

**Dated** 25 March 2014

**PUNAKAIKI FUND LIMITED  
MANAGEMENT AGREEMENT**

between

**PUNAKAIKI FUND LIMITED**  
Company

and

**LANCE WIGGS CAPITAL MANAGEMENT  
LIMITED**  
Manager

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DATED

25 March 2014

## PARTIES

1. **PUNAKAIKI FUND LIMITED** (Company Number 4395942) (the "**Company**")
2. **LANCE WIGGS CAPITAL MANAGEMENT LIMITED** (Company Number 4391999) (the "**Manager**")

## BACKGROUND

- A. The Company was incorporated to establish a fund for investment in accordance with the Investment Focus.
- B. The Manager will provide investment, management and administrative services to the Group under this Agreement.

## IT IS AGREED

### 1. INTERPRETATION

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

"**Agreement**" means this Agreement, including the Background.

"**Business Day**" means a day (other than a Saturday or Sunday) on which registered banks in Auckland, New Zealand, are generally open for business.

"**Commencement Date**" means the next allotment date of any Securities issued by the Company.

"**Constitution**" means the constitution of the Company.

"**Group**" means the Company and any Investment Entity.

"**Group Company**" means any company or other entity in the Group.

"**GST**" means goods and services tax imposed under the Goods and Services Tax Act 1985 (New Zealand).

"**Information Memorandum**" means the document provided to eligible investors inviting investment in the Company dated in or around March 2014.

"**Interest Rate**" means a rate of interest equal to 10% per annum.

"**Investment Entity**" means a wholly owned subsidiary of the Company (if any).

"**Investment Focus**" means the Group's investment objective and primary investment focus as set out in the Information Memorandum and includes any investment criteria as may be approved by the board of directors of the Company.

"**Management Fee**" means the management fee calculated in accordance with Schedule 1 and payable by the Company to the Manager under clause 6.

**"Management Services"** means the investment, management and administration services to be provided by the Manager to the Group as set out in clause 3.

**"Market Value"** means:

- (a) where the Company is listed on a recognised exchange:
  - (i) on initial quotation, the market capitalisation of the Company based on the offer price of the Company's shares at the time of listing;
  - (ii) subsequent to listing, the market capitalisation of the Company based on the volume weighted average trading price of the Company's shares over the 30 days prior to the end of the Company's financial year;
  - (iii) immediately following a capital return to shareholders, the value of the capital return together with the Net Asset Value; and
  - (iv) on termination or expiration of this Management Agreement, the greater of:
    - (1) the market capitalisation of the Company based on the volume weighted average trading price of the Company's shares over the 30 days prior to the end of the Company's financial year; and
    - (2) the Net Asset Value; and
- (b) where the Company is not listed, the Net Asset Value.

**"Net Asset Value"** means, at any time, the fair market value of the Portfolio less the liabilities of the Group as reasonably determined by the board of directors of the Company after consultation with the Manager at that time.

**"NZ GAAP"** means generally accepted accounting practice as defined in section 3 of the Financial Reporting Act 1993 (New Zealand).

**"Option"** means any option or other contract which establishes rights or obligations to an underlying Security or investment.

**"Party"** means a party to this Agreement.

**"Performance Fee"** means the performance fee calculated in accordance with Schedule 1 and payable by the Company to the Manager under clause 6.

**"Portfolio"** means all the assets and property of the Group (whether held directly or through a nominee or custodian), which is from time to time under the management of the Manager pursuant to the terms of this Agreement and includes the Portfolio Securities and the Unallocated Funds.

**"Portfolio Entity"** means the issuer of a Portfolio Security.

**"Portfolio Security"** means any Security acquired, or proposed to be acquired, by a Group Company in connection with its investment activities, other than any Security acquired as a result of investment of Unallocated Funds in accordance with clause 3.2.

**"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); and
- (b) any Option;

**"Shareholder(s)"** means any shareholder(s) of the Company.

**"Unallocated Funds"** means any cash held by or on behalf of the Group and any surplus cash of the Group invested in accordance with clause 3.2 from time to time.

**1.2 General Interpretation:** In this Agreement, unless the context requires otherwise:

- (a) assets also includes the whole and any part of the relevant person's business, undertaking, investments, revenues and rights (in each case, present and future), and reference to an asset includes any legal or equitable interest in it.
- (b) borrowing includes indebtedness for or in respect of money borrowed or raised by any means (including acceptances, deposits, financial leases, debt factoring with recourse, sale and repurchase arrangements and redeemable preference shares) and for the deferred purchase price of assets and services (other than assets and services obtained in the ordinary course of business on normal trade terms), and borrow shall be construed accordingly.
- (c) costs include costs, charges, expenses, liabilities and associated taxes.
- (d) a reference to any document or agreement (including this Agreement) includes a reference to that document or agreement as amended, novated or replaced from time to time.
- (e) \$ or dollars refers to New Zealand dollars and, unless otherwise specified, all amounts payable by a Party under this Agreement are to be paid in New Zealand currency.
- (f) the dissolution of a person includes the winding-up, liquidation, removal from the register or bankruptcy of that person or an equivalent or analogous procedure under the law of any relevant jurisdiction.
- (g) the headings are for ease of reference only and are to be ignored in the interpretation of this Agreement.
- (h) including and similar words do not imply any limitation.
- (i) indebtedness includes an obligation (whether present or future, actual or contingent, secured or unsecured, joint or several, as principal, surety or otherwise) relating to the payment of money.
- (j) a reference to a party includes the person's executors, administrators, successors and permitted assigns.
- (k) person includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, or any authority, in each case whether or not having a separate legal personality.
- (l) a security interest includes:

- (i) a mortgage, pledge, charge, lien, hypothecation, encumbrance, deferred purchase, title retention, finance lease, contractual right of set-off, flawed asset arrangement, sale-and-repurchase and sale-and-leaseback arrangement and other arrangement of any kind, the economic effect of which is to secure a creditor; and
- (ii) a security interest as defined in section 17(1)(a) of the Personal Property Securities Act 1999 (New Zealand) in respect of which the relevant person is the debtor.
- (m) the singular includes the plural and vice versa.
- (n) a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether made before or after this Agreement).
- (o) subsidiary has the meaning given to it in section 5 of the Companies Act 1993 (New Zealand) provided that a reference to "company" shall include any other legal entity.
- (p) tax includes any present or future tax, levy, impost, duty, charge, fee, deduction or withholding of any nature (whether or not payable in money) and whatever called (including any interest, penalties, fines and charges in respect of any such tax) imposed by any governmental agency, on whoever imposed, levied, collected, withheld or assessed.
- (q) unless a contrary indication appears, a reference to a time of the day is to New Zealand time.
- (r) unless otherwise provided, where this Agreement provides that a matter is to be approved by the Company, for the avoidance of doubt the matter is to be approved by the board of the Company unless the approval of the Shareholders of the Company is required by the Constitution or the Companies Act 1993.

## **2. APPOINTMENT OF MANAGER**

- 2.1 The Company appoints the Manager, and the Manager accepts appointment, under this Agreement as the sole and exclusive provider of the Management Services to the Group on the terms and conditions contained within this Agreement.
- 2.2 During the term of this Agreement, no Group Company shall appoint any other person to provide any Management Services.
- 2.3 The Manager may perform similar services to the Management Services for other persons, provided that the Manager ensures that an appropriate level of time, attention and effort is expended in providing the Management Services to the Group.
- 2.4 Subject to clauses 2.5 to 2.10, for the purpose of performing its obligations under this Agreement, the Manager shall have the powers and authorities of a natural person to acquire, sell and otherwise deal with and manage the Portfolio and to do all things and execute all documents necessary for the purpose of, acquiring, selling or otherwise dealing with and managing the Portfolio as agent of the Group or any Group Company, provided that nothing in this Agreement shall authorise the Manager to act as agent of the Group or any Group Company in excess of the authorities and powers conferred on the Manager pursuant to this Agreement.

- 2.5 The Manager shall not invest funds managed by the Manager pursuant to this Agreement in any Investment Entity or Portfolio Entity, whether in a single transaction or series of related transactions, if:
- (a) the aggregate amount to be invested is greater than NZ\$2 million or 20% of the Net Asset Value (whichever is greater); or
  - (b) where that Investment Entity or Portfolio Entity is not primarily associated with or carrying on its business in New Zealand,
- in each case without the prior approval of the Company.
- 2.6 The Manager shall not sell or otherwise dispose of an Investment Entity or an investment in a Portfolio Entity without the prior approval of the Company unless the Manager is unable to exercise its powers to retain the Investment Entity as a result of a prior agreement or legal powers that rest with third party shareholders of the Investment Entity.
- 2.7 The Manager shall not establish any borrowing facility, including granting a security interest over the Portfolio to secure the borrowing facility, or draw down any established borrowing facility without the consent of the Company.
- 2.8 Borrowing must not be incurred if, immediately afterwards, the aggregate principal amount of the borrowing of the Group would exceed an amount equal to 25% of the Net Asset Value.
- 2.9 The Manager may appoint any person to provide any Management Services, or perform any of the Manager's obligations, or exercise any of the Manager's powers, under this Agreement, on behalf of a Group Company, provided that the Manager:
- (a) believes on reasonable grounds that the person is reliable and competent in relation to the matters concerned; and
  - (b) continues to monitor, to the extent reasonable in the circumstances, the person's performance of the Management Services and, obligations or exercise of the Manager's powers.
- No such appointment shall relieve the Manager of any of its duties and obligations under this Agreement (or of liability for any failure to perform those duties and obligations).
- 2.10 The Manager may with board approval deal, on behalf of a Group Company, with companies and other entities related to the Manager, which shall be entitled to charge fees, brokerage and commissions provided that the dealings are in the ordinary course of the Group's business and on terms no less favourable to the Group Company than would have been achieved if they had been negotiated with an unrelated party at arms' length. No adjustment to the Management Fee is to be made for any amounts paid to a company or person related to the Manager in accordance with this clause.
- 2.11 Nothing in this Agreement will require the Manager to act in a manner inconsistent with the duties of the Manager or any of its related companies or associates to any clients or customers of any of them nor to offer any particular investment opportunity to a Group Company.

- 2.12 The Manager may not assign, transfer, or otherwise deal with all or any of its rights or obligations under this Agreement without the prior approval of the Company.
- 2.13 The Manager may appoint (as advisers to the Manager and/or a Group Company) such legal, accounting, investment banking, specialist consultant and other advisers as it considers necessary or desirable for performing its obligations, or exercising its powers, under this Agreement. The costs and expenses of such advice shall be allocated in accordance with clause 7. No such appointment shall relieve the Manager of responsibility for performing its obligations under this Agreement (or of any liability for any failure to perform those obligations), but the Manager may rely on reports, statements and financial data and other information prepared or supplied, and on professional or expert advice given, by any such adviser, provided that it relates to matters which the Manager believes on reasonable grounds to be within the competence of the person who has either prepared the information or provided the professional or expert advice.

### **3. SERVICES PROVIDED BY THE MANAGER**

3.1 The Manager shall provide the following Management Services:

- (a) identify investment opportunities:
  - (i) endeavour to identify and develop investment opportunities that meet the Investment Focus; and
  - (ii) where the Manager identifies an investment opportunity that meets the Investment Focus and the Group has sufficient funding to invest in that opportunity, use its best endeavours to arrange for a Group Company to invest in that investment opportunity, before offering, or arranging for the opportunity to be offered, to a third party;
- (b) where appropriate, carry out such due diligence, and engage such advisers in accordance with this Agreement, as is reasonable to investigate whether any proposed investment falls within the Investment Focus;
- (c) subject to clause 2.7 and 2.8, arrange borrowings for a Group Company;
- (d) monitor the performance of the Portfolio;
- (e) manage and negotiate on behalf of any Investment Entity in respect of any divestment by the Investment Entity;
- (f) where the Manager considers it appropriate and has the power to do so on behalf of a Group Company:
  - (i) provide advice to a Portfolio Entity;
  - (ii) attend, vote and represent a Group Company at any meeting of the creditors or security holders of a Portfolio Entity;
  - (iii) commence, pursue, compromise or settle any litigation or arbitration proceedings in respect of a Portfolio Entity; and
  - (iv) prove debts, enter into compositions with other creditors and take or join proceedings for having any Portfolio Entity wound up;

- (g) where the Manager considers it appropriate and has the power to do so:
    - (i) arrange for representation on the boards of Portfolio Entities; and
    - (ii) appoint or remove officers (including directors and managers), employees, agents, sub-contractors or arrange management of Portfolio Entities; and
    - (iii) exercise powers of management itself in respect of a Portfolio Entity.
  - (h) assist a Group Company to realise an investment in a Portfolio Entity; and
  - (i) where the Manager considers it appropriate and has the power to do so, negotiate on behalf of the relevant Portfolio Entity in respect of any divestment by that Portfolio Entity.
- 3.2 The Manager may on behalf of a Group Company, invest surplus cash in short dated government or bank securities or such other securities as may be approved by the Company.
- 3.3 The Manager may enter into any underwriting or sub-underwriting contract on behalf of a Group Company provided that the liability of that Group Company under the underwriting or sub-underwriting meets the Investment Focus. All commissions and fees payable under such contracts shall be income of the relevant Group Company, and any Securities or other property acquired pursuant to such contracts will form part of the Portfolio.
- 3.4 The Manager is not required to dispatch to the Company any notice of meeting relating to any Portfolio Entity.
- 3.5 The Manager shall assist with and report on the affairs and operations of the Group, as follows:
- (a) assist the Company to prepare the Group's annual report that includes:
    - (i) audited financial statements of the Group prepared in accordance with NZ GAAP (if the Company elects to appoint an auditor); and
    - (ii) a commentary on the Portfolio.
  - (b) within 20 Business Days after the end of each financial quarter deliver a quarterly report to all directors of the Company, that includes a brief discussion of the existing Portfolio and additions to the Portfolio for the relevant quarter; and
  - (c) produce and deliver the following information:
    - (i) a copy of any public announcement or press release relating to the Group made or sanctioned by the Manager, which must be delivered to all directors prior to its release and to Shareholders within 5 Business Days after its release; and
    - (ii) such other information about the Group as the Company may reasonably request.
- 3.6 The Manager shall be responsible for arranging all equity capital raised by the Company including, but not limited to equity placements, rights issues and the exercising of the Company's warrants and options by the holders of those instruments. The Manager may sub-contact, assign part or all of these duties to appropriately experienced third parties with the agreement of the Company, which is not to be unduly withheld, or opt out of these duties completely at the Manager's sole discretion.
- 3.7 The Manager shall:

- (a) arrange for the provision of general administrative and back office functions for the Group either by employing staff on behalf of a Group Company to manage such processes internally, or by outsourcing functions to third parties (including parties related to the Manager), in either case at the sole cost of the Group Company. Such functions may include:
  - (i) accounting and tax compliance;
  - (ii) legal compliance;
  - (iii) shareholder distributions;
  - (iv) accounts payable and accounts receivable management;
  - (v) human resource management and payroll management;
  - (vi) preparing, filing and maintaining documents (including records of all transactions entered into by Group Companies);
  - (vii) public relations and shareholder communications;
  - (viii) office facilities and information systems; and
  - (ix) other administrative and operational requirements of the Group;
- (b) arrange for meetings of the board of directors of a Group Company as required by the relevant directors, such meetings to be at the cost of the relevant Group Company.

3.8 The Manager shall oversee any litigation in respect of which any Group Company has any interest (either as plaintiff, defendant or in any other capacity).

3.9 If required by the Company, the Manager shall:

- (a) recommend and facilitate the appointment of an auditor ("**Auditor**") to audit the financial statements of the Group, and facilitate the annual re-appointment of the person so appointed or the appointment of a new auditor by the relevant shareholders of Group Company annually;
- (b) ensure that the Auditor or any other persons appointed to inspect or audit the financial statements of the Group are given access on request at all reasonable times to all records, documents, and other information held by or on behalf of the Manager which relate to the operations of the Group; and
- (c) ensure that all questions of the Auditor relating to the Group are answered fully and in a timely manner.

The Auditor's costs shall be borne by the Company.

3.10 The Manager is not responsible for providing share registry, financial, accounting, reporting or auditing services to the Group.

#### **4. CONFLICT OF INTEREST**

4.1 The Manager shall not make any investment under this Agreement in which the Manager, any officer (including directors and managers) or employees of the Manager has an ownership interest

without the express consent of the Company and, if required by the terms of the Company's constitution, the Shareholders.

- 4.2 The Manager and its officers (including directors and managers), employees, advisors, sub-contractors or agents will not undertake investments into businesses which fall within the Investment Focus without a Group Company having the first opportunity to invest. The Manager and its officers (including directors and managers), employees, sub-contractors and agents may apply for an exemption to this restriction on a case by case basis, such exemption not to be unreasonably withheld by the Company.

## **5. MANAGER STANDARD OF CARE**

5.1 The Manager shall at all times:

- (a) subject to the terms of this Agreement (including clauses 2.3, 2.9 and 2.10), act bona fide in what the Manager believes to be in the best interests of the Group in a proper, efficient and businesslike manner;
- (b) exercise due care in exercising the rights, powers and authorities granted to it, and in performing its obligations, under this Agreement;
- (c) use and employ an appropriate level of skill and resources in performing the obligations of the nature specified in this Agreement;
- (d) comply with all applicable legal requirements;
- (e) promptly advise and provide reasonable particulars to the Company of any event having a significant adverse effect on the financial position of the Portfolio or a Portfolio Entity of which the Manager is aware; and
- (f) provide the Management Services in a manner consistent with the Investment Focus.

## **6. MANAGER'S REMUNERATION**

- 6.1 Subject to clause 6.2, the Management Fee will be payable to the Manager quarterly in advance on the first Business Day after the expiry of the previous financial quarter of the Group. The date of calculation of fees in respect of each period shall be the first Business Day of each financial quarter. Payment in respect of any period which is not a complete financial quarter shall be reduced on a pro-rata basis to reflect the actual number of days elapsed during such period.
- 6.2 If the Manager and the Company agree, the Management Fees payable may be accrued and deferred. In such event, at the option of the Manager, the Company shall pay to the Manager interest on the amount of the fees so deferred at the Interest Rate for the period from the due date until the date of payment of the relevant fees calculated on a daily basis.
- 6.3 The Performance Fee will be calculated and satisfied in accordance with Schedule 1.
- 6.4 The Company shall pay to the Manager, free of any deduction and as brokerage, the amount equal to 3% of the value of all equity capital raised by the Company, with the exception of transactions between the Company and parties related to the Manager, in accordance with clause 3.6.

- 6.5 The Company will pay to the Manager any GST chargeable on supplies made by the Manager under this Agreement in addition to, and at the time of payment of, the relevant fee in respect of such supply.
- 6.6 The Management Fee and Performance Fee may be adjusted upon agreement between the Company and the Manager. An adjustment to the Management Fee or Performance Fee in favour of the Manager shall be approved by the Shareholders by ordinary resolution in a general meeting.
- 6.7 If any audit conducted pursuant to clause 3.8 determines that there has been an under or overpayment of Management Fees or Performance Fees or costs then:
- (a) 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
  - (b) in the event of any under payment the amount concerned shall be added to the next instalment of Management Fee paid to the Manager.

## **7. COSTS**

- 7.1 The Manager shall bear, and shall not be entitled to be reimbursed for, costs it incurs in relation to the establishment and maintenance of its general office infrastructure and overheads related to that infrastructure, including:
- (a) the remuneration of the Manager's employees (other than their remuneration while seconded to any Group Company) and subcontractors;
  - (b) costs of insurance for the Manager;
  - (c) travel and accommodation for the Manager's employees (other than while seconded to the Group);
  - (d) rental or other lease costs for the Manager's premises;
  - (e) the cost of office consumables and equipment owned or used by the Manager;
  - (f) telecommunications costs relating to the Manager's employees (other than while seconded to the Group);
  - (g) certain marketing and promotional activity directed at increasing awareness and credibility to the Portfolio directed at the New Zealand entrepreneurial community;
  - (h) costs associated with raising equity capital for the Company in accordance with clause 3.6, unless those duties have been assigned to the third party in accordance with clause 3.6; and
  - (i) entertainment costs of the Manager.
- 7.2 Except as otherwise set out herein, the Company shall pay and discharge and shall reimburse the Manager in respect of all fair and reasonable expenses incurred by the Manager or any authorised subcontractor of the obligations of the Manager on behalf of the Group in connection with the Management Services, including, without limitation:

- (a) all direct and out of pocket costs, charges, expenses and liabilities associated with or incurred by or on behalf of a Group Company in connection with the duties of the Manager under this Agreement including, but not limited to, costs of legal, accounting and other advisers engaged by the Manager, all expenses incurred in connection with the purchase, retention or sale of Investment Entities or the Portfolio by the Manager and all other expenses that are directly related to particular Investment Entities or Portfolio Entities or proposed investments in Portfolio Entities, whether or not actually consummated;
- (b) all costs associated with the periodic valuation of the Group, the Portfolio and the Portfolio Entities;
- (c) all costs associated with the raising of debt (including principal and financing costs payable to financiers);
- (d) costs of administration, company secretarial, audit and accounting, statutory compliance and record keeping services necessary for the Group;
- (e) all on-going expenses incurred in maintaining the purpose and benefit of the legal and tax structure including costs of completing and filing tax returns;
- (f) expenses related to shareholder meetings and the production and distribution of any statutory reports to shareholders;
- (g) all expenses and costs incurred by the Manager doing any act specifically requested by the Company outside the scope of the Management Services; and
- (h) all costs incurred relating to the liquidation of any Group Company or Portfolio Entity (where applicable), including the cost of the liquidator.

## **8. REPLACEMENT OF MANAGER**

- 8.1 The Manager may be replaced and this Agreement terminated without cause by a resolution of the Shareholders where the percentage of shares held by Shareholders resolving to replace the Manager is greater than or equal to 50% of all of the Shareholders.
- 8.2 If the Manager is replaced in accordance with clause 8.1, in addition to any accrued Performance Fee entitlement under clause 10.5, the Manager will receive the Management Fee for the three months following replacement as a termination fee.

## **9. TERM AND TERMINATION**

- 9.1 This Agreement shall commence on the Commencement Date and shall continue until terminated in accordance with the provisions of this Agreement. The initial term of this Agreement shall be for 10 years, unless terminated earlier in accordance with clauses 8.1, 9.2, 9.4 or 9.5. The parties may agree to renew this Agreement for further terms of 10 years at the expiry of the initial and each other term provided however that the Company shall only be entitled to decline to renew this Agreement for an additional term at the expiry of each term (in circumstances where the Manager is prepared to agree to renew this Agreement) if:

- (a) the Company and the Manager have first discussed in good faith the Manager's performance of the Management Services for a period of not less than 10 Business Days;
- (b) notwithstanding such consultation the Company continues to be dissatisfied with the Manager's performance of the Management Services the Company refers the question of such performance to an independent expert (appointed by agreement between the parties, but if they cannot within 10 Business Days of commencing discussion in that regard agree that appointment, appointed by the President of the Auckland District Law Society) to review and critique the performance of the Manager under this Agreement; and
- (c) following such review and critique in accordance with clause 9.1(b), the summarised results of that review are forwarded to all Shareholders, and the non-renewal by the Company of the appointment of the Manager under this Agreement is thereafter authorised and approved by the Shareholders by ordinary resolution in a general meeting.

9.2 Subject to clause 9.3, the Company shall be entitled to terminate this Agreement:

- (a) if the Manager fails, neglects or refuses to carry out or perform any material function or action required under this Agreement, and a Group Company suffers or incurs a material loss as a result of such inaction; or
- (b) if the Manager consistently fails to perform the Management Services to the standard required by clause 5.1(c).

9.3 Prior to the Company exercising any rights of termination under clause 9.2 it shall give the Manager written notice setting out details of the alleged failure or failures to perform and/or neglect and, where possible (for the purposes of clause 9.2(a)), quantify the material loss incurred as a result of such breach. If the Manager does not, in respect of a matter capable of remedy, use its best endeavours to effect a remedy within 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 immediately terminate this Agreement.

9.4 Either the Manager or the Company (the "**Non-Defaulting Party**") may terminate this Agreement immediately by written notice to the other Party (the "**Defaulting Party**"), if the Defaulting Party commits or becomes subject to any of the following events:

- (a) 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) a receiver or receiver and manager is appointed in respect of any of the assets of the Defaulting Party;
- (c) an application is made to the Court or a meeting is called for the purposes of instigating or considering proceedings intended to achieve a result described in clause 9.4(a) or 9.4(b) (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) the Defaulting Party ceases to be able to pay its debts as they come due;
- (e) 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) the Defaulting Party is declared to be at risk or a statutory manager of the Defaulting Party is appointed under the Corporations (Investigation & Management) Act 1989;
- (g) the Defaulting Party commits a material breach of this Agreement and the consequences of that specific breach are not explicitly set out elsewhere in this Agreement, and (if the breach is capable of remedy) the Defaulting Party 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
- (h) the Defaulting Party is guilty of gross negligence which has or has the potential to have a material adverse effect on the other Party.

9.5 The Manager may resign from its appointment as manager by giving 90 days written notice of its intention to resign to the Company. This Agreement will terminate upon the resignation of the Manager taking effect, subject to clauses 10.1 and 10.2.

9.6 From the date of termination under clauses 9.2, 9.4, or 9.5 no further Management Fee shall be payable to the Manager, except such fees and other amounts as are due and payable up to the date of such termination.

## **10. EFFECT OF TERMINATION**

10.1 On termination of this Agreement, the Manager shall:

- (a) deliver or cause to be delivered to the Company, all property of any Group Company including all investments in the Portfolio held by the Manager, all data, information records, certificates accounting records, correspondence, and all other records relating to the Portfolio, and the affairs of the Group Company in the possession or under the control of the Manager;
- (b) deliver to the Company all forms of proxy, letters of authority, mandates or powers of attorney which may have been issued to it by a Group Company; and
- (c) if so requested by the Company, obtain the resignation of any employees or officers of the Manager holding office as a director of a Group Company, or any Portfolio Entity on behalf of a Group Company.

10.2 The termination of this Agreement does not affect any:

- (a) transaction properly entered into prior to termination;
- (b) claim by the Manager in respect of fees accrued and costs incurred in respect of the period up to termination;
- (c) other claim which any Party may have against the other Party; or
- (d) clauses which expressly or by implication are intended to survive termination, including clauses 9, 10 and 11.

10.3 The Manager may deal with the Portfolio for up to 5 Business Days from the effective date of termination of this Agreement in order to vest control of the Portfolio or any Investment Entity in the Company and during that time the Manager:

- (a) may enter into transactions to settle or otherwise extinguish or offset obligations incurred by the Manager in relation to the Group Company or Portfolio Entity before that date;
- (b) must, with respect to obligations not capable of settlement before transfer of the Portfolio, create provision for such contingent liability as will arise, notify the Company of that provision, and direct the Company to hold sufficient assets of an Investment Entity or a Portfolio Entity to satisfy that liability; and
- (c) may deal with the Portfolio, Investment Entities and Portfolio Entities in accordance with the instructions from a new manager appointed by the Company or on instruction from the Company.

10.4 Other than as provided above, the Manager is under no obligation to do anything in connection with the Portfolio or management of the Portfolio after the effective date of termination.

10.5 On termination of this Agreement, the Manager will receive any accrued Performance Fee entitlement (if applicable) based on the Market Value at the date of termination as determined by an independent valuer to be appointed by the Manager and approved by the Company.

## 11. LIMITATION OF LIABILITY

11.1 No warranty is given by the Manager as to the performance or profitability of the Portfolio, any cash or any other asset forming part of, or constituting the assets of the Group or in respect of any distributions nor does the Manager make any representations concerning any of these matters.

11.2 The Manager, and its affiliates, officers (including directors and managers), partners, employees, consultants, sub-contractors, advisors and agents, shall not be liable for any loss or damage whatsoever which the Group or any Shareholder may sustain or suffer as a result of the exercise or performance by the Manager (or failure of the Manager to exercise or perform or any error of judgement by the Manager in respect thereof) of any of the powers, obligations and duties of the Manager under this Agreement or loss of opportunity whereby the value of any assets in the Portfolio would have increased, or for any decline in the values of any assets in the Portfolio howsoever arising, except to the extent that such loss, damage or decline is due to its gross negligence, intentional fraud, dishonesty or wilful default, or any action not taken in good faith to promote the best interests of the Group, of the Manager or of their officers, employees, advisors or agents.

11.3 The Company indemnifies and shall keep indemnified the Manager, and its affiliates, officers (including directors and managers), partners, employees, consultants, sub-contractors, advisors and agents, (each an "**indemnified party**") from and against any and all costs, obligations, losses or suits, of any kind or nature whatsoever in connection with the services provided by any of them pursuant to this Agreement and each of them is on demand indemnified out of the assets of the Group against any and all claims, liabilities (including in contract or tort), including:

- (a) amounts paid in satisfaction of judgements, in compromise settlements, fines, and penalties; and
- (b) counsel fees reasonably incurred,

in connection with the defence or disposition of any action, suit or other proceeding, whether civil or criminal, before or threatened to be brought before any arbitrator, mediator, court or administrative or legislative body, in which an indemnified party may be or may have been involved as a party or otherwise or with which it or they may be or may have been threatened, while in office or thereafter (and the reasonable costs and expenses, including but not limited to legal costs, in relation to enforcement of the indemnity) ("**indemnified costs**") provided that the indemnity contained in this clause shall not cover or extend to any indemnified costs resulting from the gross negligence, intentional fraud, or wilful default of an indemnified party.

11.4 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.

## 12. GENERAL

### 12.1 Authorised Persons:

- (a) the persons who are authorised to make any written communication or take action on behalf of the Company under this Agreement ("**Authorised Persons**") are the directors of the Company from time to time. Any written communication or action taken on behalf of the Company must be authorised by any of the Authorised Persons.
- (b) the Manager is not obliged to take any action if a communication or action is not made by an Authorised Person nor to enquire as to the identity of any person if it reasonably believes such person is an Authorised Person.
- (c) if the Manager receives any instruction or notice in circumstances where it is reasonable for the Manager to assume it was from an Authorised Person, the Manager is not liable for any properly performed action or omission by the Manager in reliance on that instruction or notice.

12.2 The Manager, and its officers (including directors and managers), employees, advisors, sub-contractors or agents shall not be liable for any loss of or damage to the Portfolio 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 beyond its reasonable control. The Manager and its directors must use their reasonable efforts to minimise the effects of the events referred to in this clause.

12.3 The failure, delay, relaxation or indulgence on the part of any Party in exercising any power or right given to that Party does not operate as a waiver of that power or right to 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.

12.4 This Agreement may only be amended or supplemented in writing signed by the Parties.

12.5 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.

12.6 Each Party shall do, sign, execute and deliver and shall procure that each of its officers, employees and agents, signs, executes and delivers all agreements, 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.

12.7 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 clauses 4.2, 11 and 12.2 which shall be enforceable by the, officers (including directors and managers), employees, advisers and agents of the Manager as referred to in those clauses.

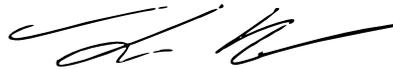
12.8 This Agreement may be signed:

- (a) in any number of counterparts, each of which is deemed an original, but all of which together constitute a single instrument; and
- (b) on the basis of an exchange of signed facsimile or scanned electronically transmitted copies of the execution pages,

and signing of this Agreement by that method is a valid and sufficient execution.

**SIGNED** for and on behalf  
of **PUNAKAIKI FUND LIMITED**

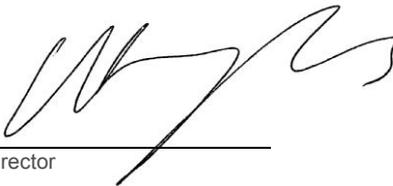
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Director

**SIGNED** for and on behalf  
of **LANCE WIGGS CAPITAL  
MANAGEMENT LIMITED**

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Director

**SCHEDULE 1**  
**CALCULATION OF FEES**

**1. MANAGEMENT FEE**

1.1 The Company shall pay the Manager a Management Fee that is:

- (a) 2% of the Net Asset Value up to \$50,000,000; plus
- (b) where the Net Asset Value exceeds \$50,000,000, 1.5% of the amount of the Net Asset Value that exceeds \$50,000,000.

in each case, in accordance with clauses 6.1 to 6.6.

**2. PERFORMANCE FEE**

2.1 The Company shall pay the Manager a Performance Fee for achieving excess returns as calculated below.

2.2 The Performance Fee shall be 20% of the Tranche Return applicable to each Share Tranche when a Liquidity Event occurs, provided that:

- (a) the Tranche Value exceeds the Performance Threshold Value; and
- (b) the Tranche Value exceeds the Tranche High Water Mark.

If the Tranche Value does not exceed the Performance Threshold Value or the Tranche Value does not exceed the Tranche High Water Mark, then no Performance Fee is payable.

2.3 For the purposes of calculating the Performance Fee:

- (a) "Initial Tranche Value" means the subscription price per ordinary share of the relevant Share Tranche multiplied by the number of ordinary shares on issue for that Share Tranche.
- (b) "Liquidity Event" means any of the following:
  - (i) a return of capital, dividend payment or other distribution by the Company which results in the Market Value decreasing by a sum which, in the reasonable opinion of the board of directors of the Company, is material;
  - (ii) the quotation of the Company's securities on a recognised exchange;
  - (iii) where the Company's securities are quoted on a recognised exchange, at the end of each Financial Year of the Company;
  - (iv) from time to time as determined by board of directors of the Company, provided that the board is reasonably satisfied non-payment of the Performance Fee would be inequitable to the Manager; and
  - (v) at the termination or expiration of this Management Agreement;
- (c) "Performance Threshold Value" means, in respect of each Share Tranche, an annualised increase of 10% applied from the Initial Tranche Value over the period starting on the date when the Share Tranche was issued and ending on the date of the relevant Liquidity Event;

- (d) "Share Tranche" means each individual grouping of ordinary shares in the Company which share both the same issue date and issue price, along with any ordinary shares issued that relate to Performance Fees applicable to that individual grouping of ordinary shares; and
- (e) "Tranche High Water Mark" means the highest Tranche Value for each Share Tranche in any previous Performance Fee calculation where a Performance Fee was paid. If no Performance Fee has been previously paid for a Share Tranche, then the Tranche High Water Mark shall be equal to the Initial Tranche Value;
- (f) "Tranche Return" means the Tranche Value minus the Tranche High Water Mark as applicable to each Share Tranche; and
- (g) "Tranche Value" means the Market Value applicable to each Share Tranche at the date of the relevant Liquidity Event.

2.4 The Performance Fee calculations shall be adjusted to reflect the effect of any dividend, buy back or other distribution by the Company, and any share split, other consolidation or adjustment undertaken by it within the relevant Performance Period.

2.5 The Performance Fee shall be calculated and paid as soon as practicable following the end of the relevant Performance Period to the Manager or its nominee or nominees. A portion of the Performance Fee equal to 1 minus the then prevailing New Zealand corporate taxation rate will be paid to the Manager and applied by the Manager to subscribe for new shares in the Company issued at an issue price per share equal to the Market Value at the end of the relevant Performance Period (adjusted to reflect the notional payment of all of the Performance Fee as cash) divided by the number of shares in the Company then on issue, with the balance to be paid in cash, such shares and cash to be issued or paid by the Company within 30 days of the end of the relevant Performance Period. The Manager or its nominee or nominees, as the case may be, may not sell those shares within 180 days of issue (other than with the prior approval of the Company) and must in any event comply with all relevant legal requirements in doing so.