

BLAKE DAWSON WALDRON

L A W Y E R S

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# Fee Sharing Deed

**Challenger Group Services UK Limited**

Company number 04244127

**Challenger Management Services Limited**

ABN 29 092 382 842

**Challenger Listed Investments Limited**

ABN 94 055 293 644

**Challenger Towers Limited**

Company number 89959

**Challenger Northern Gas Limited**

Company number 89960

**Challenger Wales and the West Gas Limited**

Company number 89958

**Execution Copy**

**14 July 2005**

Blake Dawson Waldron  
Grosvenor Place  
225 George Street  
SYDNEY NSW 2000  
Telephone: (02) 9258 6000  
Fax: (02) 9258 6999

**Ref: MTA.AUW 02 1382 6239**

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## FEE SHARING DEED

DATE 14 JULY 2005

### PARTIES

**Challenger Management Services Limited** ABN 29 092 382 842 (**CMSL**)

**Challenger Group Services UK Limited** (registered number 04244127), a company incorporated in England and Wales (**UK Manager**).

**Challenger Towers Limited** (Company number 89959), a company incorporated in Jersey.

**Challenger Northern Gas Limited** (Company number 89960), a company incorporated in Jersey.

**Challenger Wales and the West Gas Limited** (Company number 89958), a company incorporated in Jersey.

(together the **Jersey Companies**)

**Challenger Listed Investments Limited** ABN 94 055 293 644 (**CLIL**) in its personal capacity.

**CLIL** in its capacity as responsible entity for **CIF Investment Trust 1** (ARSN 114 139 703) and **CIF Investment Trust 2** (ARSN 114 139 632) (**CIF**)

### RECITALS

- A. The UK Manager has entered into an agreement to perform management services for the Jersey Companies, for which it will receive fees.
- B. CMSL has entered into an agreement to perform management services for CIF, for which it will receive fees.
- C. CLIL, as responsible entity of CIF, is entitled to be paid fees under the Constitutions.
- D. CMSL, the UK Manager and CLIL have agreed to set out in this deed how the fees payable to them by CIF and the Jersey Companies are to be allocated between them.

### OPERATIVE PROVISIONS

#### 1. INTERPRETATION

##### 1.1 Definitions

The following definitions apply in this deed.

**CIF 1** means **CIF Investment Trust 1** (ARSN 114 139 703).

**CIF 2** means **CIF Investment Trust 2** (ARSN 114 139 632).

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**Claim** means a claim, action, proceeding or demand made against the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

**CMSL Management Agreement** means the agreement for the provision of management services between CMSL and CIF dated on or about the date of this agreement.

**CMSL Fees** means the management fees which are referable to the RE Fees and payable to CMSL under the CMSL Management Agreement and, for the avoidance of doubt, do not include any fee payable under Schedule 2 paragraphs 2(c) or (e) of the CMSL Management Agreement.

**Constitutions** means the constitution of each of CIF 1 and CIF 2;

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

**Effective Date** means the date on which the rights and obligations commence under the CMSL Management Agreement.

**RE Fees** means the fees payable to CLIL under the Constitutions but, for the avoidance of doubt, does not include the additional fee payable to CLIL under clause 19.7(c)(ii) of the Constitutions.

**UK Management Agreement** means the agreement for the provision of management services between the UK Manager and the Jersey Companies dated 23 June 2005.

**UK Manager Fees** means the fees which are payable to the UK Manager under the UK Management Agreement.

## 1.2 Rules for interpreting this deed

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this deed, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
- (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (iii) a party to this deed or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
  - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and

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- (v) anything (including a right, obligation or concept) includes each part of it.
  - (b) A singular word includes the plural, and vice versa.
  - (c) A word which suggests one gender includes the other genders.
  - (d) If a word is defined, another part of speech has a corresponding meaning.
  - (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
  - (f) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
  - (g) The words **subsidiary, holding company, related body corporate** and **substantial holding** have the same meanings as in the Corporations Act.

## 2. **RIGHT TO RECEIVE FEES**

### 2.1 **CMSL Fees**

The parties acknowledge and agree that, subject to clause 3, CMSL is entitled to receive the CMSL Fees.

### 2.2 **UK Manager Fees**

The parties acknowledge and agree that, subject to clause 3, the UK Manager is entitled to receive the UK Manager Fees.

### 2.3 **RE Fees**

The parties acknowledge and agree that, subject to clause 3, CLIL is entitled to receive the RE Fees.

## 3. **ALLOCATION OF FEES**

### 3.1 **Allocation of fees**

The parties agree that fees are to be shared as follows for the term of the agreement (unless otherwise agreed by the parties):

- (a) CLIL agrees that its entitlement to fees is reduced to 5% of the RE Fees;
- (b) CMSL agrees that its entitlement to management fees is reduced to 95% of the CMSL Fees less any fees the UK Manager has received under the UK Management Agreement; and
- (c) For so long as CMSL is entitled to receive the CMSL Fees, the UK Manager agrees that its entitlement to fees under the UK Management Agreement is reduced to £15,000 in total or as otherwise agreed between the parties.

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### 3.2 Waiver of additional fees

To the extent that CMSL, the UK Manager or CLIL would otherwise be entitled to an amount in respect of the CMSL Fees, the UK Manager Fees or the RE Fees for a period that is higher than the amount of fees payable to them calculated in accordance with clause 3.1 for that period, CMSL, CLIL and the UK Manager hereby waive their entitlements to that additional amount of fees.

### 3.3 Reimbursement of expenses

For the avoidance of doubt, this deed does not affect or reduce the rights of CMSL, CLIL or the UK Manager to obtain reimbursement of their expenses in accordance with the provisions of the CMSL Management Agreement, the Constitutions and the UK Management Agreement as applicable.

### 3.4 Payment of Fees

For the avoidance of doubt, the timing, method and form of payment of the CMSL Fees, the RE Fees and the UK Manager Fees to CMSL, CLIL and the UK Manager shall be governed by the payment provisions in the CMSL Management Agreement, the Constitutions and the UK Management Agreement as applicable, including, but not limited to, provisions concerning whether fees will be paid in cash or in CIF securities.

## 4. TERM

### 4.1 Effective date

The rights and obligations under this deed shall be effective from the Effective Date.

### 4.2 Term

- (a) The rights and obligations under this deed terminate on the earlier of:
- (i) the parties agreeing in writing to terminate the agreement;
  - (ii) CLIL ceasing to be the responsible entity of CIF 1 and/or CIF 2; and
  - (iii) CMSL or the UK Manager being removed under the CMSL Management Agreement or the UK Management Agreement (as applicable).
- (b) From the date of termination until otherwise agreed by CMSL, the UK Manager and the responsible entity of CIF1 and CIF2, CMSL will waive its entitlement to fees under the CMSL Management Agreement to the extent the UK Manager is entitled to receive, and in fact receives, fees under the UK Management Agreement.

### 4.3 Claims, rights and obligations

Termination of this deed does not affect:

- (a) any Claim either party may have against the other in respect of anything done or required to be done before termination; or

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(b) rights or obligations under the following clauses:

- 1 Interpretation
- 4.2(b) CMSL Fees post termination
- 6 Notices
- 7 Amendment and Assignment
- 8 General

## 5. TRUSTEE CAPACITY

This clause 5 applies:

- (a) notwithstanding any other provision of this deed; and
- (b) to the extent that CLIL enters into this deed in its capacity as responsible entity of CIF rather than in its personal capacity.

### 5.1 Capacity and liability

- (a) Any liability arising under or in connection with this deed can be enforced against CLIL only to the extent to which it can be satisfied out of the property of CIF out of which CLIL is actually indemnified for the liability;
- (b) The limitations on CLIL's liability contained in this clause 5 extend to all liabilities of CLIL in any way connected with any representation, warranty, conduct, omission, agreement or transaction under this deed.
- (c) The other parties may not claim against the personal assets of CLIL or against CLIL in its personal capacity or seek the appointment of a liquidator, administrator, receiver or similar person to CLIL or prove in any liquidation, administration or arrangement of or affecting CLIL.
- (d) The provisions of this clause 5 shall not apply to any obligation or liability of CLIL to the extent that it is not satisfied because under the trust deeds establishing CIF or by operation of law there is a reduction in the extent of CLIL's indemnification out of the assets of CIF as a result of CLIL's failure to properly perform or exercise any of its powers or duties in relation to CIF.

## 6. NOTICES

- (a) A notice, consent or other communication under this deed is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail or fax. If it is sent by mail, it is taken to have been received 3 working days after it is posted. If it is sent by fax, it is taken to have been received when the addressee actually receives it in full and in legible form.

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- (b) A person's address and fax number are those set out below, or as the person notifies the sender:

**CMSL**

Address: Lvl 41, Aurora Place, 88 Phillip Street, Sydney NSW 2000  
Fax number: +61 2 9994 7777  
Attention: Company Secretary

**UK Manager**

Address: c/o Ogier & LeMasurier, UK, 2 Royal Exchange Building,  
London EC3 3LF  
Fax number:  
Attention: Peter Hennesy

**CLIL**

Address: Lvl 41, Aurora Place, 88 Phillip Street, Sydney NSW 2000  
Fax number: +61 2 9994 7777  
Attention: Company Secretary

**CIF**

Address: Lvl 41, Aurora Place, 88 Phillip Street, Sydney NSW 2000  
Fax number: +61 2 9994 7777  
Attention: Managing Director of CIF

**Jersey Companies**

Address: c/o Ogier & LeMasurier, Jersey; Whitely Chambers, Don  
Street, St Helier, Jersey, Channel Islands.  
Fax number: +44 (0) 1534-504444  
Attention: Simon Mackenzie

**7. AMENDMENT AND ASSIGNMENT**

**7.1 Amendment**

This deed can only be amended, supplemented, replaced or novated by another deed signed by the parties.

**7.2 Assignment**

A party may only dispose of, declare a trust over or otherwise create an interest in its rights under this deed with the prior written consent of each other party.

**8. GENERAL**

**8.1 Governing law**

- (a) This deed is governed by the law in force in New South Wales.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of

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those courts, for any proceedings in connection with this deed, and waives any right it might have to claim that those courts are an inconvenient forum.

**8.2 Liability for expenses**

Each party must pay its own expenses incurred in negotiating, executing, stamping and registering this deed.

**8.3 Giving effect to this deed**

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this deed.

**8.4 Waiver of rights**

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

**8.5 Operation of this deed**

- (a) This deed contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this deed and has no further effect.
- (b) Any provision of this deed which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this deed enforceable, unless this would materially change the intended effect of this deed.

**8.6 Consents**

Where this deed contemplates that the party may agree or consent to something (however it is described), the party may:

- (a) agree or consent, or not agree or consent, in its absolute discretion; and
- (b) agree or consent subject to conditions,

unless this deed expressly contemplates otherwise.

8.7 Counterparts

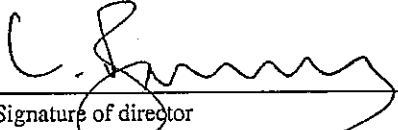
This deed may be executed in counterparts.

8.8 Attorneys

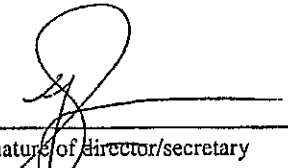
Each person who executes this deed on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

EXECUTED as a deed.

EXECUTED by Challenger Management Services Limited:

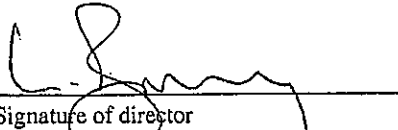
  
\_\_\_\_\_  
Signature of director

LUCAS BARRY  
\_\_\_\_\_  
Name

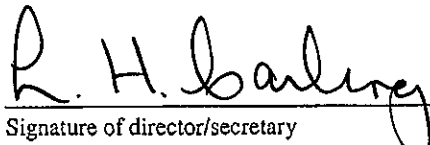
  
\_\_\_\_\_  
Signature of director/secretary

Gerard A. Browne  
\_\_\_\_\_  
Name

EXECUTED by Challenger Group Services UK Limited:

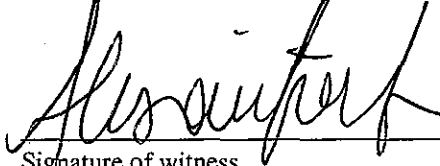
  
\_\_\_\_\_  
Signature of director

LUCAS BARRY  
\_\_\_\_\_  
Name

  
\_\_\_\_\_  
Signature of director/secretary


LYN HOWELL CASLING  
\_\_\_\_\_  
Name

SIGNED, SEALED and DELIVERED for  
Challenger Listed Investments Limited  
under power of attorney in the presence of:

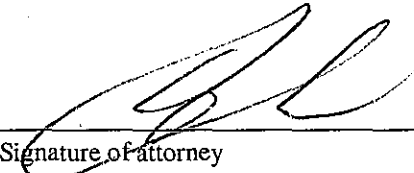
  
Signature of witness

ALISON TELFER  
Name

14 JULY 2005  
Date of power of attorney

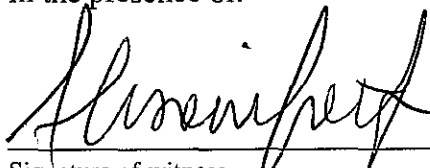
  
Signature of attorney

STEVEN BICKERTON  
Name

  
Signature of attorney


GARY KALMIN  
Name

SIGNED, SEALED and DELIVERED for  
Challenger Listed Investments Limited  
in its capacity as responsible entity of CIF  
Investment Trust 1 under power of attorney  
in the presence of:

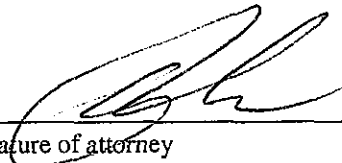
  
Signature of witness

ALISON TELFER  
Name

14 JULY 2005  
Date of power of attorney

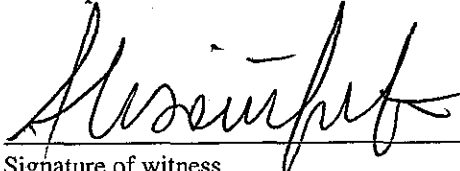
  
Signature of attorney

STEVEN BICKERTON  
Name

  
Signature of attorney

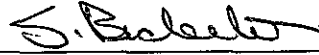
GARY KALMIN  
Name

**SIGNED, SEALED and DELIVERED** for  
**Challenger Listed Investments Limited**  
in its capacity as responsible entity of CIF  
Investment Trust 2 under power of attorney  
in the presence of:


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

ALISON TELFER  
\_\_\_\_\_  
Name

14 JULY 2005  
\_\_\_\_\_  
Date of power of attorney

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

STEVEN BICKERTON  
\_\_\_\_\_  
Name

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

GARY KALMIN  
\_\_\_\_\_  
Name

**EXECUTED by Challenger Towers  
Limited:**

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

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature of director/secretary

\_\_\_\_\_  
Name

**EXECUTED by Challenger Northern  
Gas Limited:**

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

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature of director/secretary

\_\_\_\_\_  
Name

SIGNED, SEALED and DELIVERED for  
Challenger Listed Investments Limited  
in its capacity as responsible entity of CIF  
Investment Trust 2 under power of attorney  
in the presence of:

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

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

\_\_\_\_\_  
Name

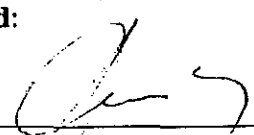
\_\_\_\_\_  
Name

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

\_\_\_\_\_  
Date of power of attorney

\_\_\_\_\_  
Name

**EXECUTED by Challenger Towers  
Limited:**

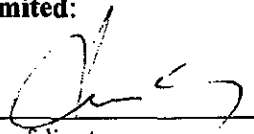
  
\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/secretary

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

**EXECUTED by Challenger Northern  
Gas Limited:**

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


\_\_\_\_\_  
Signature of director/secretary

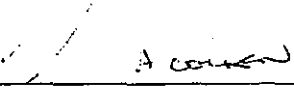
\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

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**EXECUTED by Challenger Wales and  
the West Gas Limited:**

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

  
\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature of director/secretary

\_\_\_\_\_  
Name