



smartMonday Group Insurance (Risk Only) Participating Employer Agreement

between

Equity Trustees Superannuation Limited

ABN 50 055 641 757

(Trustee)

and

IBM Australia Limited

ABN [79 000 024 733]

(Employer)

and

smartMonday Solutions Limited

ABN 48 002 288 646

(SMS)

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PARTICIPATING EMPLOYER AGREEMENT

THIS AGREEMENT is made the 26 day of May 2023

BETWEEN EQUITY TRUSTEES SUPERANNUATION LIMITED
(AFSL 229757) (ABN 50 055 641 757)
Level 1, 575 Bourke Street, Melbourne, VIC 3001 (**Trustee**)

AND IBM Australia Limited
(ABN 79 000 024 733)
259 George Street, Sydney, NSW, 2000 (**Employer**)

AND SMARTMONDAY SOLUTIONS LIMITED
(AFSL 236667) (ABN 48 002 288 646)
Level 3, 31 Alfred Street, Sydney, NSW, 2000 (**SMS**)

RECITALS

- A. The Smart Future Trust (**Fund**) is governed by a trust deed and rules dated 25 June 1990 as amended from time to time (**Trust Deed**).
- B. smartMonday PRIME is the corporate division of the Fund and smartMonday Group Insurance is the corporate risk only specialist product within the corporate division of the Fund.
- C. The Trustee is the trustee of the Fund.
- D. SMS is the sponsor of the Fund and administrator appointed by the Trustee to provide administrative services in relation to the IBM Superannuation Plan in the Fund.
- E. The Employer wishes to participate in the Fund and has requested the Trustee and SMS to establish the IBM Superannuation Plan in smartMonday PRIME to provide group insurance and other benefits to its Employees.
- F. On and from the Commencement Date, the Employer will participate in the Fund in respect of its Employees.
- G. The purpose of this Agreement is to record the conditions under which the Employer participates in the Fund.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, a word or phrase defined in the Trust Deed has the same meaning as in the Trust Deed except as follows:

Agreement means this Participating Employer Agreement.

APRA means Australian Prudential Regulation Authority.

ATO means the Australian Taxation Office.

Authorised Employer Representative means and includes the Employer's signatories to this Agreement and a person whose name appears on the most recent list of persons, provided to the Trustee and/or SMS by the Employer, who is authorised by the Employer to give requests, instructions, notices or other instruments to the Trustee and/or SMS on the Employer's behalf and to sign any document on behalf of the Employer, as provided for in clause 10 of this Agreement.

Confidential Information means this Agreement, the information contained in this Agreement and provided to a recipient pursuant to this Agreement, Personal Information, Plan Data, intellectual property, know-how, ideas, concepts, technology, data, source or object code, designs, functions, features and performance notes, technical data and marketing information such as customer lists, financial information and business plans which is disclosed, communicated or delivered to, learnt by, or which otherwise comes to the knowledge of or into the possession of the other party under or in connection with this Agreement.

Commencement Date means 27 May 2023 or such other date as may be agreed in writing between the parties.

Employee means a person who is in the full-time permanent employ of the Employer but may also include a person whose employment is not full-time and permanent .

Employer means IBM Australia Limited and includes any related body corporate of IBM Australia Limited who is a participant in the IBM Superannuation Plan.

Fund means the Smart Future Trust (ABN 68 964 712 340).

Governing Rules has the meaning contained in the Superannuation Industry (Supervision) Act 1993 (Cth).

Instruction means any request, instruction, notice or other instrument, made individually or collectively.

Monthly Employer Contribution means the monthly payment required from the Employer under this agreement.

Personal Information means all information about a person that is 'personal information' as defined in Privacy Law or other applicable law which is collected or held by the Trustee and/or SMS.

Plan means the IBM Superannuation Plan, a sub-division of smartMonday PRIME.

Plan Data means information and data about the Plan, the Plan Members, and the instructions of those Plan Members.

Plan Member means each Employee who is identified by the Employer as being a member of the IBM Superannuation Plan and each Employee who is admitted as a member of the Plan on or after the date of this Agreement.

Plan Rules means the rules of the Plan which are contained in the Schedules to this Agreement.

Policy Committee means the policy committee that advises the Trustee of the Fund and is established by or under the Governing Rules of the Fund for the Plan in accordance with the requirements of the *Superannuation Industry (Supervision) Act 1993 (Cth)* and the *Superannuation Industry (Supervision) Regulations 1994 (Cth)* which must be maintained while the Employer participates in the Fund (except for any period when the Policy Committee has dissolved itself in accordance with those requirements).

Privacy Law means:

- (a) the *Privacy Act 1988* (Cth); and
- (b) the Australian Privacy Principles contained in Schedule 1 to the *Privacy Act 1988* (Cth) or any approved privacy code (as defined in the *Privacy Act 1988* (Cth)) that applies to this Agreement; and
- (c) any other applicable privacy and data protection laws as may be in force from time to time which regulates the collection, storage, use and disclosure of Personal Information, including the *SPAM Act 2003* (Cth) and *Do Not Call Register Act 2006* (Cth); and
- (d) any other statute, regulation or law in Australia or elsewhere which relates to the protection of Personal Information and which applies to this Agreement.

Relationship Manager means the person appointed as relationship manager for the IBM Superannuation Plan under clause 3.1 from time to time.

Relevant Law means:

- (a) the Superannuation Industry (Supervision) Act 1993 (Cth);
- (b) the Superannuation Industry (Supervision) Regulations 1994 (Cth);
- (c) the Income Tax Assessment Act 1936 (Cth) and the Income Tax Assessment Act 1997 (Cth), as applicable;
- (d) the Family Law Act 1975 (Cth);
- (e) the Corporations Act 2001 (Cth);
- (f) the Bankruptcy Act 1966 (Cth);
- (g) the Anti-Money Laundering and Counter-Terrorist Financing Act 2006 (Cth);
- (h) Privacy Law;
- (i) any replacement or additional Commonwealth or State law; and
- (j) any other present, future or proposed legal requirements with which a party:
 - a. is legally obliged to comply; or
 - b. must comply to obtain the maximum tax concessions available to the Fund.

Schedule means a Schedule attached to this Agreement, as amended from time to time.

smartMonday PRIME means the corporate division of the Fund.

smartMonday Group Insurance means the corporate risk only specialist product within smartMonday Prime.

Terminal Illness has the meaning set out in Schedule 1 - Plan Design.

Trust Deed means the trust deed for the Fund dated 25 June 1990, as amended from time to time.

1.2 In this Agreement (including the Schedules), unless the context requires otherwise:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the Schedules form part of this Agreement;
- (c) the singular includes the plural and vice versa;

- (d) a reference to this Agreement, the Schedules or another instrument includes any variation, novation or replacement of them;
- (e) a reference to any legislation, ordinance, code or other law includes regulations, modification declarations and other instruments issued under it and any consolidation, amendment, re-enactment or replacement of any of them;
- (f) a reference to dollars or '\$' is a reference to Australian currency;
- (g) a reference to conduct includes a reference to any omission, statement or undertaking, whether or not in writing;
- (h) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (i) the word 'person' includes a firm, a body corporate, an unincorporated association or an authority;
- (j) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including without limitation any persons taking by novation) and assigns;
- (k) a reference to anything (including, without limitation, any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually; and
- (l) the use of the word 'including' in a provision as an introduction to a list of things does not limit that provision to that list or to things of a similar nature.

2. PARTICIPATION

2.1 On and from the date of this Agreement, the Employer:

- (a) agrees to be bound by the Governing Rules (as amended by this Agreement);
- (b) will, pursuant to this Agreement, make contributions to the Fund for the benefit of the Plan Members (or for the benefit of the Plan Members' dependants).
- (c) intends to apply for the establishment of the IBM Superannuation Plan and admission as a participant in the Fund with effect on and from the Commencement Date and in accordance with the terms and conditions of the Governing Rules;
- (d) agrees to pay the Trustee monthly fees, expenses and insurance premiums (which the Employer has agreed to pay on behalf of Plan Members as outlined in clause 7 and defined in Schedule 1; and
- (e) authorises the Trustee and/or SMS to accept the signature of any one of the Authorised Employer Representatives nominated by the Employer in writing from time to time for the purpose of nominating new Employees to the Plan or for any other purpose relating to the administration of the Plan.

2.2 Subject to Relevant Law, the Trustee admits the Employer as a participant in the Fund and agrees to the establishment of the Plan with effect on and from the Commencement Date.

2.3 The Trustee, SMS and the Employer agree that the provisions contained in the Schedules will form the Plan Rules for the Plan.

3. RELATIONSHIP MANAGER

3.1 SMS will appoint and provide a Relationship Manager to the Plan in accordance with this Agreement.

- 3.2 SMS agrees to make the Relationship Manager available to meet with the Employer at least annually, or as agreed, to review:
- (a) the operation of the Plan;
 - (b) the range of services provided under this Agreement; and
 - (c) the operation of the Plan to ensure that the services provided under this Agreement are being provided efficiently and effectively.
- 3.3 In conducting the review under clause 3.2 the Relationship Manager and the Employer shall have regard to the then prevailing industry best practice, changes or proposed changes to Relevant Law and changes or proposed changes in relation to the Fund.

4. POLICY COMMITTEE

- 4.1 If requested by the Employer or Trustee, SMS will establish a Policy Committee for the Plan and the provisions of this clause 4 will apply.
- 4.2 SMS will arrange and manage Policy Committee meetings which will be held at least annually or at such other intervals as agreed between SMS and the Policy Committee from time to time.
- 4.3 The Relationship Manger will liaise with members of the Policy Committee, attend meetings, and coordinate and present reports to the Policy Committee.
- 4.4 As part of their obligations under clause 4.3, the Relationship Manager will:
- (a) assist with the establishment of the Policy Committee, including advice on the make-up of the Policy Committee and assistance throughout the nomination/election process;
 - (b) manage Policy Committee meetings including:
 - (i) attending all meetings or if the Relationship Manager is unable to attend the meeting ensuring that an appropriately qualified nominee will attend;
 - (ii) arranging meetings including liaising with all Policy Committee representatives as necessary;
 - (iii) preparing and distributing in a timely manner meeting agendas and other meeting papers and reports;
 - (iv) actioning and managing any follow-up items arising from Policy Committee meetings; and
 - (v) preparing and distributing meeting minutes in draft to the chairperson within one week of the meeting;
 - (c) acting as an information reference point for the Policy Committee representatives; and
 - (d) assisting with and implementing any changes throughout the operation of the Policy Committee including assistance with the replacement of representatives as required.
- 4.5 Unless otherwise agreed with the Policy Committee and subject to Privacy Law, SMS will provide the Policy Committee with:
- (a) a report that summarises in relation to the Plan:
 - (i) current number of Plan Members, the number of exiting Plan Members and new Plan Members by category of membership during the quarterly period;
 - (ii) aggregate contributions remitted to the Plan during the period;
 - (iii) details of benefit payments made and pending during the period;

- (vi) the status of all insurance claims at the end of the period;
- (vii) statistics in relation to calls by members of the Fund to SMS's service centre;
- (b) the level of services provided by SMS during the period; and an annual review report each year showing aggregate membership and insurance details.

4.6 Unless otherwise agreed with the Policy Committee, SMS will also provide the Policy Committee with ad hoc reports on request addressing issues of reasonable concern to the Policy Committee.

5. INFORMATION TO BE PROVIDED TO THE EMPLOYER

5.1 The Trustee must promptly advise the Employer within 10 business days after becoming aware of:

- (a) any event which, in the opinion of the Trustee, has or may have a significant adverse effect on:
 - (i) the financial position of:
 - (A) the Plan; or
 - (B) the insurer(s) responsible for providing the smartMonday Group Insurance to Plan Members; or
 - (ii) the ability of the Trustee to discharge its obligations to the Employer under this Agreement;

5.2 At the same time or as soon as reasonably practicable after the Trustee notifies Plan Members of an event or other matter under s1017B of the Corporations Act, SMS must also provide notice of this to the Employer.

5.3 Each of the Trustee and SMS undertakes to the Employer:

- (a) to effect and maintain during the term of this Agreement and for at least 6 years after its termination, with reputable insurers, insurance cover, covering risks, and for amounts, that are consistent with prudent business practice having regard to the role and obligations of the Trustee and SMS (as applicable) under this Agreement;
- (b) to provide the Employer, at the Employer's request, with a certificate of currency for the insurances referred to in clause 5.4(a) (to the extent that the disclosure will not void the applicable policy of insurance);

6. PLAN MEMBER BENEFITS

6.1 The benefits payable from the Fund to or in respect of Plan Members (death, Terminal Illness and total and permanent disablement benefits) are set out in the Governing Rules and the Plan Rules.

6.2 The Plan Members' rights and benefits are at all times subject to, and shall be administered in accordance with, the Governing Rules.

7. FUND EXPENSES

7.1 Within 14 days of the date of the invoice received from the Fund the Employer will make a contribution to each Plan Members account in accordance with this Agreement.

- 7.2 The contribution to each Plan Member's account is equal to the premium and fees determined by applying the rules outlined in Schedule 1, as amended from time to time and/or as agreed between the parties.
- 7.3 The Trustee may change the level of fees (set out in Schedule 1 - clause 12) charged in this agreement. This would be after providing reasonable prior consultation, full information on the reason for the fee change, and if fees are increasing, at least 30 days written notice to the Employer.

8. PLAN MEMBER INSURANCE ARRANGEMENTS

- 8.1 In accordance with the Governing Rules, the Trustee has effected (or accepted the assignment of) a policy of insurance for death, Terminal Illness and total and permanent disablement benefits payable to or in respect of the Plan Members.
- 8.2 The benefits secured by the policy referred to in clause 8.1 of this Agreement, as well as the premium rates in respect thereof, are set out in the Schedules to this Agreement.
- 8.3 The Employer will, in accordance with clause 7, pay the cost of all premiums payable in respect of the benefits secured by the policy referred to in clause 8.1 of this Agreement (inclusive of all taxes) as a Monthly Employer Contribution for each Plan Member paid to each Plan Members account.
- 8.4 Once the Monthly Employer Contribution outlined in clause 8.3 is paid and allocated, the premiums payable in respect of the benefits secured by the policy referred to in clause 8.1 of this Agreement will be debited to each Plan Member's account (in proportions determined by the Trustee) and remitted by the Trustee to the insurer in accordance with the insurer's requirements.
- 8.5 The Trustee will determine the insurer with whom any group life insurance cover in respect of Plan Members is placed, and may, replace any insurer at any time in its discretion upon at least 30 days' prior notice to the Employer. The Trustee will give the Employer the opportunity to provide its comments and suggestions for the Trustee's consideration prior to replacing an insurer.
- 8.6 If the Monthly Employer Contribution outlined in clause 8.3 is not received, for the second month in a row, the Plan will immediately terminate, and Plan Members will be given 30 days' notice of termination of their insured cover. At the expiry of the 30 days' notice period the policy of insurance referred to in clause 8.1 will terminate (unless agreed otherwise between the Trustee, Employer and the Plan Member).

9. PLAN DATA

- 9.1 Neither the Trustee nor SMS is responsible for delays in the provision of any services caused by delays or deficiencies in the provision of data by the Employer, an Employee, Plan Member or another person. The Trustee and/or SMS, upon becoming aware, will promptly notify the Employer of any outstanding, invalid or incomplete required Plan Data.
- 9.2 The Employer must ensure that required Plan Data, which is under its direct or indirect control, is provided to the Trustee and/or SMS in the manner set out in Schedule 2.
- 9.3 Neither the Trustee nor SMS is responsible for the accuracy and completeness of any Plan Data provided to it by the Employer, an Employee, Plan Member or another person other than the obligation to notify the Employer under clause 9.1.

10. EMPLOYER INFORMATION

Subject to the Privacy Laws, within 14 days of the Employer's execution of this Agreement, or as reasonably required from time to time, the Employer must provide the Trustee and/or SMS with:

- (a) all information within its possession or control relating to Plan Members as required by the Trustee and/or SMS to administer the Fund (including, without limitation, information necessary to administer the Plan Members' insured benefits, such as occupation, salary, job status and date of birth; and
- (b) a list of Authorised Employer Representatives.

11. EMPLOYER INSTRUCTIONS

The Trustee and SMS each agree that a request, Instruction, notice or other instrument from the Employer is only valid if made by an Authorised Employer Representative.

12. CONFIDENTIALITY

12.1 Each party undertakes to the other that it will:

- (a) hold, treat and maintain the Confidential Information in full confidence, acknowledging it to be the valuable property of the other party;
- (b) take all steps as may be necessary to safeguard the confidentiality of the Confidential Information including maintaining electronic security;
- (c) not directly or indirectly disclose the Confidential Information to any third party (beyond its employees, affiliates, directors, officers and agents who have a need to know) without the prior written consent of the party disclosing the Confidential Information;
- (d) use every effort to limit the number of its, affiliates, directors, officers and agents who have access to the Confidential Information;
- (e) cause its affiliates, employees, agents and any of the persons who have or are likely to have access to the Confidential Information or any of them to observe all the obligations of non-disclosure contained in this clause;
- (f) comply with any obligations under any Relevant Law in relation to the Confidential Information; and
- (g) Use the Confidential Information solely in connection with the provision services provided pursuant to this Agreement or otherwise for the purpose it was disclosed.

12.2 The confidentiality obligations under this Agreement do not apply to the extent:

- (a) the disclosing party has given written consent;
- (b) disclosure is required to carry out legal or regulatory requirements;
- (c) such information is in the public domain; or
- (d) the information is rightly in a party's possession other than as a result of a breach of any obligation of confidentiality.

13. PRIVACY

13.1 Each party must:

- (a) comply with Privacy Law; and
- (b) do all that is reasonably needed on its part to enable the other party to comply with Privacy Law.

13.2 If, as a result of this Agreement, the Trustee and SMS is provided access to any Personal Information held by or on the Employer's behalf then:

- (a) the Employer warrants that:
- (i) the Personal Information has been collected in accordance with Privacy Law;
 - (ii) It has obtained the consent of the person to whom the Personal Information belongs for the Trustee and SMS to collect and use this Personal Information;
 - (iii) It has obtained the consent of the person to whom the Personal Information belongs for the Trustee and SMS to disclose, transfer or otherwise allow third party contractors (which may be based locally or overseas) to collect and use Personal Information in accordance with this Agreement.
 - (iv) the Trustee and SMS is authorised to collect the information from the Employer (including any *sensitive information* as defined under Privacy Law) and use the information for the purposes of this Agreement and, to the extent legally permitted, in accordance with and subject to the Trustee's privacy statement located at www.eqt.com.au/global/privacystatement and
 - (v) the Employer agrees that SMS may handle any Personal Information received from the Employer in accordance with and subject to the Trustee's privacy statement located at <https://www.eqt.com.au/global/privacystatement>
- (b) The Trustee and SMS agrees to:
- (i) take reasonable steps to ensure that any Personal Information is protected against misuse, interference, loss, unauthorised access, modification or disclosure however the Employer acknowledges and agrees that no data protection and security measures are completely secure and despite all measures the Trustee and SMS has put in place the Trustee and SMS cannot guarantee the security of information, particularly in relation to transmissions over the internet;
 - (ii) promptly notify the Employer if the Trustee and SMS becomes aware of any actual or potential misuse, interference, loss, unauthorised access, modification or disclosure of Personal Information and work co-operatively with the Employer to resolve any such complaint in a manner consistent with the Trustee and SMS's applicable privacy and security policies from time to time as well as Privacy Law; and
 - (iii) provide the Employer with reasonable assistance at the Employers cost in resolving any complaint under or relating to any applicable Privacy Law (whether by the Australian Information Commissioner or an individual).
- (c) The Trustee and SMS may disclose, transfer or otherwise allow third party contractors (which may be based locally or overseas) to use Personal Information in accordance with this Agreement. While the Trustee and SMS will take reasonable steps to ensure that any such third parties comply with Privacy Law when handling Personal Information, it cannot guarantee that such parties will be subject to Privacy Law (or a comparable law to Privacy Law) and to the extent permitted by law, will not be liable to the Employer or any other party in relation to any breach of Privacy Law by such parties. SMS will endeavour to provide at least 30 days' prior notice to Employer before disclosure of Personal Information to any third party that is not a Regulator, the Plan insurer, the Administrator, the SMS Mail house, SMS Insurers, SMS Data warehouse, Authorised representative of a Plan Member or an Authorised Representative of the Employer.

14. LIMITATION OF LIABILITY

14.1 Neither the Trustee nor SMS will be liable to the Employer for any loss or liability caused by:

- (a) the Trustee and/or SMS acting on any Instruction reasonably believed by the Trustee and/or SMS to be from an Authorised Employer Representative;
- (b) the Trustee and/or SMS acting in accordance with, or in a manner permitted by, this Agreement, the Governing Rules or the Relevant Law; or
- (c) any reasonable delay by the Trustee and/or SMS in implementing an Instruction given by or on behalf of the Employer.

14.2 The Trustee's liability under this Agreement (or in any way connected with any related representation, warranty, conduct, act, omission, agreement or transaction) is limited to the total amount which the Trustee is entitled to receive out of the assets of the Fund in the exercise of its right of indemnity against the assets of the Fund and under any applicable insurance arrangements.

14.3 SMS's liability under this Agreement (or in any way connected with any related representation, warranty, conduct, act, omission, agreement or transaction) is limited to the total amount of fees SMS is entitled to receive from the Plan in the preceding) month period.

14.4 The Employer:

- (a) Indemnifies the Trustee and/or SMS against all loss, injury or damage suffered or liability incurred (including all legal costs and expenses on a full indemnity basis) by the Trustee and/or SMS directly or indirectly incurred due to:
 - (i) a breach of the Employer's warranties;
 - (ii) acting upon any Instruction reasonably believed by the Trustee and/or SMS to be from an Authorised Employer Representative; and
 - (iii) the Employer's negligence, fraud or breach of this Agreement, the Governing Rules or the Relevant Law, including the negligence, fraud or breach by an Authorised Employer Representative or any officer, agent or Employee of the Employer.

14.5 Subject to clauses 14.1, 14.2 and 14.4 of this Agreement, the Trustee is liable for any loss suffered or liability incurred by an Employer through the Trustee's negligence, fraud or breach of this Agreement, including the negligence, fraud or breach by the delegates, officers, agents or employees of the Trustee.

14.6 Subject to clauses 14.1, 14.3 and 14.4 of this Agreement, SMS is liable for any loss suffered or liability incurred by an Employer through SMS's negligence, fraud or breach of this Agreement, the Governing Rules or the Relevant Law, including the negligence, fraud or breach by the delegates, officers, agents or employees of SMS.

15. TERMINATION

15.1 Either party may terminate this Agreement, for any reason, at any time, by the provision of not less than six (6) months' written notice to the other party. Such notice shall be effective to terminate the Agreement with effect on and from the expiry of the six (6) months' notice period, or such later date as may be agreed by the parties.

15.2 In addition to the general power under clause 15.1, the Employer may terminate this Agreement immediately and at any time by written notice to the Trustee (without affecting the accrued rights and obligations of the parties as at the date of termination) if:

- (a) the Trustee commits a material breach under Relevant Law which:
 - (i) results in the Fund losing its status as a complying superannuation fund;
 - (ii) results in the Trustee ceasing to hold all regulatory licences required to operate the Plan; or

- (iii) in the reasonable opinion of the Employer, is likely to have a material adverse effect upon the Employer's business or its reputation;
- (b) there is a change in the insurer (with whom any group life insurance cover in respect of Plan Members is placed) otherwise than in accordance with clause 8.5; or
- (c) the Trustee receives a direction from APRA not to accept any further Employer contributions;
- (d) the Trustee is or becomes insolvent or bankrupt, has a receiver, manager or liquidator appointed, enters into any scheme of arrangement, any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or if an application is made for or with a view to the liquidation (including provisional liquidation), winding up, dissolution, deregistration or de-listing of the Trustee ;
- (e) the Fund terminates pursuant to the terms and conditions of the Trust Deed; or
- (f) the Trustee retires, resigns or is removed as trustee of the Fund pursuant to the terms and conditions of the Trust Deed without a replacement trustee being appointed.

15.3 In addition to the general power under clause 15.1, the Trustee may terminate this Agreement immediately and at any time by written notice to the Employer (without affecting the accrued rights and obligations of the parties as at the date of termination) if:

- (a) The Employer misses its second monthly contribution payments of premiums and/or fees in a row and the contribution arrears from the previous month has not been rectified;
- (b) the Employer is or becomes insolvent or bankrupt, has a receiver, manager or liquidator appointed, enters into any scheme of arrangement, any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or if an application is made for or with a view to the liquidation (including provisional liquidation), winding up, dissolution, deregistration or de-listing of the Employer.

15.4 Upon termination of this Agreement:

- (a) subject to the agreed payment terms, the Employer must promptly pay all outstanding contributions to the Fund;
- (b) the Trustee and/or SMS will calculate the fees and charges applicable to Plan Members in accordance with this Agreement which remain unpaid;
- (c) the Trustee shall terminate the Plan and either:
 - (i) All insurance cover under the Plan will cease and all Plan Members will be terminated and;
 - (ii) Plan Members will be offered an opportunity to continue their insurance cover in a different division of the Fund on a user pay basis; and
- (d) the Trustee will notify affected Plan Members of the effects, under this clause, of termination of the Agreement.

15.5 Termination of this Agreement shall be without prejudice to the accrued rights or remedies of either party.

16. AMENDMENTS

This Agreement may only be amended at any time by written agreement between the parties.

17. COUNTERPARTS

- (a) This Agreement may be executed in any number of counterparts and using electronic

copies as originals. The parties may also sign this Agreement electronically as permitted by applicable law.

- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this Agreement by signing any counterpart.

18. ENTIRE AGREEMENT

This Agreement including its Schedules, as amended from time to time, supersedes all previous agreements in respect of its subject matter and embodies the entire agreement between the parties in respect of its subject matter.

19. NOTICES

- 19.1 Any notice or other communication including invoices to be given by one party to another under, or in connection with the matters contemplated by this Agreement must be addressed to the recipient and sent via e-mail to such other parties. The relevant details as at the date of this Agreement are:

Trustee: Ian Donaldson, Senior Client Account Manager
IDonaldson@eqt.com.au

Employer: Triveni Kanagal, Compensation and Benefits Professional
trkanaga@in.ibm.com

SMS: Roshan Singappuli, Executive General Manager
roshan.singappuli@smartmonday.com.au

- 19.2 The notice or other communication sent by email it is deemed to be received by the receiving party when the sending party indicates that the email has been successfully sent, unless:
- (a) the receiving party, within a reasonable time (and in any event, within 2 business days), informs the sending party of an incomplete transmission; or
 - (b) the transmission is completed outside Business Hours in which case the notice is regarded as received at the commencement of business on the following business day in that place.

20. FURTHER INFORMATION

During the term of this Agreement, the SMS and Trustee will consider in good faith any reasonable request by the Employer for further information relating to the SMS and Trustee's compliance with this agreement or their own policies, including information relating to ethical conduct and business continuity.

Executed as an agreement:Executed for and on behalf of **Equity Trustees Superannuation Limited (ABN 50 055 641 757)** by:_____
Signature of Director_____
Signature of Director_____
Name of Director_____
Name of Director_____
Date:_____
Date:Executed for and on behalf of **IBM Australia Limited (ABN 79 000 024 733)** by:_____
Signature of Authorised Representative_____
Name of Authorised Representative

Jennifer Cheng

Market Leader ANZ, Indirect Procurement,

IBM Global Procurement

Finance & Operations

Date:Executed for and on behalf of **smartMonday Solutions Limited (ABN 48 002 288 646)** by:_____
Signature of Director_____
Signature of Director_____
Name of Director_____
Name of Director_____
Date:_____
Date:

SCHEDULE 1 – PLAN DESIGN

1. General

Policy Owner	Equity Trustees Superannuation Limited ABN 50 055 641 757
Insurer	MetLife Insurance Limited ABN 75 004 274 882 AFSL 238096 (or as determined from time to time in accordance this Agreement)
Employer	IBM Australia Limited ABN 79 000 024 733 IBM Global Financing Australia Limited ABN 27 002 955 571
Policy Terms	Plan Design is subject to the terms and conditions contained in the policy(ies) taken out by the Trustee in respect of the Plan and Plan Members, the interpretation of which prevail over any information that may be inconsistent with Schedule 1 and/or Schedule 2 of this Agreement.
Commencement Date	27 May 2023

2. Eligibility Conditions

To be eligible for cover, a person must:

- be at least 15 years of age and under the cover cessation age,
- be an Australian Resident or holder of a temporary work visa type issued by the Australian Government and is approved by us,
- be employed by the employer in one of the Employment Status' in the table below and,
- satisfy the Additional Eligibility Conditions in the table below:

Category No.	Employment Status	Additional Eligibility Conditions	Income Definition
1	<i>Regular and Fixed Term hire employees</i>	Excludes persons eligible under Category 2 or 3.	See SC1 in section 11
2	<i>Regular and Fixed Term hire employees</i>	Existing employees who have been identified by the Employer as Minimum Guarantee Members who hold cover under AustralianSuper on the date immediately prior to the <i>commencement date</i> . Closed to new entrants.	See SC1 in section 11
3	<i>Regular and Fixed Term hire employees</i>	Existing employees who have been identified by the Employer as Fund	See SC1 in section 11

Category No.	Employment Status	Additional Eligibility Conditions	Income Definition
		Category 2B members with pre-2003 employment contracts. Closed to new entrants.	

3. Maximum Entry Age

All Categories

Death (including Terminal Illness) cover: 64 years

Total and permanent disablement cover: 64 years

Note that all new entrants after the Commencement Date will join Category 1

4. Cover Cessation Age

Death and Terminal Illness cover: 65 years for All Categories

Total and permanent disablement cover 65 years for All Categories

5. Insured Cover

Category 1

Death (including Terminal Illness) cover: 15% x Income x years to age 65*

Total and permanent disablement cover: 15% x Income x years to age 65*

*Where years to age 65 is based on complete years and complete months to age 65. This calculation of cover will be carried out for each Eligible Employee upon commencement of cover, with effect on 1 July each year, and when an update to the amount of Income is provided by the Employer, and as needed at the date of death, disability or certification in the event of a claim.

Category 2

Death (including Terminal Illness) cover:

The higher of:

- (i) Fixed amount of death cover held by the *insured person* under AustralianSuper as at 26 May 2023 as advised by the *policyowner* and as accepted by us; or
- (ii) The sum of:
 - o Fixed amount of death cover held by the *insured person* under AustralianSuper as at 26 May 2023 as advised by the *policyowner* and as accepted by us; and
 - o Six (6) times (*insured person's Income as at calculation date minus insured person's income as at commencement date*)

Total and permanent disablement cover:

The higher of:

- (i) Fixed amount of TPD cover held by the *insured person* under AustralianSuper as at 26 May 2023 as advised by the *policyowner* and as accepted by *us*; or
- (ii) The sum of:
 - o Fixed amount of TPD cover held by the *insured person* under AustralianSuper as at 26 May 2023 as advised by the *policyowner* and as accepted by *us*; and
 - o Five (5) times (*insured person's Income* as at calculation date minus *insured person's Income* as at commencement date)

Category 3

Death (including Terminal Illness) cover: $6 \times \text{Income}$

Total and permanent disablement cover: $5 \times \text{Income}$

There is no tapering of Total and permanent disablement (TPD cover), with cover calculated in accordance with the formulae in this section for each category.

6. Automatic Acceptance Limit

\$1,700,000

7. Maximum Benefit

Death (including Terminal Illness) cover: Unlimited

Total and permanent disablement cover: \$5 million

8. Total and Permanent Disablement (TPD) Definition

Definition 1

TPD means:

For an insured Plan Member who is under the age of 65 immediately prior to their date of disablement:

The insured Plan Member has been absent from their occupation with the employer through injury or illness for at least 3 consecutive months and has provided proof to our satisfaction that the insured Plan Member has become incapacitated to such an extent as to render the insured Plan Member unlikely ever to engage in or work for reward in any occupation or work for which he or she is reasonably qualified by reason of education, training or experience.

9. Continuation Option

This option applies for death and TPD cover for regular employees. Refer to section 6 of the **PDS Part B** for more information.

10. Premium Guarantee Period

27 May 2023 to 31 October 2025

11. Special Conditions

The following Special Conditions will apply:

SC1. The following definition of *Income* will apply:

Income The total regular annual income received by the *insured person* from the *employer* for personal exertion for their occupation including salary sacrifice amounts, regular commission* (but excluding overtime payments, profit distributions, director's fees and any other non-regular payments).
*Where this income includes commission, these components will be averaged over a three year period or actual period of employment if *employed* for less than 3 years.

Where the person is on unpaid leave and we continue to provide cover in respect of that *insured person*, *income* is the amount defined above before the start of the unpaid leave.

SC2. The following definitions of *Date of Certification* and *Terminal Illness* will apply:

Date of Certification The most recent date that two *medical practitioners*, one of whom is a *medical specialist* in the *insured person's* illness, certify that the illness will lead to the *insured person's* death within 24 months.

Terminal Illness (a) an *insured person* suffering from an illness that despite reasonable medical treatment will lead to the *insured person's* death within 24 months of the *Date of Certification*, and

(b) we are satisfied, on medical or other evidence, that despite reasonable medical treatment the illness will lead to the *insured person's* death within 24 months of the *Date of Certification* referred to in paragraph (a).

The *Date of Certification* must be made while the *insured person* is covered under this Plan .

12. Fees and costs

Fees and costs in this plan consist of:

- Base insurance premiums paid to the insurer, plus any loading charged by the insurer for underwritten members. This will be based on the rates charged by the insurer, as updated from time to time.
- Insurance administration fee: 3% of gross premium (PLUS allowance for GST net of RITC)
- Member fee: \$72 per member p.a.

The fees and costs are deducted monthly from a Plan Member's smartMonday account, and the Employer makes Monthly Employer Contributions on behalf of Plan Members to fully cover these fees and costs.

13. Premium Rates

Schedule 1

All Categories

Age rates are per \$1,000 of an *insured person's* cover.

Rates are inclusive of stamp duty. Nil commission applies.

Unisex				
ANB	Death Only	Death	TPD	Death & TPD
16	\$0.338	\$0.308	\$0.041	\$0.349
17	\$0.338	\$0.308	\$0.041	\$0.349
18	\$0.377	\$0.342	\$0.043	\$0.385
19	\$0.399	\$0.362	\$0.044	\$0.406
20	\$0.403	\$0.367	\$0.044	\$0.411
21	\$0.399	\$0.362	\$0.044	\$0.406
22	\$0.385	\$0.350	\$0.042	\$0.392
23	\$0.369	\$0.336	\$0.040	\$0.376
24	\$0.352	\$0.320	\$0.038	\$0.358
25	\$0.335	\$0.304	\$0.039	\$0.343
26	\$0.320	\$0.291	\$0.040	\$0.331
27	\$0.302	\$0.275	\$0.049	\$0.324
28	\$0.286	\$0.260	\$0.060	\$0.320
29	\$0.274	\$0.250	\$0.073	\$0.323
30	\$0.267	\$0.244	\$0.087	\$0.331
31	\$0.266	\$0.242	\$0.102	\$0.344
32	\$0.270	\$0.246	\$0.119	\$0.365
33	\$0.280	\$0.253	\$0.138	\$0.391
34	\$0.295	\$0.268	\$0.158	\$0.426
35	\$0.314	\$0.286	\$0.178	\$0.464
36	\$0.341	\$0.310	\$0.202	\$0.512
37	\$0.372	\$0.337	\$0.227	\$0.564
38	\$0.408	\$0.370	\$0.252	\$0.622
39	\$0.447	\$0.407	\$0.280	\$0.687
40	\$0.492	\$0.447	\$0.312	\$0.759
41	\$0.540	\$0.490	\$0.347	\$0.837
42	\$0.591	\$0.538	\$0.387	\$0.925
43	\$0.646	\$0.586	\$0.432	\$1.018
44	\$0.705	\$0.640	\$0.483	\$1.123
45	\$0.767	\$0.697	\$0.539	\$1.236
46	\$0.834	\$0.758	\$0.603	\$1.361
47	\$0.903	\$0.822	\$0.678	\$1.500
48	\$0.980	\$0.892	\$0.762	\$1.654
49	\$1.062	\$0.964	\$0.861	\$1.825
50	\$1.150	\$1.046	\$0.972	\$2.018
51	\$1.246	\$1.133	\$1.100	\$2.233
52	\$1.352	\$1.230	\$1.248	\$2.478

53	\$1.471	\$1.337	\$1.416	\$2.753
54	\$1.602	\$1.456	\$1.606	\$3.062
55	\$1.750	\$1.592	\$1.825	\$3.417
56	\$1.918	\$1.744	\$2.072	\$3.816
57	\$2.110	\$1.917	\$2.352	\$4.269
58	\$2.328	\$2.115	\$2.667	\$4.782
59	\$2.576	\$2.343	\$3.024	\$5.367
60	\$2.860	\$2.599	\$3.424	\$6.023
61	\$3.185	\$2.896	\$3.872	\$6.768
62	\$3.556	\$3.233	\$4.373	\$7.606
63	\$3.982	\$3.619	\$4.933	\$8.552
64	\$4.465	\$4.058	\$5.554	\$9.612
65	\$5.015	\$4.559	\$6.245	\$10.804

SCHEDULE 2 – Plan Data Arrangements

The Employer shall each month:

1. Following closure of payroll for the month, upload a Member Registration Request File (MRR) to the SuperStream gateway with the following member data:

(a) For all eligible **new** employees:

- TFN
- Title
- Family Name
- Given Name
- Other Given Name (if applicable)
- Sex Code
- Birth Date
- Address Details
- Email Address
- Landline number (if available)
- Mobile number (if available)
- Payroll Number
- Employment Start Date
- Annual Insured Income amount for Insurance in accordance with Special Condition 1 of Schedule 1. This needs to be one figure covering the total of the components that make up Annual Insured Income
- Fund Registration Date
- Employment Status Code

(b) For all eligible employees:

- Member Client Identifier - provided by smartMonday
- Payroll Number
- New Insured Income for Insurance (if applicable)
- Employment End Date (if applicable)

Additional non-member mandatory fields within the file include:

- USI - provided by smartMonday
- Employer ABN
- Employer Name
- Pay Period Start Date
- Pay Period End Date

The employer acknowledges the importance of providing this information in a timely manner to allow cover and premiums/contributions to be calculated accurately by the administrator, and to allow members the chance to exercise any continuation options.

Important notes:

1. Data for items a) and b) are to be provided in the one SuperStream Alternative File Format submission.
2. Dummy dates of birth are not permissible.

3. If a valid TFN has not been received from either the employee or Employer, an active account will not be created and benefits will not commence until the valid TFN is supplied.
4. Income will be taken to be effective from the employment start date for new members, or the payroll start date for existing members.
5. Where a member joins pre-1 July, notice of the member with full details needs to be provided by 30 July to ensure cover applies from the date eligible prior to 1 July.
6. Where the member has terminated pre-1 July and notification is being provided post-1 July, the termination date will be taken to be 1 July.
7. Once a membership has been established, the Fund is unable to accept changes to the following data fields directly from the employer:
 - Title
 - Family Name
 - Given Name
 - Other Given Name
 - Gender
 - Birth Date
 - Postal Address
 - Email Address
 - Landline number (if available)
 - Mobile number (if available)

The Employer will direct the Plan Members to contact the Fund to update their records.

2. Within 14 days of receipt of the invoice and contribution schedule from smartMonday produced in SuperStream Alternative File Format (SAFF) (available within 5 days after the provision of item 1 above) the employer will:

- Review the contribution schedule in a SAFF format to a SuperStream gateway
- Make payment to the Fund Operating Account (matching the invoice provided) using the appropriate Payment Reference Number

Important notes:

1. Once the schedule has been generated by smartMonday, amendments are not permissible. Where an adjustment is required, this will be put through in the next monthly schedule.
2. Negative contributions are not permissible.

3. On an annual basis in June, prior to closure of the Fund books for the year, the administrator will provide the employer with data for reconciliation. The Employer will complete a membership reconciliation to ensure that:

- All eligible new Employees have been captured
- All terminations of employment have been captured
- All Income details are up-to-date
- All Employees holding an immigration visa are noted