

**THE XU & WU
SUPERANNUATION FUND**

Prepared By:

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SOLICITORS**

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For Clients Of:

O. PANG & CO.

CHARTERED ACCOUNTANTS

10/301 Castlereagh Street, Sydney, NSW, 2000.
Phone: (02) 9281-3285

STAMP DUTY



THIS DEED OF TRUST

is made on the date set out in Schedule One

BY

the person or persons named in Schedule Two as the Founder ("the Founder").

RECITAL: The Founder has resolved to establish a superannuation fund to be known by the name set out in Schedule 3 hereto ("the Fund") to provide benefits on death or retirement for employees and their dependants of the Principal Employer named in Schedule 6 hereto and of other Participating Employers, and/or for Self-Employed Persons admitted by the Trustee from time to time.

OPERATIVE PROVISIONS: For the purpose of establishing and maintaining the Fund the Founder hereby covenants and declares as follows:

1. The fund shall come into operation on the date mentioned in Schedule 1 hereto.
2. The Founder hereby appoints the person named in Schedule 4 hereto as the Trustee of the Fund.
3. The Trustee shall henceforth hold all the property of the Fund on the trusts contained in the rules ("the Rules") attached hereto as amended from time to time.
4. The rules shall have the same force and effect as if they were set out in the body of this Deed.
5. This Deed and the Rules shall in all respects be governed by and construed in accordance with the laws of the State named in Schedule 5 hereto.

6 The Schedules hereto are and shall be deemed to be part of this Deed.

THE SCHEDULES

- Schedule 1 (*The Date*) 22 June 1998
- Schedule 2 (*The Founder*)
DIGITAL STAR GROUP HOLDINGS PTY LTD
(ACN : 082 657 823)
of 8/191 Parramatta Road,
Auburn, NSW, 2144.
- Schedule 3 (*The Name of the Fund*)
**THE XU & WU
SUPERANNUATION FUND**
- Schedule 4 (*The Trustee - may be more than one*)
DIGITAL STAR GROUP HOLDINGS PTY LTD
(ACN : 082 657 823)
of 8/191 Parramatta Road,
Auburn, NSW, 2144.
- Schedule 5 (*The State*) New South Wales
- Schedule 6 (*Employers Schedule - the firstnamed is the Principal Employer*)
DIGITAL STAR GROUP HOLDINGS PTY LTD
(ACN : 082 657 823)
of 8/191 Parramatta Road,
Auburn, NSW, 2144.

SUPERANNUATION FUND : INDEX TO THE RULES

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DEFINITIONS:

- 1.0 In the foregoing Deed and in these Rules unless there is something inconsistent in the subject or context:
- 1.1 "Accumulation Benefit" means the balance at any time to the credit of an Individual Member's Account.
- 1.2 "Approved Deposit Fund" means a Fund established and maintained in accordance with the Relevant Law.
- 1.3 "Approved Auditor" has the meaning given to it in the Relevant Law.
- 1.4 "Child" includes an adopted child, a step-child or an ex-nuptial child.
- 1.5 "Commissioner" means the Insurance and Superannuation Commissioner appointed under the Insurance and Superannuation Commissioner Act 1987 or a person for the time being acting as such or the Commissioner of Taxation, as the context requires.
- 1.6 "Dependant" in relation to a Member means the spouse, widow, widower and any child of the Member and any other person who in the opinion of the Trustee is at the relevant date wholly or partially dependant on the Member.
- 1.7 "Employee" means a person in the employ of an Employer and includes any person who is a director of an Employer which is a corporation.
- 1.8 "Employer" means any Participating Employer and in relation to a particular Member means the Employer of that person at the relevant time.
- 1.9 "Employer's Contribution Account" means an account established in accordance with Rule 6.1(c).
- 1.10 "Excluded Fund" means a superannuation fund of which there are fewer than five members.
- 1.11 "Full time employment" means gainful employment for 30 hours or more weekly or otherwise as defined from time to time in the Relevant Law.
- 1.12 "Gainful employment" means employment for earnings including business income, bonuses, commissions, fees, gratuities, salary or wages and "gainfully employed" shall have a corresponding meaning.
- 1.13 "General Fund Account" means the account established in accordance with Rule 6.1(a).
- 1.14 "Highest Average Salary" means the average salary of a Member for any consecutive period of three years prior to retirement. The Highest Average Salary of a Member may be indexed to movements in the Average Weekly Ordinary Time Earnings in the circumstances specified in the Relevant Law.
- 1.15 "Individual Member's Account" means an account as described in Rule 6.5.
- 1.16 "Lump Sum RBL" has the meaning given to it by the Relevant Law from time to time.
- 1.17 "Mandated Employer Contributions" means contributions by or on behalf of an Employer comprising contributions which reduce the Employer's potential liability for the superannuation guarantee charge imposed by Section 5 of the Superannuation

Guarantee Charge Act 1992 or payments of shortfall components and contributions towards satisfaction of the Employer's obligation under an award made on or after 1 July 1986 by an industrial authority as defined in the Relevant Law.

- 1.18 "Member" means a person who is a member of the Fund and includes a person who is receiving or is entitled to receive benefits from the Fund.
- 1.19 "Member's Personal Contribution Account" means an account established in accordance with Rule 6.1(b).
- 1.20 "Normal Retirement Date" means a male Member's sixty-fifth birthday and a female Member's sixtieth birthday or any other date upon which the Member and the Trustee may agree upon in any particular case.
- 1.21 "Participating Employer" means the person or company named as such in the Trust Deed and any company or person which the Trustee has on application admitted to participate in the Fund and entered in a Register of Employers.
- 1.22 "Part time employment" means gainful employment for 10 hours or more weekly but less than 30 hours weekly or otherwise as defined from time to time in the Relevant Law.
- 1.23 "Permanent Disablement" means either:
- (a) disablement which has rendered the Member incapable of full-time work for six months and in the opinion of the Trustee likely to be permanently and continuously incapable of engaging in any full-time work or duty on behalf of the Employer; or
 - (b) where any part of the benefit payable in the event of permanent disablement is insured with an insurance company or office, the definition of permanent disablement contained in the policy document evidencing the contract of insurance,

PROVIDED THAT the Trustee shall subject to the Relevant Law have the discretion as to which of the above paragraphs shall apply in any circumstances in which the meaning of "Permanent Disablement" is relevant.

- 1.24 "Preserved Contribution Account" means an account established to preserve benefits in compliance with the provisions of the Relevant Law.
- 1.25 "Principal Employer" means the first named employer in Schedule 6 to the Trust Deed.

If the first named employer in Schedule 6 to the Trust Deed ceases to be able to act as Principal Employer, then the next named employer in that schedule or the next entered employer in the Register of Employers shall become the Principal Employer.

- 1.26 "Relevant Law" includes the Occupational Superannuation Standards Act, the Income Tax Assessment Act, the Superannuation Industry (Supervision) Act, the Superannuation (Administration) Act, the Superannuation Guarantee Charge Act, each as amended from time to time, regulations from time to time promulgated under any of those Acts, any other legislation which from time to time has application to superannuation funds and any direction or rule issued by the Commissioner.
- 1.27 "Service" means service as an Employee of the Employer.
- 1.28 "Spouse" includes a person who, although not legally married to a Member, lives with that Member on a genuine domestic basis as the husband or wife.

- 1.29 "Standard Employer-Sponsor" means an employer who contributes to the Fund pursuant to an arrangement between the Employer and the Trustee for the benefit of a Member (or his dependants) who is an employee of the Employer or of an associate of the Employer.
- 1.30 "Standard Employer-Sponsored Fund" is a regulated fund which has at least one Standard Employer-Sponsor.
- 1.31 "Superannuation Guarantee Act" means the Superannuation (Administration) Act, 1992 and the Superannuation Guarantee Charge Act 1992 as amended from time to time.
- 1.32 "Tax Act" means the Income Tax Assessment Act 1936 as amended from time to time.
- 1.33 "Trust Deed" means the Deed of which these Rules form part and any amendments to it.
- 1.34 "Trustee" means the Trustee or Trustees for the time being of the Fund whether original, substituted or additional.
- 1.35 Words importing the singular number include the plural and vice versa and words importing any gender include each other gender as the case may require.
- 1.36 The headings in these Rules are for convenience of reference only and shall not affect their interpretation.
- 1.37 Where there is an inconsistency between any of the above definitions and a definition contained in the Relevant Law, the latter definition shall prevail.
- 1.38 Where any word or phrase not defined in these Rules is defined in the Relevant Law, it shall bear the same meaning for the purpose of these Rules.

MEMBERSHIP

- 2.1 Any individual who is entitled by virtue of the Relevant Law to join the Fund, including every eligible Employee who is invited by the Employer to participate in the Fund shall apply for membership of the Fund. On approval by the Trustee that individual shall become a Member of the Fund.
- 2.2 An Employer may, without an application by an Employee, direct the Trustee to admit that Employee as a Member of the Fund and may thereafter make contributions to the Fund for the benefit of that Employee. The Trustee will, on receipt of that direction, notify the Member that he is a Member of the Fund and provide him with such other information as may be required from time to time by the Relevant Law.
- 2.3 Following approval by the Trustee of an Employee's application (unless withdrawn by the Employee prior to approval) or receipt by the Trustee of a direction pursuant to Rule 2.2, the Employee shall be bound by the provisions of the Trust Deed and these Rules.

CONTRIBUTIONS

- 3.1 The Employer, or any other person authorised by law to make contributions to the Fund, shall contribute to the Fund such amount as it decides from time to time, PROVIDED THAT an Employer may at any time increase, reduce, suspend or terminate contributions.
- 3.2 The Trustee shall only accept such contributions for a Member as are permitted by

the Relevant Law.

- 3.3 Each Member who is an Employee may contribute to the Fund such amount as is agreed by the Member and his Employer and the Employer shall deduct the Member's contributions from his salary or wages. Contributions deducted shall be remitted to the Trustee within fourteen days of the end of the calendar month in which they were deducted. The Employer shall at that time advise the Trustee of the amount of the contribution by each Member. A Member who is self employed may contribute any amount up to the maximum permitted by the Relevant Law.
- 3.4 The contributions payable by the Employer shall be paid in such manner and at such time as is agreed between the Employer and the Trustee.
- 3.5 Any payment of contributions by the Employer at the direction of the Trustee direct to any investment manager, life insurance company or other like body shall be deemed to be both payment to the Trustee and payment by the Trustee to that body.
- 3.6 The Employer may from time to time waive all or part of any obligation of a Member to pay contributions to the Fund if the Employer pays to the Fund an amount equal to the contributions left unpaid by that Member. For the purpose of these Rules any such contributions paid by the Employer shall be deemed to have been paid by the Member and shall be credited to that Member's Preserved Contribution Account.

THE FUND

- 4.0 The assets of the Fund shall consist of all the cash, investments and other property for the time being held by or on account of the Trustee pursuant to the Trust Deed and these Rules and shall include:
- (a) contributions made in accordance with Rule 3;
 - (b) interest and dividends or other income arising from any investment and the accumulation thereof;
 - (c) all insurance policies; and
 - (d) any other property transferred to the Fund pursuant to the Trust Deed and these Rules.

INVESTMENTS

- 5.1 Subject to the provisions of the Relevant Law and these Rules, the Trustee shall have the power to apply all moneys or other assets forming part of the Fund in or upon investments of any kind (not limited to investments authorised by law for the investment of trust funds) with or without security as the Trustee shall think fit as if the Trustee were the beneficial owner thereof entitled to invest in that manner. Without limiting the generality of the foregoing the Trustee may apply such moneys or other assets either directly or indirectly:
- (a) in deposits at call or for fixed terms with any bank, building society, or other financial institution;
 - (b) in any investment authorised by law for the investment of trust funds;
 - (c) in the purchase or acquisition of any debentures, mortgages, bonds, notes, shares of any description, or securities of any kind;
 - (d) in the purchase or acquisition of any interest in any land or any buildings;

- (e) in units or sub-units of any unit trust or mutual fund or units or other interests in a unit type arrangement or pooled or managed fund;
- (f) in any life policies or policies covering total and permanent disablement as more particularly described in Rule 5.5;
- (g) in the purchase of annuities either immediate or deferred contingent upon the life of a Member or Dependant, or for a fixed period; or
- (h) in the securities of any government, semi-governmental body or public authority in Australia,

with full power to otherwise deal with those investments as fully and effectively and with the same unrestricted powers in all respects as a person absolutely and beneficially entitled when dealing with his own property may do without being responsible for loss occasioned thereby.

- 5.2 Notwithstanding the provisions of Rule 5.1 the Trustee shall not make loans to an Employer or acquire debentures issued by or shares of an Employer.
- 5.3 At June 30 of each year, and at any time and from time to time the assets of the Fund may be revalued according to their then market value as determined by the Trustee and based upon such information and advice as the Trustee thinks fit. Any profit or loss resulting from the revaluation, including provision for liabilities as the Trustee considers prudent, shall be credited or debited, as the case may be, in accordance with Rule 6.5. A revaluation may be made and the profit or loss credited or debited even though at the date of revaluation a Member's right to payment of monies standing to his credit in the Fund has become vested.
- 5.4 Subject to the provisions of Rule 5.5(e), profits or losses arising from the investment of assets during each financial year of the Fund, except for such provision for liabilities including taxation as the Trustee considers prudent, shall be credited or debited, as required, in accordance with Rule 6.3(b).
- 5.5
- (a) The Trustee may invest any part of a Member's Individual Account in the payment of premiums for a policy of life, disability or accident insurance for his benefit or (at the Member's request) in payment of the consideration for an annuity.
 - (b) The Trustee may in its discretion effect a policy of life, disability or accident insurance, accept an assignment of any such policy or accept an assignment of any rights or benefits in respect of any annuity.
 - (c) The premiums for each policy shall be paid out of the Employer's contributions in respect of each Member and the Member's contributions in such proportions as are agreed by the Trustee and the Member and in the absence of agreement, out of the Employer's contributions.
 - (d) The Trustee shall have the power to continue a policy for such period as it thinks fit or to discontinue or surrender it.
 - (e) The Trustee may at the request of a Member and with the consent of the Employer make a separate investment or accept a transfer of assets pursuant to Rule 7.5 on behalf of that Member. The Trustee shall record on whose behalf the investment is made or transfer of assets accepted for the purpose of establishing an Individual Member's Account in respect thereof. In such an event, the income less expenses, any profits or losses arising from the investment and any applicable costs or charges which are incurred pursuant to these Rules shall not be allocated to the General Fund Account but shall be

allocated directly to the appropriate Contribution Account maintained for the Member concerned.

ACCOUNTS

6.1 The following accounts shall be established:

- (a) a General Fund Account, which shall be maintained in accordance with Rule 6.2;
- (b) Members' Personal Contribution Accounts with respect to all Members which shall be maintained in accordance with Rule 6.5;
- (c) Employer's Contribution Accounts with respect to all Members which shall be maintained in accordance with Rule 6.5;
- (d) a Reserve Account which shall be maintained in accordance with Rule 6.4;
- (e) a Preserved Contribution Account which shall be maintained in respect of all amounts required to be preserved pursuant to the Relevant Law;
- (f) an Earnings Fluctuation Reserve Account which shall be maintained for moneys applied pursuant to Rule 18.5(q);
- (g) a Taxation Reserve Account to which shall be credited amounts set aside for income tax payable on contributions to and earnings of the Fund and capital gains tax payable on the realisation of assets of the Fund and to which shall be debited income tax and capital gains tax paid from this account to the Australian Taxation Office;
- (h) an Accumulation Account in respect of an investment made or a transfer of assets accepted pursuant to Rule 5.5(e).

THE GENERAL FUND ACCOUNT

6.2 Subject to Rule 5.5(e), the General Fund Account shall be:

- (a) credited with all contributions received in accordance with Rule 3;
- (b) credited with all interest, dividends and other income of the Fund together with all realised capital gains received in accordance with the terms of the Trust Deed and these Rules; and
- (c) debited with all losses, outgoings, taxes, transfers to reserve accounts, expenses and costs incurred in the establishment and maintenance of the Fund together with all realised capital losses incurred in accordance with the terms of the Trust Deed and these Rules.

APPLICATION OF THE GENERAL FUND ACCOUNT

- 6.3 (a) All amounts received into the General Fund Account pursuant to Rule 6.2 shall be applied as follows:
- (i) all personal contributions made by any Member shall be credited to that Member's Personal Contribution Account;
 - (ii) all Employer's contributions in respect of any Member other than Mandated Employer Contributions shall be credited to the Employer's Contribution Account for that Member;

- (iii) all Mandated Employer Contributions, transfers of preserved amounts and other contributions required by the Relevant Law to be preserved shall be paid to the credit of the Preserved Contribution Account; and
 - (iv) such amounts as the Trustee thinks fit shall be credited to the Earnings Fluctuation Reserve Account.
- (b) At any time chosen by the Trustee a credit or debit balance remaining in the General Fund Account may be credited or debited as required between all Members' Personal Contribution Accounts and all Employers' Contribution Accounts according to the balance of those accounts at the time of such crediting or debiting.

APPLICATION OF THE RESERVE ACCOUNT

- 6.4 (a) The Balance standing to the credit of the Reserve Account shall, within the time permitted by the Relevant Law, be applied by the Trustee in the following manner:
- (i) to provide benefits that other Members or their Dependants have a right to receive from the Fund;
 - (ii) to provide additional benefits for other Members or their Dependants on a basis that is reasonable having regard to all the circumstances;
 - (iii) to make a payment to the Employer;
 - (iv) to meet the expenses of the Fund;
 - (v) to be credited to the Earnings Fluctuation Reserve Account; or
 - (vi) for other purposes approved by the Commissioner.
- (b) Any amounts which are to be credited to the Individual Member's Account of a Member for the purposes of paragraph (a) of this Rule 6.4 shall be credited to the Preserved Contribution Account of that Member.

INDIVIDUAL MEMBERS' ACCOUNTS

- 6.5 The accounts established by the Trustee for a Member shall be collectively known as "the Individual Member's Account" and shall have:
- (a) recorded in each Individual Member's Account the Normal Retirement Date, the age, the sex, the date of commencement of service with the Employer, the date of commencement of membership of the Fund, the Member's eligible service period, the type of benefit to which the Member is entitled and any other information which the Trustee thinks fit;
 - (b) recorded in the Member's Personal Contribution Account the Initial Credit (if any) for the Member and the Member's personal contributions, if any, made to the Fund;
 - (c) recorded in the Employer's Contribution Account the Employer's contributions (other than Mandated Employer Contributions) made to the Fund;
 - (d) recorded the proportionate allocation made to the Member's Personal Contribution Account and the Employer's Contribution Account in accordance with Rule 6.3(b);

- (e) recorded the proportionate allocation made to the Member's Personal Contribution Account and the Employer's Contribution Account in accordance with Rule 5.3;
- (f) debited from the Employer's Contribution Account or the Member's Personal Contribution Account premiums paid on policies of insurance pursuant to Rule 5.5 and any income tax payable on contributions to the Fund on account of the Member;
- (g) credited to the Member's Preserved Contribution Account any Mandated Employer Contributions, any contributions to have been made by the member in accordance with Rule 3.6 and any amounts which may be applied from the Reserve Account pursuant to Rule 6.4; and
- (h) credited to the Member's Personal Contribution Account or the Employer's Contribution Account the proceeds of policies effected pursuant to Rule 5.5 in the same proportion as premiums were paid from these accounts.

TRANSFER OF BENEFITS

- 7.1 Subject to Rule 7.3, if while still in the employment of the Employer or otherwise gainfully employed, a Member becomes eligible for membership in another superannuation fund established and maintained as a complying fund under the Relevant Law, the Trustee may upon the written request of the Member and provided the rules of that other fund permit, transfer to the trustees of that fund the whole or any part of the value of the interest in the Fund attributable to that Member as determined pursuant to these Rules.
- 7.2 Subject to Rule 7.3, if a Member becomes eligible for membership in another superannuation fund established and maintained under the Relevant Law, or becomes eligible to make a deposit into an Approved Deposit Fund maintained pursuant to the provisions of the Relevant Law or wishes to purchase or acquire a deferred annuity as defined in the Relevant Law, the Trustee may upon the written request of the Member and provided the rules of any such other fund permit:
- (a) transfer to the trustees of that superannuation fund or Approved Deposit Fund assets representing the whole or any part of the value of the interest in the Fund attributable to that Member as determined pursuant to these Rules; or
 - (b) apply the whole or any part of the value of the interest in the Fund attributable to that Member in the purchase of a deferred annuity .
- 7.3 The Trustee shall not transfer or apply the value of a Member's interest in the Fund pursuant to Rules 7.1 or 7.2 unless the superannuation fund or Approved Deposit Fund into which that interest is being transferred or the annuity for which that interest is being applied prevents benefits being paid earlier than they would have been paid under these Rules.
- 7.4 Upon a transfer or application of assets of the Fund pursuant to Rule 7.1 or 7.2 the Trustee shall be released and discharged from any claim by the Member concerned or any dependant of or other person claiming through that Member in respect of the value of the interest of the Member so transferred or applied.
- 7.5 (a) For the purpose of paying new or additional benefits to a Member the Trustee may at the request of that Member accept a transfer of assets from:
- (i) the trustee of any superannuation fund of which the Member was or is a member;

- (ii) any person by whom the Member was or is employed;
- (iii) the trustee of any Approved Deposit Fund in which the Member was or is a depositor;

on the condition that any assets transferred which are required to be preserved are credited to the Member's Preserved Contribution Account and that the remainder of those assets are credited to the Member's Personal Contribution Account.

- (b) subject to Rule 5.5(e), the assets so transferred shall form part of the Fund and be available with other assets of the Fund to pay benefits to any person as provided for in these Rules.
- (c) The Trustee may require information as to:
 - (i) the period of membership of the Member with a previous fund;
 - (ii) the period of service of the Member with a previous employer in respect of which the assets so transferred represent benefits accrued to the Member including (where relevant) an allocation of those benefits between different periods;
 - (iii) the extent to which the assets transferred represent the Member's personal contributions and dates or periods (as specified by the Trustee) upon or during which those contributions were made;
- (d) the Trustee may make arrangements about any other matter which in its opinion is incidental to or consequent upon admitting that Member to membership of the Fund or allowing him to remain a member of the Fund;
- (e) the Trustee may accept a transfer of any life insurance policy existing on the life of that Member; and
- (f) if the fund from which those assets are transferred requires that any part of them should be preserved then that part shall be credited to the Member's Preserved Contribution Account. This provision extends to funds established or approved as at 1 July 1986 pursuant to s.23(ja) or S23FB of the Tax Act.

RETIREMENT BENEFIT

- 8.1 On the retirement of a Member from the employment of the Employer on or after the Normal Retirement Date the Trustee shall subject to the other provisions of these Rules apply the amount standing to the credit of the Member's Individual Member's Account at the time of retirement including the proceeds (if any) of any policy of life insurance to pay benefits to the Member or as he directs in writing.
- 8.2 The Trustee shall make payments due to a Member on his attaining age 65, or such other age prescribed by the Relevant Law from time to time, provided that:
- (a) If the Member continues in part-time employment after attaining age 65, payment may at the request of the Member be deferred to age 70 or retirement, whichever first happens; and
 - (b) if the Member continues in full-time employment or is gainfully employed on a full-time basis after age 65, payment may be deferred until he ceases full-time employment or until he is not gainfully employed on a full-time basis.

DEATH BENEFIT

- 9.1 On the death of a Member the Trustee shall, subject to these Rules, apply the amount standing to the credit of the Member's Individual Member's Account after revaluation at the date immediately prior to his death to or for the benefit of such one or more of the nominated beneficiaries as are set out in the statement of preference completed by the Member. The Trustee may, however, disregard that statement of preference and apply that amount for the benefit of such one or more Dependants or nominated beneficiaries of the deceased Member in such shares and in such manner as the Trustee determines or it may pay the benefit to the legal personal representative of the deceased Member.
- 9.2 The Trustee shall make the determinations referred to in Rule 9.1 within six months of being notified of the death of a Member and shall notify the beneficiaries in writing. If the Trustee concludes that a Member has no beneficiaries at the time of his death or is unable to determine who they are and no determinations and notifications are made by the Trustee within six months of death the amount referred to in Rule 9.1 shall be transferred to the Member's legal personal representative. If no grant of Probate or Letters of Administration shall have been made in the estate of the Member within two years from the date of his death, or such longer period as the Trustee shall determine, then the Trustee shall apply the amount in accordance with Rule 13.

PERMANENT DISABLEMENT BENEFIT

- 10.1 If the employment by the Employer of a Member is terminated as a result of Permanent Disablement the Trustee shall, subject to the other provisions of these Rules and the requirements of the Relevant Law, apply the amount standing to the credit of the Member's Individual Member's Account including the proceeds of any policy of disability insurance to pay benefits to the Member or as he directs in writing or, in the event of his being unable to manage his affairs, to such one or more of his Dependants and in such proportions as the Trustee determines.
- 10.2 Notwithstanding the provisions of Clause 10.1, a Member who has ceased full-time or part-time gainful employment because of ill-health (whether physical or mental) which prevents him from engaging in employment of the kind that he engaged in at the onset of the ill-health may remain as a Member of the Fund and the Trustee may accept on his behalf contributions which are not Mandated Employer Contributions.

WITHDRAWAL OR EARLY RETIREMENT BENEFIT

- 11.1 If the employment by the Employer of a Member is terminated before the Normal Retirement Date otherwise than in the circumstances referred to in Rules 9.1 or 10.1, and his next Employer does not make any contributions to the Fund on his behalf, the Trustee shall, subject to the other provisions of these Rules, apply the amount standing to the credit of the Member's Individual Member's Account to pay benefits to the Member or as he shall direct in writing.
- 11.2 Any part of the amount standing to the credit of the Individual Member's Account which is not paid or transferred to the Member shall be applied by the Trustee in accordance with Rule 13.1.
- 11.3 Any benefit that is required by the Relevant Law to be preserved will be credited to the Member's Preserved Contribution Account or applied by the Trustee pursuant to Rule 7.

PAYMENT OF BENEFITS

12.1 Except to the extent to which a benefit shall become payable on the retirement of a Member from the workforce before attaining the age of 55 years in the form of a non-commutable income stream as defined in the Relevant Law, the benefits following shall be retained in the Fund until:

- (a) those benefits are transferred directly for preservation on behalf of that Member in:
 - (i) Another superannuation fund nominated by that Member, being a fund of which the Member is, or intends to become, a Member and that is required to preserve any benefits transferred in accordance with the standards set out in the Relevant Law;
 - (ii) An approved deposit fund nominated by the Member, being a fund that is required to preserve any benefits transferred in accordance with the standards set out in the Relevant Law; or
 - (iii) A deferred annuity nominated by the Member, being a deferred annuity that cannot be surrendered or assigned before the Member attains the age of 55 years and that does not pay benefits except in the circumstances specified in the Relevant Law.
- (b) The Member has retired from the workforce and attained the age of not less than 55 years;
- (c) The Member has retired from the workforce before attaining the age of 55 years on the ground of permanent incapacity or permanent invalidity;
- (d) The Member has died;
- (e) The Member has permanently departed from Australia; or
- (f) Such other circumstances occur as the Commissioner approves or as the Relevant Law permits.

12.2 The benefits to which Rule 12.1 applies are:

- (a) The amount of any benefit vested in a Member arising directly or indirectly from Mandated Employer Contributions (other than death or disability benefits) in relation to the Member;
- (b) The amount of new employer-financed benefits or of any improvement in employer-financed benefits (including benefits arising from improvements in vesting) vested in that Member and arising from any relevant arrangement or agreement;
- (c) The amount of any benefit arising directly or indirectly from amounts contributed by the Member to the Fund after 13 March 1989 in any case where the Member is an "eligible person" as defined in S.82AAS of the Tax Act;
- (d) The amount of any benefit arising directly or indirectly from amounts contributed by the Member to the Fund after 1 July 1991 in any case where the Member is a member of an "eligible scheme" as defined in S.159TE of the Tax Act; and
- (e) Any other benefit preservation of which is required pursuant to the Relevant Law.

12.3 "Relevant arrangement or agreement" means any arrangement or agreement made on

or after 22 December 1986 (other than a prescribed agreement or award) under which new or additional employer-financed benefits are conferred on some or all Members of the Fund.

- 12.4 This Rule does not apply where the total amount of benefits to which a Member is entitled is less than \$500.00 or such other amount as is specified from time to time by the Relevant Law.
- 12.5 Subject to Rule 12.1, where the benefit payable to a Member includes the value of a policy of life insurance, the Trustee may, instead of collecting the proceeds of the policy, transfer it to the Member.
- 12.6 Where any benefit is payable in cash and is not required to be preserved, the Trustee may pay it in cash or by cheque or with the agreement of the Member or other person to whom such benefit is payable, by way of a transfer of assets of the Fund in specie to that Member or person where those assets are equivalent in value to the benefit payable if the Trustee has received from the Commissioner notification that the transfer will not cause the Fund to fail to satisfy the requirements of the Relevant Law.
- 12.7 Unless it otherwise decides, the Trustee shall not pay benefits to a person otherwise entitled to payment unless and until:
- (a) The Trustee has notified him of the benefit payable and of any payment alternatives available to him; and
 - (b) That person has provided an authority in a form approved of by the Trustee relating to payment of the benefit.
- 12.8 The Trustee may deduct from a benefit payable the amount of tax that is calculated by the Trustee to be payable on it and shall remit that amount to the Commissioner of Taxation. The Trustee shall also be entitled to deduct and pay to the Employer any moneys owing to the Employer by the Member but no deduction shall be made from any benefit which is vested by law in the Member.
- 12.9 A benefit that is payable to a Member:
- (a) who:
 - (i) is gainfully employed but not employed part-time or full-time; or
 - (ii) is not gainfully employed but has not retired from the workforce;
must be paid at age 65;
 - (b) who is employed part-time may be paid on or after age 65;
 - (c) who is employed part-time must be paid at age 70;
 - (d) who is employed full-time may be paid on or after age 65;
 - (e) who retires from the workforce must, subject to rule 12.1, be paid when the Member retires.
- 12.10 Where a Member is entitled to receive a benefit from the Fund, the Trustee shall subject to the Relevant Law have the discretion, if requested by that Member, to permit the amount of that benefit to remain in the Fund for an agreed period. During that period, the Trustee shall be entitled, subject to these Rules and the Relevant Law, to receive contributions by or on behalf of that Member and his individual

Member's Account shall continue to be credited or debited with amounts in accordance with Rule 6.3.

FORFEITURE AND ROLLOVER OF BENEFITS

- 13.1 Benefits payable out of the Fund which are not vested in or preserved for the benefit of a Member in pursuance of the Relevant Law and these Rules shall be forfeited if the person otherwise entitled:
- (a) assigns, alienates or charges or attempts to assign alienate or charge those benefits or part thereof; or
 - (b) owing to mental illness requires care, treatment or control for his own good or in the public interest and is, in the opinion of the Trustee, for the time being incapable of managing himself or his affairs.

The whole or part of the benefits so forfeited may, at the discretion of the Trustee be applied by it in whole or in part to or for the benefit of that Member and his Dependants or any of them as appropriate, but while he remains in the employment of the Employer the Trustee shall not make any payment to or for the benefit of him or his Dependants other than for personal maintenance and support in case of hardship.

- 13.2 If a benefit is immediately payable to a member or the trustee of another fund on behalf of a member, or to another person in respect of a member and payment has not been made within 90 days of the benefit becoming payable, the Trustee may pay that benefit to an eligible rollover fund as defined in the Relevant Law.
- 13.3 If a benefit mentioned in Rule 13.2 remains unpaid for 90 days after it becomes payable and the Trustee is satisfied that at least two consecutive reports prescribed by the Relevant Law have not been received by the Member, the Trustee shall pay the benefit to an eligible rollover fund.
- 13.4 When paying a benefit pursuant to Rules 13.2 or 13.3, the Trustee will comply with all requirements of the Relevant Law.
- 13.5 Benefits in respect of a person which are payable upon the exercise of a discretion of the Trustee, shall only be forfeited if the Trustee has determined in the proper exercise of its discretion that there is no person to whom the benefit may properly be paid pursuant to Rule 13.1.

APPLICATION OF FORFEITED BENEFITS

- 14.1 Any benefits which are forfeited shall be debited to the account from which they are forfeited and shall be credited to the Reserve Account.

DISCLOSURE AND REPORTING

- 15.1 So long as the Fund is an Excluded Fund the Trustee shall give to each person who becomes a member of the Fund, a statement in the following terms:

"This fund is not subject to detailed prudential supervision."

- 15.2 The Trustee shall give to each person who becomes a member of the Fund all information that he or she reasonably needs for the purpose of understanding:
- (a) any benefit entitlements of the Member in the Fund;
 - (b) any benefits that the Member may become entitled to receive; and

(c) the main features and performance of the Fund.

- 15.3 If the Fund ceases to be an Excluded Fund the Trustee must give to each person who subsequently becomes a member of the Fund the information concerning the Fund specified from time to time by the Relevant Law.
- 15.4 If the Fund ceases to be an Excluded Fund the Trustee must give to each person who subsequently becomes a member of the Fund the information and documents concerning that person's membership of the Fund specified from time to time by the Relevant Law.
- 15.5 Within six months after the end of each financial year of the Fund the Trustee must give to each Member all information that he or she reasonably needs for the purpose of understanding his or her benefit entitlements in the Fund as specified from time to time by the Relevant Law.
- 15.6 The Trustee must give to each Member all information that he or she reasonably needs for the purpose of making an informed judgement about the management, performance and financial condition of the Fund. So long as the Fund is an Excluded Superannuation Fund, this information need only be supplied if and to the extent that a Member requests the Trustee to do so.
- 15.7 In compliance with the last preceding sub-rule, the Trustee must give to each Member the information specified from time to time by the Relevant Law.
- 15.8 The Trustee shall inform the Commissioner immediately of any change in the Fund's name or in any contact details relating to it.
- 15.9 The Trustee shall inform the Commissioner as and when required of such information concerning Members as the Relevant Law may prescribe.

TRUSTEE - APPOINTMENT AND REMOVAL:

- 16.1 Sub-rules 16.2 to 16.6, inclusive, apply to the Fund so long as it is a Standard Employer-Sponsored Fund which is not an Excluded Fund.
- 16.2 The Trustee shall be a constitutional corporation the board of directors of which must consist of equal numbers of employer representatives and member representatives.
- 16.3 Rule 16.2 is complied with if the board of directors of the corporate trustee contains an additional independent director appointed at the request of the employer representatives or the member representatives. That additional director shall not have a second or casting vote in any proceedings of the Trustee.
- 16.4 The provisions of sub-rules 16.2 and 16.3 shall apply so long as the Fund has less than 200 members.

Alternatively, a constitutional corporation approved of by the Commissioner and which is not an associate of a Standard Employer-Sponsor may be appointed as trustee following nomination by agreement between the members of the Fund or a trade union or other organisation representing their interests and the Employer or an organisation representing its interests.
- 16.5 A resolution of the board of directors of the Trustee shall not be of any force or effect unless at least two-thirds of the individual trustees or two-thirds of the directors, as the case may be, cast an affirmative vote.
- 16.6 Where, for any reason, a vacancy occurs in the board of directors of the Trustee, that vacancy shall be filled within 90 days by the Employer where the person vacating

office represented the Employer, or by the Members where that person represented them.

- 16.7 If the Fund is a Standard Employer-Sponsored Fund which is not an Excluded Fund, the Trustee may be removed by the affirmative vote of two-thirds of the Members and a new Trustee appointed by the same method.

If the Fund is an Excluded Fund, the Principal Employer may appoint and remove the Trustee. The Principal Employer may act as trustee.

- 16.8 If the Fund is an Excluded Fund and the primary purpose of the Fund becomes other than the provision of old-age pensions, then the Trustee shall be a constitutional corporation.
- 16.9 If the Trustee is unable to continue to act as Trustee for any reason, a new Trustee may be appointed by the affirmative vote of two-thirds of the Members.

TRUSTEE'S MEETINGS

- 17.1 The Trustee may meet together for the despatch of business, adjourn and otherwise regulate its meetings as it thinks fit.
- 17.2 A resolution in writing signed by all the trustees shall have the same effect and validity as a resolution of the Trustee passed at a duly convened meeting.
- 17.3 Questions arising at any meeting shall be decided by a majority of votes and in the case of an equality of votes the chairman shall have a second or casting vote. A resolution of the directors of the Trustee shall be of no force or effect if fewer than two-thirds of the total number of the directors voted for it.
- 17.4 The Trustee shall keep and retain for at least ten years minutes of its resolutions and proceedings in a book provided for that purpose.
- 17.5 The Trustee must keep and retain for at least ten years up to date records of all changes of trustee and changes of directors of a trustee and of all consents given pursuant to Section 118 of the Superannuation Industry (Supervision) Act.

COVENANTS BY THE TRUSTEE

- 18.1 In the exercise of its powers and the discharge of its duties and responsibilities as trustee of the Fund the Trustee shall perform and observe the following covenants:
- (a) to act honestly in all matters concerning the Fund;
 - (b) in relation to all matters affecting the Fund to exercise the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom that person felt morally bound to provide;
 - (c) to ensure that the Trustee's duties and powers are performed and exercised in the best interests of the Members;
 - (d) to keep the money and other assets of the Fund separate from any money and assets that are held by the Trustee personally or that are money or assets of a standard employer-sponsor or an associate of a standard employer-sponsor of the Fund;
 - (e) not to enter into any contract or do anything else which would prevent or hinder the Trustee from properly performing or exercising its functions and

powers;

- (f) to formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the Fund, including but not limited to:
- (i) the risk involved in making, holding and realising and the likely return from the Fund's investments, having regard to its objectives and its expected cashflow requirements;
 - (ii) the composition of the Fund's investments as a whole, including the extent to which they are diverse or involve the Fund in being exposed to risks from inadequate diversification;
 - (iii) the liquidity of the Fund's investments, having regard to its expected cashflow requirements; and
 - (iv) the ability of the Fund to discharge its existing and prospective liabilities.
- (g) to formulate and give effect to a strategy for the prudential management of any reserves of the Fund consistent with the Fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due; and
- (h) to allow a member access to any prescribed information or any prescribed documents.
- 18.2 The covenant referred to in Rule 18.1 (e) does not prevent the Trustee from engaging or authorising persons to do acts or things on its behalf.
- 18.3 An investment strategy shall be taken to be in accordance with Rule 18.1 (f), even if it provides for a specified beneficiary or specified class of beneficiaries to give directions to the Trustee where:
- (a) the directions relate to the strategy to be followed by the Trustee in relation to the investment of particular asset or assets of the Fund; and
 - (b) the directions are given in circumstances covered by the Relevant Law.
- 18.4 If, at any time, the Relevant Law prescribes covenants additional to those set out in this Rule 18, those additional covenants shall be deemed to be included in these Rules.

POWERS OF TRUSTEE

- 18.5 In addition to the powers which it may by law have and which are otherwise granted to it by the Trust Deed and these Rules in relation to the administration of the Fund, the Trustee shall have the rights, powers and privileges that a natural person would have in administering his own affairs with such rights, powers and privileges including, but not being limited to, the right power or privilege:
- (a) to commence, carry on, defend or abandon any legal proceedings relating to the Fund or to the rights of Members;
 - (b) to insure or re-insure any risks, contingencies or liabilities of the Fund;
 - (c) to retain the services of professional advisers, whether persons, firms or companies, in relation to the management, administration or investment of the Fund, to act on the advice of those advisers, to delegate to them such

powers as they shall see fit from time to time and to determine and pay out of the Fund the fees payable to them;

- (d) From time to time to appoint any person or company to act as custodian trustee of any property belonging to the Fund on such terms and conditions and with such powers and authorities and subject to such obligations as the Trustee shall think fit;
- (e) to make and give receipts, releases and other discharges for money payable to the Fund and for the claims and demands of the Fund;
- (f) to determine who shall be entitled to sign on the Fund's behalf receipts, acceptances, endorsements, releases, contracts and documents;
- (g) subject to the other provisions of these Rules to determine, authorise and arrange payment of benefits out of the Fund to persons entitled;
- (h) subject to the other provisions of these Rules to decide who are Dependants for the purposes of these Rules;
- (i) to pay out of the Fund all costs, charges and taxes incidental to the implementation, administration, management and/or winding up of the Fund including any group tax payable in respect of any benefit payable pursuant to these Rules;
- (j) to enter into such contracts and deeds on behalf of the Fund as the Trustee considers necessary for the administration of the Fund;
- (k) to establish promote or acquire any company or to join in the promotion or establishment of any company;
- (l) to delegate (by Power of Attorney or otherwise) to any person or company any of the powers duties and discretions vested in the Trustee on such terms and conditions as it thinks fit and it shall not be liable for any loss incurred as a result of such delegation;
- (m) to open and maintain such accounts with any financial institution as the Trustee thinks fit;
- (n) to vary, transpose, assign, sell or convert the assets of the Fund by private sale or public auction, for cash or on terms and in such other manner and on such other terms as the Trustee thinks fit;
- (o) to construct, demolish, maintain, renovate, reconstruct, develop, improve, subdivide, exploit, surrender, cancel, let, lease, exchange, grant options or rights in, alienate, mortgage, charge, release, or discharge or otherwise deal with any asset or investment of the Fund;
- (p) where a person to whom benefits are payable under these Rules is a minor, to pay the whole or any part of the benefits so payable to any other person for application on behalf of the minor and the receipt of the person to whom the benefits are paid shall be a complete discharge to the Trustee;
- (q) from time to time to apply moneys to and from the Earnings Fluctuation Reserve Account to enable the earnings of the Fund for any period to be averaged after taking into account possible or actual periodic fluctuations in those earnings; and
- (r) generally to do all acts and things as the Trustee may consider necessary or

expedient for the administration, maintenance and preservation of the Fund and in the performance of its obligations as Trustee of the Fund.

- 18.6 (a) The Trustee may borrow money if:
- (i) the purpose of the borrowing is to enable the Trustee to make a payment to a beneficiary which is required to be made by law or by these Rules and which, apart from the borrowing, the Trustee would not be able to make;
 - (ii) the period of the borrowing does not exceed 90 days; and
 - (iii) the total amount borrowed by the Trustee does not exceed 10% of the value of the assets of the Fund.
- (b) The Trustee shall also be entitled to borrow money if:
- (i) the purpose of the borrowing is to enable the Trustee to pay for the acquisition of bonds, debentures, stock, bills of exchange or other securities; shares in a company; units in a unit trust; futures contracts; forward contracts; interest rate swap contracts; currency swap contracts; forward exchange rate contracts; forward interest rate contracts; a right or option in respect of such a security, share, unit, contract or policy; any similar financial instrument; and foreign currency;
 - (ii) at the time when the relevant investment decision was made, it was likely that the borrowing would not be needed;
 - (iii) the borrowing is not taken, under a written determination from the Commissioner, to be exempt from this paragraph;
 - (iv) the period of the borrowing does not exceed seven days; and
 - (v) the total amount borrowed by the Trustee does not exceed 10% of the value of the assets of the Fund.

18.7 All investments of assets of the Fund shall be made on an arms' length basis as defined in the Relevant Law.

18.8 The following provisions shall apply to "in-house assets":

- (a) An "in-house asset" is an asset that is a loan to, or an investment in the Employer or an associate of the Employer but does not include a life policy issued by a life insurance company, a deposit with an approved bank or an investment in a pooled superannuation trust where the Trustee of the Fund and the Trustee of the pooled superannuation trust acted at arms' length in relation to that investment.
- (b) The market value ratio of the Fund's "in-house assets" must not at any time exceed 10%.
- (c) The market value ratio of the Fund's "in-house assets" is the percentage worked out using the formula:

$$\frac{\text{Value of in-house assets of the Fund}}{\text{Value of all assets of the Fund}} \times 100$$

- (d) to keep the money and other assets of the Fund separate from any money and

assets that are held by the trustee personally or that are money or assets of a standard employer-sponsor or an associate of a standard employer-sponsor of the Fund;

- (e) not to enter into any contract or do anything else which would prevent or hinder the Trustee from properly performing or exercising its functions and powers;
- (f) to formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the Fund, including but not limited to:
 - (i) the risk involved in making, holding and realising and the likely return from the Fund's investments, having regard to its objectives and its expected cashflow requirements;
 - (ii) the composition of the Fund's investments as a whole, including the extent to which they are diverse or involve the Fund in being exposed to risks from inadequate diversification;
 - (iii) the liquidity of the Fund's investments, having regard to its expected cashflow requirements; and
 - (iv) the ability of the Fund to discharge its existing and prospective liabilities.
- (g) If the market value ratio of the Fund's "in-house assets" as at the end of its 2000-2001 year of income or any later year of income exceeds 5% the Trustee shall forthwith take steps to prepare and submit a plan to the Commissioner in compliance with the Relevant Law.

18.9 Unless the Fund is an Excluded Fund, a discretion which under these Rules is exercisable by a person other than the Trustee shall not be exercised unless:

- (a) the Trustee has consented to the exercise of that discretion; or
- (b) if the Fund is employer-sponsored:
 - (i) the exercise of discretion relates to the amount of contributions payable by the employer-sponsor; or
 - (ii) the exercise of discretion relates solely to termination of the Fund; or
 - (iii) the circumstances in which the discretion is exercisable are otherwise covered by the Relevant Law.

EXERCISING TRUSTEE'S DISCRETIONS

19.1 Subject to Rule 29.3, in administering the Fund and in exercising the trusts, powers and authorities vested in it under these Rules, the Trustee shall have an absolute and uncontrolled discretion at all times to exercise or refrain from exercising those trusts, powers and authorities.

INDEMNITY OF TRUSTEE

20.1 The Trustee shall not be liable for any act or default done or omitted in good faith in the administration of the Fund or for any loss or expense incurred by the Fund and shall be fully indemnified by the Fund for any act done or omitted in good faith in administering the Fund unless:

- (a) the Trustee fails to act honestly; or
- (b) intentionally or recklessly fails to exercise the degree of care and diligence that the Trustee is required by law to exercise; or
- (c) the liability is for a monetary penalty under a civil penalty order made pursuant to the Relevant Law.

20.2 The Trustee shall not in any circumstances be entitled to indemnity reimbursement or recompense from the Members or any of them or any other person entitled to benefits herein and the Members shall not be liable for the debts of the Fund.

TRUSTEE'S DISCLOSURE OF INTEREST

21.1 Subject to the provisions of the Relevant Law, no director of the company, (in this clause called a "Director") shall be disqualified by his office from contracting with the Trustee on behalf of the Fund, nor shall any such contract or any contract entered into by or on behalf of the Fund in which any Director shall be in any way interested be avoided, nor shall any Director so contracting or being so interested be liable to account to the Fund for any profit realised by any such contract by reason only of such Director holding that office or of the fiduciary relationship thereby established, provided that the nature of his interest must be disclosed by him at the meeting of the Trustee at which the contract is discussed or concluded if his interest then exists or in any other case at the first meeting of the Trustee after the acquisition of his interest. A Director may vote in respect of any contract or arrangement in which he is interested, and may be counted for the purpose of any resolution regarding that contract or arrangement in the quorum present at the meeting and may notwithstanding his interest and whether or not he votes, participate in the execution of any instrument by or on behalf of the Trustee and whether signing or sealing it or otherwise.

AUDIT: TRUSTEE'S ACCOUNTS AND RECORDS

22.1 Together with the duties and obligations contained in Rule 6, the Trustee shall keep a complete record of all matters essential to the administration and working of the Fund and shall also keep such accounts as it may (subject to the Relevant Law) decide. Such accounts shall be produced by the Trustee as required by the Relevant Law.

22.2 (a) All accounts established and maintained in connection with the Fund and the balance sheet of the Fund as at 30 June in each year shall be audited by an auditor from time to time appointed by the Trustee. The auditor shall have access to all books papers vouchers accounts and documents connected with the Fund and shall report and certify in writing as to the truth and fairness of the balance sheet and accounts and any other matters (including compliance with all relevant prudential standards) set down by the Commissioner or required by law (statutory or otherwise);

(b) The audited accounts, balance sheet and audit certificate shall be submitted to the Trustee, and any Participating Employer who has nominated a Member of the Fund (provided that such a person is a Member at the date of the audit) as soon as practicable after the audit;

(c) Following their submission as set out in paragraph (b) copies of the audited accounts, balance sheet and audit certificate shall be made available to a Member by the Trustee within a reasonable time following a written request to that effect from the Member; and

- (d) The auditor above referred to shall be an "approved Auditor" as defined in the Relevant Law. The audit shall be carried out and completed in compliance with the Relevant Law.

22.3 In compliance with the Relevant Law the Trustee shall furnish to the Commissioner each year a report, trustee's certificate and audit certificate in the form prescribed containing such information as may be prescribed from time to time.

22.4 The Trustee shall keep and retain so long as they are relevant, and in any event for at least ten years, copies of reports given to all members of the Fund or to all members included in a particular class of members and must make those copies available for inspection by a member of the staff of the Commissioner if requested to do so by a member of that staff.

TRUSTEE'S REMUNERATION

23.1 The Trustee shall be entitled to be paid and retain out of the Fund such remuneration as is determined from time to time in writing by the Trustee having regard to its duties hereunder and to the provisions of any relevant law.

REMUNERATION OF PROFESSIONAL PERSONS

24.1 Any person who is an accountant solicitor barrister or other professional person and is also a director of the Trustee who is called upon to perform any service in relation to the Fund shall be entitled to make the same professional charges for that service as he would have made had he not been a director of the Trustee.

AMENDMENT OF RULES

25.1 So long as the Fund is an Excluded Fund, the Trustee may at any time by resolution or by supplemental deed amend the provisions of the Trust Deed or the Rules, but no amendment shall be made which reduces or detrimentally affects any benefit which is or has become vested in any Member PROVIDED THAT any amendments which are approved of by the Commissioner or in respect of which all Members whose benefits would be reduced or detrimentally affected have given their written consent to the Trustee shall be deemed not to reduce or detrimentally affect the benefits in respect of those Members.

25.2 If the Fund is not an Excluded Fund, these Rules may not be amended unless:

- (a) the Trustee has consented to the amendment; or
- (b) if the Fund is an Employer-Sponsored fund:
 - (i) the amendment relates to the contributions that an Employer-Sponsor will, after the amendment, be required or permitted to pay to the Fund; or
 - (ii) the circumstances in which the amendment was made are in accordance with the Relevant Law.

25.3 These Rules may not be amended so that:

- (a) an individual is eligible to be appointed or to remain as a trustee; or
- (b) the sole or primary purpose of the Fund would be a purpose other than the provision of old-age pensions unless the Rules provide that the Trustee must be a constitutional corporation.

TRUST DEED AVAILABLE FOR INSPECTION

- 26.1 A copy of the Trust Deed and these Rules shall be kept by the Trustee, and each Participating Employer at its principal place of business and be available for inspection by any Member at all reasonable times upon reasonable notice.

WITHDRAWAL OF PARTICIPATING EMPLOYER

- 27.1 A Participating Employer shall cease to be a contributor to and a participant in the Fund upon:
- (a) The date specified in a written notice to the Trustee of its intention to cease to be a Participating Employer from that date;
 - (b) Becoming bankrupt or being placed in liquidation or receivership or on ceasing to carry on business.
- 27.2 Members who are Employees of a Participating Employer that has ceased to be a participant in the Fund shall continue to be Members for the duration of their employment with the Participating Employer. No benefit comprising a preserved benefit or a restricted non-preserved benefit as defined in the Relevant Law shall be paid to those Members during the period that their employment with the former Participating Employer continues. An unrestricted non-preserved benefit may be paid from the Fund at any time.

TERMINATION OF FUND

- 28.1 The Fund shall be wound up as hereinafter provided upon the happening of any of the following events:
- (a) the expiry of one month's notice to the Trustee and each Member by each Participating Employer that it has decided to cease permanently contributing to the Fund and the Trustee does not during the period of notice appoint another Participating Employer;
 - (b) if the only Participating Employer is a company - if an order is made or an effective resolution is passed for the winding-up of the Participating Employer, other than for the purpose of amalgamation or reconstruction, or if the Participating Employer for any other reason ceases to carry on business;
 - (c) if the only Participating Employer is a Partnership or Sole Trader - if the Partnership is dissolved or the business of the Participating Employer in any way ceases to exist, other than for the purpose of succession amalgamation or reconstruction;
 - (d) if there is no person to whom a benefit is or may be payable pursuant to these Rules; or
 - (e) if the liabilities of the Fund at any time exceed its assets.
- 28.2 Subject to Rule 28.3, in the event of a winding-up of the Fund the liability of any person to make contributions pursuant to the Rules shall cease and the Trustee shall distribute amongst the Members or former Members or their Dependants the assets of the Fund in accordance with the other provisions of these Rules either as a death benefit, a withdrawal benefit or a permanent disablement benefit as appropriate provided that the Trustee may vary such benefits in such circumstances on a basis that the Trustee considers reasonable having regard to the circumstances.
- 28.3 Subject to compliance with the Relevant Law, if any amount remains in the Fund

after all the Members' entitlements to benefits have been paid the amount remaining shall be paid to the Employers in such proportions as the Trustee considers to be appropriate.

MISCELLANEOUS

29.1 Where the laws applicable to this Deed are the laws of the State of South Australia the provisions of Section 35(b) of the Trustees Act 1936-1953 of that State are hereby expressly excluded from application to this Deed.

29.2 To the extent that they are not incorporated in these Rules, the requirements contained in the Relevant Law from time to time shall be deemed to be incorporated in these Rules.

These Rules shall be read and construed on the basis that the provisions of the Relevant Law to the extent that they impose requirements in relation to the trust deeds of superannuation funds in order for the Fund to qualify for income tax concessions are deemed to be incorporated in these Rules.

In the event of any inconsistency between a provision of these Rules and any provision of the Relevant Law, the latter shall be deemed to apply.

29.3 Where in these Rules the Trustee is expressed to have a power or discretion it shall be exercised at all times having regard to the provisions of the Relevant Law.

29.4 Notwithstanding the provisions of these Rules, if there is any inconsistency between them and the Relevant Law, the latter provisions shall prevail.

29.5 Unless the Fund is an Excluded Fund the Trustee must take all reasonable steps to ensure that there are at all times in force arrangements under which:

(a) beneficiaries have the right to make enquiries into or complaints about the operation or management of the Fund in relation to the beneficiary making the enquiry or complaints; and

(b) enquiries or complaints so made will be properly considered and dealt with within 90 days after they were made.

29.6 Where the Fund has no employer but has members who are self employed it shall be wound up if there is no person to whom a benefit is or may be payable pursuant to these Rules or if at any time the liabilities of the Fund exceed its assets.

PENSION BENEFITS ON RETIREMENT, DEATH OR PERMANENT DISABLEMENT

30.1 The primary purpose of the Fund is to ensure that the balance to credit of an Individual Member's Account shall be applied in payment of an old-age pension in accordance with the Relevant Law unless the Member elects to commute that credit or any part of it to a lump sum payment.

30.2 The Trustee may establish in the books of the Fund in respect of any member an account styled "Allocated Pension Account".

30.3 There shall be credited to a member's Allocated Pension Account any Eligible Termination Payment rolled over from his Individual Member's Account or from any other superannuation fund or Approved Deposit Fund from which that member is entitled to receive a benefit, together with all income earned on those amounts.

- 30.4 There shall be debited to a Member's Allocated Pension Account all pension payments to that Member and all expenses including income tax payable by the Member pursuant to these Rules.
- 30.5 The amount of pension shall be determined by the Trustee having regard to:
- (a) the amount standing to the credit of the Member's Allocated Pension Account from which the benefits will be paid;
 - (b) the period for which the pension will be paid;
 - (c) the provisions of the Relevant Law; and
 - (d) any other matters that the Trustee considers relevant.
- 30.6 The Trustee may increase the pension annually as from the anniversary of its commencement by the greater of 5 per centum or any increase in the Consumer Price Index (All Groups) (eight Capital cities) or if that Index ceases to exist, any other index specified by the Relevant Law or which the Trustee reasonably considers to be a substitute for that Index.
- 30.7 Subject to the provisions of the Relevant Law, the Trustee may at any time pursuant to a request from the Member pay to him a lump sum equivalent to a commutation not exceeding his pension entitlement.

SELF-EMPLOYED PERSONS

- 31.1 A person who is not employed by an Employer but who is gainfully occupied in any business, trade, profession, vocation, calling or occupation may apply to the Trustee to become a Member of the Fund. If the application is accepted, that person shall become a "Member" for the purpose of these Rules.
- 31.2 A self-employed Member may contribute such amount not exceeding the maximum allowed by law as he may decide to contribute from time to time.
- 31.3 If the Fund is not a standard Employer-Sponsored Fund the provisions of Rule 16 shall not apply to the appointment and removal of the Trustee and the following provisions shall apply instead:
- (a) The Trustee may be either a constitutional corporation or not more than four individuals.
 - (b) The Trustee shall be appointed by a vote of not less than two-thirds of the Members and may at any time be removed in the same manner.
- 31.4 On the establishment of the Fund or on the Fund ceasing to be a standard Employer-Sponsored Fund the Trustee shall forthwith apply to the Commissioner for a declaration pursuant to the Relevant Law that the Fund is not a Public Offer Superannuation Fund.
- 31.5 The Fund shall be wound up and terminated if at any time there is no person to whom a benefit is or may be payable pursuant to these Rules or if the liabilities of the Fund exceed its assets.

EXECUTED AS A DEED

IN WITNESS WHEREOF this Deed creating
THE XU & WU SUPERANNUATION FUND
is executed hereunder by the Founder on the date set out in Schedule 1 above.

THE TRUSTEE named in Schedule 4 above hereby consents to act as the Trustee
of the Fund and covenants and agrees that the Fund will be administered
according to the Rules. If the Trustee is not the same person as the Founder, such
consent is given and confirmed by execution hereunder.

DIGITAL STAR GROUP HOLDINGS PTY LTD :

THE SEAL of the above is)
hereby affixed and hereby)
signed in accordance with)
the provisions of its)
Articles of Association)



[Handwritten signature]
.....
(Director/Secretary)

.....
(Director/Secretary)

