Operator activities than there would otherwise be, resulting in a potential for reduced confidence in the integrity and safety of the STN. The explicit self-governance framework of the New MoU will ensure that Gateway Operator activities are more accountable and transparent than under the Current MoU, thereby increasing confidence in the STN and transfers system, which in turn is reflected in the level of confidence in the superannuation system.

## 5 Benefits

### 5.1 Public benefits

There are substantial public benefits arising from the New MoU. In the absence of explicit legislation governing the Gateway Operators' participation in the STN, the public benefits which are associated with the new framework agreement include:

- a) security and integrity of the STN, by ensuring standards are set across the network to safeguard the personal and private information which it handles.
- b) the efficient transfer of data and payments links over the STN, from both employers to funds and inter-fund transfers through a set of standards for Gateway Operator behaviour, ultimately to achieve the intent of the SuperStream measures to increase efficiency and drive down system costs for superannuation members;
- c) greater overall responsibility for industry stakeholders through an industry sponsored governance regime, reducing the need for government oversight;
- d) a more formal sustainable self-funded structure better able to drive additional efficiency enhancements in the future; and
- e) a more formal structure to provide for better consultation with all stakeholders including industry, employer groups, consumers and government.

Furthermore, the New MoU will not increase barriers to entry, given that application by new Gateways to be a party to the MoU is not materially restricted or difficult. Access will be open to all relevant industry participants, i.e. any new Gateway. It is highly unlikely that GNGB will reject any applications by any solvent Gateway Operator that commits to compliance with the Gateway Standard and demonstrates interoperability.

The STN is of central importance to the efficient functioning of the Australian superannuation system. Each year about 80 million messages are exchanged between employers and funds in respect of rollovers and changes to fund members data. The frequency and volume of those messages necessitates that some type of network is utilised. If the network is to be managed and funded by industry then a body such as GNGB is required to be established to monitor the STN, and to ensure that it is secure and efficient and assists the industry to meet its compliance obligations.

All Australian superannuation funds currently rely on Gateway Operators to undertake this electronic messaging via the STN. It is not feasible or practicable for funds to establish bilateral arrangements with the thousands of other funds across Australia in order to exchange these messages.

There are around 3,500 APRA-regulated funds and 300,000 SMSFs (which may receive contributions from employers). This includes pass through arrangements whereby a default fund may be required to pass on messages received from an employer to another fund chosen by a member/employee. The annual value of the transfers between funds and employers, which are the subject of the messages transmitted via the STN is approximately \$50 billion.

The public benefits associated with the New MoU are therefore considerable. Whilst detailed work has not been undertaken concerning the estimated quantification of savings to be achieved by the industry following the implementation of the SuperStream reforms including the GNGB, the savings are likely to be significant.

The SuperStream concept was introduced because, prior to the proposed reforms, there were some \$5 billion in administration costs across the industry which needed to be addressed. It was estimated by the Cooper Report that the SuperStream reforms as a whole will result in a 20% or \$1 billion saving to the superannuation industry. Whilst it is difficult to quantify the portion of this saving that is relatable solely to the STN and GNGB, the New MoU is a necessary and integral element of achieving those savings for electronic messaging and fast processing of rollovers.

Importantly most of this efficiency will be derived within the funds. Previously any inter fund transfers and rollovers could take up to a period of 6 weeks to be processed however, with electronic messaging via the STN, funds are able to meet their regulatory obligations that now require rollovers to be processed within 3 days. This reduced time delivers significant benefits to members in their funds being quickly reinvested into investments in receiving funds as early as possible.

The New MoU will therefore assist to deliver significant public benefits to Australian superannuation members.

These benefits must be recognised under an appropriate governance framework such as that proposed under the New MoU.

## **5.2 Beneficiaries**

The New MoU will have multiple beneficiaries:

- a) superannuation funds and employers that use the STN to meet their superannuation obligations;
- b) Australian superannuation fund members who rely on an efficient and secure superannuation industry and network; and
- c) Gateway Operators themselves through increased confidence in their products and the efficiency of their services.

## **6 Public Detriments**

The New MoU is not anti-competitive and does not pose any significant detriments. To the contrary, it will give rise to the significant public benefits outlined above. Nothing in the New MoU prevents or restricts Gateway Operators from competing for the business of providing data services to superannuation entities and funds, nor does it preclude employers and superannuation funds from establishing other arrangements outside the scope of the STN.

As noted above, the New MoU will not impose nor increase barriers to entry given that application by new Gateways to be a party to the MoU is not materially restricted or difficult. Access to the STN and GNGB arrangements will be open to all relevant Gateways which are solvent, reputable and who commit to compliance with the Gateway Standard.



## 7 Term of the Authorisation

The GNGB is seeking an initial authorisation period of five years.

## 8 Interim Authorisation

To ensure that GNGB will be fully operational with core competencies in place for handover from the ATO, it will be important that, from week beginning **29 August 2016**, the GNGB is operational and can initiate steps to accept applications from Gateway Operators to sign up to the New MoU.

This process is likely to commence before the final authorisation determination has been made. Whilst it is unlikely that the handover to the GNGB will occur before final authorisation is granted, the applicants **require interim authorisation** to permit the Gateway Operators and the incorporated GNGB entity to make and give effect to the provisions of the New MoU dealing with acceptance of Gateway Operators who commit to be bound by the New MoU being **clauses 2, 4 and 5(c)**.

This is requested on the basis that those parties' formal agreement and commitment to the New MoU will be subject to the condition (set out in **Clause 3** of the New MoU) that final authorisation must be granted in those terms to all affected parties. If final authorisation is not granted then Clause 3 provides that the parties' agreement to the New MoU will be terminated automatically, by force of that provision, and the parties will revert to the Current MoU.

Interim authorisation is **not** requested for other provisions of the New MoU which are the subject of the application for final authorisation, being:

- fees - clauses 6.1 and 12;
- rights to exchange messages - clause 6.2;
- dispute resolution - clause 10; and
- remedies including probation and termination - clause 11.

The GNGB is therefore seeking an interim authorisation in accordance with s. 91(2) of the Act, so that the Working Group can commence the preparatory steps required to establish this scheme from week beginning 29<sup>th</sup> August this year. (Other transitional steps which do not require interim authorisation include incorporation of the new governance entity, appointment of officers and preparation for adoption of the rules of the governance structure).

Furthermore the ATO has been tasked by the Assistant Treasurer to work with industry on the development and handover of this role to an industry-sponsored body by mid-2016. This deadline needs to be met, or a date as close as possible to it must be met, in order to deliver on the commitment made to hand back to industry by mid-2016. Interim authorisation is therefore required in order to expedite the handover from the ATO to the GNGB, in a manner in which the GNGB is comfortable that the MoU will not result in a contravention of the Act.

The applicants submit that this application will satisfy the criteria for interim authorisation in the ACCC's guidelines. In particular:

- **the New MoU is not anti-competitive.** To the contrary, it will give rise to significant public benefits, and no discernible anti-competitive detriments. Nothing in the New MoU prevents or restricts Gateway Operators for competing for the business of providing data services for superannuation entities and funds, nor does it preclude superannuation funds from establishing other arrangements outside the scope of the STN and with other entities than the committed Gateway Operators;
- interim authorisation for preparations for handover will **not permanently alter the competitive dynamics** of any relevant market, nor will any relevant market be inhibited from returning to its pre-interim authorisation state if final authorisation is not granted;
- by 3 September 2016 there will be a **clear need** to for the Commonwealth Government to hand over Gateway governance responsibilities, for the reasons described above;
- granting interim authorisation will **not cause harm to other parties** such as customers or competitors; and
- it was not possible to file the application for authorisation earlier than occurred, because of the extensive consultation which has been required to be undertaken by the Working Group with all stakeholders over the design of the New MoU, its provisions, the constitution and the content of this application.

## Appendix A – Parties Engaging in the Conduct

The two key parties engaging in the New MoU are:

- Gateway Operators (current Gateway Operator details as listed below or any other organisation which becomes a party to the MoU in the future); and
- The Gateway Network Governance Body (GNGB)

List of current Gateway Operators (signatories to the Current MoU):

<b>Name</b>	<b>ABN</b>	<b>Email Address</b>	<b>Address</b>
ClickSuper	48 122 693 985	<a href="mailto:robin.beauchamp@clicksuper.com.au">robin.beauchamp@clicksuper.com.au</a>	Level 4, 8-10 Loftus St Sydney 2000
GBST	85 010 488 874	<a href="mailto:kathy.taylor-hofmann@gbst.com">kathy.taylor-hofmann@gbst.com</a>	Level 24, 259 George St, Sydney NSW 2000
MessageXchange	73 076 521 161	<a href="mailto:michael.ross@messageexchange.com">michael.ross@messageexchange.com</a>	Level 3, 488 Bourke St, Melbourne VIC 3000
LUCRF Super	26 382 680 883	<a href="mailto:Carl.Michael@lucrf.com.au">Carl.Michael@lucrf.com.au</a>	Level 1, 1 Bridge Street, Granville, NSW 2142
OZedi	47 167 142 672	<a href="mailto:david.field@ozedi.com.au">david.field@ozedi.com.au</a>	Level 2, 1 Queens Road, Melbourne Vic 3004
Rockfast International	75 076 477 953	<a href="mailto:waughman@rockfast.com.au">waughman@rockfast.com.au</a>	F2/16 Mars Rd, Lane Cove West NSW 2066
Sunsuper	98 503 137 921	<a href="mailto:dean_wallace@sunsuper.com.au">dean_wallace@sunsuper.com.au</a>	Level 5, 30 Little Cribb St, Milton QLD 4064
SuperChoice	78 109 509 739	<a href="mailto:Ian.Gibson@superchoice.com.au">Ian.Gibson@superchoice.com.au</a>	35 Clarence Street, Sydney NSW 2000
Wealth Within	87 114 756 517	<a href="mailto:lea@wealthwithin.com.au">lea@wealthwithin.com.au</a>	Level 1, 270 Auburn Rd, Hawthorn VIC 3122
Westpac Institutional Bank	33 007 457 141	<a href="mailto:edobson@westpac.com.au">edobson@westpac.com.au</a>	275 Kent Street, Sydney, NSW 2000

## Appendix B – Other Impacted Parties

### GNGB Proposed Co-Sponsor Members

<b>Name</b>	<b>Address</b>	<b>Business Activity</b>
Australian Business Software Industry Association (ABSIA)	Level 1, 11 Chandler Rd, Boronia VIC 3155	Software Industry Association
Australian Institute of Superannuation Trustees (AIST)	215 Spring St., Melbourne VIC 3000	Fund Industry Association
Financial Services Council (FSC)	Level 24, 44 Market St, Sydney NSW 2000	Fund Industry Association
Gateway Association and Transaction Exchange (GATE)	Level 6, 10 Help St, Chatswood NSW 2068	Gateway Operator Industry Association
The Association of Superannuation Funds of Australia (ASFA)	Level 11, 77 Castlereagh Street, Sydney NSW 2000	Fund Industry Association

### Other Parties

<b>Name</b>	<b>Address</b>	<b>Business Activity</b>
Australian Chamber of Commerce and Industry (ACCI)	Level 3, 24 Brisbane Avenue, Barton ACT 2600 Level 2, 150 Collins Street, Melbourne VIC 3000	Employer Industry Association
SMSF Association	<a href="#">Adelaide Head Office</a>	Industry Association representing

	Level 1, 366 King William St Adelaide SA 5000	Self Managed Superannuation Fund Trustees, whose transactions will pass through the STN.

## Appendix C – Consultation Process

### Overview

At the outset of the GNGB Design phase, it was recognised by the co-sponsors that the success of the GNGB was dependent upon the support of a wide range of stakeholders impacted by the operation of the Superannuation Transaction Network (**STN**). The STN enables **Employers** and **Superannuation Funds** to meet their regulatory obligations, however in addition to these parties, any changes to the STN impacts the current participants being **Gateway Operators, Software/Payroll Providers**, as well as those with governance responsibilities of impacted parties, the **ATO** and **APRA**. It was with this in mind, a comprehensive stakeholder engagement program was initiated and a GNGB Working Group (**WG**) together with a CEO's Group was established to provide governance to the program of work.

The details of the co-sponsors and key industry stakeholders directly involved in the consultation process via WG participation

Organisation	Who they are	Content of Consultation	Contact Details
<b>Australian Business Software Industry Association (ABSIA)</b>	<p>ABSIA is a Non-Profit Association created to represent the Australian Business Software Industry.</p> <p>Members of ABSIA are the builders and operators of Software that supports employers, payroll providers, funds and gateways.</p>	<p>Review of and input into drafts of the MoU and GNGB Constitution:</p> <p>28 March 2016</p> <p>22 April 2016</p> <p>13 May 2016</p> <p>6 June 2016</p> <p>24 June 2016</p> <p>30 June 2016</p> <p>8 July 2016</p>	<p><b>WG Name:</b> David Field</p> <p><b>Email:</b> <a href="mailto:david.field@absia.asn.au">david.field@absia.asn.au</a></p> <p><b>Telephone:</b> 1300 737 614</p> <p><b>Mobile:</b> 0402 306 789</p>
<b>Australian Chamber of Commerce &amp; Industry</b>	<p>ACCI is Australia's largest and most representative business association, comprising state and territory</p>	<p>Review of and input into drafts of the MoU and GNGB Constitution:</p>	<p><b>WG Name:</b> Dick Grozier</p> <p><b>Email:</b> <a href="mailto:Dick.Grozier@nswbc.com.au">Dick.Grozier@nswbc.com.au</a></p>

<b>Organisation</b>	<b>Who they are</b>	<b>Content of Consultation</b>	<b>Contact Details</b>
<b>(ACCI)</b>	chambers of commerce and national industry associations representing the interests of the private sector rather than individual clients or a narrow sectional interest. Members of the ACCI are state and territory chambers of business, and national industry associations.	28 March 2016 22 April 2016 13 May 2016 6 June 2016 24 June 2016 30 June 2016 8 July 2016	<b>Telephone:</b> 02 9458 7574 <b>Mobile:</b> 0418 960 295
<b>Australian Institute of Superannuation Trustees (AIST)</b>	AIST represents the not-for-profit superannuation sector, with policy development and provider of research being benefits to their members. Members of AIST can be funds or individuals who provide services to the not-for-profit superannuation sector. There is also associate membership for organisations wholly owned by a representative not-for-profit superannuation fund or a regulator involved in the superannuation industry.	Review of and input into drafts of the MoU and GNGB Constitution: 28 March 2016 22 April 2016 13 May 2016 6 June 2016 24 June 2016 30 June 2016 8 July 2016	<b>WG Name:</b> David Haynes <b>Email:</b> <a href="mailto:dhaynes@aist.asn.au">dhaynes@aist.asn.au</a> <b>Telephone:</b> 03 8677 3803 <b>Mobile:</b> 0429 029 230
<b>Financial Services Council (FSC)</b>	The FSC advocates on behalf of their members concerning the development of the social, economic and regulatory framework in which	Review of and input into drafts of the MoU and GNGB Constitution: 28 March 2016	<b>WG Name:</b> Blake Briggs <b>Email:</b> <a href="mailto:bbriggs@fsc.org.au">bbriggs@fsc.org.au</a> <b>Telephone:</b> 02 8235 2566

Organisation	Who they are	Content of Consultation	Contact Details
	<p>their members operate.</p> <p>The FSC members include companies in funds management, superannuation, life insurance, financial advice businesses and trustee services, as well as a range of service suppliers supporting the industry, such as legal and accounting firms, research houses, asset consultants, and information technology providers.</p>	<p>22 April 2016</p> <p>13 May 2016</p> <p>6 June 2016</p> <p>24 June 2016</p> <p>30 June 2016</p> <p>8 July 2016</p>	<p><b>Mobile:</b> 0432 663 875</p>
<p><b>Association of Superannuation Funds of Australia (ASFA)</b></p>	<p>ASFA is the peak policy, research and advocacy body for Australia's superannuation (super) industry. Members include superannuation funds from the corporate, industry, retail and public sectors, as well as service providers.</p>	<p>Review of and input into drafts of the MoU and GNGB Constitution:</p> <p>28 March 2016</p> <p>22 April 2016</p> <p>13 May 2016</p> <p>6 June 2016</p> <p>24 June 2016</p> <p>30 June 2016</p> <p>8 July 2016</p>	<p><b>WG Name:</b> Tim Buskens</p> <p><b>Email:</b> <a href="mailto:tbuskens@superannuation.asn.au">tbuskens@superannuation.asn.au</a></p> <p><b>Telephone:</b> 02 8079 0862</p> <p><b>Mobile:</b> 0439 492 524</p>
<p><b>Australian Taxation Office (ATO)</b></p>	<p>As current stewards of the STN, the ATO have participated in WG as coordinators, providing administrative support, as well as providing input utilising their experience as stewards.</p>	<p>Review of and input into drafts of the MoU and GNGB Constitution:</p> <p>28 March 2016</p>	<p><b>Name:</b> Mark Stockwell</p> <p><b>Email:</b> <a href="mailto:mark.stockwell@ato.gov.au">mark.stockwell@ato.gov.au</a></p> <p><b>Telephone:</b> 07 3149 5022</p>



Organisation	Who they are	Content of Consultation	Contact Details
	<p>Representing themselves as current stewards and ensuring a level of comfort is gained over the design and implementation process, to be able to hand over to the new agreed arrangements.</p>	<p>22 April 2016 13 May 2016 6 June 2016 24 June 2016 30 June 2016 8 July 2016</p>	<p><b>Mobile:</b> 0422 009 518</p>
<p><b>Gateway Operators</b></p>	<p>Gateway Operators operating within the STN were represented by Gateway Operator participants of the WG for the GNGB Set Up Phase. The three participants represented all Gateway Operators part of the current MoU V3.0 operating within the STN. Organisations attending included:</p> <ul style="list-style-type: none"> <li>• Superchoice</li> <li>• Westpac</li> <li>• GBST</li> </ul>	<p>Review of and input into drafts of the MoU and GNGB Constitution:</p> <p>28 March 2016 22 April 2016 13 May 2016 6 June 2016 24 June 2016 30 June 2016 8 July 2016</p>	<p><b>Superchoice</b> <b>WG Name:</b> Ian Gibson <b>Email:</b> <a href="mailto:ian.gibson@superchoice.com.au">ian.gibson@superchoice.com.au</a> <b>Telephone:</b> 02 8038 6776 <b>Mobile:</b> 0408 370 447</p> <p><b>Westpac</b> <b>WG Name:</b> Emma Dobson <b>Email:</b> <a href="mailto:edobson@westpac.com.au">edobson@westpac.com.au</a> <b>Telephone:</b> 02 8254 1717 <b>Mobile:</b> 0437 301 745</p> <p><b>GBST</b> <b>WG Name:</b> Fraser Cooper-Southam</p>

Organisation	Who they are	Content of Consultation	Contact Details
			<b>Email:</b> <a href="mailto:fraser.cooper-southam@gbst.com">fraser.cooper-southam@gbst.com</a> <b>Telephone:</b> 02 9253 6562 <b>Mobile:</b> 0403 222 735

In addition to stakeholders directly involved in Consultation Sessions, the following table outlines other industry consultation

Organisation	Who they are	Content of Consultation	Contact Details
<b>Gateway Association and Transaction Exchange Pty Ltd (GATE)</b>	GATE is a newly formed industry body representing Gateway Operators. Members include a number of the current gateway operators that will be applying for acceptance to the GNGB as Gateway Operators under the new MoU.	GATE representative Chris Matthews has joined the WG as an observer in the later WG meetings (May 2016 onwards)	<b>Name:</b> Chris Matthews <b>Email:</b> <a href="mailto:CMatthews@asas.net.au">CMatthews@asas.net.au</a> <b>Telephone:</b> (02) 9194 5681 <b>Mobile:</b> 0412 361 095
<b>Australian Prudential Regulatory Authority (APRA)</b>	APRA provides the regulatory framework for impacted parties of the STN, including Superannuation Funds. As part of this framework, APRA regulates service provider	APRA were approached directly for feedback by GNGB Interim EO on behalf of the Working Group. APRA reviewed the draft of the MoU (22 <sup>nd</sup> April) and provided comments/feedback	<b>Name:</b> John Dow <b>Email:</b> <a href="mailto:john.dow@apra.gov.au">john.dow@apra.gov.au</a> <b>Telephone:</b> 02 9210 3000

Organisation	Who they are	Content of Consultation	Contact Details
	management (where Service Provider is considered “material” by APRA definition) by Superannuation Funds and has made it clear that engagement of a Gateway Service Provider falls within the definition of “material”.	on the draft.	<b>Mobile:</b> N/A
<b>Australian Payments and Clearing Association (APCA)</b>	APCA is the self-regulatory body set up by the payments industry to improve the safety, reliability, equity, convenience and efficiency of the Australian payments system. APCA administers a number of payments systems within Australia. Members include all large banks, payment organisations, credit unions etc.	APCA began the GNGB journey as a participant on the WG as a co-sponsor entity, up until December 2015. Since that time, they have provided advice and acted as a sounding board, based on the similarities to the APCA model of being a non-government, self-regulatory body.	<b>Name:</b> Bob Masina <b>Email:</b> bmasina@apca.com.au <b>Telephone:</b> (02) 9216 4847 <b>Mobile:</b> 0419 490 814
<b>SMSF Association</b>	Industry Association representing Self Managed Superannuation Funds	Conversation with Nicole Dykstra, Assistant Commissioner of Taxation	<b>Name:</b> Andrea Slattery <b>Email:</b> <b>Telephone:</b> <b>Mobile:</b>
<b>Class Super</b>	Software provider to SMSF trustees and their agents	Discussion with the Nicole Dykstra, Assistant Commissioner of Taxation, regarding plan for GNGB and review of the proposed MoU	<b>Name:</b> Mike Denniss <b>Email:</b> <a href="mailto:mike.denniss@super-ip.com.au">mike.denniss@super-ip.com.au</a> <b>Telephone:</b> 02 9016 3055

In addition to stakeholders directly involved in Consultation, the following table outlines other industry communications\*

	<b>March 2016</b>	<b>April 2016</b>	<b>May 2016</b>	<b>June 2016</b>
Gateway Operator's Group (GOG)	17 (Sydney) 31 (teleconference)	14 (Melbourne) 28 (teleconference)	12 (Sydney) 28 (teleconference)	9, 23
ACCC Briefing	18 (letter)	5 (meeting)		
Briefing at Industry Forums	SuperStream BEF - 23	SuperStream Reference Group - 13	ABSIA Conference - 5	SuperStream Reference Group - 8 SuperStream BEF – 20
Articles				SuperFund Magazine

\* Other Industry Forums where communications on the progress and status on the Consultation process are provided

<b>Group/Activity</b>	<b>Purpose</b>	<b>Members/Attendees/Audience</b>
<b>Gateway Operator's Group (GOG)</b>	The GOG is a special purpose consultative group whose role is to consider operational matters specific to the STN and support the transition to a self-regulated, industry-funded body by July 2016. The GOG aims to maintain and improve the effectiveness of the STN.	Current Gateway Operators and ATO representatives.
<b>SuperStream Business Engagement Forum (BEF)</b>	Purpose of the BEF group is for the ATO to provide an update to industry on SuperStream progress and activities.	Invitation to the forum is open to all key stakeholders in the SuperStream network - funds/trustees, Gateways, payroll providers, software developers, Employer groups

<b>Group/Activity</b>	<b>Purpose</b>	<b>Members/Attendees/Audience</b>
<p><b>SuperStream Reference Group (SSRG)</b></p>	<p>The purpose of the SSRG is to discuss issues which have an impact on the implementation of the SuperStream reforms. It will focus on industry readiness for the commencement of the superannuation data and payment standard.</p> <p>The ATO provides attendees with a paper for each meeting, providing an update on GNGB progress including any key risks and issues.</p>	<p>Members are representative of stakeholders across the superannuation industry and have been appointed by the ATO.</p>
<p><b>SuperFund Magazine</b></p>	<p>Key publication for the Superannuation industry.</p> <p>Article is written by Sarah O'Brien providing background on the GNGB and how it was initially formed and an update on the current activity around setting up the GNGB as a company.</p>	<p>FSC will use the article published in the magazine to update its members on the progress of the GNGB.</p>

## Appendix D - New MoU

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# Memorandum of Understanding For participants in the Superannuation Transaction Network

## Version 4

Made between the Gateway Operators described in clause 2(a)

**FINAL DRAFT: - 22<sup>nd</sup> July – FINAL**

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Date:

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## Parties

Made between the **Parties**, a **Party** being GNGB and each Gateway Operator whose Application has been accepted by GNGB in accordance with clause 4 of this MoU.

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## Background

- A The superannuation industry in Australia is undergoing significant transformation. Among other regulatory changes, the **Data and Payment Standard** was implemented to ensure that employers and trustees of APRA-regulated superannuation entities comply with certain requirements in relation to the processing of Superannuation Transactions.
- B Interim arrangements set out in the document entitled 'Memorandum of Understanding For Participants in the Superannuation Transaction Network Version 3' and dated 9 December 2014 (**Previous MoU**) were established to provide a framework for the ongoing development of a formal self-governance regime to be administered by the entity to be appointed as the Gateway Network Governance Body (GNGB).
- C GNGB has now been incorporated and this Memorandum of Understanding (**MoU**) is being established to:
- (i) supersede and replace the Previous MoU;
  - (ii) regulate participation in the Superannuation Transactions Network between Gateway Operators (and associated activities, including connecting to, exchanging Superannuation Transaction Messages over and communicating with other Gateway Operators using, the Superannuation Transactions Network);
  - (iii) implement the self-governance framework, which will regulate participation in the Superannuation Transactions Network to be administered by GNGB and address related matters; and
  - (iv) implement, and require 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

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## 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.

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## 2 Application and effect

- (a) Subject to clause 3, this MoU is legally binding on each Gateway Operator whose Application has been accepted by GNGB.
- (b) An Application is accepted by GNGB 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 4.2.
- (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 4.
- (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) In respect of a Gateway Operator that was a party to the existing MoU, on and from the date that such Gateway Operator's Application has been accepted by GNGB, the Previous MoU will be replaced by this MoU and the Previous MoU will cease to apply to that Gateway Operator.

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## 3 Condition subsequent

- (a) The parties acknowledge that:

- (i) application has or is being made by or on behalf of GNGB to the Australian Competition and Consumer Commission (**ACCC**) for authorisation of making and giving effect to certain of the arrangements described in this MoU;
- (ii) if the ACCC:
  - (A) declines to grant such authorisation (on a final basis); or
  - (B) grants such authorisation on terms or subject to conditions which GNGB considers, in its discretion, to be unacceptable to it or to the intended effective operation and/or administration of the self-governance regime referred to in paragraph B of the Background to this MoU,

then GNGB may issue to each Gateway Operator who has become a party to this MoU pursuant to the operation of clause 2(a) a written notice (**Condition Trigger Notice**) referring to this clause and informing each such Gateway Operator that an event referred to in this clause 3 has arisen.

- (b) If GNGB issues a Condition Trigger Notice, then in respect of each Gateway Operator to whom such a notice is issued:
  - (i) this MoU will (with the exception of this clause 3) be taken to never have come into effect, notwithstanding GNGB's acceptance of the relevant Gateway Operator's Application; and
  - (ii) notwithstanding clause 2(f), the Previous MoU will be taken to have continued and be binding on that Gateway Operator, unaffected by this MoU or the matters contemplated in it.
- (c) The parties acknowledge that a Condition Trigger Notice may have retrospective operation and may also set out other terms relating to its implementation, the continuation of the Previous MoU or other relevant matters.

---

## 4 Acceptance as Gateway Operator

### 4.1 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.

## 4.2 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 withhold approval of Applications by Applicants that are a party to the Previous MoU [unless GNGB considers, acting reasonably, that such Applicant does not (other than in a non-material way) meet the eligibility criteria set out in clause 4.1.
- (c) GNGB will not unreasonably withhold approval of Applications by any Applicant who fulfils the eligibility criteria.
- (d) 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 4.1; 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.
- (e) 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.
- (f) Where GNGB accepts an Application pursuant to clause 2(b) and this clause 4.2, GNGB must 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.
- (g) Where GNGB accepts an Application pursuant to clause 2(b) and this clause 4.2, the GNGB must provide a written notice to the Applicant that their Application has been accepted and specify the effective date.
- (h) 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.

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## 5 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; and
- (h) management of an active stakeholder engagement model and regular consultation at strategic and operational levels.

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## 6 Rights and obligations

### 6.1 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 10.7 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; and
- (e) use best endeavours to attend Gateway Operators Meetings as outlined in Clause 7

## 6.2 Rights to Exchange Messages

- (a) Subject to clause 6.2(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 6.2(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 ATO Small Business Clearing House (or such future equivalent replacement or successor organisation);
  - (iii) with the Australian Taxation Office, in connection with the Superannuation Transaction Network and related services; or
  - (iv) with the prior consent of GNGB.
- (c) Without limiting clauses 9.2 or 9.3 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 6.2(b)(i) assumes all risk and responsibility in connection with that exchange.

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## 7 Gateway Operators Meetings

### 7.1 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.

## 7.2 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.

## 7.3 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.
- (b) Nothing in this clause 7 precludes the Gateway Operators from holding other meetings without the participation of GNGB.

---

# 8 Amendment of MoU and Gateway Standard

## 8.1 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 8.1(a) take effect on and from the expiry of the notice period set out in clause 8.1(a).

## 8.2 Amendment of Gateway Standard

- (a) Subject to obtaining the approval of the GNGB Board by way of 75% majority, (other than in respect of the Gateway Standard as it exists as at **[insert date of this MoU]**), 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 8.2(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.

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## 9 Liability

### 9.1 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 Transactions 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 9.1.
- (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 9.1(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.

## 9.2 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.

## 9.3 Exclusions

Without limiting clause 9.1 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.

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## 10 Issues and dispute resolution

### 10.1 Acknowledgement

The parties acknowledge and agree that:

- (a) the dispute resolution procedures set out in clauses 10 and 11 of this MoU are intended to provide a transparent and consultative process for the resolution of Disputes arising out of, or in connection with, this MoU and the Gateway Standard; and
- (b) they 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 10.1(a) in relation to the resolution of a Dispute.

### 10.2 Resolution of Disputes

- (a) Subject to clauses 10.2(j) and 10.2(l), all Disputes will be referred in writing to a resolution sub-committee appointed by GNGB Board (**Resolutions Group**), for determination by that Resolutions Group.
- (b) The Resolutions Group will:

- (i) be convened by the GNGB Executive Officer as soon as reasonably practical, or otherwise within a period no longer than 10 Business Days from notification of a Dispute, on a case-by-case basis; and
  - (ii) be selected from a standing panel of up to 15 representatives (**Standing Panel**).
- (c) The Resolutions Group representatives comprising the Standing Panel will be pre-appointed by the GNGB Board from time to time on a standing basis . The GNGB Executive Officer will, for a particular Dispute, select some proportion of those representatives to form the Resolutions Group for that Dispute, having regard to those persons who are likely to have appropriate skills and expertise to contribute to the resolution of a particular Dispute and the nature of the relevant Dispute and its subject matter. Where a portion of representatives from the Standing Panel is selected for a particular dispute, those members remain the Dispute Resolutions Group until the conclusion of the particular dispute for which they have been selected.
- (d) The number of members on the Resolutions Group may change on a case by case basis, with regard to the particulars of each Dispute, at the discretion of GNGB Executive Officer.
- (e) GNGB Board may remove any representative from the Standing Panel by providing written notice to that person.
- (f) A party seeking to initiate such written referral must include reasonable particulars of the Dispute in a notice to GNGB Executive Officer. GNGB will consider such notice and, if appropriate, convene one or more meetings of the Resolutions Group as it determines appropriate to consider and determine such Dispute.
- (g) If 75% or more of the representatives of the Resolutions Group that are present at a Resolutions Group meeting agree on a determination with respect to the outcome of a Dispute, such determination will, subject to a contrary determination pursuant to clause 10.3, be binding on the parties to that Dispute.
- (h) A determination of the Resolutions Group in relation to a Dispute must be evidenced by a Dispute Resolution Certificate and a determination so evidenced will, subject to a contrary determination pursuant to clause 10.3, be binding upon all parties to the Dispute (including, without limitation, any Gateway Operator which, subsequently to the occurrence of the events giving rise to the Dispute, resigns as a Gateway Operator pursuant to clause 11.7(b) or whose participation in this MoU is terminated pursuant to clause 11.7(d)).
- (i) In the process of making a determination in relation to a Dispute as contemplated in clause 10.2(a), GNGB will direct the Resolutions Group to undertake reasonable consultation with, and accept and consider submissions from, all parties to the Dispute.
- (j) Prior to a party referring a Dispute pursuant to clause 10.2(a), the relevant party must have:
- (i) provided to the other party (or parties) involved in the Dispute (or received from such other party) written notice of the Dispute, including the reasonable particulars of the Dispute; and
  - (ii) made all reasonable efforts to meet with the other party (or parties) involved in the Dispute and attempt to resolve the Dispute, for a period of a minimum 10 Business Days commencing on receipt of the written notice of Dispute

contemplated in paragraph 10.2(j)(i), unless another time frame is specified in that written notice by the referring party,

and subject to clause 10.2(n), no proceedings may be commenced in relation to any Dispute unless:

- (iii) the Dispute has first or already been referred to the Resolutions Group pursuant to clause 10.2(a);
  - (iv) the Dispute has been determined by the Resolutions Group; and
  - (v) the determination has been evidenced by a Dispute Resolution Certificate in accordance with clause 10.2(a).
- (k) The GNGB Executive Officer or the Resolution Group may determine that the nature of the Dispute is outside the scope of the GNGB and this MoU. In that case, the Dispute can be referred to the appropriate regulatory body. For example, a Dispute between Gateway Operators relating to interpretation of the Data and Payment Standards should be referred to the ATO.
- (l) If the parties to a Dispute settle the Dispute prior to determination of it by the Resolutions Group, they may withdraw the Dispute from the Resolutions Group by each giving written notice of that withdrawal to GNGB.
- (m) GNGB Board may publish additional procedures which set out further details, processes or logistics which the parties will comply with in relation to the Resolutions Group and/or the resolution process for Disputes.
- (n) Nothing in this clause 10.2 prevents a party seeking injunctive or other urgent equitable relief.

### 10.3 Appeals

- (a) If a party to a Dispute disagrees with a determination of the Dispute Resolutions Group made pursuant to clause 10.2, that party may refer that Dispute to the GNGB Board for determination, provided that such referral is made within 10 Business Days of the applicable Dispute Resolution Certificate being issued by the Dispute Resolution Group.
- (b) The GNGB Board will consider a Dispute referred to it pursuant to clause 10.3(a) (including undertaking reasonable consultation with, and accepting and considering submissions from, all parties to the Dispute) at the next occurring meeting of the GNGB Board (unless the GNGB Board has not received reasonably sufficient notice of the Dispute prior to the next occurring meeting, in which case the Dispute will be considered at the subsequent meeting) and will, by written notice to the parties to the Dispute, make a determination as to the Dispute and such determination will, subject to any contrary determination pursuant to clause 10.3(c), be binding on the parties to that Dispute. Notwithstanding the foregoing, if there is no scheduled meeting of the GNGB Board within [30] days of the date that a Dispute is referred to the GNGB Board, GNGB will endeavour to convene a meeting of the GNGB Board for the purposes of considering that Dispute as soon as reasonably practicable.
- (c) If a party to a Dispute disagrees with a determination of the GNGB Board made pursuant to clause 10.3(b) that party may refer that Dispute to arbitration by an independent arbitrator, provided that such referral is made within 10 Business Days of the GNGB Board making its determination. Arbitration must be conducted in accordance with the Australian Centre for International Commercial Arbitration (ACICA) Expedited Arbitration Rules. The seat and place of arbitration shall be

Sydney, Australia and the language of the arbitration shall be English. The parties to the dispute will each bear their own costs in respect of the arbitration process, unless otherwise determined by the arbitrator.

- (d) Notwithstanding any referral pursuant to clause 10.3(a) or 10.3(c), a determination made pursuant to clause 10.2 or 10.3(b) (as applicable) subject to clause 10.3(e) below, remains binding on the parties to the relevant Dispute until a contrary determination is made pursuant to clause 10.3(b) or 10.3(c) (as applicable).
- (e) In circumstances in which a party to a Dispute disagrees with a determination, in relation to that Dispute, of:
  - (i) the Dispute Resolutions Group made pursuant to clause 10.2 and refers that Dispute to the GNGB Board for determination in accordance with clause 10.3(a); or
  - (ii) the GNGB Board made pursuant to clause 10.3(b) and refers that Dispute to arbitration by an independent arbitrator in accordance with clause 10.3(c),

that party to the Dispute may, at the time of the relevant referral, make a request to (in the case of paragraph (i) above) the Dispute Resolutions Group or (in the case of paragraph (ii) above) the GNGB Board, to suspend the coming into effect of some or all parts of the relevant determination, pending the outcome of the applicable referral. The Dispute Resolutions Group or the GNGB Board (as applicable) will consider any such request(s) in good faith, but will retain sole discretion in relation to whether or not to grant a request (and the terms on which such request may be granted).

#### **10.4 Dispute Resolution Fees and Costs**

- (a) Subject to clauses 11.4(b) and 10.7 (and unless otherwise determined in the future by the GNGB Board in accordance with the GNGB Constitution), each Gateway Operator who is a party to a Dispute which is referred to the Resolutions Group pursuant to clause 10.2(a), and GNGB, must each bear their own fees and costs incurred by it in connection with the administration, conduct or handling of that Dispute.
- (b) For the avoidance of doubt, clause 10.4(a) will not prevent the Resolutions Group making a determination that certain costs and expenses incurred by a party in connection with a Dispute are to be paid, in whole or in part, by another party to that Dispute (as part of its determination of that Dispute).
- (c) GNGB will require the Resolutions Group to keep confidential all information provided to it with respect to settlement of a Dispute, including without limitation, information about any agreement between the parties to the Dispute as to apportionment of GNGB's costs and expenses, but excluding the fact that a settlement has been agreed and may not disclose that information to any Gateway Operator without the consent of the parties to the Dispute.
- (d) GNGB may, in its discretion, publish or communicate the outcome of any Dispute that has been submitted to the Resolutions Group for determination (including in connection with the issuing of notices concerning compliance with this MoU or its subject matter).

#### **10.5 Commencement of Proceedings**

- (a) If a Gateway Operator fails or refuses to give effect to a determination of the Resolutions Group in relation to a Dispute, which determination is evidenced by a Dispute Resolution Certificate, GNGB may:

- (i) terminate that Gateway Operator's participation in this MoU; and
  - (ii) resolve that proceedings be commenced and prosecuted against the non-complying Gateway Operator by GNGB in its own right.
- (b) Alternatively, any aggrieved Gateway Operator which was a Gateway Operator at the date of issue of the relevant Dispute Resolution Certificate (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.

## 10.6 Costs

All:

- (a) costs (including costs as between solicitor and own client) and disbursements incurred by GNGB in relation to any proceedings commenced and prosecuted in accordance with clause 10.5;
- (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.

## 10.7 Distribution of Recoveries

If any proceedings are commenced by a Gateway Operator or Gateway Operators pursuant to this clause 10, and GNGB renders administrative assistance pursuant to clause 10.5(b) 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.

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# 11 Remedies

## 11.1 Notification of Breach

- (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.
- (b) GNGB may also, in its discretion, receive and consider information from any third party concerning the matters described in paragraph 11.1(a) in respect of any Gateway Operator.

- (c) Where GNGB receives a notice of the kind contemplated in clause 11.1(a) or 11.1(b), or GNGB otherwise becomes aware of the occurrence of a matter described in clause 11.1(a) in respect of a Gateway Operator, GNGB will notify the ATO and APRA of such occurrence after investigating whether or not such breach or Insolvency Event has occurred,

## 11.2 Prioritisation of consultation as to Disputes

- (a) Subject to clause 11.2(c), before exercising a right to terminate a Gateway Operator's participation in this MoU and/or the Superannuation Transaction Network pursuant to this clause 11, GNGB must first notify the Gateway Operator of the relevant issue as a Dispute and comply with the Dispute process set out in clause 10 in respect of that issue.
- (b) If, in respect of the issue notified as a Dispute under clause 11.2(a):
  - (i) the Resolutions Group determines that GNGB should be entitled to exercise a right to terminate the Gateway Operator; or
  - (ii) the Dispute has not otherwise been resolved or a reasonable resolution plan accepted within 30 days of GNGB notifying the Gateway Operator of the relevant issue and the Gateway Operator has failed, within that period, to undertake consultations or to make submissions as provided in 10.2(i),

then GNGB may proceed to exercise the termination right. For clarity, GNGB is not required to comply with the Dispute process in respect of placing a Gateway Operator on probation under clause 11.3 or exercising a right to terminate a Gateway Operator while a Gateway Operator is on probation.

- (c) Without limiting the revocation procedure contemplated in clause 11.7(d), GNGB is not required to notify the relevant Gateway Operator of a Dispute in respect of a right to terminate relating to:
  - (i) clause 11.7(d)(i);
  - (ii) clause 11.7(d)(ii);
  - (iii) clause 11.7(d)(iii); or
  - (iv) 11.7(d)(iv)
  - (v) clause 11.7(d)(v), where the relevant adverse impact is reasonably regarded by GNGB as potentially having an imminent and material detriment to the other Gateway Operators or the Superannuation Transaction Network;

## 11.3 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 4.1(a) in a material respect; or



- (B) all other applicable requirements for participation in this MoU as set out in clause 4.1 (other than clause 4.1(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 11.7.
- (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

#### **11.4 Probation for New Gateway Operators**

- (a) New Gateway Operators (being persons who, at the time of Application, are not parties to the Previous MoU) will be required to undertake the initial on-boarding processes and procedures set out 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 11, until (subject to clause 11.4(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.

### **11.5 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 11.5(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 11.3 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 11.3 is not excused from discharging its obligations under this MoU or the Gateway Standard.
- (e) GNGB will notify all Gateway Operators, the ATO and APRA (by the most expeditious means reasonably available) if any Gateway Operator is placed on probation under clause 11.3.

### **11.6 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.

### **11.7 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 11.7(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 give GNGB reasonable prior notice of such revocation.

- (c) A Gateway Operator may not resign except by giving notice in accordance with clause 11.7(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 11.3 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) the Gateway Operator engages in fraud;
  - (iv) an Insolvency Event occurs in respect of the Gateway Operator; or
  - (v) 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;

provided that in the case of clauses 11.7(d)(ii), 11.7(d)(iii), 11.7(d)(iv) and 11.7(d)(v), such termination shall not be immediate but will be effective on the date that is 15 Business Days after the date of GNGB's written notice of termination. During this 15 Business Day period, GNGB may invoke STN BCP procedures to protect STN from immediate harm, resulting in potential disconnection of Gateway Operator which is subject to the Termination Notice.

During this 15 Business Day 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 15 Business Day 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.

- (e) GNGB will communicate to the relevant Gateway Operator any reasons for a decision to terminate it. Without limiting the revocation procedure contemplated in

clause 11.7(d), GNGB may revoke any such notice at any time before it becomes effective.

- (f) Any Gateway Operator subject to a notice of termination pursuant to clause 11.7(d) (**Termination Notice**) 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).
- (g) 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 11.7(b) or whose participation in this MoU is terminated pursuant to clause 11.7(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.
- (h) 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.
- (i) 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.
- (j) On termination of a Gateway Operator's participation in this MoU, GNGB will as soon as practicable notify all other Gateway Operators, 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.

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## 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) \$112,500 ,

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, provided that no such indexation will take effect until after 30 June 2018. 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).

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## 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

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## 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 or facsimile transmission 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 5<sup>th</sup> Business Day after the date of its posting.
- (c) Where a notice is sent by facsimile transmission, service of the notice is deemed to be effected by properly addressing the facsimile transmission and transmitting same and to have been served in the case of a facsimile transmission on the Business Day following its despatch.
- (d) 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 Transactions 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 excepted 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.



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## Schedule 1 — Dictionary

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### 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.

**Condition Trigger Notice** has the meaning given to it in clause 3(a)(ii).

**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.

**Dispute** means a dispute or difference between:

- (a) GNGB and any one or more Gateway Operators, which, for the purposes of clause 10 (**Issues and dispute resolution**) only, includes persons/entities that have submitted an Application seeking approval under clause 4; or
- (b) two or more Gateway Operators,  
arising out of, or in any way connected with, this MoU or the **Gateway Standard** including, without limitation, a dispute or difference:
- (c) involving an alleged breach by one or more Gateway Operators of this MoU or the **Gateway Standard**;
- (d) arising out of, or in any way connected with, any decision of GNGB;
- (e) as to any sum of money claimed to be payable pursuant to, or any liability or obligation or other matter to be ascertained or dealt with or which arises under, clause 11.7(g); or
- (f) arising out of, or in any way connected with, the non-payment or alleged non-payment of any sum of money otherwise payable or alleged to be otherwise payable pursuant to this MoU or the **Gateway Standard**.

**Dispute Resolution Certificate** means a certificate evidencing a determination made under clause 10 (**Issues and dispute resolution**) signed by GNGB and setting out in reasonable detail reasons for the determination made.

**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 7.1(a).

**GNGB** means Gateway Network Governance Body Limited [**insert details of incorporated entity**].

**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 [**to be inserted**].

**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.

**Previous MoU** has the meaning given in paragraph B of the Background.

**Probation Event** has the meaning given in clause 11.3.

**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.

**Resolutions Group** has the meaning given to it in clause 10.2(a).

**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.

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## 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 clause 10 (**Issues and dispute resolution**) 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.

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## 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 Version 4' and dated **[insert] 2016 (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 enure 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)

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## Schedule 3 — Fee apportionment - Year 1

Threshold (Transactions in and out)	Tier	%
over 15 mil	1	40%
2 mil - 15mil	2	40%
under 2 mil	3	20%
		<b>100%</b>

### 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.



## Appendix E - Current MoU

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# Memorandum of Understanding For participants in the Superannuation Transaction Network

## Version 3

Made between the Gateway Operators described in clause 2(a)

**9 December 2014**

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Date:

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## Parties

Made between the **Parties**, a **Party** being each person who has signed and delivered an Accession Deed Poll in accordance with clause 2 of this MoU.

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## Background

- A The superannuation industry in Australia is undergoing significant transformation. Among recent regulatory changes, the *Superannuation Data and Payment Standards 2012 (ATO Standard)* has been passed to ensure that employers and trustees of APRA-regulated superannuation entities comply with certain requirements in relation to the processing of Superannuation Transactions.
- B This Memorandum of Understanding (**MoU**) is being established to:
- (i) enable the superannuation industry to implement the ATO Standard in an efficient and cohesive manner;
  - (ii) regulate, on an interim basis, participation in the Superannuation Transactions Network between Gateway Operators (and associated activities, including connecting to, exchanging Superannuation Transaction Messages over and communicating with other Gateway Operators using, the Superannuation Transactions Network); and
  - (iii) provide a framework for the ongoing development of a formal self-governance regime to be administered by the entity to be appointed in the future as the Gateway Network Governance Body (**GNGB**).

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 Standard, but is not defined in the Dictionary or the Superannuation Act, has the meaning given to it in the Standard.

### 1.2 Interpretation

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

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## 2 Application and effect

- (a) This MoU is legally binding on each Gateway Operator who has signed and delivered an Accession Deed Poll to the secretariat of the Gateway Operators Group (GOG).
- (b) This MoU, together with the Standard, takes effect:
  - (i) as a contract under seal between (collectively, and as between each of them) those Gateway Operators who have accepted this MoU in accordance with paragraph 2(a); and
  - (ii) in relation to each Gateway Operator, on and from the date that the relevant Gateway Operator signs and delivers an Accession Deed Poll in accordance with clause 2(a).
- (c) This MoU continues in respect of each such Gateway Operator until such time as that Gateway Operator's participation in this MoU is superseded or replaced by the formal self-governance regime described in paragraph B(iii) of the Background.

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## 3 Standard

- (a) Each Gateway Operator must comply with, and fulfil and perform, the obligations and duties imposed on it by or pursuant to this MoU and the Standard.
- (b) Each Gateway Operator acknowledges and agrees that it is bound by the Standard, as amended from time to time as agreed by the parties.

---

## 4 Liability

- (a) Each Gateway Operator represents and warrants to each other Gateway Operator that:
  - (i) it has the power and authority to enter into this MoU and comply with its obligations under it and the 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 Standard, in accordance with all applicable laws;
  - (ii) 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 of this MoU and the Standard;
  - (iii) its obligations under the MoU and the Standard are valid and binding and are enforceable against it according to their terms; and
  - (iv) 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.
- (b) Each Gateway Operator acknowledges that:

- (i) the integrity, reliability and security of the Superannuation Transactions 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 Standard, to another Gateway Operator; and
  - (iii) each other party relies on the representations and warranties in clause 4(a).
- 

## 5 Issues and dispute resolution

### 5.1 Operational issues

- (a) This MoU is administered by a working group, being the GOG, which comprises members from each of the Gateway Operators, for the purposes of consultative resolution of operational issues.
- (b) Each Gateway Operator agrees to provide a member to participate in the GOG. This member will be responsible for the resolution of operational issues for its Gateway Operator.
- (c) The GOG will meet from time to time, as agreed by the Gateway Operators.

### 5.2 Formal disputes

- (a) A Gateway Operator wishing to raise a formal dispute with another Gateway Operator arising under or in connection with this MoU or its subject matter may submit a written referral of the relevant dispute to each other member of the GOG, identifying reasonable particulars of the dispute and requesting a resolution meeting.
- (b) On receipt of a written referral under clause 5.2(a), each Gateway Operator must procure that its member co-ordinates with each other Gateway Operator's member to convene and attend a meeting of the GOG to seek to resolve the dispute as soon as reasonably possible, and in any case within 48 hours of the receipt of the dispute notice.

### 5.3 Dispute Resolution

- (a) Prior to the establishment of a formal self-governance industry regime, the Gateway Operators will procure that formal disputes that are unable to be resolved by the GOG pursuant to clause 5.2 (**Formal disputes**) are referred to the SSRG as soon as reasonably possible, and in any case within 10 Business Days of the date of the first meeting convened by the GOG under clause 5.2(b) in respect of the relevant dispute. The Gateway Operators are responsible for co-operating with each other to ensure that the relevant affected parties are notified as determined by the SSRG.
- (b) Nothing in this clause 5 affects or limits a Gateway Operator's rights or remedies at law, in equity or otherwise, including to commence or maintain any action or proceeding in any court, tribunal or other competent forum.

---

## 6 Future regime

- (a) Each Gateway Operator acknowledges that this MoU describes an interim arrangement which is intended to be subsequently superseded and replaced in its entirety by a formal self-governance industry regime which:
  - (i) will regulate participation in the Superannuation Transactions Network between Gateway Operators;
  - (ii) will include, and be administered by an entity to be appointed as, GNGB; and
  - (iii) may address, at the determination of GNGB (in consultation with industry stakeholders), additional matters relating to that regime such as:
    - (A) the role and rights of GNGB;
    - (B) matters relating to eligibility for admission as a Gateway Operator and participation and discontinuance of participation in the Superannuation Transactions Network;
    - (C) suspension and termination of participation in the Superannuation Transactions Network;
    - (D) meetings of GNGB and Gateway Operators, including as to agenda and frequency;
    - (E) further matters concerning governance and liability as required to accommodate the introduction of GNGB;
    - (F) breaches of that regime by Gateway Operators; and
    - (G) the processes for the resolution of disputes between participants in the Superannuation Transactions Network.
- (b) Each Gateway Operator agrees to co-operate with the other parties to this MoU in relation to the development and implementation of the industry regime referred to in clause 6(a).

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## 7 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 7(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 7 (**Confidentiality**) and that the party whose Confidential Information is the subject of a breach of this clause 7 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 respective names and details in the Public Gateway Operator List.
- (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.

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## 8 General

- (a) Subject to clause 8(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, which consent is not to be unreasonably withheld.
- (b) Notwithstanding clause 8(a), a Gateway Operator may assign or transfer this MoU without the consent of the other Gateway Operators:
  - (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 incurs obligations under this MoU, that Gateway Operator assumes those obligations as principal notwithstanding any fact, matter or circumstance.
- (d) No Gateway Operator has authority to bind any other Gateway Operator.
- (e) 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.
- (f) The MoU together with the 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.



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## Schedule 1 — Dictionary

---

### 1 Dictionary

In this MoU:

**Accession Deed Poll** means the deed poll by which a Gateway Operator becomes a party to this MoU, in the form set out in Schedule 2 (**Form of Accession Deed Poll**).

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

**ATO Standard** has the meaning given to it in paragraph A of the Background.

**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)*. **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 (including Gateway-related data and messaging services) and/or connected or associated functions in relation to a Gateway (whether on its own behalf or on behalf of another person or entity).

**GOG** means the Gateway Operators Group, comprising members from each of the Gateway Operators, established for the purposes of consultative resolution of operational issues.

**GNGB** means the Gateway Network Governance Body, as referred to in paragraph B(iii) of the Background, being the entity to be so agreed and appointed from time to time by the superannuation industry to fulfil that position, and which appointment has been accepted by that entity.

**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 Australian Prudential Regulation Authority or another 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.

**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 the secretariat of the GOG.

**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).

**SSRG** means the SuperStream Reference Group which provides executive-level industry leadership and a forum for resolving issues related to the implementation of the SuperStream reforms.

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

**Superannuation Entity** means those regulated superannuation entities which are subject to the SuperStream 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 ATO Standard.

**Superannuation Transaction Message** means a message contained 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 the Gateway operated by a Gateway Operator and the Gateway operated by one or more other Gateway Operators.

---

## 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; 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.

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## Schedule 2 — Form of Accession Deed Poll

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### Form of Accession Deed Poll

This accession deed poll is made on **[insert date]** by the following parties:

---

#### Parties

- 1 **[insert name] [insert ABN] of [insert address] (New Gateway Operator),**  
in favour of:
- 2 Each Gateway Operator listed in the Public Gateway Operator List maintained by the secretariat of the Gateway Operators Group as at the date of this deed poll.

This deed poll witnesses as follows:

---

### 1 Interpretation

- (a) A term or expression starting with a capital letter which is defined in the Memorandum of Understanding, but is not defined in this deed poll, has the meaning given to it in the Memorandum of Understanding.
  - (b) In this deed poll:  
  
**Effective Date** means the date of this deed poll; and  
  
**Memorandum of Understanding** means the Memorandum of Understanding for participants in the Superannuation Transactions Network to which this deed poll relates.
  - (c) Clause 1.2 of the Memorandum of Understanding applies to this deed poll as if set out in full in this deed poll.
- 

### 2 New Gateway Operator becomes a party

With effect on and from the Effective Date:

- (a) the New Gateway Operator is and is taken to be a party to the Memorandum of Understanding;
- (b) the New Gateway Operator becomes bound by the Memorandum of Understanding and has the same rights and assumes the same obligations as if it were a party to the Memorandum of Understanding; and
- (c) each reference in the Memorandum of Understanding to 'Gateway Operator' includes a reference to the New Gateway Operator.

---

### 3 Acknowledgments

Each New Gateway Operator acknowledges that it has received a copy of the Memorandum of Understanding, the Standard and all other information it has required in connection with this deed poll.

---

### 4 Notices

The details of each New Gateway Operator for the purpose of the Memorandum of Understanding are as follows:

Address: **[insert details]**

Attention: **[insert details]**

Facsimile: **[insert details]**

---

### 5 Governing law

This deed poll is governed by the laws in force in the State of New South Wales. Each party submits to the exclusive jurisdiction of the courts of that state and the courts that hear appeals from those courts.

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### 6 Counterparts

This deed poll may be executed in any number of counterparts. All counterparts, taken together, constitute one instrument. A party may execute this deed poll by signing, sealing and delivering any counterpart.

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## Executed as a deed poll

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Signed and delivered by New Gateway Operator in accordance with section 127 of the *Corporations Act 2001* (Cth) by authority of its directors:

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Signature of director

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Signature of director/secretary

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Name of director (print)

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Name of director/secretary (print)

## Appendix F - Gateway Standard

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# Superannuation Data and Gateway Services Standards for Gateway Operators transacting within the Superannuation Transaction Network

Version 3

9 December 2014



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## 1 Preamble

- (a) This Superannuation Data and Gateway Services Standards for Gateway Operators transacting within the Superannuation Transaction Network, as may be amended or updated from time to time (the **Standard**) as agreed by the parties, sets out minimum technical and operating requirements for Gateway Operators in relation to messages sent or received in connection with – Superannuation Transactions.
- (b) This Standard also requires that Gateway Operators comply with the *Superannuation Data and Payment Standards 2012* and all schedules, annexures and associated documents, issued by the Australian Taxation Office (ATO), including as amended and updated by the ATO from time to time (**ATO Standard**). The ATO Standard requires employers and superannuation funds and their agents to comply with certain requirements in the processing of Superannuation Transactions.
- (c) The Standard applies to all persons or entities which operate a Gateway (whether on its own behalf or on behalf of another person or entity) and which have accepted this Standard by acceding to the Regulations in the manner described in the Regulations.
- (d) Without limiting paragraph (a), each Gateway Operator acknowledges that this Standard may be subject to review upon the earlier of:
  - (i) the formation of a formal governance body for the Gateway Network; and
  - (ii) 12 months from the date of this document.

---

## 2 Statement of purpose

The purpose of this Standard is to:

- (a) ensure adherence to certain minimum requirements, encouraging consistent quality of service across the superannuation industry;
- (b) promote the efficiency and effectiveness of superannuation processes;
- (c) realise lower cost, faster and more secure superannuation processes; and
- (d) promote transparency and inclusiveness of all industry participants in effecting superannuation processes.

---

## 3 Application and effect

### 3.1 Effect of this Standard

- (a) Each Gateway Operator acknowledges that it is bound to:
  - (i) comply with this Standard; and
  - (ii) fulfil and perform the obligations and duties imposed on it by or pursuant to this Standard.

- (b) Each Gateway Operator acknowledges that it might have liability, for a breach by it of this Standard, to another Gateway Operator.

### 3.2 Inconsistencies

If a provision of this Standard is inconsistent with a provision of the ATO Standard or the Regulations, the following order of priority will prevail:

- (a) the Regulations; and
- (b) the ATO Standard;
- (c) this Standard.

taking into account at all times that this Standard may be amended or clarified from time to time by agreement by issuing a Binding Implementation Practice notification which will be binding on Gateway Operators where such a Binding Implementation Practice notice does not contravene the ATO Standard or the Regulations.

Gateway Operators will not be liable for financial compensation where it has satisfied the Standard and the Standard was not consistent with the ATO or Regulations.

### 3.3 Gateway Operators act as Principals

- (a) Where a Gateway Operator incurs obligations under this Standard, that Gateway Operator assumes those obligations as principal notwithstanding any fact, matter or circumstance.
- (b) Except as provided otherwise, no Gateway Operator has authority to bind any other Gateway Operator.

### 3.4 Governing jurisdiction

Any disputes arising under this Standard are governed by the laws in force in the state of New South Wales, Australia.

---

## 4 Defined terms and interpretation

### 4.1 Interpretation

- (a) A term or expression starting with a capital letter:
  - (i) which is defined in the Dictionary in clause 4.3 (**Dictionary**), has the meaning given to it in the Dictionary;
  - (ii) 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
  - (iii) which is defined in the Regulations, but is not defined in the Dictionary or the Superannuation Legislation, has the meaning given to it in the Regulations.
- (b) In this Standard:
  - (i) words importing any one gender include the other gender;

- (ii) the word 'person' includes a firm, body corporate, an unincorporated association or an authority;
- (iii) the singular includes the plural and vice versa;
- (iv) a reference to a statute or code means the statute or code as modified or amended and in operation for the time being, or any statute, code or provision enacted in lieu thereof and includes any regulation or rule for the time being in force under the statute or code;
- (v) a reference to a specific time means Australian Eastern Standard Time unless the context requires otherwise; and
- (vi) headings are inserted for convenience and do not affect the interpretation of this Standard.

#### 4.2 Relationship with ATO Standard

This Standard cross refers to, and should be read in conjunction with, the ATO Standard, including all schedules, annexures and associated documents, as updated from time to time and published on the ATO website at [www.ato.gov.au](http://www.ato.gov.au).

#### 4.3 Dictionary

**APRA** means Australian Prudential Regulation Authority.

**ATO** means the Australian Taxation Office.

**ATO Standard** has the meaning given to it in clause 1(b).

**Available**, with respect to a Gateway, means having an available internet presence and that the Gateway is capable of handling and processing Superannuation Transaction Messages in accordance with all requirements of this Standard.

**Beneficiary** means a member of a Superannuation Entity.

**Binding Implementation Practice** means a ratified notification which outlines operational guidance on methods or practices for implementing the standards and which forms an annex to this Standard which is binding on Gateway Operators.

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

**Business Hours** means between 9am to 5pm on a Business Day.

**Contingency** means any Disabling Event.

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

**Change** means an alteration, modification or change (including a change in configuration or interoperability parameters) to a network or any network element, including hardware, software, lines or to any operational procedure relating to the use of one or more of those items.

**Cryptography Standards** means the cryptographic standards described in the 'DSD Approved Cryptographic Algorithms' section of the *Australian Government Department of*

*Defence Information Security Manual – September 2012* (a copy of which is linked at [http://www.dsd.gov.au/publications/Information\\_Security\\_Manual\\_2012\\_Controls.pdf?&updatedNov12](http://www.dsd.gov.au/publications/Information_Security_Manual_2012_Controls.pdf?&updatedNov12)), as may be updated or revised from time to time.

**Disabling Event** means any:

- (a) processing, communications or other failure of a technical nature;
- (b) inaccessibility (total or partial) of facilities by means of which exchanges are conducted; or
- (c) manifestation of industrial action,

which affects, or may affect, the ability of any Gateway Operator to participate to the normal and usual extent in the exchange of Superannuation Transaction Messages or the Superannuation Transaction Network.

**Emergency Remedial Repair** means a repair, fix or patch upgrade to the Gateway Operator's technology, required to enable the continuation of service and gateway availability within the Superannuation Transaction Network.

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

**Gateway Contacts Register** means a register of contacts for Gateway Operators.

**Gateway Operator** means any person or entity which operates or supplies functions and services (including Gateway-related data and messaging services) and/or connected or associated functions in relation to a Gateway (whether on its own behalf or on behalf of another person or entity) and who meets the connection eligibility criteria specified in Clause 8.1.

**Gateway Profile** means the Gateway profile in accordance with the industry standard underpinned by schedule 5 of the ATO Standard.

**Industry Peak Period** has the meaning given to it in clause 6.4(b).

**Nominated Service Contact** means a person nominated from time to time by a Gateway Operator for the purposes of receiving notifications under clause 6.10, which person may be listed in the Gateway Contacts Register.

**Regulations** means the document entitled *Memorandum of Understanding for Participants in the Superannuation Transaction Network* (as that document may be subsequently elaborated and replaced by long form participant regulations), together with and in which context this Standard is to be read.

**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).

**Standard** has the meaning given to it in clause 1(a).

**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 Entity** means those superannuation entities which are subject to the SuperStream Standard.

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

**Superannuation Transaction Message** means a message contained 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 the Gateway operated by a Gateway Operator and the Gateway operated by one or more other Gateway Operators.

**GOG** means the Gateway Operators Group, comprising members from each of the Gateway Operators, established for the purposes of consultative resolution of operational issues.

**Testing Framework** means the testing framework and criteria set out in Attachment A .

---

## 5 Gateway operation overview

### 5.1 Application

This Standard sets out the operating and technical requirements for interaction between and interoperation of Gateways. For clarity, except as otherwise expressly provided, this Standard is not intended to describe the operating and technical requirements for interactions that occur between a Gateway Operator and its clients (that is, employers or Superannuation Entities and their agents), which are the responsibility of the relevant Gateway Operator.

---

## 6 Gateway to Gateway interoperability

### 6.1 Gateway Profile recognition

- (a) Gateway Operators must ensure their Gateway is capable of establishing a messaging connection with all other Gateway Operators and other entities that use a Gateway Profile (including Superannuation Entities) in connection with the operation of a Gateway on the Superannuation Transaction Network.
- (b) Each Gateway Operator must ensure that its Gateway supports the sending and receiving of Superannuation Transaction Messages in compliance with the Gateway Profile.

### 6.2 Gateway availability

Each Gateway Operator must ensure that its Gateway is Available 24 hours a day, 7 days a week except for periods of temporary unavailability or downtime during which Changes are permitted pursuant to clause 6.3.

### 6.3 Change window

- (a) Changes which may impact a Gateway's production connectivity to the Superannuation Transaction Network and associated infrastructure, other than for Emergency Remedial Repair, shall only be made during agreed change windows.
- (b) Change Windows will be at stipulated times outside of Business Hours, that have been provided in writing by each Gateway Operator to the group and accepted by the group
- (c) If as part of the ongoing operation of the Superannuation Transaction Network there needs to be a change to the Change Window that has been specified by a particular Gateway Operator, that Gateway Operator will provide notice in writing to all other Gateway Operators at least 14 days prior to the proposed change.
- (d) Notwithstanding the available change window described in clause 6.3(a), (b) and (c) above, Gateway Operators must minimise Changes, make use of the change window only where required and otherwise maintain Availability in accordance with clause 6.2.

### 6.4 Change Freeze

- (a) No Gateway Operator may make Changes, other than emergency remedial repair, to a Gateway or a Gateway's production connectivity during Industry Peak Periods.
- (b) **Industry Peak Periods** for Superannuation Transactions are:
  - (i) the 1 week period immediately preceding 30 June of any year; and
  - (ii) the 1 week period immediately preceding 28 January, 28 April, 28 July and 28 October of any year.

### 6.5 Message technology and processing

- (a) Each Gateway Operator must ensure its Gateway:

- (i) receives, processes and sends file sizes of up to the size prescribed in the ATO Standard from time to time;
  - (ii) processes and onsennds all Superannuation Transaction Messages as soon as possible after they are received. Once a Superannuation Transaction Message is received in its entirety, that Superannuation Transaction Message must be processed and onsent immediately, subject to the availability of the receiving Gateway, and in any event within a timeframe not exceeding the following service standards:
    - (A) 99.8% of Superannuation Transaction Messages must be processed and sent within 1 hour of complete receipt, measured over a monthly period; and
    - (B) all remaining Superannuation Transaction Messages must be processed and sent in a time not exceeding 6 hours of complete receipt, including during the industry peak periods referred to in clause 6.4(b) and subject to the availability of the receiving Gateway.
  - (iii) supports ongoing changes (as defined by the Superannuation Legislation), within 12 months of the version change, to the 'AS4' Gateway Profile of ebMS 3.0 Version 1.0 and such further versions as may become generally used and accepted in the industry from time to time and also maintains a level of one version backwards compatibility for participants using older versions. .
- (b) Each Gateway Operator must implement and operate sufficient capacity monitoring software and technology on its systems to enable it to appropriately manage traffic congestion, forecast peak loads and assess its own ongoing compliance with the requirements set out in this clause 6.5.

## **6.6 Transport and message security protocols**

- (a) For non-interactive integrations (for example, messaging between Gateways), Gateway Operators must use a minimum level of protection of Transport Layer Security (TLS) of version 1.1 or above.
- (b) Each Superannuation Transaction Message must be digitally signed in accordance with the Gateway Profile.

## **6.7 System security**

- (a) All Gateway Operators must implement, maintain and enforce a security policy which must include procedures for detecting and preventing any unauthorised access to the use of the Superannuation Transaction Network through their own hardware, software, lines and operational procedures which enable the exchange of authorisation and reconciliation of Superannuation Transaction Messages.
- (b) Gateway Operators must implement and use controls in the Superannuation Transaction Network and any associated networks/equipment to:
  - (i) maintain a risk management strategy that includes the prevention of fraud;
  - (ii) allow for the timely and effective detection of activities indicative of fraud;
  - (iii) allow fraud and other security incidents to be responded to on a timely and effective basis;



- (iv) log security events, escalation requirements, response requirements and contingency arrangements; and
  - (v) respond to security events with an urgency that corresponds to their severity, using prudent business judgment to determine the timing and use of resources for solving any problem.
- (c) Any:
- (i) incidents or potential incidents associated with the Superannuation Transaction Network or associated infrastructure of a security nature;
  - (ii) procedural or operational lapses or outages;
  - (iii) failure of internal systems or controls of a Gateway Operator;
  - (iv) incidents of unauthorised access to systems;
  - (v) unauthorised message interrogation or interception; or
  - (vi) unauthorised access or changes to data,
- must be reported in a timely manner to the Gateway Operator's impacted client(s).
- (d) A Gateway Operator must log an incident report with each other affected Gateway Operator if, for any reason, including but not limited to those described in 6.7(c), there is an unplanned outage of more than 30 minutes which affects that Gateway Operator's ability to continue exchanges across the Superannuation Transaction Network. The incident report needs to be made available to each other affected Gateway Operator within two weeks of the outage and cover the cause, impact, sequence of events and resulting action items.
- (e) A Gateway Operator that becomes aware of or reasonably suspects any actual or significant attempted security threat to the Superannuation Transaction Network, any Gateway or any hardware, software, lines and operational procedures which enable the exchange of, authorisation and reconciliation of Superannuation Transaction Messages must immediately notify any other Gateway Operator that may be affected.
- (f) Each Gateway Operator must record and maintain (and ensure that its message sending and receiving platforms implement and maintain sufficient logging and tracking capability to record and maintain) an end-to-end audit trail of the path of a Superannuation Transaction Message, , from the point of entry into that Gateway Operator's systems (onto and through its Gateway) to the point of exit from that Gateway Operator's systems. Each Gateway Operator will procure that such records, limited to the evidence of a message path including time and date stamps, message identifiers, receiver and sender information, must be:
- (i) maintained in accordance with the same requirements applying to reports required to be maintained under section 105 of the *Superannuation Industry (Supervision) Act 1993* (Cth); and
  - (ii) made available to employer or Superannuation Entities and applicable regulatory authorities on disconnection from the Superannuation Transaction Network or as and when requested.

## **6.8 Disasters, emergencies and business continuity**

- (a) Gateway Operators must ensure that they establish and maintain a disaster recovery plan to protect their Gateway from disasters and interruptions beyond their reasonable control, preserve business continuity in the event of an emergency, minimise disruption to the Superannuation Transaction Network and their individual Gateway, and facilitate the backup and restoration of affected data.
- (b) The disaster recovery plan referred to in clause 6.8(a) must reflect (at least) the following minimum requirements:
  - (i) time to full recovery: 12 hours;
  - (ii) minimal data loss: ability to recover all data except data in transit at the time of the relevant disaster;
  - (iii) internal Gateway Operator testing of the disaster recovery plan no less frequently than on an annual basis, or upon changes to the Gateway technology;
  - (iv) near real-time data replication (log shipping);
  - (v) availability of redundant disaster recovery infrastructure at an alternate geographically separated site; and
  - (vi) failover disaster recovery equipment enables the continuation of service in line with the requirements as outlined in clause 6.5.

## **6.9 Access to ATO Enabling Services – Fund Validation Service**

All Gateway Operators must ensure the latest and most appropriate Fund Validation Service data, as issued by the ATO, is used in the direction of Superannuation Transaction Messages, ensuring no loss of service or misdirection of Superannuation Transaction Messages due to inaccurate records.

## **6.10 Problem and error management**

- (a) In the first instance, Gateway Operators must comply with all applicable error management protocols and procedures set out in the ATO Standard including technical retry processes and procedures.
- (b) In the case of non-receipt of a signal message receipt for a Superannuation Transaction Message, the sending Gateway Operator must initiate resolution protocols with the proposed receiving Gateway Operator in the form of telephone contact or electronic alert, to the Nominated Service Contact for the receiving Gateway Operator within 2 Business Hours of the sending of the original Superannuation Transaction Message.
- (c) The sending Gateway Operator remains obliged to resolve the non-receipt situation and achieve signal message receipt success until the Nominated Service Contact of the proposed receiving Gateway Operator is contacted, alerted to the issue and accepts responsibility for its resolution.

- (d) If signal message receipt success is not achieved within 3 Business Hours of the sending of the original Superannuation Transaction Message, notwithstanding the Gateway Operator complying with its obligations under clauses 6.10(b) and 6.10(c), the sending Gateway Operator must also promptly notify the unresolved issue to the employer or Superannuation Entity on whose behalf the original Superannuation Transaction Message was sent.
  - (e) In the event that errors are not resolved by the protocols in paragraphs 6.10(a) to 6.10(d), Gateway Operators will refer the matter to the GOG.
- 

## 7 Connection integrity

### 7.1 Redundant connections

Each Gateway Operator must maintain two distinct permanent connections to the Superannuation Transaction Network. Sufficient redundancy must be provided to ensure that no single point of failure exists within the network components under each Gateway Operator's control. An active-active configuration is preferred for Gateways with large Superannuation Transaction Message volumes.

### 7.2 No wireless connections

No wireless access to the Superannuation Transaction Network is permitted. Otherwise, but without limiting the other requirements of this Standard, Gateway Operators may choose their own type of connections.

### 7.3 Contingency

Gateway Operators have a responsibility to each other to co-operate in resolving any processing difficulty including during a Contingency. To the extent that such co-operation does not adversely affect its own processing environment, a Gateway Operator receiving a request for assistance may not unreasonably withhold such assistance.

### 7.4 Availability and support

Each Gateway Operator's infrastructure and support arrangements shall be such as to meet the availability requirements of the Superannuation Transaction Network. Each Gateway Operator must ensure that it has appropriately qualified and experienced personnel to service and support its Gateway and associated functions, which person(s) are available to provide:

- (a) physical support, on an on-site basis, during Business Hours; and
  - (b) remote on-call support outside Business Hours.
- 

## 8 Connections and disconnections

### 8.1 Connection eligibility

To be and remain eligible for connection to the Superannuation Transaction Network for the purposes of operating a Gateway, a Gateway Operator must:

- (a) undertake and successfully complete the entry process in accordance with the *Superannuation Transaction Network process and requirements for New Gateway Operators*;

- (b) have its connection request endorsed by written notification:
  - (i) from a Superannuation Entity to the ATO resulting in the Gateway Operator being recorded in the *ATO Fund Register* as the Gateway Operator for the Superannuation Entity; or
  - (ii) from an employer or their service provider to the GOG Secretariat nominating the Gateway Operator as their Gateway Operator;
- (c) commit to certify each other, as participants in the Superannuation Transaction Network by undertaking and successfully passing interoperability testing between all parties to the regulations as outlined in the testing framework and criteria set out in Appendix A.

## **8.2 Disconnecting GSPs**

Before a Gateway Operator may permit or implement any disconnection of its connectivity or systems from the Superannuation Transaction Network, that Gateway Operator must:

- (a) submit at least four (4) weeks prior written notice of that disconnection to each employer or Superannuation Entity for which it performs Gateway Services;
- (b) reasonably co-operate with each such employer or Superannuation Entity in relation to the co-ordination of any such proposed disconnection and the transition of the performance of Gateway-related functions and services (including Gateway-related data and messaging services) and/or connected or associated functions to any other Gateway Operator nominated by that employer or Superannuation Entity;
- (c) be otherwise entitled to permit or implement that disconnection, including under the terms of any contract or agreement with each employer or Superannuation Entity for which it performs Gateway Services;
- (d) cooperate with the transfer of historical data records if required by the Gateway Operator's client(s) as allowed under clause 6.7(f)(ii); and
- (e) procure that it ceases to be the subject of an active listing as a Gateway Service Provider in the *Fund Validation Service* spreadsheet held by the ATO.

## **8.3 Testing requirements**

Gateway Operators must undertake:

- (a) connection testing; and
- (b) Superannuation Transaction Message testing upon changes to the Superannuation Transaction Network as defined by in the Superannuation Legislation,

in accordance with the Testing Framework.

## **8.4 Separation of test environments**

- (a) Gateway Operators must ensure that security is enforced between their internal application(s) and the Superannuation Transaction Network, so that an unauthorised copy of an application (for example, a test version) may not accidentally send messages through the Superannuation Transaction Network to the production system of another Gateway Operator.

- (b) Test systems must be explicitly separated from production environments.

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# Attachment A — Testing Framework

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## 1 Test planning

- (a) Before commencing any testing, a Gateway Operator proposing to conduct testing with another Gateway Operator must prepare and submit to that other (second) Gateway Operator a project plan (**Project Plan**) which must:
  - (i) include a timetable (**Testing Timetable**) for testing the operation of the first Gateway Operator's systems with the second Gateway Operator's systems;
  - (ii) include a detailed testing protocol describing the duration and scope of the testing process and the standards that must be met in order to complete testing successfully (**Testing Protocol**), which must at a minimum address testing for all applicable test types set out in paragraph 3 of this Attachment (**Test Types**);
  - (iii) establishment of testing environment connection(s) to/from the second Gateway Operator testing environment(s); and
  - (iv) be approved by the second Gateway Operator (including as to both the Testing Timetable and Testing Protocol), which approval will not be unreasonably withheld, delayed nor granted subject to unreasonable conditions.
- (b) The Testing Protocol must have regard to:
  - (i) the first Gateway Operator's obligations under this Standard; and
  - (ii) any reasonable requests of the second Gateway Operator.
- (c) The Testing Timetable must provide that testing will be undertaken during a time mutually agreed between the first Gateway Operator and the second Gateway Operator.

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## 2 Testing

- (a) The first Gateway Operator and the second Gateway Operator must conduct tests in accordance with the Testing Timetable and Testing Protocol developed according to paragraph 1(a) of this Attachment.
- (b) Testing will be deemed to be successful if and when all tests in the Testing Protocol are successfully completed in accordance with the criteria set out in the Testing Protocol.
- (c) Gateway Operators may use sample instances and test data made available on an industry wide basis, or alternative test data may be used as mutually agreed between them.

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## 3 Test types

(a) The **Test Types** are:

Test type	Description	Test Areas to be covered (but not limited to)	Testing Scenarios	Success measure
Gateway Operator Internal testing	Testing to be conducted within each organisation in line with individual project development lifecycles	<ul style="list-style-type: none"> <li>• Message receipt and processing</li> <li>• Message generation</li> <li>• Validation of message data including header and payloads where applicable</li> <li>•</li> </ul>	<ul style="list-style-type: none"> <li>• Send to self in test environment</li> <li>• Open and process messages</li> <li>•</li> </ul>	<ul style="list-style-type: none"> <li>• Message technical structure complies with EbMS 3.0/AS4.0 standards</li> <li>• Message business content complies with SuperStream MIGs</li> </ul>
Connectivity testing	Testing: <ul style="list-style-type: none"> <li>• the ability to connect to other gateway operators in test environments and the production connection; and</li> <li>• ATO connection for Fund Validation Services</li> </ul>	<ul style="list-style-type: none"> <li>• Mutual authentication</li> <li>• Digital certificate authentication</li> </ul>	<ul style="list-style-type: none"> <li>• Open connection</li> <li>• Close connection</li> <li>• Confirm authenticated party</li> <li>• Detect unauthenticated party</li> </ul>	<ul style="list-style-type: none"> <li>• Connection to authorised gateways confirmed</li> <li>• Connection to unauthorised gateways rejected</li> <li>• Successfully shut down connection as defence</li> </ul>
Ability to send/receive messages/file testing	Testing to ensure that, even though a connection can be achieved, the connection allows a file/message to be sent/received	<ul style="list-style-type: none"> <li>• Files/messages received acknowledged and processed</li> <li>• Files/messages sent</li> <li>• Files/messages received and acknowledged by all funds on the Gateway Operator's network</li> <li>• Transport level encryption in tact</li> </ul>	<ul style="list-style-type: none"> <li>• Send to other party,</li> <li>• Receive from other party</li> <li>• Routing positive and negative scenarios including valid/invalid addressing</li> </ul>	<ul style="list-style-type: none"> <li>• Reconciliation with counterparties accounts for all files/messages</li> <li>• Message integrity intact</li> </ul>
Error/Response Messages	Ensure ability to generate appropriate technical receipt or error messages	<ul style="list-style-type: none"> <li>• Technical error messages sent/received</li> <li>• Ability to resolve non receipts/errors</li> </ul>	<ul style="list-style-type: none"> <li>• Deliberate error scenarios</li> <li>• Deliberate non receipt generation from/to counterparties</li> </ul>	<ul style="list-style-type: none"> <li>• Generation of accurate error codes,</li> <li>• Validation of successful business resolution processes</li> </ul>
Format/content testing	Testing, using test data, to ensure the recipient can pick up the file/message and "read" it or onsend it	<ul style="list-style-type: none"> <li>• ebms Header testing</li> <li>• Message testing will be across all message types.</li> <li>• Include compressed payload and associated processes</li> </ul>	<ul style="list-style-type: none"> <li>• Positive and negative scenarios including valid/invalid senders/receivers, dates, ABN/TFN, message types and error codes</li> </ul>	<ul style="list-style-type: none"> <li>• Counterparty gateways can "read" and route messages to/from new gateway</li> </ul>
Integrity testing	Testing to ensure that new connections have not corrupted any other parts of	<ul style="list-style-type: none"> <li>• Network participants connect and subsequently disconnect</li> </ul>	<ul style="list-style-type: none"> <li>• All participants connect and mutually authenticate – end to</li> </ul>	<ul style="list-style-type: none"> <li>• Uninterrupted network availability</li> </ul>

Test type	Description	Test Areas to be covered (but not limited to)	Testing Scenarios	Success measure
	the Superannuation Transaction Network.		end network connections	as a result of new connection



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## 4 Availability for testing

- (a) The first Gateway Operator and second Gateway Operator must use reasonable endeavours to make their systems available for testing during the Testing Timetable approved by the second Gateway Operator pursuant to paragraph 1(a)(iv) of this Attachment.
- (b) If the second Gateway Operator fails to make its systems available for testing at the times set out in the Testing Timetable approved by the second Gateway Operator pursuant to paragraph 1(a)(iv) of this Attachment, the first Gateway Operator may reasonably request, and if so reasonably requested the second Gateway Operator must agree, to complete all testing at a different time.
- (c) The second Gateway Operator must not unreasonably withhold or delay in making its systems available for testing, nor grant consent on unreasonable conditions.

## Appendix G - ATO Support Document



## To: Australian Competition & Consumer Commission

### Competition policy review for a new Gateway Network Governance Body (GNGB)

c/o: Clayton Utz

Dear Sir / Madam,

The ATO has been tasked with facilitating industry agreement on the establishment of a new governing body to provide oversight of a network of gateway operators and commence transition of our current stewardship of this network to the new body from 1 July 2016.

Over recent months, the ATO has collaborated with five industry bodies ('governance network sponsors')<sup>1</sup> to establish a governance framework for the STN. The industry bodies have designed the STN governance framework and the not for profit entity that will be created to oversee it – the gateway network governance body (GNGB).

During the design process, the industry bodies have engaged Clayton Utz to provide advice on any potential competition issues with the proposed design. This industry bodies are intending to seek authorisation from the ACCC prior to operating the new GNGB. The industry bodies also intend to seek an interim authorisation so that handover can commence in the earliest possible timeframe.

We would appreciate any priority you can give to this matter and provide any guidance on how we could work with you to expedite the authorisation process.

### Background of SuperStream and the Gateway Network

We have also provided some background information for your reference.

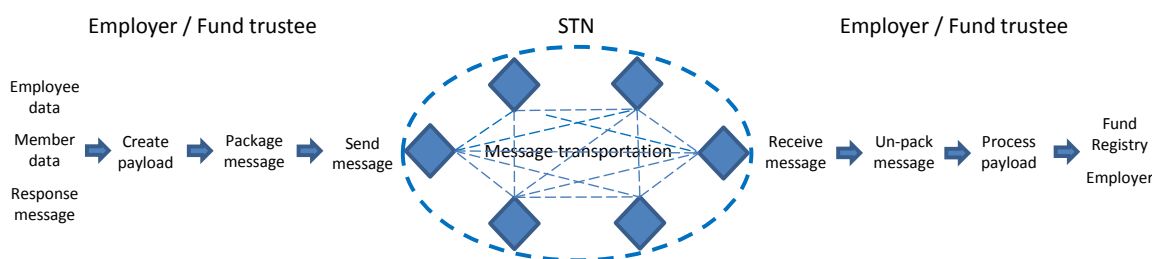
1. Government announced the Stronger Super Reforms in Dec 2010 in response to the Super System Review (aka "Cooper Review"). This included support of the SuperStream recommendations which aim to enhance the 'back office' of APRA-regulated superannuation funds.
2. SuperStream includes measures for electronic transactions to reduce the costs and complexity arising from manual processing, lack of standardised formats, and poor and incomplete data. While there will be additional costs on industry in the short term, the reforms are expected to deliver significant benefits over the longer term.
3. As part of the Stronger Super reforms, the ATO was tasked with facilitating the introduction of the Government's SuperStream measures, which has led to the development of a mandated set of common rules for the electronic payment of superannuation rollovers and

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<sup>1</sup> Association of Super Funds Australia (ASFA), Australian Industry Super Funds and Trustees (AIST), Financial Services Council (FSC), Australian Chamber of Commerce and Industry (ACCI), Australian Business Software Industry Association (ABSIA).

contributions, and the corresponding data messages for each transaction they represent (the Superannuation Data and Payment Standards).

4. Messaging gateways have emerged since 2013 as a core service at the centre of the SuperStream environment. Analogous to a telephone utility, these gateways connect employer data transaction flows to a myriad of super fund destinations. They also connect one super fund to another where a member's account information needs to be transferred. Together they form a network of gateways which guarantee transactions are passed reliably, securely to their destination on a 24X7 basis. This network is known as the Superannuation Transactions Network (STN) and currently operates on the basis of a mutually binding memorandum of understanding between each operator. Note, gateway operators do not process money, which is transferred through the banking system.



5. Superannuation funds and employers participate in the SuperStream environment in a way that is regulated by the SuperStream laws, as well as the broader superannuation laws. Gateway operators are intermediaries in this process and are not directly regulated. Governments of various persuasions have taken the policy view that regulation of intermediaries in the superannuation system, whether an administrator, clearing houses or gateways was not desirable.
6. In recognition of this, the then Assistant Treasurer, Sen. Arthur Sinodonis, asked the ATO in early 2014 to provide interim stewardship of the gateway network from a governance perspective and work with industry stakeholders in putting together a self-regulated, industry-funded governance body to provide this governance on a permanent basis. He asked that this body be in place by 1 July 2016.<sup>2</sup>

We thank you for your attention to this matter, and look forward to hearing from you on any options or suggestions to expedite the authorisation process.

Mark Stockwell  
Sub-Program Manager  
Data Standards and E-Commerce (SuperStream) project  
Superannuation

Contact Number: 07 314 95022, 0422 009 518

<sup>2</sup> Refer to Attachment 1: "Stability for the SuperStream gateway network", Assistant Treasurer's media release, 21/02/2014 and Attachment A2: "SuperStream - Gateway Governance Transition Planning", Treasury Executive Minute, 12 February 2014.

## **Attachment 1**

AT Media Release for ATO to provide stewardship to STN

21 February 2014

Media Release - #2014009, 2014

### **Stability for the SuperStream gateway network**

The Assistant Treasurer, Senator the Hon Arthur Sinodinos AO, today announced arrangements to provide certainty and stability to the superannuation industry by setting in place a governance structure for the SuperStream gateway network.

SuperStream is a project to introduce e-commerce to the 'back office' of the superannuation industry, reducing transaction costs and processing times. SuperStream reforms are estimated to deliver savings of \$1b annually to industry.

The gateway network is a key part of the infrastructure required to ensure that SuperStream delivers maximum benefits to employers, superannuation funds and fund members.

While the network is bedded down, the Australian Taxation Office (ATO) will, for a period of two years only, have stewardship of the SuperStream gateway network. It will convene a governance group made up of industry participants, including gateway operators, superannuation funds and employer representatives. During this initial two year period, the ATO will be responsible for providing clarity and certainty to the gateway operators and other members of the superannuation industry regarding the network's operation.

One of the key functions the ATO will undertake during this time will be to facilitate an industry agreement on the design of a self-regulated, industry-funded governance body. The ATO will put in place the required administrative framework to allow for a smooth transition to self-regulation, which will occur in the second quarter of 2016.

It is the expectation of the Assistant Treasurer that the industry will work together to ensure this outcome is achieved. After transition the ATO will maintain only a participatory role as a member of the governance body.

This announcement provides certainty and stability to participants in the superannuation industry during this period of reform.


The Government remains committed to SuperStream and the ATO will continue to work closely with superannuation funds, fund administrators, employers, and software developers as SuperStream continues to be implemented.

**To: Australian Competition and Consumer Commission (ACCC)**  
**Re: Formation of Gateway Network Governance Body (GNGB)**

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The parties to this statement ('the parties') share a common interest in the efficient, reliable and secure operation of the Superannuation Transaction Network which is made up of messaging gateways. Collectively we represent the interests of employers, gateway operators, payroll providers, and superannuation funds - major stakeholders in the flow of contributions data and money under SuperStream. It is our intent to work together in establishing a self-regulatory body which would take over ongoing responsibility for the governance and oversight of this gateway network.

We recognise that the ATO is currently serving as the interim steward of the Superannuation Transaction Network and has been tasked by the Assistant Treasurer to work with industry on development and handover of this role to an industry-sponsored body by mid-2016. The parties have worked collaboratively to enable the GNGB to take over this role and are wholly supportive of the results of our endeavours, as can be evidenced by our drafting an agreed Memorandum of Understanding and GNGB Constitution.

Name	Name/Title	Signature
Australian Institute of Superannuation Trustees (AIST)	TOM GARCIA CEO	
Financial Services Council (FSC)		
Gateway Association & Transaction Exchange (GATE)		
Australian Business Software Industry Association (ABSIA)		
Australian Chamber of Commerce and Industry (ACCI)		

**To: Australian Competition and Consumer Commission (ACCC)**  
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Name	Name/Title	Signature
Australian Institute of Superannuation Trustees ( <b>AIST</b> )		
Financial Services Council ( <b>FSC</b> )		
Gateway Association & Transaction Exchange ( <b>GATE</b> )	Chris Matthews Executive Officer	
Australian Business Software Industry Association ( <b>ABSIA</b> )		
Australian Chamber of Commerce and Industry ( <b>ACCI</b> )		

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Name	Name/Title	Signature
Australian Institute of Superannuation Trustees (AIST)		
Financial Services Council (FSC)	Sally Loane CEO	
Gateway Association & Transaction Exchange (GATE)		
Australian Business Software Industry Association (ABSIA)		
Australian Chamber of Commerce and Industry (ACCI)		