

**DATED 11 FEBRUARY 1994**  
**(incorporating subsequent amendments documented under amendment deeds or**  
**agreements dated 11 May 1995, 19 December 1995 and 23 October 2001, 4 November**  
**2002 and 25 May 2005)**

**Between**

**[INF RATIL LIMITED]<sup>1</sup>**  
**(the "Company")**

**and**

**[MORRISON & CO INFRASTRUCTURE MANAGEMENT LIMITED]<sup>2</sup>**  
**(the "Manager")**

## **MANAGEMENT AGREEMENT**

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<sup>1</sup> Formerly *Infratil Infrastructure & Utilities NZ Limited*.

<sup>2</sup> Formerly *Infratil Management Limited*.

## *Notes to Consolidated Copy*

This is a copy of the 11 February 1994 Management Agreement, updated to reflect the following:

1. Amendments to the terms of the Management Agreement contemplated by subsequent amendments to the Management Agreement, as noted above. The text shows the provision as amended, and a footnote has been inserted in the relevant clause indicating the amending document under which amendments to that provision were made.
2. Several provisions in amendment agreements to the Management Agreement that are not direct amendments to the text of the Management Agreement but record agreements between the parties related to the specific, direct amendments being made. These provisions appear in **double** square brackets and italics (e.g. *[[relevant text]]*), with a reference to the applicable clause number of the relevant amending agreement appearing before the provision and an identifying description in the applicable footnotes.
3. The provisions of the Infratil Ventures Management Agreement dated 4 November 2002 made between the Manager, the Company and Morrison & Co Ventures Limited (the "Infratil Ventures Management Agreement"), noting that:
  - To the extent that the Infratil Ventures Management Agreement contains direct amendments to the terms of the Management Agreement, these are shown in accordance with note 1 above.
  - To the extent that the provisions of the Infratil Ventures Management Agreement do not directly amend the terms of the Management Agreement, and are specific to the ventures investments portfolio, those amendments appear in this consolidated copy of the Management Agreement in **single** square brackets and italics (e.g. *[relevant text]*), with a reference to the applicable clause number of the Infratil Ventures Management Agreement appearing before the provision. Note that within those italicised provisions:
    - references to a clause is, unless otherwise specified, a reference to the relevant clause of the Infratil Ventures Management Agreement; and
    - defined terms have the meaning given to them in the Management Agreement, unless defined in the Infratil Ventures Management Agreement (and included in this consolidated copy of the Management Agreement).
  - Pursuant to the Infratil Ventures Management Agreement, all the terms and provisions of the Management Agreement as they apply to the management of the existing Portfolio apply to the management of the Portfolio, inclusive of the VCF Portfolio Securities.

Note that footnotes have been placed:

- at the end of a clause if the clause is just a single clause without a series of sub-clauses;
- at the start of a clause (immediately after the title to the relevant clause) if the clause has sub-clauses and the entire clause was amended by the relevant amending document;
- at the end of a subclause where only that specific subclause was amended by the relevant amending document; and
- in an empty space to indicate the deletion of something that previously appeared in that space.

Note also that minor spelling or formatting errors such as clause numbering issues contained in the original agreement or the relevant amending documents remain recorded in the attached as they were in those documents unless formal amendments have been made to correct those errors.

While care has been taken in preparing this copy, it does not replace the original documents and should not be relied upon as an original.

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**THIS AGREEMENT** is dated the 11th day of February 1994

**BETWEEN** [INFRATIL LIMITED]<sup>3</sup> a duly incorporated company having its registered office at [5 Market Lane], Wellington (the "Company")

**AND** [MORRISON & CO INFRASTRUCTURE MANAGEMENT LIMITED]<sup>4</sup> a duly incorporated company having its registered office at [5 Market Lane], Wellington (the "Manager")

**RECITAL**

- A.** The Company has been incorporated to establish a fund for investment in accordance with the Investment Policy (as defined below) primarily in securities issued by New Zealand entities which are characterised by providing utility or infrastructure services in New Zealand and in accordance with the restrictions set out in the Company's Constitution.<sup>5</sup>
- B.** The Company intends to raise funds by means of an offer of ordinary shares and options to the public and intends to seek listing on the New Zealand Stock Exchange.
- C.** The Manager has been incorporated for the purposes of this Agreement by and is, or is to be, owned by investment bankers H.R.L. Morrison & Co Limited ("Morrison & Co") and Duncan Paul Saville.
- D.** The Company wishes to appoint the Manager to provide it with investment and administrative services.
- E.** The Manager has agreed to provide the Company with those services on the terms and conditions set out in this Agreement.

**IT IS AGREED:**

**1. INTERPRETATION**

1.1 **Definitions:** In this Agreement unless the context otherwise requires:

"Agreement" means this agreement together with any amendments from time to time agreed in writing by the parties;

"Approved Person" means any of the following:

- (a) Morrison & Co;

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<sup>3</sup> Formerly Infratil Infrastructure & Utilities NZ Limited.

<sup>4</sup> Formerly Infratil Management Limited.

<sup>5</sup> See Agreement Amending the Management Agreement dated 4 November 2002.

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- (b) any subsidiary of any company referred to in (a);
- (c) Lloyd Morrison; or
- (d) any company in which all the equity share capital is beneficially owned by any of, or any combination of, the persons referred to in (a) and (c);

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"Auditor" means the auditor for the time being of the Company;

"Australian Portfolio Entities' Debt" means the book value of the total debt of the wholly owned Australian Portfolio Entities;<sup>7</sup>

"Australian Portfolio Entity" means a Portfolio Entity that has a majority of its assets domiciled in Australia;<sup>8</sup>

"Australian Portfolio Security" means any Portfolio Security issued by an Australian Portfolio Entity;<sup>9</sup>

"Board" means such of the Directors of the Company acting as a board of directors in accordance with the Company's Constitution.<sup>10</sup>

"Business Day" means any day on which registered banks (as defined in the Reserve Bank of New Zealand Act 1989) are open for business in Wellington;

"Commencement Date" means the day on which this Agreement becomes binding in terms of clause 2.1;

"Company" means Infrastructure & Utilities NZ Limited, and where the context requires or admits also includes any wholly owned subsidiary of the Company formed for the purpose of acquiring or holding any Portfolio Securities as described in clause 6.3;

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"Confidential Information" means all commercial, financial and technical information and know-how (whether in written, documentary or other recorded or tangible form) which is supplied to, communicated to, or derived by the Manager at any time relating to the Company's undertaking, activities, business environment or prospects and which at the time it is supplied to, communicated to or derived by the Manager is not publicly known or available by reason of general publication or public knowledge but does not include:

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<sup>6</sup> See Agreement Amending the Management Agreement dated 4 November 2002, deleting definition of 'Articles of Association'.

<sup>7</sup> See Agreement Amending the Management Agreement dated 4 November 2002.

<sup>8</sup> See Agreement Amending the Management Agreement dated 4 November 2002.

<sup>9</sup> See Agreement Amending the Management Agreement dated 4 November 2002.

<sup>10</sup> See Agreement Amending the Management Agreement dated 4 November 2002.

<sup>11</sup> See Deed of Amendment dated 23 October 2001 and Agreement Amending the Management Agreement dated 4 November 2002, deleting definition of 'Company Value'.

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- (a) information which at the time it is supplied to, communicated to or derived by the Manager was already in the Manager's possession and was not acquired by the Manager in the course of or incidentally to the performance by the Manager of its duties under this Agreement;
- (b) information which has reached the public domain otherwise than as a result of a breach by the Manager, or any person for whom the Manager is responsible, of the Manager's obligations under clause 16; or
- (c) information which has been or subsequently is acquired or developed by the Manager without violating any of its obligations under clause 16 and without the use of any Confidential Information;

"Connected Person" in relation to any person (the relevant person) means:

- (a) if the relevant person is a body corporate, any person:
    - (i) beneficially owning, directly or indirectly, 20% or more of the equity share capital of the relevant person; or
    - (ii) able to exercise, directly or indirectly, 20% or more of the total voting rights attributable to the voting share capital or rights of the relevant person;
  - (b) any body corporate which is a subsidiary (within the meaning of Section 158 of the Companies Act 1955) of a person described in paragraph (a) above;
  - (c) if a person described in paragraph (a) above is a body corporate, any person who:
    - (i) controls (either directly or indirectly) the composition of the board of directors of that body;
    - (ii) controls (either directly or indirectly) more than half of the voting rights attributable to the voting share capital of that body; or
    - (iii) holds (either directly or indirectly) more than half of the equity share capital of that body;
  - (d) any body corporate:
    - (i) 20% or more in the aggregate of whose equity share capital is beneficially owned, directly or indirectly by the relevant person; or
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- (ii) 20% or more in the aggregate of the total votes attributable to the voting share capital or rights of which can be exercised, directly or indirectly by the relevant person;
- (e) any director or other officer of the relevant person or any body corporate which is a Connected Person of the relevant person by reason of paragraphs (a), (b), (c) or (d) above; and
- (f) any trustee of any trust which is exclusively or principally for the benefit of the relevant person or any person who is a Connected Person of the relevant person by reason of paragraph (e) above, when acting in the capacity of trustee of such trust.

"Constitution" means the constitution of the Company as may be adopted or altered from time to time;<sup>12</sup>

"Cost Value" means, in respect of a Non-New Zealand Portfolio Security, the acquisition cost of that Non-New Zealand Portfolio Security (including capitalised acquisition costs);<sup>13</sup>

*[Clause 1.1 of the Infratil Ventures Management Agreement:*

*"Cost Value" means, in respect of a VCF Portfolio Security, the acquisition cost of that VCF Portfolio Security (including capitalised acquisition costs);]*

"Debt Security" means any interest in or right to be paid money that is, or is to be, deposited with, lent to, or otherwise owing by, any person (whether or not the interest or right is secured by a charge over any property); and includes:

- (a) a debenture, debenture stock, bond, note, certificate of deposit and convertible note;
- (b) any renewal or variation of the terms or conditions of any existing Debt Security; and
- (c) any Security that is declared to be a "debt security" for the purposes of the Securities Act;

"Defaulting Party" has the meaning given to it in clause 11.4;

"Director" means a director for the time being of the Company;

"Distributions" means all dividends and other distributions (including interest) received by the Company in respect of Portfolio Securities after the deduction of any tax in respect thereof;<sup>14</sup>

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<sup>12</sup> See Agreement Amending the Management Agreement dated 4 November 2002.

<sup>13</sup> See Agreement Amending the Management Agreement dated 4 November 2002.

<sup>14</sup> See Agreement Amending the Management Agreement dated 4 November 2002.

"Equity Security" means any interest in or right to a share in the share capital of a company; and includes:

- (a) a preference share, company stock, share warrant, stock warrant and an option in respect of a share or stock;
- (b) any renewal or variation of the terms or conditions of any existing Equity Security; and
- (c) any Security that is declared to be an "equity security" for the purposes of the Securities Act;

"Exchange" means the New Zealand Stock Exchange;

"Financial Derivative" means any derivative or option or other contract which establishes rights or obligations to an underlying Security, investment, product, index, right or service;

"Financial Indebtedness" means, in respect of any person, any obligation, whether present or future, actual or contingent, to pay or deliver any money, currency or commodity under or in respect of any financial accommodation or arrangement, including (without limitation) under or in respect of:

- (a) moneys borrowed or raised by that person;
  - (b) a guarantee, indemnity, letter of credit, performance bond, acceptance or endorsement or legally enforceable undertaking or obligation to:
    - (i) provide, or provide funds (including the purchase of any property) in or to enable, payment or a discharge of;
    - (ii) indemnify against the consequences of a default in the payment of; or
    - (iii) otherwise be responsible for, any obligation (whether or not it involves the payment of money) of any other person;
  - (c) a bond, debenture, certificate, redeemable or repurchaseable share or stock, bill of exchange or any similar instrument, whether or not transferable or negotiable, issued by that person;
  - (d) a put option or buyback or discounting arrangement in relation to any property exercisable against that person;
  - (e) a lease, licence or other arrangement in respect of any property (real, personal, tangible or intangible) entered into by that
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person primarily for the purpose of raising finance or financing the acquisition of the property leased, licensed or subject to the relevant arrangement (other than a lease, licence or arrangement which may be accounted for as an operating lease under any applicable standard accounting practice);

- (f) a hire purchase or deferred payment obligation for any property acquired or service employed by that person;
- (g) an interest or currency swap or hedge arrangement, financial option, or analogous transactions entered into by that person; or
- (h) an arrangement which achieves the same or similar commercial effect as any of the above;

"Financial Year" means the year ended 31 March;<sup>15</sup>

"FX Value" means the net present value (which may be a negative number) in New Zealand dollars as at the Relevant Date of all existing foreign exchange contracts entered into by the Company for the purposes of hedging its foreign exchange exposure arising out of the acquisition and holding of relevant Non-New Zealand Portfolio Securities (which are, where this definition is used in the definition of New Zealand Company Value, only the Australian Portfolio Securities and, where used in clauses 9.2 and 12.1.2, are exclusive of the Australian Portfolio Securities) held at the Relevant Date plus the net gain or loss suffered from any prior such contracts in respect of those Non-New Zealand Portfolio Securities that have now been closed out;<sup>16</sup>

"GST" means goods and services tax imposed under the Goods and Services Tax Act 1985;

"Hurdle Rate of Return" means 12 per cent per annum post tax;<sup>17</sup>

"Infratil Ventures Management Agreement" means the Infratil Ventures Management Agreement dated 4 November 2002 made between the Manager, the Company and Morrison & Co Ventures Limited;<sup>18</sup>

"Instalment Amounts" means the amounts payable to the Company on 1 October 1994 by the holders of the ordinary shares in the Company in respect of such shares;

*[Clause 1.1 of the Infratil Ventures Management Agreement:*

*"International Portfolio Agreement" means the agreement having the same date as this Agreement between the Company, the Manager and Morrison & Co International Limited amending the Management Agreement;]*

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<sup>15</sup> See Agreement Amending the Management Agreement dated 4 November 2002.

<sup>16</sup> See Agreement Amending the Management Agreement dated 4 November 2002.

<sup>17</sup> See Agreement Amending the Management Agreement dated 4 November 2002.

<sup>18</sup> See Infratil Ventures Management Agreement dated 4 November 2002.

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"International Portfolio Annual Valuation Assets" means all Non-New Zealand Portfolio Securities held unrealised by the Company as at the relevant 31 March that are issued by a Non-New Zealand Portfolio Entity in which Non-New Zealand Portfolio Securities have been held continuously by the Company since a date before (and including) the third preceding 31 March;<sup>19</sup>

"International Portfolio Commencement Date" means the date of acquisition of the first Non-New Zealand Portfolio Securities;<sup>20</sup>

"International Portfolio Fair Market Value" means the International Portfolio Fair Market Value certified by the International Portfolio Independent Valuer under clause 9.3.1 which shall have: (a) deducted from it the International Portfolio Independent Valuer's estimate of any capital gains or income tax (or the like) that will be payable upon a sale or other realisation; (b) added to it the International Portfolio Independent Valuer's estimate of any International Portfolio Tax Benefits that will arise out of the payment of the such capital gains or income tax (or the like) and (c) deducted from it the International Portfolio Independent Valuer's estimate of the likely sale costs, or such notional estimate of the likely sale costs as agreed by the Company and the Manager and advised to the International Portfolio Independent Valuer;<sup>21</sup>

"International Portfolio Incentive Fees" mean the International Portfolio Initial Incentive Fees, the International Portfolio Annual Incentive Fees, the International Portfolio Realised Incentive Fees and the International Portfolio Final Incentive Fees;<sup>22</sup>

"International Portfolio Independent Valuer" means an appropriately qualified person who is independent of the Manager and the Company, appointed by the Company after consultation with the Manager to be an independent valuer for the purposes of this Agreement;<sup>23</sup>

"International Portfolio Initial Valuation Assets" means all Non-New Zealand Portfolio Securities which are held unrealised by the Company as at the relevant 31 March that are issued by a Non-New Zealand Portfolio Entity in which Non-New Zealand Portfolio Securities have been held continuously by the Company from a date between (and including) the third preceding 1 April and (and including) the second preceding 31 March;<sup>24</sup>

"International Portfolio Tax Benefits" means: (a) imputations credits (or the like) that can be passed through to New Zealand resident shareholders of the Company as credits against their New Zealand tax liability; and (b) New Zealand or non-New Zealand tax credits (or the like, including

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<sup>19</sup> See Agreement Amending the Management Agreement dated 4 November 2002.

<sup>20</sup> See Agreement Amending the Management Agreement dated 4 November 2002.

<sup>21</sup> See Agreement Amending the Management Agreement dated 4 November 2002.

<sup>22</sup> See Agreement Amending the Management Agreement dated 4 November 2002.

<sup>23</sup> See Agreement Amending the Management Agreement dated 4 November 2002.

<sup>24</sup> See Agreement Amending the Management Agreement dated 4 November 2002.

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withholding taxes that have been deducted, underlying foreign tax credits or credits under any applicable double taxation agreement) that can be used by the Company to reduce its tax liability in New Zealand or elsewhere;<sup>25</sup>

"International Portfolio Termination Date" means the earlier of: (a) the date of termination of this Agreement; and (b) the date of completion of the sale of the final Non-New Zealand Portfolio Securities;<sup>26</sup>

"International Portfolio Valuation Date" means each of: (a) the International Portfolio Termination Date; (b) 31 March of any year if in the Financial Year ended on that 31 March any Non-New Zealand Portfolio Securities have been sold; and (c) 31 March if as at that date there are any International Portfolio Annual Valuation Assets or International Portfolio Initial Valuation Assets;<sup>27</sup>

*[Clause 1.1 of the Infratil Ventures Management Agreement:*

*"Investment Committee" means the committee referred to in clause 4.4;]*

"Investment Policy" means the investment objectives described in clause 5.1 and in clause 4.1 of the Infratil Ventures Management Agreement as restricted by the Investment Restrictions, as amended from time to time in accordance with clause 5.5;<sup>28</sup>

"Investment Restriction" means a restriction for the time being set out in clause 5.2, clause 5.3 or clause 5.4 or in clause 4.3 of the Infratil Ventures Management Agreement;<sup>29</sup>

"Investor" means a person who for the time being holds any ordinary shares in the capital of the Company;

*[Clause 1.1 of the Infratil Ventures Management Agreement:*

*"IO Fund" means the venture investment fund established by the Company, Orion New Zealand Limited, NZVIF (IOM) Limited and IO Management Limited pursuant to a Joint Venture Co-Investment Agreement and a Management Agreement both dated 24 October 2002;*

*"IO Fund Capital Commitment" means the Company's share from time to time of the capital commitment upon which the base management fees for the IO Fund are calculated in accordance with Schedule 2 of the Management Agreement referred to in the definition of IO Fund;*

*"IO Fund Core Portfolio Securities" means Securities issued by investees of the IO Fund and which are managed by the IO Fund Manager under the auspices of the IO Fund;*

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<sup>25</sup> See Agreement Amending the Management Agreement dated 4 November 2002.

<sup>26</sup> See Agreement Amending the Management Agreement dated 4 November 2002.

<sup>27</sup> See Agreement Amending the Management Agreement dated 4 November 2002.

<sup>28</sup> See Infratil Ventures Management Agreement dated 4 November 2002.

<sup>29</sup> See Infratil Ventures Management Agreement dated 4 November 2002.

*"IO Fund Follow On Portfolio Securities" means Securities issued by investees of the IO Fund subsequent to the issue of IO Fund Core Portfolio Securities which are not eligible for investment under the auspices of the IO Fund;*

*"IO Fund Manager" means IO Management Limited, being a company jointly owned by Orion New Zealand Limited and HRL Morrison & Co Limited, or, as the case may be, any replacement manager of the IO Fund;*

*"IO Fund Portfolio Securities" means the IO Fund Core Portfolio Securities and the IO Fund Follow On Portfolio Securities;*

*"Management Agreement" means the management agreement (as amended by Deeds of Amendment dated 11 May 1995, 19 December 1995 and 23 October 2001 and the International Portfolio Agreement) dated 11 February 1994 made between the Company and the Manager;]*

"New Zealand Company Value" means on each Relevant Date the value derived by the application of the formula:

$$\text{NZCV} = \text{MP} + \text{BVD} - \text{UFS} - \text{IA} + \text{FX Value}$$

Where:

NZCV = New Zealand Company Value

MP = The weighted average market price of the Company's Securities on the Exchange over the five Trading Days ending on (and including) the Relevant Date, as calculated by the Manager

BVD = The book value of the total debt of the Company less the book value of any Non-New Zealand Portfolio Entities' Debt (but not deducting any Australian Portfolio Entities' Debt) included in the book value of the total debt of the Company

UFS = Unallocated Funds plus the market value of any Securities in which Unallocated Funds have been invested pursuant to clause 5.4

IA = The Cost Value of the Non-New Zealand Portfolio Securities that are not Australian Portfolio Securities

provided that if at anytime UFS is greater than BVD then NZCV shall be  $\text{MP} - \text{IA} + \text{FX Value}$ ;<sup>30</sup>

*[Clause 6.1 of the Infratil Ventures Management Agreement:*

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<sup>30</sup> See Deed of Amendment dated 23 October 2001 (refer to definition of "Company Value") and Agreement Amending the Management Agreement dated 4 November 2002.

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***Reduction of New Zealand Portfolio Management Fee:*** From (and including) the VCF Effective Date to (but excluding) the VCF Termination Date, for the purposes of calculating the management fee payable under clauses 9 or 12 of the Management Agreement, the New Zealand Company Value shall be reduced by the aggregate of: (a) the IO Fund Capital Commitment; and (b) the VCF Commitment all at the relevant time.]

"New Zealand Portfolio Entity" means a Portfolio Entity that has a majority of its assets domiciled in New Zealand and, notwithstanding the foregoing, includes each member of the Glasgow Prestwick Holdings Limited group of companies;<sup>31</sup>

"New Zealand Portfolio Security" means any Portfolio Security issued by a New Zealand Portfolio Entity;<sup>32</sup>

"Non-Defaulting Party" has the meaning given to it in clause 11.4;

"Non-New Zealand Portfolio Entities' Debt" means the book value of the total debt of the wholly owned Non-New Zealand Portfolio Entities;<sup>33</sup>

"Non-New Zealand Portfolio Entity" means any Portfolio Entity that is neither a New Zealand Portfolio Entity nor a VCF Portfolio Entity;<sup>34</sup>

"Non-New Zealand Portfolio Security" means any Portfolio Security that is not a New Zealand Portfolio Security;<sup>35</sup>

"Participatory Security" means any Security other than an Equity Security or a Debt Security;

"Portfolio" means the property of the Company, or any of its wholly owned subsidiaries, which is from time to time under the management of the Manager pursuant to the terms of this Agreement and includes without limitation the Portfolio Securities and the Unallocated Funds;

"Portfolio Entity" means the issuer of a Portfolio Security and in the case of a Financial Derivative includes the issuer of the Financial Derivative and of any underlying security, investment product, index, right or service;

"Portfolio Security" means any Equity Security or Debt Security or Participatory Security or Financial Derivative acquired, or proposed to be acquired, by the Company in connection with its investment activities pursuant to clause 5.1 and any VCF Portfolio Security;<sup>36</sup>

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<sup>31</sup> See Agreement Amending the Management Agreement dated 4 November 2002.

<sup>32</sup> See Agreement Amending the Management Agreement dated 4 November 2002.

<sup>33</sup> See Agreement Amending the Management Agreement dated 4 November 2002.

<sup>34</sup> See Agreement Amending the Management Agreement dated 4 November 2002.

<sup>35</sup> See Agreement Amending the Management Agreement dated 4 November 2002.

<sup>36</sup> See Infratil Ventures Management Agreement dated 4 November 2002.

"Registered Bank" means a registered bank as defined in section 2 of the Reserve Bank of New Zealand Act 1989;

"Relevant Date" means:

- (a) the last day of each calendar month in each year; and
- (b) if clause 12.1.2 applies; the day on which the Agreement terminates,

and if that day is not a Trading Day, the immediately preceding Trading Day;<sup>37</sup>

"Securities Act" means the Securities Act 1978;

"Security" means any interest or right to participate in any capital, asset, earnings, royalties, or other property of any person; and includes:

- (a) any interest in or right to be paid money that is, or is to be, deposited with, lent to, or otherwise owing by, any person (whether or not the interest or right is secured by a charge over any property);
- (b) any Financial Derivative; and
- (c) any renewal or variation of the terms or conditions of an existing Security;

"Strategic Investment" means any parcel of Portfolio Securities of the same kind or class issued by a particular Portfolio Entity where the parcel of Portfolio Securities was acquired for long term income yield and/or capital growth and not for the purposes of trading;<sup>38</sup>

"Term" means the term of this Agreement as provided in clause 11.1;

"Trading Day" means a day on which the Exchange is open for trading and on which trades in the Company's Securities are reported;

"Total Assets" means the total aggregate of the shareholders' funds of the Company including retained earnings and revaluations, plus borrowings and other liabilities;

"Unallocated Funds" means any cash held by the Company from time to time; and

"Underwriting Date" means the date upon which the underwriters of the offer to the public of shares and options by the Company are required to apply for the allotment of shares and options pursuant to the underwriting agreement between the underwriters and the Company.

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<sup>37</sup> See Deed of Amendment dated 23 October 2001 and Agreement Amending the Management Agreement dated 4 November 2002.

<sup>38</sup> See Deed Amending Management Agreement dated 11 May 1995.

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*[Clause 1.1 of the Infratil Ventures Management Agreement:*

*"Undrawn VCF Commitment" means the amount which the Company may be obliged to advance or pay to, or in respect of, a VCF Portfolio Entity due to an existing contractual commitment (by way of uncalled capital, guarantees, underwriting commitment or otherwise);*

*"Utility Portfolio" means the Portfolio, excluding VCF Portfolio Securities and Non-New Zealand Portfolio Securities, managed by the Manager pursuant to the Management Agreement;*

*"VCF Commitment" means the sum of:*

- (a) the aggregate Cost Value of all VCF Portfolio Securities currently held by the Company;*
- (b) the aggregate of all Undrawn VCF Commitments in respect of VCF Portfolio Securities currently held by the Company;*
- (c) the aggregate of all VCF Distributions received in respect of VCF Portfolio Securities currently held by the Company (other than those transferred from the Venture Capital Portfolio into the Utility Portfolio pursuant to clause 5.3.2);*
- (d) the aggregate of the net sale or other proceeds of realisation of VCF Portfolio Securities (other than those transferred from the Venture Capital Portfolio into the Utility Portfolio pursuant to clause 5.3.2); and*
- (e) the aggregate of all VCF Portfolio Entities' Debt of those VCF Portfolio Entities currently held by the Company;*

*"VCF Distributions" means means all dividends and other distributions (including interest) received by the Company in respect of VCF Portfolio Securities before the deduction of any tax in respect thereof;*

*"VCF Effective Date" means 1 February 2002;*

*"VCF Fair Market Value" means the fair market value calculated before payment of any capital gains or income taxes (or the like);*

*"VCF Incentive Fee Period" means the period beginning on the VCF Effective Date and ending on the first occurring VCF Review Date and, thereafter, the period between each VCF Review Date and, finally, the period between the last VCF Review Date and the VCF Termination Date;*

*"VCF Independent Valuer" means an appropriately qualified person who is independent of the Manager and the Company, appointed by the Company after consultation with the Manager to be an independent valuer for the purposes of this Agreement;*

*"VCF Maximum" means \$15,000,000 until 30 June 2005 and thereafter the amount determined by the Company pursuant to clause 5.3;*

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*"VCF Portfolio Entities' Debt" means the book value of the total debt of wholly-owned VCF Portfolio Entities;*

*"VCF Portfolio Entity" means the issuer of a VCF Portfolio Security;*

*"VCF Portfolio Security" means any Equity Security or Debt Security or Participatory Security or Financial Derivative acquired, or proposed to be acquired, by the Company in connection with its investment activities pursuant to clause 4.1 including all IO Fund Follow On Portfolio Securities but excluding all IO Fund Core Portfolio Securities and VCF Portfolio Securities transferred out of the Venture Capital Portfolio into the Utility Portfolio pursuant to clause 5.6;*

*"VCF Review Date" means 30 June 2005 and each second anniversary thereof;*

*"VCF Tax Benefits" means: (a) imputations credits (or the like) that can be passed through to New Zealand resident shareholders of the Company as credits against their New Zealand tax liability; and (b) New Zealand or non-New Zealand tax credits (or the like, including withholding taxes that have been deducted, underlying foreign tax credits or credits under any applicable double taxation agreement) that can be used by the Company to reduce its tax liability in New Zealand or elsewhere;*

*"VCF Termination Date" means the date upon which this Agreement terminates in accordance with clause 8.3.3 or 8.4;*

*"Venture Capital Businesses" shall have the meaning given in clause 4.2; and*

*"Venture Capital Portfolio" means that part of the Portfolio comprising the VCF Portfolio Securities.]*

**1.2 Construction of Certain References:** In this Agreement, unless the context otherwise requires, any reference to:

"equity share capital", or to a "subsidiary" or a "holding company" are references to equity share capital, subsidiary and holding company within the meaning of section 158 of the Companies Act 1955;

"month" is a reference to a calendar month;

"person" includes a reference to an association of persons, an individual natural person, company, body corporate, body politic, firm, joint venture, association (whether incorporated or unincorporated), trust, or governmental or regulatory agency or authority, whether or not having separate legal personality;

"Recital" or "clause" is a reference to a recital or clause of this Agreement;

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"related company" is a reference to related company within the meaning of section 2(5) of the Companies Act 1955;

"retained earnings" includes a reference to a positive figure or if the Company has incurred a loss of capital, a negative figure; and

"year" is a reference to a calendar year.

- 1.3 **Recitals and Descriptions:** Recitals and descriptions of the parties forms part of this Agreement.
- 1.4 **Statutes:** Reference to a statute, or statutory provision, or order or regulation made under it includes that statute, provision, order or regulation as amended, modified, re-enacted or replaced from time to time (whether before or after the date of this Agreement) and to any previous statute, statutory provision, order or regulation amended, modified, re-enacted or replaced by that statute, provision, order or regulation.
- 1.5 **Parties:** Reference to a party to this Agreement, or any other document or arrangement, includes that party's executors, administrators, substitutes (including, but not limited to, persons taking by novation), successors and permitted assigns.
- 1.6 **General References:** A reference to a gender includes each other gender; the singular includes the plural and vice versa.
- 1.7 **Headings:** Headings and the index shall be ignored in constituting this Agreement.
- 1.8 **Subsidiaries:** Where the Company has any subsidiaries incorporated as described in clause 6.3, the Manager's obligations under this Agreement shall be construed (where the context admits) as covenants in favour or respect of, or including, the Company and each subsidiary.
- 1.9 **Related Entities:** An entity is related to another entity if:
- (a) the other entity controls that entity;
  - (b) the entity controls that other entity;
  - (c) the business of both entities have been so carried on so that the separate business of each entity, or a substantial part thereof, is not readily identifiable; or
  - (d) there is another entity to which both entities are related.

For the purposes of this subclause, "control" means in relation to control of one person by another, that other person (whether directly or indirectly and whether by ownership of share capital, the possession of voting power, contract or otherwise) has the power to appoint and/or remove the majority of the governing body of that person or otherwise controls or

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has the power to control the affairs and policies of that person or is in a position to derive the whole or a substantial part of the benefit of the existence or activities of that person.

- 1.10 **Terms Defined in Clauses:** Terms defined in other clauses of this Agreement have that defined meaning in the whole of this Agreement unless the context otherwise requires.<sup>39</sup>

## 2. CONDITION

- 2.1 **Agreement Conditional:** Except for this clause this Agreement shall not become binding unless and until the Manager receives written notice from the Company that the Company has received and accepted applications for subscription to a minimum of 25,000,000 ordinary shares of \$0.20 each in the capital of the Company.
- 2.2 **Notice of Acceptances:** The Company shall give written notice to the Manager within 5 Business Days of the Underwriting Date of the number of ordinary shares for which it has received and accepted applications for subscription.

## 3. APPOINTMENT OF MANAGER

- 3.1 **Appointment:** The Company appoints the Manager and the Manager accepts appointment as the sole and exclusive investment manager of the Company, and also to provide other administrative services, on the terms and conditions contained in this Agreement.
- 3.2 **Exclusive Appointment:** During the Term the Company shall not appoint any other person to provide any of the services to be provided by the Manager under this Agreement without the prior written consent of the Manager, which consent shall not be unreasonably withheld in relation to any appointment in respect of administrative services.
- 3.3 **Agent:** In the performance of this Agreement the Manager acts solely as agent for the Company provided that nothing in this Agreement shall authorise the Manager to act as agent of the Company in excess of the authorities and powers conferred on the Manager pursuant to this Agreement.
- 3.4 **Restrictions on Manager:** During the continuance of this Agreement the Manager shall:
- 3.4.1 **Business to be Management of Investments:** except with the agreement of the Board, confine its business to the duties and responsibilities it has agreed to carry out for the Company under this Agreement;
- 3.4.2 **Procedures and Standards:** have and maintain procedures and standards, and terms and conditions of employment which

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<sup>39</sup> See Agreement Amending the Management Agreement dated 4 November 2002.

require its officers and employees to conduct themselves in accordance with all applicable laws and regulations and to refrain from any conduct which contravenes any applicable laws (including without limitation laws relating to insider trading or similar practices), and to refrain from any actions which give rise to any conflicts of interest;

3.4.3 **Compliance with Procedures and Standards:** ensure that each employee and officer of the Manager complies with the procedures and standards, and terms and conditions required under subclause 3.4.2 and otherwise acts in a manner consistent with the duties and obligations of the Manager under this Agreement; and

3.4.4 **Sub-Contracting:** subject to subclause 3.5, be entitled to enter into subcontracts with any Approved Person for the provision of any services required to be performed by the Manager under this Agreement and the provisions of subclauses 3.4.2 and 3.4.3 shall apply mutatis mutandis to any Approved Person (and to the employees of any Approved Person and, where the Approved Person is a Company, to its officers) who enters into any such subcontract and provided that no such subcontract shall relieve the Manager from responsibility for performing its duties and obligations under this Agreement, and provided further that where this Agreement restricts or limits the Manager or any Connected Person of the Manager in any way, or imposes duties on the Manager, those constraints or duties shall apply equally to any such Approved Person.

3.5 **Approved Person to Agree:** The terms of any subcontract entered into under subclause 3.4.4 shall impose on the Approved Persons, their employees and officers, an obligation not to act or fail to act in any manner inconsistent with the obligations of the Manager under this Agreement.

*[[Clause 4 of the Agreement Amending the Management Agreement dated 4 November 2002:*

4.1 **Appointment:** *The Manager appoints the International Portfolio Manager as its sub-contractor to provide the services required to be performed by it under the Management Agreement in respect of the identification of, investment in, and management of, the Non-New Zealand Portfolio Securities and the International Portfolio Manager accept this appointment. The Company consents to the appointment.*

4.2 **Agreement:** *The International Portfolio Manager agrees that the Management Agreement as amended by this Agreement is binding upon it in so far as it relates to Non-New Zealand Portfolio Securities as if it were the Manager and unless the context otherwise requires all references in both agreements to the Manager shall be deemed to include the International Portfolio Manager.*

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- 4.3 **No Effect:** *This clause shall not affect the obligations of the Manager under this Agreement and the Management Agreement, and all acts and omissions of the International Portfolio Manager shall be deemed to be the acts and omissions of the Manager for the purposes of this Agreement and the Management Agreement.]]*

*[Clause 7 of the Infratil Ventures Management Agreement:*

- 7.1 **Appointment:** *The Manager appoints the Venture Portfolio Manager as its sub-contractor to provide the services required to be performed by it under the Management Agreement in respect of the identification of, from the investment in, and management of, the VCF Portfolio Securities and the Venture Portfolio Manager accept this appointment. The Company consents to the appointment.*
- 7.2 **Agreement:** *The Venture Portfolio Manager agrees that the Management Agreement as amended by this Agreement is binding upon it in so far as it relates to VCF Portfolio Securities as if it were the Manager and unless the context otherwise requires all references in both agreements to the Manager shall be deemed to include the Venture Portfolio Manager.*
- 7.3 **No Effect:** *This clause shall not affect the obligations of the Manager under this Agreement and the Management Agreement, and all acts and omissions of the Venture Portfolio Manager shall be deemed to be the acts and omissions of the Manager for the purposes of this Agreement and the Management Agreement.]*

#### **4. DUTIES OF MANAGER**

- 4.1 **Duties:** The Manager shall:
- 4.1.1 **Investment:** invest the Portfolio and provide the investment management services described in clauses 5 and 6; and
- 4.1.2 **Administration:** provide the administrative and general services described in clause 7.
- 4.2 **Act Bona Fide:** The Manager must at all times:
- 4.2.1 **Interests of Company:** act bona fide in the best interests of the Company in a proper, efficient and businesslike manner;
- 4.2.2 **Best Efforts:** use its best efforts and judgment and exercise due care in exercising the rights, powers and authorities granted to it, and in performing its obligations, under this Agreement;
- 4.2.3 **Investment Policy:** act in accordance with the Investment Policy;
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- 4.2.4 **Regulatory Requirements:** act in accordance with:
- (a) any regulatory provisions which apply to the Manager or the Company; and
  - (b) any rules or requirements of any self-regulatory organisation to which the Manager or any Approved Person who has entered into a subcontract with the Manager in accordance with clause 3.4.4 is affiliated;
- 4.2.5 **Legal Requirements:** comply with all applicable legal requirements;
- 4.2.6 **Listing Requirements:** act in a manner so as to ensure that at all times the Company complies with the listing requirements of the Exchange, subject to any waivers granted by the Exchange in relation to the Company; and
- 4.2.7 **Board's Requirements:** act in accordance with the requirements of the Board, being requirements which are not inconsistent with the provisions of this Agreement, and as advised from time to time under this Agreement.

## 5. INVESTMENT POLICY

5.1 **Investment Objectives:**<sup>40</sup> The Manager shall identify and invest the Portfolio in Securities which are suitable for investment by the Company having regard to the following objectives:

- 5.1.2 **New Zealand Utilities Objective:** The Company shall invest in Securities issued by New Zealand entities which are characterised by providing utility or infrastructure services in New Zealand; and
- 5.1.3 **International Utilities Objective:** The Company shall also invest in Securities issued by non-New Zealand entities, which are characterised by providing utility or infrastructure services outside New Zealand; and

in accordance with the restrictions set out in the Constitution (of which the Manager acknowledges it is fully aware).

*[Clauses 4.1 and 4.2 of the Infratil Ventures Management Agreement:*

4.1 **Investment Policy:** *In addition to the investment objectives described in clause 5.1 of the Management Agreement, the Manager may identify and invest a proportion of the Portfolio in Securities issued by Venture Capital Businesses in accordance with this Agreement and the Constitution.*

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<sup>40</sup> See Agreement Amending the Management Agreement dated 4 November 2002.

- 4.2 **Venture Capital Businesses:** *Venture Capital Businesses include:*
- 4.2.1 **Intellectual Property:** *Businesses which have a significant proportion of their value in intellectual property (usually through having patents or patentable applications or licences to use patents) which has international application and scalability;*
  - 4.2.2 **Developing Businesses:** *Businesses that are at the post-start up phase of their development but still in need of growth capital that can not be readily sourced through banks and/or public debt and equity markets;*
  - 4.2.3 **IO Fund:** *Businesses carried out by investees of the IO Fund;*
  - 4.2.4 **Other VIFs:** *Venture investment funds co-promoted or co-established by the New Zealand Government or investees of such funds; and*
  - 4.2.5 **Other:** *Such other businesses are as agreed by the Company and the Manager from time to time to be Venture Capital Businesses,*

*but, unless the Company and the Manager agree otherwise, shall as of the date of this Agreement be limited to Plato Health Systems Limited, PayGlobal Limited and Victoria Electricity Pty Limited (or associated companies thereof) and any issuer of IO Fund Follow On Portfolio Securities.]*

- 5.2 **General Restrictions:** In investing the Portfolio and managing the Portfolio Securities and Unallocated Funds, the Manager shall comply with the following restrictions:
- 5.2.1 **Prohibited Businesses:** No investment shall be made in any Securities issued by any person where such would be in breach of the Company's Constitution (and, in particular but without limitation clause 32 thereof) as may be modified or amended from time to time;<sup>41</sup>
  - 5.2.2 **Manager's Interest:** Without the prior consent of the Board, no investment shall be made or retained in any Security issued by any person if the Manager or any Approved Person who has entered into a subcontract with the Manager as described in clause 3.4.4 or any Connected Person of the Manager or such Approved Person also holds or has agreed to hold or acquire directly or indirectly more than 1 % of the total issued Securities of any class of Securities issued by that person or by any Connected Person of that person;

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<sup>41</sup> See Agreement Amending the Management Agreement dated 4 November 2002.

- 5.2.3 **No Unlimited liability:** The Manager shall not make any investment in any Securities which would involve the assumption of unlimited liability by the Company;
- 5.2.4 **No Guarantees:** Without the prior unanimous consent of the Directors the Manager shall not commit the Company to give any guarantee or indemnity or otherwise to become liable howsoever (and whether such liability is legally enforceable or not) for or in connection with any Financial Indebtedness of any person;
- 5.2.5 **No Leasing:** The Manager may not enter into any transaction involving the lease or loan or similar arrangement in relation to any Security; and
- 5.2.6 **Borrowings:** No Financial Indebtedness shall be incurred on behalf of the Company or any subsidiary of the Company or against the security of any of the Portfolio or the property of any subsidiary of the Company unless the Board has given its prior written approval to the Company or that subsidiary incurring that Financial Indebtedness.
- 5.3 **Restrictions on Portfolio Securities:** In addition to the restrictions contained in clause 5.2 the Manager shall comply with the following restrictions in relation to the Portfolio Securities:
- 5.3.1 **Board Approval:** No investment in any Portfolio Security issued by any particular Portfolio Entity shall be made unless the Manager has received the prior approval of the Board for investments to be made in Securities issued by that Portfolio Entity;
- 5.3.2 **Maximum Amount of Investment:** No more than 25% of Total Assets for the time being shall be invested in Portfolio Securities issued by any one Portfolio Entity (or by two or more Portfolio Entities where the Portfolio Entities are related companies or related entities) without the prior written approval of the Board provided that in calculating Total Assets prior to 2 October 1994 the Manager shall be entitled to include the Instalment Amounts;
- 5.3.3 **Maximum Level of Investment:** The total number of the Portfolio Securities of a class held by the Company issued by any Portfolio Entity shall not exceed 50% (or such greater proportion as may be authorised by the Board) of the total number of Securities of that class issued by that Portfolio Entity without the prior written approval of the Board and for the purposes of this subclause, a Security that is convertible into and a Financial Derivative in respect of a Security are deemed to be Securities of the same class as that Security;
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- 5.3.4 **Non-New Zealand Entities:** No investment shall be made in any Non-New Zealand Portfolio Securities if, immediately after such acquisition, the aggregate of the market value of the Company's investments in Non-New Zealand Portfolio Securities will exceed the percentage of the aggregate of the market value of the Company's investments in all Portfolio Securities (all calculated in New Zealand dollars at the time of such acquisition) approved by the Board from time to time.<sup>42</sup>
- 5.3.5 **Maximum Amount of Investment in Debt Securities:** No more than 40% of the aggregate of Total Assets for the time being shall be invested in Portfolio Securities that are Debt Securities.
- 5.3.6 **Strategic Investments:** The Manager may not dispose of all or any part of any Strategic Investment the value of which is equal to or exceeds 5% of Total Assets without the prior approval of the Board.<sup>43</sup>

*[Clauses 4.3 and 4.4 of the Infratil Ventures Management Agreement:*

- 4.3 **Restrictions on VCF Portfolio Securities:** *In addition to the restrictions contained in clauses 5.2 and 5.3 of the Management Agreement, the Manager shall comply with the following restrictions:*
- 4.3.1 **Size Limitation:** *Not more than \$7,500,000 (inclusive of any Undrawn VCF Commitment applicable thereto) may be invested in VCF Portfolio Securities issued by any one VCF Portfolio Entity (or by two or more VCF Portfolio Entities where the VCF Portfolio Entities are related companies or related entities) without the prior written approval of the Board.*
- 4.3.2 **Maximum Investment Limit:** *No investment shall be made or Undrawn VCF Commitment entered into if that would cause the VCF Commitment, immediately after such investment or payment of the obligation due in respect of the Undrawn VCF Commitment, to exceed the VCF Maximum for the time being.*
- 4.3.3 **Investment Committee:** *Without prejudice to clause 5.3.1 of the Management Agreement, no investment shall be made in a VCF Portfolio Security unless the Investment Committee has first approved such investment.*
- 4.4 **Investment Committee:** *The Manager and the Company shall establish an investment committee. The committee shall comprise not more than five persons. The Board (or other persons nominated by the Company) may nominate up to two members of the Investment Committee. The Manager may nominate up to three members of the Investment Committee. The Manager shall make available to the Investment*

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<sup>42</sup> See Agreement Amending the Management Agreement dated 4 November 2002.

<sup>43</sup> See Deed Amending Management Agreement dated 11 May 1995.

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*Committee such information as it may possess about prospective investments in VCF Portfolio Securities as the Investment Committee may from time to time request and shall, at the request of the Company, seek to involve the Investment Committee in due diligence examinations of prospective VCF Portfolio Entities. The Manager may only recommend to the Company investments in VCF Portfolio Securities that have been previously approved by a majority of the members of the Investment Committee.]*

*[Clause 5 of the Infratil Ventures Management Agreement:*

- 5.1 Investment in VCF Portfolio Securities:** *The Manager may, subject to the Board first approving the identity of each VCF Portfolio Entity in accordance with the Management Agreement and the acquisition of VCF Portfolio Securities being approved in accordance with clause 4 of this Agreement, invest the Portfolio in VCF Portfolio Securities in accordance with this Agreement and the Management Agreement.*
- 5.2 Distributions and Sale Proceeds Prior to the First Review Date:** *Subject to the Management Agreement and this Agreement, all VCF Distributions from, and the proceeds of sale or other realisation of VCF Portfolio Securities received prior to the first VCF Review Date shall be retained in the Venture Capital Portfolio and made available for reinvestment into VCF Portfolio Securities.*
- 5.3 Determinations on VCF Review Dates:** *Prior to each VCF Review Date the Company shall determine after consultation with the Manager:*
- 5.3.1 VCF Maximum:** *The VCF Maximum for the two years commencing on the VCF Review Date;*
- 5.3.2 Treatment of Distributions and Proceeds of Sale and Realisation:** *How VCF Distributions on, and the net sale or other proceeds of realisation of, VCF Portfolio Securities are to be treated for the two years commencing on the VCF Review Date whether by retaining some or all VCF Distributions or proceeds in the Venture Capital Portfolio or transferring some or all VCF Distributions or proceeds to the Utility Portfolio; and*
- 5.3.3 Revaluations:** *If the Manager has received, or would otherwise be receiving, a VCF Incentive Fee in the VCF Incentive Fee Period just ending, whether or not all the existing VCF Portfolio Securities should, for the purposes only of recalculating such VCF Incentive Fee be deemed to be divested at their VCF Fair Market Values as at such VCF Review Date. If the Company so determines, the VCF Incentive Fees for that VCF Incentive Fee Period shall be recalculated and the provisions of clause 6.5 and clause 6.6 shall apply accordingly and the VCF Fair Market Values so adopted shall be deemed to be the Cost Value of such VCF Portfolio Securities and such VCF Review Date shall be deemed to be the date of acquisition*
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when calculating the VCF Incentive Fees for the subsequent VCF Incentive Fee Period until adjusted in accordance with this clause.

5.3.4 **Advice to Portfolio Manager of Determinations:** The Company shall advise the Manager in writing of the determinations made under clause 5.3 within one month of the VCF Review Date and, if it fails to do so, the VCF Maximum shall remain unchanged.

5.3.5 **Allocation to the Venture Capital Portfolio:** The Company and the Manager shall, each time the IO Fund Manager advises that it intends to dispose of an IO Fund Core Portfolio Security, consult and seek to agree whether the Company should acquire (or reallocate) such Securities for the Venture Capital Portfolio. Any IO Fund Core Portfolio Securities so acquired (or reallocated) shall become VCF Portfolio Securities with the Cost Value thereof being the acquisition cost (including capitalised acquisition costs) or, as the case may be, the VCF Fair Market Value as at the date of becoming VCF Portfolio Securities.

5.3.6 **Reallocation to the Utility Portfolio: If:**

5.3.6.1 **Agreement:** the Company and the Manager agree that a VCF Portfolio Security should be more appropriately managed as part of the Utility Portfolio under the Management Agreement;

5.3.6.2 **Sale:** the Manager advises the Company that it wishes to sell a VCF Portfolio Security and the Company, in turn (within 10 Business Days, or such lesser period as may be necessary due to an imminent third party transaction, of receiving such advice) advises that it wishes to retain such VCF Portfolio Securities in the Utility Portfolio; or

5.3.6.3 **Termination:** this Agreement terminates by reason of the termination of the Management Agreement and the Company holds VCF Portfolio Securities as at the VCF Termination Date,

*then all such VCF Portfolio Securities shall be transferred out of the Venture Capital Portfolio into the Utility Portfolio at their VCF Fair Market Value.]*

5.4 **Restrictions on Unallocated Funds:** In addition to the restrictions contained in clause 5.2, the Manager may only invest Unallocated Funds in debt securities issued by a Registered Bank, New Zealand Government Stock issued and registered in New Zealand (including Treasury Bills) and securities issued by a local authority under Part III of the Local Authorities Loans Act 1956.

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- 5.5 **Change in Investment Policy:** The Manager and the Directors may agree to amend the Investment Policy if they consider it to be in the best interests of the Company provided that no change may be made in the Investment Policy without the prior unanimous approval of all of the Directors of the time being of the Company or that would breach the Constitution except by complying with the procedure contained in the Constitution with respect to such change or by amending the Constitution as the circumstances may require.<sup>44</sup>
- 5.6 **Remedy Breach of Investment Restrictions:** If, at any time there is a breach of the Investment Restrictions, the Manager shall:
- 5.6.1 **Advise Board:** advise the Board forthwith; and
- 5.6.2 **Take Reasonable Steps:** within a reasonable period of time (and without limiting any rights the Company may have against the Manager in relation to that breach), take all reasonable steps necessary to remedy the breach taking into account the best interests of the Company **provided that** if the Investment Restriction in subclause 5.3.2 is breached at any time after a duly authorised investment has been made by reason of any change in the value of any Security since the date of investment; receipt of any rights or benefits in respect of any Securities; any amalgamation or reconstruction of any Entity; any distribution being made to the Investors; or realisation of any Security: the Manager shall not be required to dispose of any Security to remedy the breach of the Investment Restriction contained in subclause 5.3.2.

## 6. MANAGER'S POWERS

- 6.1 **Securities:** Subject to complying with the Investment Policy and upon the terms of and subject to this Agreement (in particular, this clause 6), the Manager may on behalf of and in the name of the Company (or any wholly owned subsidiary of the Company incorporated pursuant to clause 6.3) purchase, subscribe for, or otherwise acquire Securities and may sell, redeem, convert, exchange, vary, receive repayment of or otherwise dispose of Securities provided that no Securities shall be acquired or held in the name of or to the account of the Manager unless with the specific prior written approval of the Board.<sup>45</sup>
- 6.2 **Underwriting:** The Manager may enter into any underwriting or sub-underwriting contract on behalf of the Company so long as the liability of the Company under the underwriting or sub-underwriting contract would not be in breach of the Investment Policy. All commissions and fees payable under such contracts shall be income of the Company, and any Securities acquired pursuant to such contracts will form part of the Portfolio Securities.

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<sup>44</sup> See Agreement Amending the Management Agreement dated 4 November 2002.

<sup>45</sup> See Deed Amending Management Agreement dated 11 May 1995.

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- 6.3 **Incorporation of Wholly Owned Subsidiaries:** If agreed to by the Board after a request by the Manager, the Company may incorporate, subscribe for and hold shares in one or more wholly owned subsidiary of the Company for the purpose of acquiring and holding Portfolio Securities issued by any Portfolio Entity. All costs and expenses in respect of the incorporation of any such wholly owned subsidiary shall be borne by the Company.
- 6.4 **Exercise Powers:** The Manager shall have power and authority to exercise on behalf of the Company any right or power which the Company may have as a holder of any Portfolio Securities including the right to appoint a director or directors of any Portfolio Entity. In exercising such power and authority the Manager shall have regard to the Investment Policy and its duties under this Agreement and before the exercise of any power or authority shall consult with the Board.
- 6.5 **Representation of the Company:** Without limiting the generality of clause 6.4 the Manager shall have power and authority having due regard to the Investment Policy and the duties of the Manager under this Agreement and having had prior consultation with the Board;
- 6.5.1 **Voting at Meetings:** to attend and vote and represent the Company at any meeting of creditors of or holders of Securities issued by any Portfolio Entity in respect of which the Company is interested;
- 6.5.2 **Litigation:** to commence, pursue, compromise and settle any litigation or arbitration proceedings in respect of the Portfolio on behalf of the Company;
- 6.5.3 **Bankruptcy/Winding Up:** to prove debts, enter into compositions with other creditors and to take or join in taking proceedings for having any debtor adjudicated bankrupt or for obtaining any winding up order in respect of any company or other body; and
- 6.5.4 **General:** for all or any other purposes as aforesaid to execute all such documents and do all such things as the Manager may consider necessary or expedient and in particular may appoint any person as proxy of the Company.

The Manager may exercise any such voting rights in such manner as the Manager determines in good faith to be in the best interests of the Company and the Manager may for like reasons refrain from exercising any voting rights. The Company shall upon request in writing by the Manager execute and deliver to the Manager any power of attorney, appointment of corporate representative, proxy or other document to similar effect reasonably required by the Manager for the purposes of authorising any person selected by the Manager to vote, consent or otherwise act in respect of such meetings.

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## 7. ADMINISTRATION

7.1 **General Administrative Services:** The Manager is responsible for the provision of general administrative services required by the Company in connection with the Portfolio and the Investors and the Board shall delegate to the Manager such of its powers, duties and discretions as the Board may lawfully delegate which may be necessary for the proper performance of the Manager's administrative duties under this Agreement without the Manager having to make further reference to the Board except as provided elsewhere in this Agreement.

7.2 **Specific Administrative Services:** In particular, but without limiting the generality of clause 7.1 the Manager shall:

7.2.1 **Reports:** prepare or procure the preparation of:

(a) **Annual and Half-Yearly Reports:** such reports and other information and material as the Board may reasonably require in connection with the annual and half-yearly reports and audited annual and unaudited half-yearly accounts of the Company and their preparation; and

(b) **Other Reports:** any other report as may reasonably be required from time to time by the Board and without limitation the Manager shall promptly after request by the Board at any time or times provide the Company with any information the Board may reasonably require in respect of the Portfolio or any Portfolio Entity or the performance by the Manager of its duties and obligations under this Agreement, provided that the Manager shall not be required to disclose to the Board in any report any information which the Manager is prohibited by law from disclosing, or which has been obtained from a source other than a Portfolio Entity subject to an obligation of confidentiality, or that the Manager has obtained from a Portfolio Entity subject to an obligation to keep such information confidential until such time as each of the persons to whom such information is to be disclosed have executed a like obligation in favour of the Portfolio Entity;

7.2.2 **Accounting Records:** keep, or cause to be kept, such accounting records in relation to the Company, the Manager and this Agreement as are required by law or otherwise necessary for the proper conduct of the affairs of the Company and the discharge of the Manager's obligations under this Agreement;

7.2.3 **Moneys Received:** as soon as practicable on receipt of any moneys received on behalf of the Company pay such moneys into a bank account held in the name of the Company;

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- 7.2.4 **Certificates:** subject to any direction of the Board hold all certificates or other documents of title received in respect of the Portfolio safe and secure on behalf of the Company;
- 7.2.5 **Bank Account:** open a current account with such Registered Bank as the Company may from time to time appoint as its bankers under the style "Infrastructure & Utilities NZ Limited", into which all moneys coming into the hands of the Manager on behalf of the Company shall be paid in accordance with clause 7.2.3 and to operate on such bank account or authorise the making of withdrawals therefrom and to sign cheques or authorise the signing of cheques drawn on such bank account in accordance with any authority given by the Board from time to time in relation thereto;
- 7.2.6 **Company Liabilities:** subject to there being sufficient funds available in the Company's bank account, meet all liabilities of the Company in relation to this Agreement as and when such liabilities shall become due and payable with the exception of the remuneration and costs payable to the Manager under clause 9 and clause 10 of this Agreement which may only be paid with the prior approval of the Board;
- 7.2.7 **Collect Debts:** use its best endeavours to collect all outstanding moneys owing by debtors of the Company, and if necessary the Manager shall, if required by the Board, commence litigation in the name of the Company which may reasonably be considered necessary for the Company to collect any outstanding debts, subject to any directions which may from time to time be given to the Manager by the Board;
- 7.2.8 **Litigation:** conduct any litigation in respect of which the Company has any interest either as plaintiff or defendant subject to any directions which may from time to time be given to the Manager by the Board;
- 7.2.9 **Audit:** arrange for the annual financial statements of the Company to be audited by the Auditor including without limitation the auditing of the calculation of the Manager's remuneration paid under clause 9 and costs paid to the Manager pursuant to clause 10 in respect of the accounting period concerned;
- 7.2.10 **Returns:** provide such assistance as the Company may reasonably require in respect of the preparation and filing of all returns and notices required to be filed by the Company or any of its subsidiaries;
- 7.2.11 **Tax Returns:** give to the Company all such assistance as the Company may reasonably require in connection with the
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preparation and filing of all tax returns (including any GST returns) required to be filed by the Company;

7.2.12 **Borrowings:** subject to clause 5.2.6, be responsible for the negotiation and supervision of all Financial Indebtedness of the Company that may from time to time be incurred or desired to be incurred by the Company;

7.2.13 **Records:** at all times keep comprehensive and up to date records of all transactions entered into by the Manager as manager of the Portfolio, and retain copies of such records for at least such periods as are required by law or for so long as the Manager remains manager of the Portfolio until they are delivered up to the Company; and

7.2.14 **Exchange Requirements:** prepare all reports and announcements required by and otherwise assist the Company to comply with, the listing requirements of the Exchange.

7.3 **General Powers:** The Manager in performing its functions under this Agreement shall be entitled, subject to any applicable laws:

7.3.1 **Advisors:** to employ on behalf of the Company such brokers, valuers, lawyers, accountants and other professional advisors as the Manager shall consider necessary or expedient in the best interests of the Company;

7.3.2 **Contracts:** to enter into any contracts in the name of the Company that are necessary or desirable to carry out the Manager's duties under this Agreement;

7.3.3 **Payments:** to pay all outgoings, expenses, charges and costs to be borne by the Company and payable in respect of the Company's business arising from the exercise by the Manager of any of the powers and authorities conferred on it by this Agreement; and

7.3.4 **Interests of Company:** subject to the provisions of this Agreement, to do or perform any other act matter or thing which may seem to the Manager to be in the best interests of the Company.

## 8. ADVISORS

8.1 **Acting on Advice:** The Manager may in the performance of its duties and in the exercise of any of its powers, rights and discretions under this Agreement:

8.1.1 **Advice:** act or rely on the opinion or advice requested and obtained for the purposes of this Agreement in good faith from any broker, lawyer, accountant or any other professional advisor or other expert and the Manager shall not, in the absence of

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negligence or wilful default on its part, be responsible for any loss occasioned because of it so acting; and

8.1.2 **Advisory Pool:** establish an "advisory pool" comprising suitably qualified persons to advise the Manager in respect of any Portfolio Securities or proposed Portfolio Entity or to serve as the Company's nominee on any board of any Portfolio Entity.

8.2 **Advice addressed to Company:** The Manager shall ensure that all advice and opinions it obtains for the purposes of this Agreement are addressed to the Company and to the Manager, and may be relied upon by the Company. **Provided that** this clause shall not apply to any advice or opinion obtained by the Manager in connection with a bona fide dispute with the Company.

## 9. REMUNERATION

9.1 **New Zealand Portfolio Management Fee:** The Company shall pay the Manager within 7 Business Days of each Relevant Date a management fee ("New Zealand Portfolio Management Fee") equal to one twelfth of the aggregate of:

- 1.125% of the New Zealand Company Value up to \$50,000,000;
- 1.0% of the New Zealand Company Value over \$50,000,000 and up to \$150,000,000;
- 0.80% of the New Zealand Company Value over \$150,000,000.

less any fee, or portion thereof, attributable to the NZ Portfolio paid or payable for the relevant period by the Company or any group member to any person who, with the consent of the Company and the Manager, is providing services which would otherwise be provided by the Manager under this Agreement.<sup>46</sup>

9.2 **International Portfolio Management Fee:** The Company shall pay the Manager within 7 Business Days of each Relevant Date a management fee ("International Portfolio Management Fee") equal to one twelfth of the aggregate of 1.50% of:

- the aggregate of the Cost Value of the Non-New Zealand Portfolio Securities, the Non-New Zealand Portfolio Entities' Debt and the FX Value, less
- the aggregate of the Cost Value of the Australian Portfolio Securities and the Australian Portfolio Entities' Debt,

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<sup>46</sup> See Deed of Amendment dated 19 December 1995, Deed of Amendment dated 23 October 2001, Agreement Amending the Management Agreement dated 4 November 2002 and Agreement Amending the Management Agreement dated 25 May 2005.

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all as at that Relevant Date, less any fee, or portion thereof, attributable to the International Portfolio paid or payable for the relevant period by the Company or any group member to any person who, with the consent of the Company and the Manager, is providing services which would otherwise be provided by the Manager under this Agreement.<sup>47</sup>

*[[Clause 3.3 of the Agreement Amending the Management Agreement dated 25 May 2005:*

3.3 *The parties acknowledge and declare that the variations to clauses 9.1 and 9.2 made pursuant to [the Agreement Amending the Management Agreement dated 25 May 2005] are not intended, and do not in their view, increase or give rise to an increase in the amount of fees payable by the Company and its subsidiaries for services provided, or which otherwise would be provided, under the Management Agreement. If, however, it transpires that the aggregate of the fees payable under [the Agreement Amending the Management Agreement dated 25 May 2005] and any agreement for services between the Company or any group member and a service provider for services which would otherwise be provided by the Manager under [the Agreement Amending the Management Agreement dated 25 May 2005] is greater than the amount which would have been payable under the Management Agreement prior to the amendment of clauses 9.1 and 9.2 pursuant to [the Agreement Amending the Management Agreement dated 25 May 2005], then the parties agree that the amount of the fees payable pursuant to clauses 9.1 and 9.2 shall be reduced so that the aggregate of fees payable (excluding GST) is equal to the amount which would otherwise have been payable and that the New Zealand Portfolio Management Fee and International Portfolio Management Fee would be reduced to facilitate any required reduction of the fees payable.]]*

9.3 **Valuation Procedures:**<sup>48</sup>

9.3.1 **Annual Engagement & Certification:** The Company shall, not later than 1 March in each year, determine whether as at the next occurring 31 March it will (or will be likely to) hold any International Portfolio Initial Valuation Assets or International Portfolio Annual Valuation Assets. If so, the Company shall promptly arrange for the International Portfolio Independent Valuer (at the cost and expense of the Company):

- (a) to determine the amount which in the opinion of the International Portfolio Independent Valuer is the International Portfolio Fair Market Value in New Zealand dollars of such International Portfolio Initial Valuation Assets or International Portfolio Annual Valuation Assets as at such International Portfolio Valuation Date; and

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<sup>47</sup> See Agreement Amending the Management Agreement dated 4 November 2002 and Agreement Amending the Management Agreement dated 25 May 2005.

<sup>48</sup> See Agreement Amending the Management Agreement dated 4 November 2002.

- (b) to certify in writing to the Company the amounts payable (if any) to the Manager under clauses 9.4.1 and 9.4.4.

Notwithstanding the foregoing, the Company and the Manager may, from time to time and without reference to the International Portfolio Independent Valuer, agree between themselves any of the determinations or calculations described in this clause 9.3.1, in the balance of clause 9.3 or in clauses 9.4 and 9.5. If so, these clauses shall be construed accordingly.

- 9.3.2 **Engagement and Certification for Realised Investments:** If the Company has sold or otherwise realised any Non-New Zealand Portfolio Assets since last calculating the International Portfolio Realised Incentive Fee or the International Portfolio Realised Incentive Fee has not previously been calculated, the Company shall, if it is believed that an International Portfolio Realised Incentive Fee may be due to the Manager, promptly arrange for the International Portfolio Independent Valuer to determine (at the cost and expense of the Company) such fee as at the next occurring 31 March or, if this is the sale or realisation of the final Non-New Zealand Portfolio Securities held by the Company, the date of such sale or realisation. The International Portfolio Independent Valuer shall certify in writing to the Company the amount payable (if any) to the Manager under clause 9.4.2.
- 9.3.3 **Engagement and Certification on International Portfolio Termination Date:** If, as at the International Portfolio Termination Date, the Company holds Non-New Zealand Portfolio Securities the Company shall promptly arrange for an International Portfolio Independent Valuer to determine (at the cost and expense of the Company) the amount which in the opinion of the International Portfolio Independent Valuer is the International Portfolio Fair Market Value of such Non-New Zealand Portfolio Securities as at the International Portfolio Termination Date and certify in writing to the Company the amount payable (if any) to the Manager under clause 9.4.5.
- 9.3.4 **Methodologies:** On each occasion where the International Portfolio Independent Valuer is instructed to provide a valuation, it shall be provided with a copy of the guidelines as set out in Schedule 1 to this Agreement and advised to give all due regard to those guidelines.

- 9.4 **International Portfolio Incentive Fees:**<sup>49</sup> The Company shall pay the Manager incentive fees calculated and paid as follows:

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<sup>49</sup> See Agreement Amending the Management Agreement dated 4 November 2002.

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- 9.4.1 **International Portfolio Initial Incentive Fee:** The Company shall pay to the Manager within 7 Business Days of receipt by the Company of a certificate from the International Portfolio Independent Valuer under clause 9.3.1, an incentive fee ("International Portfolio Initial Incentive Fee") on certain increases in the unrealised value of the International Portfolio Initial Valuation Assets equal to "A" calculated in accordance with the following formula:

$$A = \frac{FV^1 + FX^1 + D^1 - Z^1}{5}$$

Where:

$FV^1$  = International Portfolio Fair Market Value of all International Portfolio Initial Valuation Assets held as at the International Portfolio Valuation Date to which the International Portfolio Independent Valuer's certificate relates

$FX^1$  = Net present value (which may be a negative number) in New Zealand dollars as at the International Portfolio Valuation Date to which the International Portfolio Independent Valuer's certificate relates of all current foreign exchange contracts entered into by the Company for the purposes of hedging its foreign exchange exposure arising out of the acquisition and holding of the International Portfolio Initial Valuation Assets referred to in  $FV^1$  above plus the net gain or loss suffered from any prior such contracts that have been closed out and that have not otherwise previously been taken into account when calculating an International Portfolio Incentive Fee

$D^1$  = Distributions and International Portfolio Tax Benefits received by, or becoming available to, the Company in respect of those International Portfolio Initial Valuation Assets since their respective dates of acquisition by the Company plus the Hurdle Rate of Return on such Distributions and International Portfolio Tax Benefits calculated on a daily basis from (and including) the relevant date of receipt by the Company to (but excluding) the International Portfolio Valuation Date to which the International Portfolio Independent Valuer's certificate relates and compounded at the end of each Financial Year

$$Z^1 = C^1 + H^1$$

$C^1$  = Cost Value of those International Portfolio Initial Valuation Assets

$H^1$  = The Hurdle Rate of Return on the Cost Value of those International Portfolio Initial Valuation Assets calculated on a daily basis from (and including) the relevant dates of acquisition by the Company to (but excluding) the International Portfolio Valuation Date to which the International Portfolio Independent

Valuer's certificate relates and compounded at the end of each Financial Year,

Provided that if  $Z^1$  is greater than  $FV^1 + FX^1 + D^1$ , then A equals nil.

- 9.4.2 **International Portfolio Realised Incentive Fee:** The Company shall pay to the Manager within 7 Business Days of receipt by the Company of a certificate from the International Portfolio Independent Valuer under clause 9.3.2, an incentive fee ("International Portfolio Realised Incentive Fee") on certain realised gains from the sale or other realisation of Non-New Zealand Portfolio Securities equal to "R" calculated in accordance with the following formula:

$$R = \frac{P^2 + FX^2 + D^2 - Z^2}{5}$$

Where:

$P^2$  = Proceeds of Non-New Zealand Portfolio Securities received by the Company since the previous International Portfolio Valuation Date either by sale or other realisation (or, if there hasn't been an International Portfolio Valuation Date, the International Portfolio Commencement Date) ("Disposed Assets") after deduction of: (a) the actual costs of sale or other realisation; and (b) any capital gains or income tax (or the like) that will be payable upon such sale or other realisation; and addition of any International Portfolio Tax Benefits that will arise out of the payment of the such capital gains or income tax (or the like)

$FX^2$  = Net present amount (which may be a negative number) in New Zealand dollars realised on all foreign exchange contracts entered into by the Company for the purposes of hedging its foreign exchange exposure that were realised upon the sale or other realisation of the current Disposed Assets plus the net gain or loss suffered from any prior such contracts that have been closed out or valued as at the relevant date of realisation and that have not otherwise previously been taken into account when calculating an International Portfolio Incentive Fee

$D^2$  = Distributions and International Portfolio Tax Benefits (including arising from a sale or other realisation) received by, or becoming available to, the Company in respect of those Disposed Assets since the previous International Portfolio Valuation Date (or, if there hasn't been an International Portfolio Valuation Date, the International Portfolio Commencement Date) plus the Hurdle Rate of Return on such Distributions and International Portfolio Tax Benefits calculated on a daily basis from (and including) the relevant date of receipt by the Company to (but excluding) the relevant date of sale or other

realisation by the Company and, where relevant, compounded at the end of each Financial Year

$Z^2$  = the greater of  $(PFV^2 + H^2)$  and  $C^2$

$PFV^2$  = International Portfolio Fair Market Value of those Disposed Assets as at the previous International Portfolio Valuation Date or if no International Portfolio Fair Market Value has previously been determined, then  $PFV^2$  shall be  $C^2$

$C^2$  = Cost Value of those Disposed Assets

$H^2$  = The Hurdle Rate of Return on each Disposed Asset calculated on a daily basis from (and including) the previous International Portfolio Valuation Date or, if later, the date of acquisition to (but excluding) the relevant date of sale or other realisation by the Company and, where relevant, compounded at the end of each Financial Year,

Provided that if  $Z^2$  is greater than  $P^2 + FX^2 + D^2$ , then R equals nil.

- 9.4.3 **International Portfolio Annual Incentive Fee:** The Company shall pay the Manager in accordance with clause 9.4.4 an incentive fee ("International Portfolio Annual Incentive Fee") on certain unrealised increases in the value of the International Portfolio Annual Valuation Assets equal to "B" calculated in accordance with the following formula provided that if the International Portfolio Termination Date is otherwise an International Portfolio Valuation Date then no International Portfolio Annual Incentive Fee shall be payable in respect of the Financial Year ended on that 31 March. Any fee that might be due at such time shall be calculated and paid under clause 9.4.5:

$$B = \frac{FV^3 + FX^3 + D^3 - Z^3}{5}$$

Where:

$FV^3$  = International Portfolio Fair Market Value of all International Portfolio Annual Valuation Assets held as at the International Portfolio Valuation Date to which the International Portfolio Independent Valuer's certificate relates

$FX^3$  = Net present value (which may be a negative number) in New Zealand dollars as at the International Portfolio Valuation Date to which the International Portfolio Independent Valuer's certificate relates of all current foreign exchange contracts entered into by the Company for the purposes of hedging its foreign exchange exposure arising out of the acquisition and holding of the International Portfolio Annual Valuation Assets referred to in  $FV^3$  above plus the net gain or loss suffered from

any prior such contracts that have been closed out and that have not otherwise previously been taken into account when calculating an International Portfolio Incentive Fee

$D^3$  = Distributions and International Portfolio Tax Benefits received by, or becoming available to, the Company in respect of those International Portfolio Annual Valuation Assets since the previous International Portfolio Valuation Date plus the Hurdle Rate of Return on such Distributions International Portfolio Tax Benefits calculated on a daily basis from (and including) the relevant date of receipt by the Company to (but excluding) the International Portfolio Valuation Date to which the International Portfolio Independent Valuer's certificate relates and, where relevant, compounded at the end of each Financial Year

$Z^3$  = the greater of  $(PFV^3 + H^3)$  and  $C^3$

$PFV^3$  = International Portfolio Fair Market Value of the  $FV^3$  assets as at the previous International Portfolio Valuation Date or, if acquired since then, the date of acquisition and if no International Portfolio Fair Market Value has been previously determined, then  $PFV^3$  shall be  $C^3$

$C^3$  = Cost Value of the  $FV^3$  assets

$H^3$  = The Hurdle Rate of Return on each  $FV^3$  asset calculated on a daily basis from (and including) the previous International Portfolio Valuation Date or, if later, the date of acquisition to (but excluding) the International Portfolio Valuation Date to which the International Portfolio Independent Valuer's certificate relates and, where relevant, compounded at the end of each Financial Year

Provided that if  $Z^3$  is greater than  $FV^3 + FX^3 + D^3$  then  $B = \text{nil}$ .

9.4.4 **Payment of Annual International Incentive Fee:** The International Portfolio Annual Incentive Fee calculated in respect of a Financial Year shall be earned and paid in three equal instalments as follows:

- (a) The first instalment shall be earned and paid within 7 Business Days of receiving the International Portfolio Independent Valuer's certificate under clause 9.3.1 (being for "Year 1") confirming the amount of such International Portfolio Annual Incentive Fee.
  - (b) The second instalment shall be earned and paid within 7 Business Days of receiving the International Portfolio Independent Valuer's certificate in respect of the end of the next subsequent Financial Year ("Year 2") under clause 9.3.1 but only if, in respect of those International Portfolio Annual Valuation Assets for
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which the fee was first calculated,  $FV^3 + FX^3 + D^3 + SP$  (all as at Year 2) is greater than the greater of  $C^3$  and  $FV^3$  (each as at Year 1). If  $FV^3 + FX^3 + D^3 + SP$  is not greater than the greater of  $C^3$  and  $FV^3$ , then this second instalment shall never be earned or paid.

- (c) The third instalment shall be earned and paid within 7 Business Days of receiving the International Portfolio Independent Valuer's certificate in respect of the end of the second next subsequent Financial Year ("Year 3") under clause 9.3.1 but only if, in respect of those International Portfolio Annual Valuation Assets for which the fee was first calculated,  $FV^3 + FX^3 + D^3 + SP$  (all as at Year 3) is greater than the greater of  $C^3$  and  $FV^3$  (each as at Year 1). If  $FV^3 + FX^3 + D^3 + SP$  is not greater than the greater of  $C^3$  and  $FV^3$ , then this third instalment shall never be earned or paid.
- (d) Notwithstanding the foregoing, if any second or third instalments of the International Portfolio Annual Incentive Fees have not been calculated and paid:
- (I) As at the International Portfolio Termination Date (which occurs other than by reason of the Manager having given notice of termination under clause 11.2.1), such instalments shall be paid within 7 Business Days of the International Portfolio Termination Date.
- (II) As at the date on which the last of the Non-New Zealand Portfolio Securities which were held as at the International Portfolio Valuation Date to which the first instalment relates are sold or otherwise realised, such instalments shall be calculated and, if due, paid within 7 Business Days of the relevant date of sale or realisation.
- (e) In this clause, "SP" means the proceeds (if any) arising from the sale or other realisation of those International Portfolio Annual Valuation Assets held as at the date as at which calculation of the first instalment of the relevant International Portfolio Annual Incentive Fee was made after deduction of: (a) the actual costs of sale or other realisation; and (b) any capital gains or income tax (or the like) that will be payable upon such sale or other realisation; and addition of any International Portfolio Tax Benefits that will arise out of the payment of the such capital gains or income tax (or the like)

9.4.5 **International Portfolio Final Incentive Fee:** The Company shall pay the Manager within 7 Business Days of receipt by the

Company of a certificate from the International Portfolio Independent Valuer under clause 9.3.3 a final incentive fee ("International Portfolio Final Incentive Fee") on certain increases in the unrealised value of the Non-New Zealand Portfolio Securities equal to "F" calculated in accordance with the following formula:

$$F = \frac{FV^4 + FX^4 + D^4 - Z^4}{5}$$

Where:

$FV^4$  = International Portfolio Fair Market Value of all Non-New Zealand Portfolio Securities held (but unrealised) as at the International Portfolio Termination Date

$FX^4$  = Net present value (which may be a negative number) in New Zealand dollars as at the International Portfolio Termination Date of all current foreign exchange contracts entered into by the Company for the purposes of hedging its foreign exchange exposure arising out of the acquisition and holding of the Non-New Zealand Portfolio Securities referred to in  $FV^4$  above plus the net gain or loss suffered from any prior such contracts that have been closed out and that have not otherwise previously been taken into account when calculating an International Portfolio Incentive Fee

$D^4$  = Distributions and International Portfolio Tax Benefits received by, or becoming available to, the Company in respect of those Non-New Zealand Portfolio Securities since the previous International Portfolio Valuation Date (or if there hasn't been a Valuation Date, the International Portfolio Commencement Date) plus the Hurdle Rate of Return on such Distributions and International Portfolio Tax Benefits calculated on a daily basis from (and including) the relevant date of receipt by the Company to (but excluding) the International Portfolio Termination Date and, where relevant, compounded at the end of each Financial Year

$Z^4$  = the greater of  $(PFV^4 + H^4)$  and  $C^4$

$PFV^4$  = International Portfolio Fair Market Value of the  $FV^4$  assets held as at the previous International Portfolio Valuation Date (or, if there hasn't been a previous International Portfolio Valuation Date,  $PFV^4$  shall be  $C^4$ )

$C^4$  = Cost Value of the  $FV^4$  assets

$H^4$  = The Hurdle Rate of Return on each  $FV^4$  asset calculated on a daily basis from (and including) the previous International Portfolio Valuation Date (or if there hasn't been an International Portfolio Valuation Date, the International Portfolio Commencement Date) or, if later, the date of acquisition to (but

excluding) the International Portfolio Termination Date and, where relevant, compounded at the end of each Financial Year

Provided that if  $Z^4$  is greater than  $FFV + FX^4 + D^4$  then  $F = \text{nil}$ .

## 9.5 **Currency of Calculation and Payment:**<sup>50</sup>

9.5.1 **New Zealand Portfolio, International Portfolio Management Fee and International Incentive Fees:** The New Zealand Portfolio Management Fee, International Portfolio Management Fee and International Incentive Fees shall be calculated and paid in New Zealand dollars.

9.5.2 **Currency Conversion:** For all New Zealand Portfolio Management Fee and International Portfolio Management Fee calculation purposes, the Cost Value of all Non-New Zealand Portfolio Securities and the book value of all Non-New Zealand Portfolio Entities' Debt acquired or denominated in a currency other than New Zealand dollars shall be converted into New Zealand dollars at the mid-point exchange rate quoted by Bank of New Zealand (and, failing them, ANZ Banking Group (New Zealand) Limited) at the close of business in Wellington on the relevant Relevant Date. For all International Portfolio Incentive Fee calculation purposes, all amounts in respect of all Non-New Zealand Portfolio Securities and all Non-New Zealand Portfolio Entities' Debt acquired or denominated in a currency other than New Zealand dollars and all sale or other realisation proceeds, Distributions and International Portfolio Tax Benefits received in other than New Zealand dollars shall be converted into New Zealand dollars at the mid-point exchange rate quoted by Bank of New Zealand (and, failing them, ANZ Banking Group (New Zealand) Limited) at the close of business in Wellington on the date of receipt or, as the case may be, the relevant International Portfolio Valuation Date provided that (for the avoidance of doubt) in the formulae above the various values for C shall be determined at the close of business in Wellington on the relevant dates of acquisition and the various values for PFV shall be determined at the close of business in Wellington on the previous relevant International Portfolio Valuation Date.

## 9.6 **Method of Payment:**<sup>51</sup>

9.6.1 **Payment in Shares:** Notwithstanding the previous subclauses of this clause but subject to clause 9.6.2, the Company may pay all or any of the International Portfolio Management Fees or International Portfolio Incentive Fees by issuing the Manager with fully paid ordinary shares in the Company ranking pari passu with the ordinary shares then on issue. The number of ordinary shares to be issued will be calculated by dividing the

<sup>50</sup> See Agreement Amending the Management Agreement dated 4 November 2002.

<sup>51</sup> See Agreement Amending the Management Agreement dated 4 November 2002.

New Zealand dollar amount of the fees to be paid by 98 per cent of the weighted average sale price of all trades of the Company's ordinary shares on the New Zealand Stock Exchange on the 5 Business Days immediately prior to the date of issue of the ordinary shares. The Company must give the Manager at least 5 Business Days notice of its intention to pay any fees by the issue of ordinary shares pursuant to this clause and, in the event that it does, the various references in clause 9.4 to "7 Business Days" to pay fees shall be extended to "12 Business Days".

**9.6.2 Exceptions:** The Company shall not be entitled to pay all or any of the International Portfolio Management Fees or International Portfolio Incentive Fees by issuing the Manager with fully paid ordinary shares in the Company if the Manager has given the Company notice no later than 5 Business Days after notice was given by the Company under clause 9.6.1 that to do so would cause the Company or the Manager or any person associated with it: (a) to breach any applicable law or regulation (including the Listing Rules of the New Zealand Stock Exchange or any takeovers code ("Code") in force in New Zealand at the relevant time); or (b) to have to make any full or partial offer for additional shares of the Company, or to sell any shares of the Company, in order to avoid a breach of the Code or to ensure continuing compliance with the Code.

9.7 **Goods & Services Tax:** GST will be added (if applicable) to all fees payable under this clause.<sup>52</sup>

9.8 **Gearing:** Without the prior written approval of the Board, the debt to capital ratio (calculated by reference to current market values) of a Non-New Zealand Portfolio Entity shall not exceed 55%. If it is proposed that the ratio be higher than 55%, the Manager shall provide the Company with a study demonstrating that there is a net benefit to it in the higher gearing. This study shall have specific regard to the relevant asset, the greater financial risks that flow from increased gearing and the higher expected returns to equity.<sup>53</sup>

9.9 **Lowest Price:** The parties agree for the purposes of the accrual rules in the Income Tax Act 1994 that the amounts payable under this clause represent the lowest price the parties would have agreed for the services on the date this Agreement is entered into, if payment had been required in full at the time the services were provided and on that basis no income or expenditure arises under those rules.<sup>54</sup>

9.10 **FX Contracts:** Where foreign exchange contracts are taken out to hedge foreign exchange exposure, the Company shall allocate such contracts to specific Non-New Zealand Portfolio Entities at the time such contracts are entered into and advise the Company accordingly.<sup>55</sup>

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<sup>52</sup> See Agreement Amending the Management Agreement dated 4 November 2002.

<sup>53</sup> See Agreement Amending the Management Agreement dated 4 November 2002.

<sup>54</sup> See Agreement Amending the Management Agreement dated 4 November 2002.

<sup>55</sup> See Agreement Amending the Management Agreement dated 4 November 2002.

9.11 **Recovery of Under or Overpayment:**<sup>56</sup> If any audit conducted pursuant to clause 7.2.9 of the management fees paid to the Manager by the Company pursuant to this clause 9 or of any costs paid to the Manager by the Company pursuant to clause 10 determines that there has been an under or overpayment of management fee or costs then:

9.11.1 **Overpayment:** in the event of any overpayment the amount concerned shall be deducted from the next instalment of management fee payable and if the amount concerned exceeds the amount of the next instalment of management fee payable then the Manager agrees to pay to the Company the amount of such overpayment upon demand; and

9.11.2 **Under Payment:** in the event of any under payment the amount concerned shall be added to the next instalment of management fee paid to the Manager,

provided however that in the event that either party disputes the auditor's finding pursuant to clause 7.2.9 then that party may require the issue to be referred to arbitration pursuant to clause 18.6.

[Clauses 6.2 to 6.10 of the Infratil Ventures Management Agreement:

6.2 **VCF Management Fee:** *The Company shall pay to the Manager within 7 Business Days after the last day of each calendar month after the VCF Effective Date a management fee ("VCF Management Fee") equal to:-*

6.2.1 **2% to \$7,500,000 per VCF Portfolio Entity:** *In respect of each VCF Portfolio Entity, where the VCF Commitment applicable to that VCF Portfolio Entity is equal to or less than \$7,500,000, one twelfth of 2% of the VCF Commitment applicable to that VCF Portfolio Entity as at the end of the previous calendar month: or*

6.2.2 **1.2% on Amounts over \$7,500,000 per VCF Portfolio Entity:** *In respect of each VCF Portfolio Entity, where the VCF Commitment applicable to that VCF Portfolio Entity is greater than \$7,500,000, \$12,500 plus one twelfth of 1.2% of the VCF Commitment in excess of \$7,500,000 applicable to that VCF Portfolio Entity as at the end of the previous calendar month,*

*adjusted in accordance with clause 6.4.*

6.3 **Annual Valuation:** *The Company shall arrange for a VCF Independent Valuer to certify in writing to the Company the amount which, in the opinion of the VCF Independent Valuer, is the VCF Fair Market Value of all VCF Portfolio Securities issued by each VCF Portfolio Entity and the sum of such VCF Fair Market Values ("VC Portfolio Value") as at 31 March 2005 and each subsequent 31 March and otherwise as required*

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<sup>56</sup> See Agreement Amending the Management Agreement dated 4 November 2002 (renumbering only).

by this Agreement (each such date being a "VCF Valuation Date") and to certify in writing to the Company such VCF Fair Market Values and VC Portfolio Value as at each VCF Valuation Date. Notwithstanding the foregoing, the Manager and the Company may, from time to time, agree the VCF Fair Market Value of all VCF Portfolio Securities issued by each VCF Portfolio Entity and the VC Portfolio Value without reference to the VCF Independent Valuer.

- 6.4 **VCF Management Fee Adjustment:** If as at any VCF Valuation Date on or after 30 June 2006 the VC Portfolio Value plus all VCF Distributions received in respect of the VCF Portfolio Securities held as at such date (together the "VCF Total Value") is less than the aggregate Cost Value of such VCF Portfolio Securities ("VCF Aggregate Cost"), then the management fees payable pursuant to clause 6.2 for the "X" months ending on the VCF Valuation Date shall be reduced by the percentage derived from the formula: (1 minus (the VCF Total Value divided by the VCF Aggregate Cost)) and the appropriate amount shall be refunded by the Manager to the Company. In this clause, "X" shall be the number of complete months that any VCF Portfolio Securities issued by a VCF Portfolio Entity that are included in the VCF Portfolio Value calculation that have a Cost Value higher than the aggregate of their VCF Fair Market Value as at such date plus all VCF Distributions in respect thereof have been held. Provided that if more than one VCF Portfolio Security so qualifies the greatest number of months shall be taken but further provided that "X" shall not, in any circumstance, be greater than 12.
- 6.5 **VCF Incentive Fee:** The Company shall pay the Manager an incentive fee ("VCF Incentive Fee") or, as the case may be, the Manager shall refund to the Company previously paid VCF Incentive Fees relating to the same VCF Incentive Fee Period, each within 7 Business Days of the divestment (including any deemed divestment) of any VCF Portfolio Securities, calculated as follows:
- 6.5.1 **First Divestment:** Following the first divestment of VCF Portfolio Securities that occurs within a VCF Incentive Fee Period, the Company shall pay the Manager 20% of the Compound Gains (if it is a positive number) on such Divested VCF Portfolio Securities.
- 6.5.2 **Positive Subsequent Divestments:** If, following the second or any subsequent divestment of VCF Portfolio Securities that occurs within a VCF Incentive Fee Period, the Compound Gains on all Divested VCF Portfolio Securities divested within that VCF Incentive Fee Period is a positive number ("First Value") greater than the Compound Gains on all Divested VCF Portfolio Securities previously divested within the same VCF Incentive Fee Period, whether that is a positive or negative number, ("Second Value"), the Company shall pay the Manager 20% of the First Value less, if the Second Value is positive, 20% of that Second Value.
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6.5.3 **Negative Subsequent Divestments:** *If, following the second or any subsequent divestment of VCF Portfolio Securities that occurs within a VCF Incentive Fee Period, the Compound Gains on all Divested VCF Portfolio Securities divested within that VCF Incentive Fee Period, whether that is a positive or negative number, ("Third Value") is less than the Compound Gains on all Divested VCF Portfolio Securities previously divested within the same VCF Incentive Fee Period which is, itself, a positive number ("Fourth Value"), the Manager shall refund to the Company 20% of the difference between the Third Value and the Fourth Value; provided that the Manager shall never be required to refund a greater amount of VCF Incentive Fee in any VCF Incentive Fee Period than it has received within that VCF Incentive Fee Period.*

6.6 **Losses and Gains:** *For the purposes of clause 6.5:*

*"Compound Gains " equals "V",*

*Where:*

$$V = W + X - Y - Z$$

*W = the aggregate amounts received by the Company on divestment of the relevant Divested VCF Portfolio Securities (before deduction of any capital gains or income tax (or the like)) less the costs directly associated with the divestment or, as the case may be, the VCF Fair Market Value of those Divested VCF Portfolio Securities upon transfer to the Utility Portfolio*

*X = the aggregate amounts of VCF Distributions received by the Company in respect of those Divested VCF Portfolio Securities (before deduction of any capital gains or income tax (or the like)) plus VCF Tax Benefits received in respect of such VCF Distributions plus the VCF Hurdle Rate of Return on such VCF Distributions calculated on a daily basis from (and including) the relevant date of receipt to (but excluding) the date of divestment and compounded at the end of each Financial Year*

*Y = Cost Value of those Divested VCF Portfolio Securities plus the VCF Hurdle Rate of Return on such Cost Value calculated on a daily basis from (and including) the relevant date of acquisition to (but excluding) the date of divestment and compounded at the end of each Financial Year*

*Z = the VCF Management Fees paid by the Company from (and including) the VCF Effective Date to (but excluding) the relevant date of divestment (pro-rated for any part month) in respect of those Divested VCF Portfolio Securities plus the VCF Incentive Fees previously paid in respect of past divestments of Divested VCF Portfolio Securities*

*"Divested VCF Portfolio Security" means a VCF Portfolio Security that has been:*

- (a) *disposed of by the Company (either by sale or upon liquidation or winding up) since the VCF Effective Date or, if later, the most recent VCF Review Date but excluding any divestments of former VCF Portfolio Securities out of the Utility Portfolio; or*
- (b) *transferred to the Utility Portfolio since the VCF Effective Date or, if later, the most recent VCF Review Date*

*"divestment" has a corresponding meaning.*

*"VCF Hurdle Rate of Return" means 17.5% per annum.*

- 6.7 **Methodologies:** *On each occasion where the VCF Independent Valuer is instructed to provide a valuation, it shall be provided with a copy of the guidelines as set out in Schedule A to this Agreement and advised to give all due regard to those guidelines.*
- 6.8 **Adjustments and Audit:** *The recovery of under or overpayment of fees and audit provisions in clauses 9 and 12 of the Management Agreement shall apply, with all necessary modifications, to the VCF Management Fee and the VCF Incentive Fee.*
- 6.9 **Goods & Services Tax:** *GST will be added (if applicable) to all fees payable under this clause 6.*
- 6.10 **Lowest Price:** *The parties agree for the purposes of the accrual rules in the Income Tax Act 1994 that the amounts payable under this clause 6 represent the lowest price the parties would have agreed for the services on the date this Agreement is entered into, if payment had been required in full at the time the services were provided and on that basis no income or expenditure arises under those rules.]*

## 10. COSTS

- 10.1 **Costs to be Borne by the Company:** Subject to clause 10.3 the Company shall pay and discharge and shall reimburse the Manager in respect of all costs, charges, expenses and liabilities associated with or incurred by or on behalf of the Company in connection with the operation of the Company, its business and assets.
- 10.2 **Particular Costs:** Without limiting clause 10.1 but subject to clause 10.3, the Company shall pay all costs, charges, expenses and liabilities:
  - 10.2.1 **Manager's Costs:** incurred by the Manager in the course of and incidental to its performance of this Agreement;
  - 10.2.2 **Report to Shareholders:** in relation to the preparation of reports to shareholders including annual and half-yearly reports; and

10.2.3 **Brokerage:** being brokerage and other fees, costs, charges and expenses incurred in respect of the acquisition of any Portfolio Security.

10.3 **Costs to be Borne by the Manager:** The Manager shall pay and discharge all costs, charges, expenses and liabilities incurred by or on behalf of the Manager in respect of taking advice concerning, or providing services in connection with, the selection and management of Portfolio Securities.

## 11. TERM AND TERMINATION

11.1 **Term:** The Term of this Agreement shall commence on the Commencement Date and shall continue until terminated in accordance with the provisions of this Agreement.

11.2 **Termination on Notice or for Failure to Perform:**<sup>57</sup>

11.2.1 **On Notice:** Either the Manager or the Company may terminate this Agreement by the giving of written notice by one to the other. The Agreement shall terminate on the date that is five years from the next annual balance date of the Company following written notice of termination.

11.2.2 **Failure to Perform Investment Services:** If and whenever the Manager fails, neglects or refuses to carry out or perform any material function or action required to be carried out or performed by the Manager pursuant to the terms of this Agreement, or if the Manager consistently fails to provide a satisfactory and competent standard of investment and administrative management which the Company could otherwise reasonably expect from a comparable professional manager carrying out the same duties, the Company shall be entitled to terminate the Agreement.

11.2.3 **Procedure to be Followed in Relation to Clause 11.2.2:** Prior to the Company exercising any rights of termination under clause 11.2.2 of this Agreement it shall give the Manager written notice setting out details of the alleged failure or failures to perform and/or neglect, and if the Manager does not, in respect of a matter capable of remedy, use its best endeavours to effect a remedy within twenty (20) Business Days of the date of such notice, or, if a matter is not capable of remedy, then the Company shall be entitled by further written notice to forthwith terminate the Agreement. From the date of termination no further management fee shall be payable to the Manager, save such fees and other amounts as are due and payable up to the date of such termination.

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<sup>57</sup> See Deed of Amendment dated 19 December 1995.

11.3 **Winding Up:** This Agreement shall terminate on the commencement of winding up or other dissolution of the Company.

11.4 **Termination on Default:**

11.4.1 **Default by Manager or Company:** Either the Manager or the Company ("the Non-Defaulting Party") may terminate this Agreement forthwith by notice to the other, if the other ("the Defaulting Party") commits or is or becomes subject to any of the following events (provided that if the Manager is the Defaulting Party any decision by the Company to terminate this Agreement shall be required to be a made by a unanimous decision of all the Directors for the time being):

- (a) **Liquidation:** the Defaulting Party goes into liquidation (other than a voluntary liquidation for the purpose of reconstruction or amalgamation on terms previously approved by the Non-Defaulting Party);
  - (b) **Receivership:** a receiver or receiver and manager is appointed in respect of any of the assets of the Defaulting Party;
  - (c) **Application or Meeting:** an application is made to the Court or a meeting is called for any of those purposes in subclauses 11.4.1(a) and 11.4.1(b) above (unless the Defaulting Party satisfies the Non-Defaulting Party in its reasonable opinion that the application or call for meeting is frivolous or vexatious);
  - (d) **Insolvency:** the Defaulting Party ceases to be able to pay its debts as they become due;
  - (e) **Composition with Creditors:** the Defaulting Party enters into any arrangement or composition with its creditors generally (other than with the prior consent of the Non-Defaulting Party);
  - (f) **Corporations (Investigation and Management) Act:** the Defaulting Party is declared to be at risk or a statutory manager of the Defaulting Party is appointed under the Corporations (Investigation and Management) Act 1989;
  - (g) **Material Breach:** the Defaulting Party commits a material breach of this Agreement and (if the breach is capable of remedy) fails to remedy the breach within 20 Business Days after receipt of written notice from the Non-Defaulting Party requiring it to remedy the breach; and
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- (h) **Serious Misconduct:** the Defaulting Party is guilty of gross negligence in the performance of its duties under this Agreement

provided that if any of the events or circumstances specified in subclauses 11.4.1(a) to (h) inclusive above applies or occurs in relation to Morrison & Co (or any wholly owned subsidiary of Morrison & Co which holds equity share capital in the Manager) or any Approved Person which has entered a contract with the Manager in accordance with subclause 3.4.4 (as if any such company or person were the Defaulting Party), and in each of these circumstances the Manager shall be deemed to be the Defaulting Party).

- 11.4.2 **Change in Control in Manager:** The Company may terminate this Agreement forthwith by notice to the Manager if without the consent of the Board (which may not be unreasonably withheld) there is a change of control of the Manager whereby Morrison & Co, or any wholly owned subsidiary of Morrison & Co, or Lloyd Morrison or any company which is wholly owned by any of the above or any combination thereof, cease to hold in the aggregate between them 60% of the equity share capital of the Manager (and in this circumstance the Manager shall be deemed to be the Defaulting Party).<sup>58</sup>

11.5 **Duties on Termination:** On termination of this Agreement:

- 11.5.1 **Company Property:** the Manager shall deliver or cause to be delivered to the Company:
- (a) all property of the Company including all certificates relating to the Portfolio or other investments of the Company; and
  - (b) accounting records, correspondence, and all other records relating to the affairs of the Company in the possession or under the control of the Manager or any Approved Person who has entered into a subcontract with Manager in accordance with clause 3.4.4;
- 11.5.2 **Authorities:** the Manager shall deliver to the Company all forms of proxy, letters of authority, mandates or powers of attorney which may have been issued to it by the Company;
- 11.5.3 **No Authority:** the Manager shall not hold itself out as having authority to negotiate or contract on behalf of the Company; and
- 11.5.4 **Resignation:** if so requested by the Company, the Manager shall obtain the resignation as a director of any Portfolio Entity

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<sup>58</sup> See Deed of Amendment dated 19 December 1995.

of any person nominated by the Company as a director of any Portfolio Entity.

*[Clause 8 of the Infratil Ventures Management Agreement:*

- 8.1 **Termination of the Venture Capital Portfolio as at Review Date:** *As at each VCF Review Date, the Company may, after consultation with the Venture Portfolio Manager but at its sole discretion, terminate the Venture Capital Portfolio. Any such election shall be advised by the Company to the Manager by not later than one month following the relevant VCF Review Date (and, failing this, the Company shall be deemed to have elected not to terminate the Venture Capital Portfolio).*
- 8.2 **Termination of the Venture Capital Portfolio By Agreement:** *The Company and the Manager may, at any time, agree to terminate the Venture Capital Portfolio.*
- 8.3 **Consequences of Termination:** *If the Venture Capital Portfolio is terminated:*
- 8.3.1 **No Further Acquisitions:** *The Investment Committee shall be disbanded and the Manager shall cease to identify suitable investment opportunities in Venture Capital Businesses and shall not acquire any further VCF Portfolio Securities without the prior written consent of the Board (unless in performance of an Undrawn Commitment made prior to date of termination) but shall otherwise continue to manage the Venture Capital Portfolio in accordance with the terms of this Agreement and the Management Agreement.*
- 8.3.2 **Process for Sale:** *The Manager shall agree with the Company a process and timetable for the orderly sale of all existing VCF Portfolio Securities and shall transfer all sale proceeds to the Utility Portfolio; provided that, if all existing VCF Portfolio Securities have not been unconditionally sold within 12 months of the VCF Termination Date (or such other date as agreed by the Company and the Manager), the Company may transfer all such VCF Portfolio Securities out of the Venture Capital Portfolio into the Utility Portfolio, and, for the purpose of VCF Management Fee calculations, the VCF Commitment shall be reduced to zero and the Manager shall continue to manage such VCF Portfolio Securities in accordance with the Management Agreement.*
- 8.3.3 **Completion of Sale or Transfer:** *Upon the completion of the sale or transfer process described in clause 8.3.2, this Agreement shall terminate and the relevant amendments to the Management Agreement shall cease to be of any effect (save with respect to any rights or obligations arising prior to the VCF Termination Date).*
- 8.4 **Termination of Management Agreement:** *This Agreement shall terminate on termination of the Management Agreement.*
- 8.5 **VCF Termination Date:** *If the VCF Termination Date is other than the last day of a calendar month then the Company shall pay the Manager within 7 Business Days of termination a management fee equal to that that would be calculated pursuant to clauses 6.2.1 and 6.2.2 except that the references to “one twelfth”*
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*shall be replace with "x/365" where "x" equals the number of days since the last day of the immediately preceding calendar month until the VCF Termination Date.]*

## 12. EFFECT OF TERMINATION

### 12.1 Fees:

12.1.1 **Company May Require Audit:** Notwithstanding clause 12.1.2 the Company may upon termination require the Auditor to determine whether the management fees paid to the Manager pursuant to clause 9 and the costs paid to the Manager pursuant to clause 10 have been correctly determined and paid since the conclusion of the accounting period to which the previous audit carried out under clause 7.2.9 related and until such audit has been completed the Company shall have no obligation to pay any amount otherwise owing under clause 12.1.2. In the event that this audit determines that there has been an overpayment or under payment of management fees paid pursuant to clause 9 or costs paid pursuant to clause 10 then:

- (a) **Overpayment:** in the event of an overpayment the amount of such overpayment shall be deducted from the payment to be made to the Manager pursuant to clause 12.1.2 or if the overpayment exceeds this payment then the Manager shall upon demand pay the amount by which the overpayment exceeds the payment pursuant to clause 12.1.2 to the Company; and
- (b) **Under Payment:** in the event of an under payment then the amount of such under payment shall be added to the payment which the Company is to make to the Manager pursuant to clause 12.1.2,

provided however that in the event that either party disputes the auditor's finding then that party may require the issue to be referred to arbitration pursuant to clause 18.6.

12.1.2 **Calculation of Fees:** Where the Agreement is terminated on a day that is not the last day of a calendar month, the Company shall pay the Manager within 7 Business Days of termination a management fee equal to  $x/365$  multiplied by the aggregate of:

- 1.125% of the New Zealand Company Value up to \$50,000,000;
- 1.0% of the New Zealand Company Value over \$50,000,000 and up to \$150,000,000;
- 0.80% of the New Zealand Company Value over \$150,000,000; and

- 1.50% of the aggregate of the Cost Value of the Non-New Zealand Portfolio Securities, the Non-New Zealand Portfolio Entities' Debt and the FX Value less the aggregate of the Cost Value of the Australian Portfolio Securities and the Australian Portfolio Entities' Debt,

plus GST (if applicable), where x equals the number of days since the last day of the immediately preceding calendar month.<sup>59</sup>

- 12.2 **Effect of Termination:** On termination of this Agreement the rights and obligations under this Agreement will cease to have effect provided that no termination shall affect any rights and obligations in respect of events prior to termination and provided further that the following provisions shall continue in full force and effect notwithstanding such termination, that is to say clauses 11.5, 12.1, 14.1, 14.2, 14.4, 14.5, 16.1, 16.2 and any other provision which expressly or by implication is intended to survive termination.

### 13. CONFLICTS OF INTEREST

- 13.1 **No Dealing with the Company as Principal:** The Manager shall not, and shall use its best endeavours to ensure that any person appointed by it under subclause 8.1.2 and any Connected Person of any of the Manager or any person appointed under subclause 8.1.2 or any Approved Person does not, except with the consent of the Board after full disclosure of their interest, deal with the Company as beneficial owner on disposition or acquisition of any Portfolio Securities by the Company or otherwise deal with the Company as principal.
- 13.2 **Permitted Dealings:** Subject to subclause 13.3 and 13.4, the Manager, any Approved Person and any Connected Person of the Manager may contract with or enter into any financial or other transaction with any Investor or with any Portfolio Entity without being under any obligation to account to the Company for any commission or other payment received in connection therewith except where such contract or transaction would give rise to a conflict with the Manager's duties under this Agreement.
- 13.3 **Acquisition of Securities:** The Manager will not and will procure that no Approved Person (who has entered into a subcontract with the Manager as described in clause 3.4.4) or any Connected Person of the Manager will acquire, purchase or subscribe for any Security unless the Security has first been offered to the Company on no less favourable terms and the board has resolved not to take up or accept the opportunity to invest on the same terms.

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<sup>59</sup> See Deed of Amendment dated 19 December 1995, Deed of Amendment dated 23 October 2001 and Agreement Amending the Management Agreement dated 4 November 2002.

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- 13.4 **Fees and Commission:** The Manager shall account to the Company and shall procure that any Approved Person or Connected Person of the Manager or any Approved Person shall also account to the Company for any fees, commissions or other payment or benefit (whether in money or moneys worth) received by the Manager or any Connected or Approved Person in relation to, or arising out of, or in connection with, the acquisition, holding or disposition of any Portfolio Security by the Company provided that this clause shall not apply where the Manager, Approved Person or Connected Person has previously disclosed the fee, commission or other payment or benefit to the Board and the Board has consented to the fee, commission or other payment or benefit.
- 13.5 **Natural Persons:** Notwithstanding clause 13.4, no natural person who is not an officer of the Manager, any Associated Person or any Connected Person shall be required to account to the Company under clause 13.4.

#### 14. LIMITATION OF LIABILITY

- 14.1 **No Warranty:** No warranty is given by the Manager as to the performance or profitability of any Portfolio Securities, cash or other property forming part of, or constituting the assets of the Company.
- 14.2 **Wilful Default or Negligence:** The Manager shall not be liable for any loss or damage whatsoever which the Company or any Investor may sustain or suffer as the result of the exercise or performance by the Manager (or failure of the Manager to exercise or perform or any error of judgment by the Manager in respect thereof) of any of the obligations and duties of the Manager under this Agreement or loss of opportunity whereby the value of the Company would have increased, or for any decline in the value of the Company, howsoever arising except to the extent that such loss, damage or decline is due to the gross negligence, fraud, dishonesty or wilful default of the Manager or that of its officers, employees, advisors or agents.
- 14.3 **Confirmation by Company:** The Company will allow and confirm everything properly done in accordance with this Agreement by the Manager.
- 14.4 **Indemnity by the Company:** Subject to clause 10.3 the Company indemnifies and shall keep indemnified the Manager, its officers, employees, advisors or agents, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, expenses or disbursements of any kind or nature whatsoever (other than those resulting from the unauthorised acts, gross negligence, wilful default, dishonesty or fraud of, or breach of this Agreement by, the Manager or of its officers, employees, advisors or agents) including the Manager's reasonable costs and expenses in relation to enforcement of the indemnity which may be imposed on, or incurred by or asserted against the Manager solely by reason of the Manager performing any functions, obligations, discretions or duties of the Manager under this Agreement.
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- 14.5 **Continuing Obligation:** Each indemnity in this Agreement is a continuing obligation separate and independent from the other obligations of the parties and survives termination of this Agreement.

## 15. FORCE MAJEURE

The Manager, its officers, employees advisors or agents or delegates shall not be liable for any loss of or damage to property of the Company in possession of the Manager or for any failure, interruption or delay to fulfil its duties under this Agreement if the loss, damage, failure, interruption or delay is caused directly or indirectly by any force majeure event including without limitation, act of God, the act of any government or competent authority, strike, failure or malfunction of power, communications, computer services or systems or other service, storm, fire or accident. The Manager, its officers, employees, advisors and agents must use their reasonable efforts to minimise the effects of the events referred to in this clause.

## 16. CONFIDENTIALITY

- 16.1 **Confidentiality:** The Manager shall:

16.1.1 **Keep Confidential:** hold and keep confidential all Confidential Information;

16.1.2 **Purposes of Agreement:** only use Confidential Information for the purposes of its duties under this Agreement;

16.1.3 **Not Disclose:** not disclose or make available any Confidential Information to any person except:

- (a) to its directors, officers, employees, agents, professional advisors, Approved Persons appointed under subclause 3.4.4, and persons appointed under subclause 8.1.2, for the purposes of this Agreement and on directing such person to treat the information on a confidential basis as required by this clause;
- (b) with the prior consent of the Board; or
- (c) as is necessary and in the course of complying with the Company's obligations under the law or the listing requirements of the Exchange to disclose or make available any such information; and

16.1.4 **Detrimental to Company:** not use any Confidential Information in a manner that is detrimental to the Company.

- 16.2 **Continuing Obligation:** The obligations created by this clause shall remain in full force and effect after termination of this Agreement.
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**17. NOTICES**

17.1 **Method of Giving Notice:** A notice required or permitted to be given by one party to another under this Agreement shall be in writing, addressed to the other party and may be:

17.1.1 **Hand Delivery:** hand delivered at that party's address;

17.1.2 **Fastpost:** sent by prepaid "Fastpost" mail to that party's address; or

17.1.3 **Facsimile:** transmitted by facsimile to that party's address.

17.2 **Time of Receipt:** A notice given to a party in accordance with clause 17.1 shall be treated as having been given and received:

17.2.1 **Hand Delivery:** if hand delivered to a party's address, on the day of delivery if a Business Day, otherwise on the next following Business Day;

17.2.2 **Fastpost:** if sent by prepaid "Fastpost" on a Business Day, on the next Business Day after posting otherwise on the second Business Day after posting; and

17.2.3 **Facsimile:** if transmitted by facsimile to a party's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next following Business Day.

17.3 **Address of Parties:** For the purposes of subclause 17.2 the address of a party is the address set out below or such other address which that party may from time to time advise the other party:

17.3.1 In the case of:

Infrastructure & Utilities NZ Limited  
97 The Terrace  
PO Box 320  
Wellington

Facsimile No. (04) 473 2388  
Attention: The Secretary

17.3.2 In the case of:

Infratil Management Limited  
97 The Terrace  
PO Box 1395  
Wellington

Facsimile No. (04) 473 2388  
Attention: Mr H R L Morrison

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**18. GENERAL**

- 18.1 **Waiver:** The failure, delay, relaxation or indulgence on the party of any party in exercising any power or right given to that party under this Agreement does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right under this Agreement. A power or right may only be waived in writing, signed by the party to be bound by the waiver.
- 18.2 **Amendment:** This Agreement may only be amended or supplemented in writing signed by the parties.
- 18.3 **Severability:** Any term, condition or proviso in this Agreement which may be invalid or unenforceable is to be read if possible, so as to be valid and enforceable, and if any term, condition or proviso is declared or adjudged to be invalid or unenforceable, such term, condition or proviso shall be severable, shall be deemed to be deleted from this Agreement and shall not affect the validity or enforceability of other terms, conditions and provisos contained in this Agreement.
- 18.4 **Further Assurances:** Each party shall do, sign, execute and deliver and shall procure that each of its officers, employees and agents, signs, executes and delivers, all deeds, documents, instruments and acts reasonably required of it or them by notice from the other party to effectively carry out and give full effect to the parties' intentions as evidenced by this Agreement.
- 18.5 **Assignment:** No party may assign or transfer in whole or in part any of its rights or obligations under this Agreement without the prior written consent of the other.
- 18.6 **Arbitration:** If any dispute arises between the parties touching the construction, meaning or effect of this Agreement or the rights and liabilities of the parties under this Agreement and the parties are not able to resolve such dispute by negotiation in good faith then either party may refer to dispute to arbitration. Such arbitration to be before a single arbitrator if the parties can agree upon one and otherwise to be before two arbitrators, one to be appointed by the Company and one to be appointed by the Manager and in the event of the arbitrators differing, to an umpire who shall have been appointed by the two arbitrators before they entered upon their deliberations. Such arbitration shall be conducted in all respects in accordance with the provisions of the Arbitration Act 1908.
- 18.7 **Counterparts:** This Agreement may consist of two counterparts and both counterparts taken together shall constitute one and the same instrument.
- 18.8 **Change of Law:** If at any time during the currency of this Agreement there is a change of tax law, which affects the tax payable by either the Company or the Manager (including without limitation any indirect
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increase in tax payable by the Manager as a result of adjustments to the imputation tax credit regime currently in force), or to the law relating to bodies corporate, so that in either case the parties' intentions, as evidenced by this Agreement, cannot be or are likely not to be capable of being achieved to the same extent and in the same way as is proposed in this Agreement the Manager and the Company shall forthwith meet to discuss the effect or likely effect of such changes or alterations with a view to making such adjustments to this Agreement as may be necessary to ensure that their respective original intentions, as evidenced by this Agreement, will not be materially adversely affected.

18.9 **Privity :** For the avoidance of any doubt this Agreement shall not be construed as conferring any benefits enforceable at the suit of any third parties except for the Investors.

**EXECUTED AS A DEED**

**THE COMMON SEAL** of  
**INFRASTRUCTURE & UTILITIES NZ**  
**LIMITED** was affixed in the presence of:

\_\_\_\_\_ Director

\_\_\_\_\_ Director/Secretary

**THE COMMON SEAL** of **INFRATIL**  
**MANAGEMENT LIMITED** was affixed in the  
presence of:

\_\_\_\_\_ Director

\_\_\_\_\_ Director/Secretary

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**SCHEDULE 1<sup>60</sup>****(Clause 9.3.4)****Valuation Process Guidelines**

1. These guidelines will be provided to the International Portfolio Independent Valuer.
2. These guidelines go to the process that should be followed when determining the International Portfolio Fair Market Value, but not valuation outcome:
  - (a) The valuation outcome sought is neither optimistic nor pessimistic.
  - (b) The Company shall (with the Manager's assistance where needed) provide the International Portfolio Independent Valuer with:
    - (i) An electronic copy of the valuation model used to support the original investment recommendation. This model should disclose the basis of the valuation, the valuation assumptions used and the projected performance of the asset.
    - (ii) Copies of all Board reports relating to the original investment recommendation.
  - (c) The International Portfolio Independent Valuer shall provide both the Company and the Manager with drafts of its valuation for written comment before settling on the final International Portfolio Fair Market Value. All written comments shall be circulated among the three relevant parties and each of the Company and the Manager shall have an opportunity to comment in writing on the comments made by the other of them.
  - (d) While the International Portfolio Independent Valuer shall not be required to retain the initial project assumptions from the material referred to in paragraph (b) above, where they are not retained the International Portfolio Independent Valuer shall state the reasons for not doing so.
  - (e) The approach to determining International Portfolio Fair Market Value should be consistent with the New Zealand practice (but having all proper regard to the country where the assets are situated) and should be consistently applied across successive valuations.

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<sup>60</sup> See Agreement Amending the Management Agreement dated 4 November 2002.

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*[Schedule A of the Infratil Ventures Management Agreement:*

***SCHEDULE A***

***(Clause 6.7)***

***Valuation Process Guidelines***

1. *These guidelines will be provided to the VCF Independent Valuer.*
2. *These guidelines go to the process that should be followed when determining the VCF Fair Market Value, but not valuation outcome:*
  - (a) *The valuation outcome sought is neither optimistic nor pessimistic.*
  - (b) *The Company shall (with the Manager's assistance where needed) provide the VCF Independent Valuer with:*
    - (i) *An electronic copy of the valuation model used to support the original investment recommendation. This model should disclose the basis of the valuation, the valuation assumptions used and the projected performance of the asset.*
    - (ii) *Copies of all Board reports relating to the original investment recommendation.*
  - (c) *The VCF Independent Valuer shall provide both the Company and the Manager with drafts of its valuation for written comment before settling on the final VCF Fair Market Value. All written comments shall be circulated among the three relevant parties and each of the Company and the Manager shall have an opportunity to comment in writing on the comments made by the other of them.*
  - (d) *While the VCF Independent Valuer shall not be required to retain the initial project assumptions from the material referred to in paragraph (b) above, where they are not retained the VCF Independent Valuer shall state the reasons for not doing so.*
  - (e) *The approach to determining VCF Fair Market Value should be consistent with the New Zealand practice and should be consistently applied across successive valuations.]*