

# TRUST DEED

- establishing -

BriChi Fund



Level 21, 400 George Street  
Brisbane Qld 4000 Australia

T 61 7 3231 2955

F 61 7 3231 8955

W [www.cgwstructures.com.au](http://www.cgwstructures.com.au)

DMH10082199 3215673v1/LS

## INDEX

Clause	Subject Matter	Page
INDEX.....		i
1.	ESTABLISHMENT .....	1
2.	DIVISIONS .....	1
3.	COVENANTS.....	1
- DIVISION A - .....		1
4.	INTERPRETATION - DEFINITIONS.....	1
5.	INTERPRETATION - GENERAL .....	4
6.	EMPLOYER'S AND TRUSTEE'S POWERS .....	5
7.	PROPER LAW .....	5
8.	MEMBERSHIP OF FUND .....	5
9.	MEMBERSHIP NOTIFICATION REQUIREMENTS .....	6
10.	MEETINGS OF MEMBERS .....	6
11.	FUND RECORDS .....	7
12.	ACCUMULATION ACCOUNTS .....	7
13.	VALUATION.....	10
14.	FUND TRUSTEE - APPOINTMENT, VACANCY AND REMOVAL .....	11
15.	TRUSTEE'S INVESTMENT POWERS.....	11
16.	TRUSTEE'S POWERS OF MANAGEMENT .....	12
17.	DUTIES AND LIABILITIES OF TRUSTEE.....	14
18.	INDEMNITY OF TRUSTEE.....	14
19.	REMUNERATION OF TRUSTEE .....	14
20.	APPOINTMENT OF SERVICE PROVIDERS.....	15
21.	ACTUARIAL INVESTIGATIONS.....	15
22.	CONTRIBUTIONS TO FUND .....	16
23.	TRANSFERS TO AND FROM ROLLOVER FUNDS.....	16
24.	LIMITATION ON BENEFITS.....	17
25.	MONEYS OWING TO FUND.....	17
26.	FORFEITURE OF BENEFITS.....	17
27.	CONVERSION OF LUMP SUM TO PENSION.....	18
28.	PENSION PAYMENT CONDITIONS.....	20
29.	GENERAL PENSION PAYMENT CONDITIONS.....	22
30.	TRANSFER IN SPECIE .....	23
31.	PAYMENT OF BENEFITS ON DEATH .....	24
32.	PAYMENT OF BENEFITS .....	25
33.	PAYMENT OF TAXATION.....	25
34.	POLICIES OF ASSURANCE .....	25
35.	PARTICIPATING EMPLOYERS .....	26
36.	VARIATION OF TRUST DEED.....	26
37.	WINDING UP OF FUND .....	26
- DIVISION B - .....		27
38.	MEMBERSHIP CLASSIFICATION .....	27
39.	BENEFITS.....	28
40.	RETIREMENT .....	28
41.	DISABLEMENT .....	28
42.	EARLY RETIREMENT FROM GAINFUL EMPLOYMENT .....	28
43.	DEATH .....	29
44.	BENEFIT PAYABLE ON REACHING PRESERVATION AGE .....	29
45.	INCREASES TO BENEFITS.....	29
46.	TIME OF PAYMENT OF BENEFITS .....	29

**THIS DEED** is made on the date specified in Schedule A by the person or entity named in Schedule A as the Trustee (Trustee).

## 1. ESTABLISHMENT

---

The Trustee declares that it will act as trustee of the fund (the Fund). The Fund will be known by the name set out in Schedule A.

## 2. DIVISIONS

---

Division A of this Deed deals with the management and administration of the Fund and Division B deals with the Benefits payable from the Fund.

## 3. COVENANTS

---

The Trustee covenants that it will perform and observe the covenants, trusts, and conditions of this Deed.

### - DIVISION A -

## 4. INTERPRETATION - DEFINITIONS

---

In this Deed:

**Accumulation Account** means the account established on behalf of each Member or Beneficiary in respect of each Class of which the person is a member.

**Annuity** has the same meaning as in Section 10 of the SIS Act.

**Beneficiary** means a person presently and absolutely entitled to receive a Benefit including a Pensioner.

**Benefit** means any amount which is payable out of the Fund to or in respect of a Member.

**Benefit Entitlement** means any amount held in the Fund which may become payable to a person but to which the person has not become absolutely and indefeasibly entitled.

**Commissioner** means, as the case requires, the Commissioner of Taxation, Australian Prudential Regulation Authority or other regulatory body having responsibility for administration of the Relevant Requirements in relation to the Fund.

**Complying Superannuation Fund** means a complying superannuation fund pursuant to the Relevant Requirements.

**Condition of Release** has the same meaning as in Regulation 6.01 of the SIS Regulations.

**Constitutional Corporation** has the same meaning as in Section 10 of the SIS Act.

**Contribution Splitting Request** means a valid application by a Member under Regulation 6.44 of the SIS Regulations.

**Contributions** means gross payments to the Fund in respect of Members prior to the withdrawal of any Taxation payable in respect of those Contributions, and for the purposes of this definition, payments includes the transfer of an asset which is intended by the transferee to be a contribution.

**Regulated Fund** means a regulated superannuation fund as defined in Section 19 of the SIS Act.

**Relevant Requirements** means any requirements (including the provisions of the SIS Act) which the Trustee or the Deed must comply with to avoid a contravention of the requirements or in order for the Fund to qualify for concessional Taxation treatment as a Complying Superannuation Fund, and includes Part VIIIA of the Family Law Act 1975 and the Family Law (Superannuation) Regulations 2001.

**Registrable Superannuation Entity** has the same meaning as in the SIS Act.

**Restricted Non-Preserved Benefit** in respect of a Member means an amount determined in accordance with Regulation 6.08 of the SIS Regulations.

**Reversionary Beneficiary** means a Dependant nominated by a Pensioner and, in default of a nomination by the Pensioner where appropriate for the particular form of pension concerned, a Dependant nominated by the Trustee who is eligible to receive a Benefit upon the death of a Pensioner.

**Rollover Fund** means any other fund or benefit arrangement into which or from which assets can be transferred without causing the Fund to be in breach of the Relevant Requirements.

**Rollover Payment** means any payment made or received by the Trustee in circumstances which satisfy the Relevant Requirements to or from any Rollover Fund.

**SIS Act** means the Superannuation Industry (Supervision) Act 1993 and any regulations pursuant to it.

**SIS Regulations** means the Regulations made under the SIS Act.

**Spouse** includes a spouse as defined in Section 10 of the SIS Act, and where there is more than one such person the Trustee may determine which is considered to be the Spouse.

**Tax Act** means the Income Tax Assessment Act 1936, the Income Tax Assessment Act 1997, and any regulations pursuant to those acts.

**Tax Saving Amount** means the total amount which the Trustee must pay to Beneficiaries in order to claim a deduction for the amount calculated in accordance with either sub-section 279D(2) or section 295-485 of the Tax Act following the death of a Member.

**Taxation** includes any tax, surcharge, levy, impost or duty payable by the Trustee in respect of income, Contributions, capital gains, benefits or any transaction entered into by the Trustee.

**Total and Permanent Disablement** means:

- with respect to any potential benefit payable out of the proceeds of any insurance Policy effected by the Trustee in respect of the Member and in force at the time of the Total and Permanent Disablement of the Member, the definition contained in that Policy; or
- if there is no such Policy (or in any case, for any potential benefit payable on Total and Permanent Disablement other than proceeds of an insurance Policy) then Total and Permanent Disablement in relation to a Member means permanent incapacity for the purposes of payment of benefits under the Relevant Requirements,

and the expression **Totally and Permanently Disabled** has a corresponding meaning.

**Transition to Retirement Income Stream** means one that meets the rules in paragraph (b) of the definition of transition to retirement income stream in Regulation 6.01(2) of the SIS Regulations.

**Trustee** means the Trustee or Trustees for the time being of the Fund.

**Trustee** means the Trustee or Trustees for the time being of the Fund.

- (g) a reference to a Statute includes a reference to or citation of all enactments amending or consolidating the Statute and to an enactment substituted for the Statute;
- (h) monetary references are references to Australian currency;
- (i) the Background does not form part of the document;
- (j) the Schedule and Annexures form part of this document;
- (k) a reference to an Item is a reference to an Item in the Schedule to this document; and
- (l) headings are included for convenience only and do not affect interpretation of this document.

## **6. EMPLOYER'S AND TRUSTEE'S POWERS**

---

### **6.1 Employer's Power**

Nothing in this Deed affects the powers of an Employer with regard to the terms of employment or dismissal of an Employee. The existence or cessation of any actual or prospective Benefit under the Fund will not be grounds for claiming or increasing damages in any action brought against an Employer in respect of any termination of employment or otherwise.

### **6.2 Exercise of Discretions**

Despite anything to the contrary in this Deed:-

- (a) in exercising its powers the Trustee is not subject to the direction of any other person except where the Relevant Requirements permit. If any provisions of this Deed would permit a person to give a direction to the Trustee in circumstances other than those permitted by the Relevant Requirements, the Trustee may disregard any such direction;
- (b) if a discretion under this Deed may be exercised by a person other than the Trustee, that discretion must not be exercised without the consent of the Trustee except in circumstances permitted under the Relevant Requirements.

## **7. PROPER LAW**

---

This Deed will be governed and construed in accordance with the laws of the State or Territory of the Commonwealth of Australia in which the Deed is executed.

## **8. MEMBERSHIP OF FUND**

---

### **8.1 Application for Membership**

- (a) Any person may apply to become a Member by completing an application for membership.
- (b) If an application for membership is not provided, the payment of a Contribution in respect of a person is deemed to constitute the receipt of an application for membership in respect of that person.

### **8.2 Admission to Membership**

- (a) Subject to clause 8.2(d), a Member is deemed to have joined the Fund on the date the completed application for membership is received or deemed to have been received or any other date determined by the Trustee.
- (b) The Trustee may impose conditions on a person's admission as a Member and may vary the conditions at any time.

## **10.6 Voting**

Each Member is entitled to one vote with the chairperson being given a casting vote.

## **10.7 Notice from members**

If the Members are required to give notice to the Trustee under any provisions of this Deed a notice signed by the chairperson of any meeting of Members certifying that a matter has been agreed to by a majority of Members is considered to be a notice from a majority of Members.

## **10.8 Member includes Pensioner**

For the purposes of this clause 10, Member includes a Pensioner.

## **11. FUND RECORDS**

---

### **11.1 Records and accounts to be kept**

The Trustee must keep and maintain appropriate minutes and other records and documents required by the Relevant Requirements.

### **11.2 Audit**

The financial statements and other relevant records must be audited annually or at any other times required by the Relevant Requirements.

### **11.3 Trust Deed**

A copy of this Deed must be made available for inspection as required by the Relevant Requirements.

### **11.4 Information for Trustee**

When requested by the Trustee a person who is a Member, Pensioner or Beneficiary must provide all information in its power or possession which may in the opinion of the Trustee be necessary or expedient for the management and administration of the Fund.

### **11.5 Disclosure and Reporting Requirements**

- (a) The Trustee must provide to Employers, Members and former Members and the Commissioner any information reports and returns in relation to the Fund required by the Relevant Requirements.
- (b) The Trustee may provide the Tax File Numbers of the Members, Pensioners and Beneficiaries of the Fund to any person where the Trustee has or reasonably believes it has the consent of the relevant person to the disclosure or is required or allowed to do so by law.

## **12. ACCUMULATION ACCOUNTS**

---

### **12.1 Separate Member Accounts**

The Trustee must establish an Accumulation Account in respect of each Member or Beneficiary.

### **12.2 Credits**

The Trustee must credit the following amounts to the relevant Accumulation Account as appropriate:

- (a) any amount paid into the Fund in respect of the Member;

- (iv) the proceeds of any Policy effected by the Trustee where the Trustee determines that it should not be credited to an Accumulation Account, Pension Account or the Pension Reserve Account; and
  - (v) any other amounts which the Trustee from time to time determines.
- (b) The Trustee must debit the Income Account, subject to Clause 12.7 and sub-clause (g), with the following:
- (i) any loss sustained on the disposal of any investments of the Fund;
  - (ii) any costs or charges incurred pursuant to Clause 19 which are not debited to an Accumulation Account;
  - (iii) any debits arising out of adjustments pursuant to Clause 12.6;
  - (iv) the cost of any Policy effected by the Trustee where the Trustee determines that it should not be debited to an Accumulation Account;
  - (v) any deficiency arising from a valuation of the Fund;
  - (vi) any amount payable or which may become payable by way of Taxation in respect of the Contributions and the income and profits of the Fund which are not debited to an Accumulation Account as the Trustee determines to be equitable;
  - (vii) any income transferred to a Reserve Account;
  - (viii) any income transferred to an Accumulation Account, Pension Account or the Pension Reserve Account; and
  - (ix) any other amounts which the Trustee from time to time determines.
- (c) At the end of each Fund Year the Trustee must determine the fund earning rate and calculate the amount available for distribution.
- (d) Before allocating any portion of the amount available for distribution the Trustee may transfer a portion of the amount to any of the Reserve Accounts.
- (e) Subject to Clause 12.7, the Trustee must allocate the earnings of the Fund available for distribution after any transfer to Reserve Accounts to each Accumulation Account, Pension Account and the Pension Reserve Account in proportion to the amounts standing to the credit of that account at the beginning of the relevant Fund Year, appropriate adjustments being made for amounts credited or debited to each Account since that date, or in any other way the Trustee in its discretion determines.
- (f) If the Trustee is required to establish a fund earning rate in respect of a portion of a Fund Year or before the fund earning rate has been or can be established for a full Fund Year, the Trustee must determine that rate in accordance with the Relevant Requirements on a basis which the Trustee considers to be equitable.
- (g) The Trustee may determine to credit the amounts in sub-clause (a) and/or debit the amounts in sub-clause (b) or debit or credit any amount which this Deed requires to be transferred to or from the Income Account directly to any Accumulation Account and/or Pension Account and/or the Pension Reserve Account and/or Reserve rather than to the Income Account.

## **12.5 Reserve Account**

The Trustee may establish one or more Reserve Accounts and may transfer amounts from the Income Account to a Reserve Account pursuant to Clause 12.4 above or from a Member's Accumulation Account pursuant to Clause 27.2 or from the Pension Reserve Account pursuant to Clause 27.4, or from one Reserve Account to another.

Trustee must determine whether there is a surplus or deficiency and whether it is equitable to transfer the surplus or deficiency to the Income Account.

## **14. FUND TRUSTEE - APPOINTMENT, VACANCY AND REMOVAL**

---

### **14.1 Trustee Criteria**

The appointment, removal and composition of the Trustee is governed by this Deed unless the Relevant Requirements otherwise provide.

### **14.2 Eligibility for Trustee**

The Trustee of the Fund must be a Constitutional Corporation, and must be:

- (a) a Trustee that satisfies or is permissible under the Relevant Requirements; or
- (b) a Trustee approved by the Commissioner.

### **14.3 Appointment of Trustee**

The majority of Members, subject to the other provisions of this Clause, determine who acts as the Trustee, and may appoint a new or additional trustee by deed or notice in writing.

### **14.4 Change of Trustee**

A Constitutional Corporation immediately ceases to act as a Trustee if:

- (a) it resigns by instrument in writing;
- (b) the Trustee is disqualified from holding office by operation of law;
- (c) it is wound up or placed in receivership; or
- (d) a majority of Members resolve to terminate the appointment of the Trustee.

### **14.5 Member may be Director of Trustee**

No Director, officer or employee of a Trustee that is a Constitutional Corporation is disqualified from being a Member of the Fund.

### **14.6 Confirmation of Discharge of Retiring Trustee**

Despite any rule of law or legislative provisions to the contrary, a person who retires or is removed as Trustee or a co-Trustee of the Fund in accordance with the provisions of this Deed is discharged from the trusts contained in this Deed as from the date of retirement or removal provided that there is at least one continuing Trustee.

### **14.7 Member includes Pensioner**

For the purposes of this clause 14, Member includes a Pensioner.

## **15. TRUSTEE'S INVESTMENT POWERS**

---

### **15.1 Investment Policy and Strategy**

The Trustee must formulate the investment strategy of the Fund and determine a policy to give effect to that strategy.

### **15.2 Authorised Investments**

The assets of the Fund may be invested in any of the following investments:

- (a) to settle, compromise or submit to arbitration any claims, or matters relating to this Deed or to the rights of Members, former Members or Beneficiaries;
- (b) to commence, carry on or defend legal proceedings;
- (c) to borrow money and to secure the repayment of it in any manner and upon any terms which the Trustee considers appropriate unless this would constitute a contravention of the Relevant Requirements;
- (d) to insure or reinsure any risks, contingencies or liabilities of the Fund;
- (e) to underwrite any risks, contingencies or liabilities under any superannuation arrangement conducted by any Employer where there is an agreement for a transfer of Employees to the Fund;
- (f) to purchase an Annuity to provide all or a part of the Pension payable in respect of a Member;
- (g) to retain the services of professional or other advisers and consultants;
- (h) to pay out of the Fund all costs, expenses and outgoings (including Taxation) of and incidental to the management and administration of the Fund and to pay out of the Fund the Trustee's professional fees (if any);
- (i) to indemnify anyone in respect of any claims, matters or things relating to the Fund or to the rights of Members, former Members or Beneficiaries in respect of the Fund;
- (j) to provide a full or partial release to anyone in respect of any matters which have arisen or may arise as a result of an association, involvement or membership of the Fund by that person;
- (k) to insure any liability of the Trustee or any Directors or officers of the Trustee or the liability of the Fund to indemnify or reimburse the Trustee or its Directors or officers pursuant to Clause 18;
- (l) to permit any asset of the Fund to be held or registered in the name of any nominee of the Trustee (subject to any restrictions contained in the Relevant Requirements);
- (m) to deal with itself in different capacities; and
- (n) generally to do anything the Trustee considers appropriate for the administration, maintenance and preservation of the Fund.

## **16.2 Exercise of Trustee Powers**

All the powers and discretions conferred upon the Trustee or any Director by this Deed or by law may be exercised even if the Trustee or Director may have a direct, indirect or personal interest (whether as a shareholder, director, member or partner of any company, organisation or partnership) in the manner or result of exercising the power or discretion or may benefit directly or indirectly as a result of the exercise of the power or discretion and notwithstanding that the Trustee may be the sole Trustee.

## **16.3 Trustee Discretion**

Subject to Clause 31.2, the Trustee has an absolute and uncontrolled discretion as to the exercise and the manner, mode and timing of exercise of the trusts, authorities, powers and discretions conferred on it by this Deed.

## **16.4 Trustee May Delegate**

The Trustee may delegate to any person or company any of the Trustee's powers or discretions in its absolute discretion unless this would constitute a contravention of the Relevant Requirements.

### **19.3 Reimbursement**

The Trustee is entitled to reimbursement from the Fund for and in respect of expenses properly incurred in carrying out its duties including:

- (a) all costs and expenses incurred in connection with the acquisition and disposal of or other dealings with investments of the Fund;
- (b) fees and expenses of the service providers and consultants engaged by the Trustee;
- (c) all Taxation payable by the Trustee in connection with the Fund;
- (d) all fees, wages and expenses of any employees or agents employed by the Trustee;
- (e) any administrative costs charged in relation to the Fund; and
- (f) any expenses in connection with the maintenance of accounting records and the preparation and distribution of any accounting, taxation or other reports or notices.

## **20. APPOINTMENT OF SERVICE PROVIDERS**

---

### **20.1 Actuary and Auditor**

The Trustee must if necessary appoint:

- (a) an Actuary;
- (b) an Auditor who is appropriately qualified according to any criteria specified by the Relevant Requirements.

### **20.2 Administration Manager**

The Trustee may appoint an administration manager to provide fund administration services to the Trustee on terms which the Trustee considers appropriate.

### **20.3 Investment Manager**

The Trustee may appoint in writing one or more companies (or individuals where not prohibited by the Relevant Requirements) to act as investment managers for the Fund on such terms as the Trustee determines provided that the appointment and the terms of the appointment are in accordance with the Relevant Requirements.

### **20.4 Custodian**

The Trustee may appoint one or more companies (or individuals where not prohibited by the Relevant Requirements) to act as a custodian for the Fund on terms and conditions the Trustee determines provided that the appointment and the terms of the appointment are in accordance with the Relevant Requirements.

## **21. ACTUARIAL INVESTIGATIONS**

---

If an Actuary has been appointed, the Trustee may ask the Actuary for information or advice from time to time in accordance with the provisions of this Deed but the Trustee is under no obligation to be bound by or to act upon the advice provided unless required by the Relevant Requirements.

### **23.3 Roll Over**

Where a Member or former Member wishes to effect a Rollover Payment in respect of all or any of the entitlement of that person in the Fund, that person must make a written request to the Trustee nominating the Rollover Fund and must provide any other details the Trustee requires.

### **23.4 Preserved Payment Transfers**

Where a Member or former Member has Preserved Payment Benefits in the Fund the Trustee must ensure that the provisions of the Other Fund require that the Preserved Payment Benefit must be preserved and vested in accordance with the Relevant Requirements.

### **23.5 Transfers from Rollover Funds**

- (a) Where a Member is or was a member or a beneficiary under any other Rollover Fund the Trustee may take over any part of the assets of the Rollover Fund.
- (b) The Trustee holds any amounts transferred as part of the particular Member's Accumulation Account.
- (c) On any transfer from a Rollover Fund the amount of the transfer which represents a Member's Contributions is the amount as the trustee of the Rollover Fund certifies or, failing a certification by that trustee, the amount the Trustee considers to be fairly attributable to the contributions of that Member together with accrued earnings.

### **23.6 Overriding Conditions on Portability**

Despite anything to the contrary in this Deed, no payment or transfer can be accepted from or made to another Rollover Fund if, in the opinion of the Trustee, this would cause the Fund to be in breach of any of the Relevant Requirements.

### **23.7 Transfers to Eligible Rollover Fund**

Despite anything to the contrary in this Deed the Trustee may and, if required by the Relevant Requirements must, transfer the entitlement of a Member or Beneficiary to an Eligible Rollover Fund where such a transfer is permitted or required under the Relevant Requirements.

## **24. LIMITATION ON BENEFITS**

---

Despite any other provision of this Deed the Trustee must not pay out any Benefits to Members, the Dependants of Members or Beneficiaries where the payment could cause the Fund to become a non-complying fund.

## **25. MONEYS OWING TO FUND**

---

Where a Member owes any money to the Trustee, the Trustee may debit an Accumulation Account of the Member for a sum equivalent to the amount owing provided it is permitted by the Relevant Requirements, and may retain the money in the Fund.

## **26. FORFEITURE OF BENEFITS**

---

### **26.1 Accumulation Account Residue**

Any person who has been paid all Benefits which the Trustee considers should be paid to the person pursuant to this Deed and who still has a residual amount standing to the credit of their Accumulation Account or Pension Account forfeits the amount, which is dealt with as a forfeited Benefit. Once the liability for all pensions being paid from the Pension Reserve Account has ceased, any further amount in the Pension Reserve Account is forfeited and is to be dealt with as a forfeited Benefit.

- (vii) any credit arising out of any adjustments made in accordance with Clause 12.6.
- (b) The Trustee must debit the following amounts to the Pension Account of a Pensioner:
  - (i) any amount transferred out of the Fund as a Rollover Payment which the Trustee considers it appropriate to debit;
  - (ii) any payments made to or in respect of the Pensioner or a Reversionary Beneficiary pursuant to this Deed;
  - (iii) such proportion of any Taxation in respect of the earnings of the Fund credited to the Pension Account or arising as a result of a Rollover Payment as the Trustee determines;
  - (iv) such of the amounts paid or incurred in accordance with Clauses 18 or 19 as the Trustee considers equitable;
  - (v) a proportion of any losses of the Fund as the Trustee considers equitable;
  - (vi) any amount transferred to the Accumulation Account of a Beneficiary;
  - (vii) if the Trustee is going to pay a Pension under Clauses 28.3 or 28.4, the amount transferred to the Pension Reserve Account;
  - (viii) any amount transferred to a Reserve Account;
  - (ix) any amount paid under Clause 27.6 in respect of the Pensioner; and
  - (x) any other amounts as the Trustee considers equitable.

#### **27.4 Establishment and Operation of Pension Reserve Account**

- (a) If the Trustee is going to pay a Pension under Clauses 28.3 or 28.4, the Trustee must establish a Pension Reserve Account for the Fund.
- (b) The Trustee must credit the following amounts to the Pension Reserve Account:
  - (i) any amount transferred into the account under paragraphs 28.3(c) or 28.4(c);
  - (ii) such earnings of the Fund as the Trustee determines to be equitable;
  - (iii) the proceeds of any Policy effected in respect of the Pensioner which the Trustee considers it appropriate to credit;
  - (iv) any amount transferred from a Reserve Account as the Trustee determines reasonable; and
  - (v) any credit arising out of any adjustments made in accordance with Clause 12.6.
- (c) The Trustee must debit the following amounts to the Pension Reserve Account:
  - (i) any payments made to or in respect of the Pensioner or a Reversionary Beneficiary pursuant to this Deed;
  - (ii) such proportion of any Taxation in respect of the earnings of the Fund credited to the Pension Reserve Account as the Trustee determines;
  - (iii) such of the amounts paid or incurred in accordance with Clauses 18 or 19 as the Trustee considers equitable;
  - (iv) a proportion of any losses of the Fund as the Trustee considers equitable;
  - (v) any amount transferred from the Pension Reserve Account under Clause 12.5; and

- (d) If the cashing restriction for a Benefit being paid to a Member requires the Pension to be a non-commutable form of income stream, the Pension paid under this clause may only be paid as a non-commutable pension.

### **28.3 Complying Fixed-Term Pension (Regulation 1.06(7))**

- (a) The terms of payment of the Pension must comply with the limitations and requirements set out in Regulations 1.06(7) and 1.07B and any other provisions of the Relevant Requirements from time to time that relate to a Pension intended to be a Pension paid in accordance with Regulation 1.06(7) having regard to the commencement date of the Pension as if those provisions were incorporated into this Deed.
- (b) The terms of the Pension may include any other terms permitted under the Relevant Requirements for this type of Pension.
- (c) The Trustee must transfer an amount which it considers necessary to pay the Pension from the Pensioner's Pension Account to the Pension Reserve Account, and the Pension is payable from the amount standing to the credit of the Pension Reserve Account.
- (d) If the cashing restriction for a Benefit being paid to a Member requires the Pension to be a non-commutable form of income stream, the Pension paid under this clause may only be paid as a non-commutable pension.

### **28.4 Lifetime Pension (Regulation 1.06(2))**

- (a) The terms of payment of the Pension must comply with the limitation and requirements of Regulations 1.06(2) and 1.07B (subject to the exceptions set out in Regulation 1.06(3)) and any other provisions of the Relevant Requirements from time to time that relate to a Pension intended to be a Pension paid in accordance with Regulation 1.06(2) having regard to the commencement date of the Pension as if those provisions were incorporated into this Deed.
- (b) The terms of the Pension may include any other terms permitted under the Relevant Requirements for this type of Pension.
- (c) The Trustee must transfer an amount which it considers necessary to pay the Pension from the Pensioner's Pension Account to the Pension Reserve Account, and the Pension is payable from the amount standing to the credit of the Pension Reserve Account.
- (d) If the cashing restriction for a Benefit being paid to a Member requires the Pension to be a non-commutable form of income stream, the Pension paid under this clause may only be paid as a non-commutable pension.

### **28.5 Market Linked Pension (Regulation 1.06(8))**

- (a) The terms of payment of the Pension must comply with the limitations and requirements set out in Regulations 1.06(8) and 1.07C and any other provisions of the Relevant Requirements from time to time that relate to a Pension intended to be a Pension paid in accordance with Regulation 1.06(8) as if those provisions were incorporated into this Deed. If the Pension is one to which Regulation 1.06(1B) applies, then the terms of payment of the Pension must comply with the limitations and requirements set out in Regulation 1.06(1B) as well.
- (b) The terms of the Pension may include any other terms permitted under the Relevant Requirements for this type of Pension.
- (c) The Pension is payable from the amount standing to the credit of the Pension Account of the Pensioner.
- (d) If the cashing restriction for a Benefit being paid to a Member requires the Pension to be a non-commutable form of income stream, the Pension paid under this clause may only be paid as a non-commutable pension.

Annuity, must not exceed the amount in the Fund to which the Member is entitled at the date of the transfer or purchase.

## **29.2 Pension Increase**

Any Pension payable under this Deed must, if required by the Relevant Requirements and agreed to by the Trustee, be increased from time to time by an amount the Trustee in its absolute discretion considers appropriate to compensate the Pensioner for cost of living increases **PROVIDED** that any increase must be at least the minimum required by the Relevant Requirements and does not exceed any maximum permitted by the Relevant Requirements.

## **29.3 Reversionary Pension**

After the death of a person who was at the time of death in receipt of a Pension, the Trustee may pay to the Reversionary Beneficiary a Pension as allowed by the Relevant Requirements and must pay a Pension to the Reversionary Beneficiary as required by the Relevant Requirements.

## **29.4 Death of Pensioner**

If a Pensioner or a Reversionary Beneficiary dies while there is still an amount standing to the credit of the Pension Account and where no Reversionary Beneficiary has been nominated, the Trustee must deal with the balance of the Pension Account or if the Pension is being paid from the Pension Reserve Account, that part of the Pension Reserve Account as the Trustee determines is appropriate, in accordance with Clause 31 as a Benefit.

## **29.5 Conditions of Commutation**

On the written application of a Pensioner or Reversionary Beneficiary the Trustee may commute the whole or any part of a Pension to a lump sum Benefit **PROVIDED THAT:**

- (a) the commutation is permitted by the Relevant Requirements that apply to the particular Pension, and incorporated into this Deed, and this Deed and the terms of payment of the Pension;
- (b) where any amount remains in the Fund after the entitlement of all Pensioners and Reversionary Beneficiaries have been paid out that amount shall be dealt with as though it were a forfeited benefit; and
- (c) the Trustee is satisfied the commutation would not materially disadvantage the Employers or the remaining Members, Pensioners or Reversionary Beneficiaries.

## **29.6 Adjustment of Pension following the Commutation**

Following the commutation of a part of a Pension the Trustee must reduce the total amount of the instalments of any Pension payable to the Pensioner by any amount it considers appropriate.

## **30. TRANSFER IN SPECIE**

---

### **30.1 Transfer of Investments**

The Trustee may with the consent of a Member or the Dependants of a Member to whom a Benefit is payable transfer investments of the Fund of equivalent value instead of paying the whole or part of the amount otherwise payable.

### **30.2 No Beneficial Interest**

With the exception of the provisions of this Clause and Clause 15.5, no Member or Beneficiary has or may acquire any beneficial or other interest in specific assets of the Fund.

after reasonable enquiries, the Trustee may pay the Benefit to any individuals the Trustee considers reasonable in whatever shares the Trustee determines.

## **32. PAYMENT OF BENEFITS**

---

### **32.1 Payment to Others on Behalf of Beneficiaries**

When any Beneficiary is under 18 or when in the opinion of the Trustee it would be in the best interests of the Beneficiary, the Trustee may pay all or part of any Benefit to any other person for application on behalf of the Beneficiary and the receipt of the person to whom the Benefit is paid is a complete discharge to the Trustee. The Trustee is not required to see to the application of the Benefit so paid.

### **32.2 Restrictions on Payment of Benefits**

- (a) Benefits may be paid when and to the extent that the Trustee is permitted to pay them under the Relevant Requirements and must be paid when and to the extent that the Trustee is required to pay them under the Relevant Requirements.
- (b) A Member is only entitled to the Member's Preserved Payment Benefits or Restricted Non-Preserved Benefits if the Member has satisfied a Condition of Release.
- (c) Subject to the provisions of this Deed (including this clause and clause 31.2) and the Relevant Requirements, benefits may be cashed in any one or more of the following ways:
  - (i) one or more lump sums;
  - (ii) one or more pensions; and/or
  - (iii) the purchase of one or more annuities.

## **33. PAYMENT OF TAXATION**

---

### **33.1 Tax on Benefits**

The Trustee may deduct from any Benefit any Taxation required to be deducted or which the Trustee considers should be deducted from it.

### **33.2 Tax on Contributions**

The Trustee may deduct any Taxation payable in relation to a Contribution prior to the Contribution being credited to an Accumulation Account.

## **34. POLICIES OF ASSURANCE**

---

### **34.1 Trustee may effect Policy**

The Trustee may effect separate Policies and may secure the Benefit of a Member or class of Members by means of individual Policies or group Policies providing any benefits the Trustee considers appropriate.

### **34.2 No Responsibility**

The Trustee is not responsible or liable to the Member, the Member's legal personal representative or the Dependants of the Member if the Trustee does not take out a Policy, or if there are no or insufficient proceeds payable under a Policy.

- there are no further Members remaining in the Fund; or
- the Trustee determines for any reason that the Fund should be wound up.

### **37.2 Procedure on Winding Up of Fund**

Where the Fund is to be wound up the Trustee must:

- give written notice to each participating Employer and each Member of the Termination Date;
- arrange to pay or transfer Benefits to or apply on behalf of Members, former Members and Beneficiaries, after deducting the costs of administering and winding up the Fund.

### **37.3 Exhaustion of Fund**

The Trustee shall pay Benefits in the following order to the extent that the assets of the Fund permit:

- (a) Benefits to which Members, former Members or their Dependants are entitled at the Termination Date;
- (b) the provision of additional Benefits to Members, former Members and their Dependants as the Trustee in its absolute discretion considers appropriate;
- (c) payment to any of the Employers (if any) as have made Contributions to the Fund as the Trustee in its absolute discretion considers appropriate **PROVIDED THAT** all procedures required by the Relevant Requirements have been complied with prior to the payment being made.

### **37.4 Duration**

Unless previously terminated the trusts constituted by this Deed continue for a period of 80 years or any longer period allowed by law.

## **- DIVISION B -**

## **38. MEMBERSHIP CLASSIFICATION**

---

### **38.1 Classes of Membership**

Until the Trustee otherwise resolves, there is one class of membership:

A Class

### **38.2 Initial Membership**

When admitting a person to membership each Member will be an A Class Member unless the Trustee determines otherwise.

### **38.3 Different Classes of Membership**

The Trustee may create other classes of membership and must specify the rights of a Member in each different class of membership at the time that class of membership is created, which will determine the Member's Benefit Entitlement in relation to that class of membership. If there is more than one class of membership of the Fund at any time:

- (a) the Trustee must designate a person's class of membership on that person joining the Fund;

#### **43. DEATH**

---

43.1 On the death of a Member the Trustee must pay the full amount standing to the credit of the Member's A Class Accumulation Account as at the date of payment in accordance with the provisions of this Deed.

#### **43.2 Additional Payment**

In addition to the amounts determined under Clause 43.1 the Trustee may also pay an additional amount equal to the Tax Saving Amount, where the Trustee is satisfied that the Trustee will be entitled to claim a deduction under either section 279D or section 295-485 of the Tax Act.

#### **44. BENEFIT PAYABLE ON REACHING PRESERVATION AGE**

---

If a Member meets a Condition of Release just by reaching the Member's Preservation Age prior to retirement from the workforce, the Member is entitled to call on the Trustee to pay to the Member a Benefit equivalent to the amount standing to the credit of the Member's A Class Accumulation Account subject to any cashing restrictions which apply to that Condition of Release.

#### **45. INCREASES TO BENEFITS**

---

In circumstances where a Member ceases to be a Member of the Fund, the Trustee may take into account the Member's interest in a Reserve Account (if any) in determining whether any amount should be transferred from the Reserve Account to the Member's Accumulation Account for purposes of the payment of a Benefit.

#### **46. TIME OF PAYMENT OF BENEFITS**

---

#### **46.1 Trustee must pay Benefit to Member**

When a Member calls on the Trustee to pay a Benefit under this Deed, the Trustee must pay the Benefit, subject to the terms of this Deed and the Relevant Requirements.

#### **46.2 Retention of Benefits in Fund**

Where a person does not require Benefits to be immediately paid, the Trustee may retain all or any part of any Benefit until:

- the person requests that it be paid;
- the Member dies;
- the Trustee is required to pay it under the Relevant Requirements; or
- the Trustee decides to pay it.

EXECUTED as a Deed

**SIGNED SEALED AND DELIVERED** on behalf  
of **FENWICK PTY. LTD. ACN 009 615 758** as  
Trustee in accordance with its Constitution by  
Brian Thomas Hood as director and Elaine  
Joyce Valentine Hatch as director in the  
presence of:

)  
)  
) *A Hood*  
) Director

)  
) *EJ Hatch*  
) Director/Secretary

*[Signature]*  
\_\_\_\_\_  
Witness

*[Signature]*  
\_\_\_\_\_  
Name of Witness (print)

*[Signature]*  
\_\_\_\_\_  
Date

## SCHEDULE A

DATE OF DEED: The 19<sup>th</sup> day of May 2010

TRUSTEE: FENWICK PTY. LTD. ACN 009 615 758

NAME OF FUND: BRICHI FUND

NT STAMP DUTY 02/06/10  
1397 12563101 DD duty \$20.00

**SCHEDULE B  
APPLICATION FOR MEMBERSHIP  
CONFIDENTIAL**

TO: THE TRUSTEE, BRICHI FUND

I, \_\_\_\_\_, apply for membership of the Fund.

- (a) I will be bound by the Trust Deed governing the Fund as varied from time to time.
- (b) I will notify the Trustee if at any time I am not, or I cease to be, Gainfully Employed as defined in the Trust Deed.
- (c) I consent to the Trustee acting as Trustee of the Fund.
- (d) I declare that the information in this Application is accurate in every respect.

**APPLICATION DETAILS**

Name:

Address:

Occupation:

Date of Birth:

Membership Class:

Tax File Number: \_\_\_\_\_

NOTE: Your Tax File Number (TFN) is confidential. Before you provide it, you must be told:

1. Your TFN can be collected under the Superannuation Industry (Supervision) Act 1993.
2. If you provide your TFN, it will only be used for legal purposes, which currently include:
  - finding or identifying your superannuation benefits;
  - calculating tax on eligible termination payments; and
  - providing information to the Commissioner of Taxation.
 These purposes may change in the future as a result of legislative change.
3. It is not an offence not to provide your TFN. If you do not:
  - you may pay unnecessary tax on your benefits, which you will need to reclaim later through the income tax assessment process; and
  - it may be more difficult to find unclaimed benefits that you have, or to locate and amalgamate other benefits you have.

The consequences of not providing your TFN may change in the future as a result of legislative change.

4. If you provide your TFN, the trustee may provide it to:
  - the trustee of another superannuation fund when you transfer your benefits to it, unless you instruct the trustee not to; and
  - the Commissioner of Taxation,
 but otherwise it will be treated as confidential.

**NOMINATED DEPENDANT(S)**

I nominate the following persons as my Nominated Dependants:

SURNAME(S)	GIVEN NAME(S)	RELATIONSHIP	% OF BENEFIT

DATED \_\_\_\_\_ 2010 Signature .....

**SCHEDULE C  
PARTICIPATING EMPLOYERS ADMITTED TO FUND  
PURSUANT TO CLAUSE 35**

---

NAMES OF PARTICIPATING EMPLOYERS	DATE OF ADMISSION	EXECUTION OF PARTICIPATING EMPLOYERS
--	----------------------	--

---

DMH10082199 3215673v1