
**CONSTITUTION OF
FONTERRA CO-OPERATIVE GROUP LIMITED**

CONTENTS

1.	PURPOSE AND PRINCIPAL ACTIVITIES.....	1
2.	SHAREHOLDERS	2
3.	CO-OPERATIVE SHARE STANDARD	3
4.	COMPLIANCE AND REMEDIES	12
5.	THE FONTERRA SHAREHOLDERS MARKET.....	13
6.	REGISTERED VOLUME PROVIDERS.....	14
7.	AUTHORISED FUND	15
8.	SHAREHOLDERS' VOTING ENTITLEMENTS.....	16
9.	TERMS AND CONDITIONS OF SUPPLY OF MILK BY SHAREHOLDERS.....	18
10.	PAYMENT FOR MILK SUPPLIED BY SHAREHOLDERS	19
11.	DISTRIBUTIONS	20
12.	APPOINTMENT ROTATION AND REMOVAL OF DIRECTORS	20
13.	POWERS OF DIRECTORS.....	21
14.	EXERCISE OF POWERS OF SHAREHOLDERS	21
15.	SHAREHOLDER PROPOSALS AND MANAGEMENT REVIEW.....	21
16.	FONTERRA CO-OPERATIVE COUNCIL	22
17.	MILK COMMISSIONER.....	25
18.	ALTERATIONS TO PART A OF THIS CONSTITUTION	26
19.	REGISTRATION AS A CO-OPERATIVE DAIRY COMPANY	27
20.	VALUER.....	27
21.	SHARES GENERALLY	28
22.	SHAREHOLDING STATEMENTS.....	29
23.	ACQUISITION, REDEMPTION AND HOLDING OF OWN SHARES.....	29
24.	ALTERATION OF SHAREHOLDER RIGHTS.....	29
25.	EQUITABLE INTERESTS IN SHARES.....	30
26.	CALLS ON SHARES	30
27.	FORFEITURE OF SHARES.....	31
28.	LIEN ON SHARES AND PAYMENTS.....	32
29.	SALE OF SHARES SUBJECT TO FORFEITURE OR LIEN	32
30.	TRANSFER OF CO-OPERATIVE SHARES	33
31.	TRANSMISSION OF SHARES	35
32.	PERSONAL REPRESENTATIVES	35
33.	GENERAL PROVISIONS RELATING TO DIRECTORS	35
34.	REMUNERATION AND OTHER BENEFITS OF DIRECTORS.....	36
35.	INDEMNITY AND INSURANCE	37
36.	PROCEEDINGS OF BOARD	37

37.	MEETINGS OF SHAREHOLDERS	38
38.	NOTICE OF MEETINGS OF SHAREHOLDERS	38
39.	PROCEEDINGS AT MEETINGS OF SHAREHOLDERS	39
40.	CHAIRPERSON OF MEETINGS OF SHAREHOLDERS	39
41.	VOTING AT MEETINGS OF SHAREHOLDERS	40
42.	POLLS.....	40
43.	PROXIES	41
44.	CORPORATE REPRESENTATIVE	42
45.	ADDITIONAL METHODS OF CONTRACTING	42
46.	NOTICES	42
47.	LIQUIDATION.....	42
48.	DEFINITIONS AND INTERPRETATION.....	43

CONSTITUTION
OF
FONTERRA CO-OPERATIVE GROUP LIMITED
PART A - CO-OPERATIVE PRINCIPLES OF COMPANY

1. PURPOSE AND PRINCIPAL ACTIVITIES

1.1 **Continuation of co-operative activity:** The Company is registered as a co-operative company under the Co-operative Companies Act and intends to continue its business as a co-operative dairy company.

1.2 **Purpose:** The purpose of the Company in carrying out its business is to maximise the wealth of its Shareholders by:

- (a) the sale of their Milk;
- (b) providing a purchaser of that Milk; and
- (c) enhancing the value of the Company as a co-operative.

1.3 **Principal activities:** The principal activities of the Company are:

- (a) the manufacture and sale of butter, cheese, dried Milk, or casein, or any other product derived from Milk or Milksolids supplied to the Company by its Shareholders;
- (b) the sale to any person of Milk or Milksolids supplied to the Company by its Shareholders; or
- (c) the collection, treatment, and distribution for human consumption of Milk or cream supplied to the Company by its Shareholders.

1.4 **No restriction on activities:** Clause 1.3 does not limit, or impose a restriction on, the activities of the Company.

1.5 **Fonterra Shareholders Market:** Co-operative Shares may, on and from a date determined by the Board, be quoted and traded on the Fonterra Shareholders Market. At all times while Co-operative Shares are quoted and traded on that Market the Company will comply with the Market Rules, subject to:

- (a) the requirements of the Act, the Co-operative Companies Act, and any other applicable legislative or regulatory requirements; and
- (b) the terms of any Ruling given by the Operator.

1.6 **Authorised Fund:** The primary purpose of the arrangements in clause 7 is to regulate the operation of the Authorised Fund, subject always to the rights, powers and limitations contained in this Constitution (including in clause 7).

2. SHAREHOLDERS

2.1 **Applications for supply:** Any person that intends to commence the supply of Milk to the Company shall give written notice of that intention to the Company and complete such application in the form and by the time the Board may from time to time determine in a manner consistent with any applicable enactment.

2.2 **Irrevocable application:**

- (a) The supply by any person of Milk to the Company is an irrevocable application by that person to become a Shareholder and to hold the number of Co-operative Shares from time to time required under this Constitution.
- (b) A Farm Lessor, Sharemilker or Contract Milker may apply to become an Associated Shareholder, and to hold Co-operative Shares (subject to any limitations in, and otherwise in accordance with, any rules adopted by the Board or from time to time applicable).

2.3 **Board may accept application:**

- (a) Subject to clause 2.3(b), the Board may in its absolute discretion decide:
 - (i) whether or not to accept an application by a person to become a Shareholder made in accordance with clause 2.2 or any application procedure which the Board may from time to time determine; and
 - (ii) whether or not to accept the supply of Milk from any person, on such terms and conditions as the Board thinks fit, without requiring that person to become a Shareholder in respect of that supply.
- (b) In respect of applications for the supply of Milk to the Company that are made on or after 1 June 2023, the Board will (subject to clause 2.4) accept an application by a person to supply Milk to the Company from any Farm from which, at the time of the application, Milk is supplied to the Company, provided that the Board is satisfied that the applicant and the relevant Farm comply with the Terms and Conditions. This clause 2.3(b) will cease to apply on the first date that subpart 5 of Part 2 of the Dairy Industry Restructuring Act 2001 is repealed or otherwise ceases to apply to the Company.

2.4 **Board may not admit certain persons:** The Board may only admit, as a Shareholder, any person:

- (a) whose supply or estimated supply of Milksolids obtainable from Milk to be supplied to the Company by that person in a Season is not less than 1,000 kilograms of Milksolids or such minimum level of supply as determined from time to time by the Board, being a level not more than 15% greater than the level applying in the preceding Season; or
- (b) who is an Associated Shareholder who has been approved by the Board as a Shareholder in accordance with either any rules established by the Board from time to time or any applicable enactment; or
- (c) who is a Permitted Transferee of a Shareholder.

2.5 [Not used]

2.6 **Requests for separate designation for suppliers from same Farm:** A Shareholder may request the Company to treat the supply of Milk from the same Farm as split between supply by two or more persons in accordance with any rules established by the Board from time to time and, subject to clause 2.7, the Company shall take appropriate steps to ensure the Co-operative Shares relating to each such separate supply are registered separately in the Share Register and other applicable records of the Company.

2.7 **Requests for acceptance of supply as not being from a Shareholder:** A Shareholder may request the Company to accept one or more of the supplies of Milk described in clause 2.6 as being a supply from a person not required to become a Shareholder in respect of that supply, and that request shall be determined by the Board in accordance with clause 2.3(a)(ii).

2.8 **Identification of separate supply:** For the purposes of clauses 2.6 and 2.7 a Farm or separate supply from a Farm shall be identified in such reasonable manner as the Board determines shall most effectively ensure that the Company may treat supply from that Farm as being separate and

distinct from any other Farm, or from other Milk supplied from that Farm, in the case of clauses 2.6 and 2.7, for operational, Milk quality and commercial purposes. The initial identification shall, in the Company's discretion, be by reference to the Farm supply number, party number, farm grouping number, Farm tank number or such other identifier as the Company may specify or by which that Farm or that separate supply is identified in the records of the Company for the time being.

3. CO-OPERATIVE SHARE STANDARD

3.1 **Obligation of Shareholders to hold a number of Co-operative Shares:** Subject to the provisions of this clause 3 each Shareholder supplying Milk to the Company in a Season shall hold a number of Co-operative Shares for that Season:

- (a) not less than the number of Co-operative Shares ("**Minimum Holding**") equal to 33% of the Share Standard for that Season; and
- (b) not greater than a number of Co-operative Shares ("**Maximum Holding**") which is equal to the number of Co-operative Shares derived (subject to clauses 3.2 and 3.4) by multiplying the Share Standard for that Season by a factor ("**Limiting Factor**") specified by the Board from time to time and being not less than one and not more than four,

provided that no Shareholder may at any time hold, or have Relevant Interests in, a number ("**Individual Limit**") of Co-operative Shares such that the total number of Co-operative Shares which the Shareholder holds, or has Relevant Interests in, exceeds 5% of the total number of Co-operative Shares then on issue in the capital of the Company (excluding any Co-operative Shares which are, at the relevant time, on issue but have been surrendered to, or have been acquired by, the Company, and have not been cancelled).

3.2 **Aggregate Threshold:** Notwithstanding the provisions of clause 3.1(b), if at any time:

- (a) the aggregate number of Co-operative Shares then on issue in the capital of the Company (excluding treasury stock) is greater or lesser than the aggregate Share Standard for all Shareholders by a factor of more than 15% ("**Aggregate Threshold**"); or
- (b) the Board specifies a Limiting Factor under clause 3.1(b) which is less than the previously operative Limiting Factor,

then the Board:

- (c) where subclause (a) applies, shall take such steps and do such things, within such timeframes as the Board considers appropriate, to increase or reduce the total number of Co-operative Shares on issue by the Company (excluding treasury stock) to a number which is within the Aggregate Threshold; and
- (d) where subclause (b) applies, may by notice in writing to any Shareholder who at the relevant time holds Co-operative Shares in excess of the number permitted by the most recently specified Limiting Factor under clause 3.1(b), require such Shareholder to dispose of a number of Co-operative Shares which is in excess of that limit, and the Shareholder must dispose of the relevant Co-operative Shares within a period specified by the Board (not being less than 10 Working Days after the date of the Board's notice), and the provisions of clause 4.3 and (if the Shareholder does not comply with a notice given under clause 4.3(c)) clause 4.4 shall apply.

3.3 **Interrelationship of limits:** Notwithstanding the restrictions in clauses 3.1(b) and 3.2 above, if at any time the total number of Co-operative Shares on issue by the Company is outside the Aggregate Threshold:

- (a) all Co-operative Shares shall remain validly issued;
- (b) the rights and powers conferred by Co-operative Shares shall not be affected; and

- (c) no person shall be entitled to take any action (whether against, or in respect of, the Company, any Director, or any Shareholder) in respect of the total number of Co-operative Shares on issue being outside the Aggregate Threshold, and none of the Company, any Director, nor any Shareholder shall have any liability to any person in respect of the total number of Co-operative Shares on issue being outside the Aggregate Threshold.

3.4 **Share Standard:** Subject to clauses 3.6, 3.9 and 3.10, the Share Standard applicable to a Shareholder for each Season shall be one Co-operative Share for each kilogram of Milksolids obtainable from the Average Quantity of Milk determined by the Board in relation to that Shareholder (excluding Milk supplied on Contract Supply), provided that:

- (a) Shareholders may elect to hold at least the Minimum Holding (if any) applicable to them, rather than holding the full Share Standard;
- (b) the Share Standard and Minimum Holding for an Associated Shareholder shall be zero; and
- (c) the Associated Shareholder(s) of a Shareholder supplying Milk to the Company may (subject to any limitations in, and otherwise in accordance with, any rules adopted by the Board and applicable from time to time) apply to the Company for approval to acquire and (if approved) hold Co-operative Shares up to an overall maximum number (in aggregate for all that Shareholder's Associated Shareholders) equal to the Share Standard applicable to that Shareholder in respect of the relevant Farm(s), or any lesser number of Co-operative Shares which may from time to time be permitted or provided for in those rules.

The Company may, at any time, disclose the number of Co-operative Shares held or permitted to be held by, and/or the Share Standard of, a Shareholder and its Associated Shareholder(s) in respect of the relevant Farm(s), to each of them.

3.5 **Average Quantity:** Subject to clauses 3.6, 3.9 and 3.10, the Average Quantity shall, in relation to the Farm from which a Shareholder is to supply Milk to the Company, be the quantity determined by the Board as being of the average of:

- (a) the quantity of Milk supplied by the Shareholder from that Farm to the Company during the Season immediately preceding the Season to which the Share Standard applies;
- (b) the quantity of Milk supplied by the Shareholder from that Farm to the Company in the Season immediately preceding the Season referred to in subclause (a); and
- (c) the quantity of Milk supplied by the Shareholder from that Farm to the Company in the Season immediately preceding the Season referred to in subclause (b).

3.6 **Estimate:** Where:

- (a) a Shareholder has not supplied Milk to the Company in any one or more of the three Seasons immediately preceding the relevant Season; or
- (b) the Board determines, for any other reason, that the mechanism in clause 3.5 is inappropriate with respect to that Shareholder,

the Board may require the Shareholder to provide an estimate of the quantity of Milk which it expects to supply to the Company in the relevant Season and the Board may, having regard to any such estimate provided by the Shareholder, specify a quantity which will be deemed to be the Average Quantity for that Shareholder. The Board's determination on that issue shall, absent manifest error, be conclusive and binding.

3.7 **Reliance on information:** In:

- (a) specifying a quantity under clause 3.6;

- (b) issuing any determination (or re-determination) under clause 3.8; or
- (c) otherwise exercising its powers under this Constitution,

the Board may rely on any information or estimate of supply provided to it by a Shareholder, and the Board may, but shall not be required to, reissue any statement or alter any determination previously made by it in relation to the number of Co-operative Shares which the Shareholder is required, or permitted, to hold under this Constitution where any such information or estimate is subsequently shown to have been inaccurate or has failed to take in to account any particular circumstance or contingency.

3.8 **Company may re-determine:** The Company may at any time during a Season determine, or re-determine, the Minimum Holding and Maximum Holding applicable to a Shareholder for that Season under clauses 3.1(a) or clause 3.1(b) respectively, and any such determination (or re-determination) may differ from the number of Co-operative Shares previously determined as the Minimum Holding or Maximum Holding (as applicable) in relation to that Shareholder. In that case and based on that determination (or re-determination):

- (a) the Board may at any time by notice in writing to the Shareholder require that Shareholder to acquire any additional number of Co-operative Shares that the Board may determine to ensure that the Shareholder holds the Minimum Holding applicable to that Shareholder under clause 3.1(a);
- (b) the Board may at any time by notice in writing to the Shareholder require that Shareholder to dispose of any number of Co-operative Shares held, or in which it holds Relevant Interests, which the Board may determine to be in excess of the Maximum Holding applicable to that Shareholder under clauses 3.1, 3.2 and 3.3; and
- (c) if the Board issues a notice under subclauses (a) or (b):
 - (i) at any time prior to the Compliance Date in the relevant Season, the Shareholder must acquire, or dispose of, the relevant number of Co-operative Shares (as applicable) in each case not later than the later of that Compliance Date, or the date 20 Working Days after the date of the Board's notice; and
 - (ii) at any time following the Compliance Date in the relevant Season, the Shareholder must acquire, or dispose of, the relevant number of Co-operative Shares, in each case within a period of 20 Working Days of the date of the Board's notice.

3.9 **New entrants:** Where:

- (a) a person applies under clauses 2.1 and 2.2 to commence the supply of Milk to the Company and to become a Shareholder in respect of that supply, and that application is accepted under clause 2.3;
- (b) a person has supplied Milk to the Company without being required to hold Co-operative Shares, or to hold the number of Co-operative Shares required to satisfy the Minimum Holding, and that person wishes to acquire Co-operative Shares in respect of that supply; or
- (c) a Shareholder wishes, in relation to a Season, to increase the quantity of Milk which the Shareholder supplies to the Company, as a result of a Material Change, and the Board determines that such increase is material,

then:

- (d) in the case of subclauses (b) and (c), the person must, not later than three months before the commencement of the relevant Season, apply to the Company in writing for permission to acquire the relevant Co-operative Shares or to make the Material Change (as applicable). The Board may, in its absolute discretion, decide whether to accept any such application.

If the Board gives notice in writing to any person who has applied under subclauses (b) or (c) accepting the relevant application, or where subclause (a) applies:

- (e) the Board may specify a period ("**Transition Period**") in which the Shareholder shall be permitted to achieve compliance with standards for the holding of Co-operative Shares (determined in accordance with this clause 3.9);
- (f) the Board shall estimate the minimum quantity of Milk which the Shareholder is expected to supply in each Season in that Transition Period, and the Board shall estimate the maximum quantity of Milk which the Shareholder is expected to supply:
 - (i) where subclause (a) above applies, in the Season in which the Shareholder is to commence supply of Milk to the Company;
 - (ii) where subclause (b) above applies, in the Season in which the person becomes a Shareholder in relation to the relevant supply; and
 - (iii) where subclause (c) above applies, in the Season in which the Material Change referred to in that subclause will be completed;
- (g) the Shareholder must supply Milk to the Company in accordance with clauses 3.12 and 9 throughout the period, and in accordance with the quantities, referred to in subclause (f), in each case unless otherwise determined by the Board and notified to the Shareholder;
- (h) the Transition Period shall be a period commencing on the date ("**Commencement Date**") of acceptance of the relevant application and expiring at the end of the sixth complete Season after such acceptance but the Board may in its discretion, in relation to any one or more Shareholders, specify a shorter or longer Transition Period;
- (i) the Shareholder may, immediately on acceptance of such application by the Board, commence the acquisition of any Co-operative Shares which it will be required to hold in relation to the Milk proposed to be supplied by it;
- (j) the Shareholder must, by each Compliance Date in the Transition Period, acquire a number of Co-operative Shares which is not less than the number ("**Transition Minimum**") specified by the Board (having regard to the minimum quantity of Milk specified under subclause (f)) in relation to the relevant Season;
- (k) the Shareholder may, at any time following acceptance of such application, acquire a maximum number of Co-operative Shares ("**Transition Maximum**") which the Board may specify in relation to that Shareholder;
- (l) without limiting subclause (k) above, when the Board specifies a Transition Maximum with respect to any Season in the Transition Period applicable to a Shareholder, it shall do so having regard to the estimated maximum quantity of Milk which the Shareholder is expected to supply under subclause (f), irrespective of (and without being limited by) the Transition Minimum specified by the Board under subclause (j) in relation to that Season; and
- (m) the Board shall be entitled to determine (or re-determine) in any Season in a Transition Period the Transition Minimum and the Transition Maximum applicable to any such Shareholder in that Season.

3.10 **Exiting Shareholders:** Where:

- (a) a person wishes to cease to supply Milk to the Company;
- (b) a person wishes to continue the supply of Milk to the Company but on the basis that it will hold a number of Co-operative Shares which is less than the Minimum Holding (whether under clause 3.22 or otherwise); or

- (c) a Shareholder wishes, in relation to a Season, to reduce the quantity of Milk which the Shareholder supplies to the Company as a result of a Material Change, and the Board determines that such reduction is material,

then, in any such case that person must, not later than three months before the commencement of the Season in which the relevant change will occur, apply in writing to the Company for permission to make that change. Any application under clause 3.10(a) must set out the date on which the Shareholder intends to cease the supply of Milk to the Company. Where a person has not applied to the Company under this clause 3.10 within the required timeframe, the Board may (in accordance with any rules established by the Board from time to time) waive that requirement and treat the person as having submitted such an application. The Board may in its absolute discretion decide whether to accept any such application, subject to the terms of any enactment.

The following clauses specify arrangements which apply if the Board gives notice in writing accepting an application made, or treated as having been made, under this clause (subject also to any rules applicable to Associated Shareholders):

- (d) the Board may specify a period ("**Reduction Period**") in which the Shareholder and any Associated Shareholders shall be required to achieve compliance with modified standards for the holding of Co-operative Shares determined in accordance with this clause 3.10;
- (e) the Board shall (where applicable) estimate the quantity of Milk which the Shareholder is expected to supply to the Company in each Season in that Reduction Period and the Shareholder must, in accordance with clauses 3.12 and 9, supply Milk to the Company until (where subclause (a) applies) the date specified in the Shareholder's application as being the date on which the Shareholder intends to cease supply of the Milk to the Company and, where subclauses (b) and (c) apply, throughout the relevant Season and, in all such cases, in accordance with the quantities specified in this subclause (e);
- (f) the Reduction Period shall generally be a period commencing on the date ("**Reduction Date**"):
- (i) where subclause (a) above applies, which is the start of the Season in which the Shareholder will cease to supply Milk to the Company; and
 - (ii) where subclauses (b) or (c) apply, on which the relevant application is accepted by the Company,
- and expiring:
- (iii) for any person that was a Shareholder on 9 December 2021, on the later of 31 May 2037 or the end of the tenth complete Season after the applicable Reduction Date;
 - (iv) for any other Shareholder supplying Milk to the Company, at the end of the fifth complete Season after the applicable Reduction Date; and
 - (v) for any Associated Shareholder, at the end of the third complete Season after the applicable Reduction Date,

but the Board may in its discretion, in relation to any one or more Shareholders, specify a shorter or longer Reduction Period (and may re-determine any Reduction Period that has previously been specified);

- (g) the Shareholder may, following acceptance of such application by the Board, commence the disposal of any Co-operative Shares which it will be required to dispose of as a result of cessation or reduction in its supply;
- (h) the Shareholder and any Associated Shareholder must, by each Compliance Date in the Reduction Period, dispose of a number of Co-operative Shares such that its holding

of Co-operative Shares is not more than the number ("**Reduction Maximum**") specified by the Board (having regard to the estimated quantity of Milk specified under subclause (e)) in relation to the relevant Season;

- (i) where subclauses (b) or (c) above apply, the Shareholder must, at each Compliance Date in the Reduction Period, hold a number of Co-operative Shares which is not less than the number ("**Reduction Minimum**") specified by the Board in relation to the relevant Season;
- (j) without limiting subclause (i) above, when the Board specifies a Reduction Minimum with respect to any Season in a Reduction Period applicable to a Shareholder, it may do so irrespective of (and without being limited by) the Reduction Maximum specified by the Board under subclause (h);
- (k) the Board shall be entitled to determine (or re-determine) in any Season in a Reduction Period the Reduction Maximum and (where applicable) Reduction Minimum applicable to any such Shareholder in that Season;
- (l) notwithstanding subclauses (d) to (k) of this clause 3.10, a Shareholder whose application (or deemed application) under clause 3.10(a) has been accepted by the Board may (subject to any limitations in, and otherwise in accordance with, any rules established by the Board from time to time) transfer Co-operative Shares to one or more persons who have been approved by the Company and who are (and remain) related to or associated with that Shareholder, as determined in accordance with those rules (each a "**Permitted Transferee**"):
 - (i) during the first complete Season after the Season in which the Shareholder's application is accepted; or
 - (ii) at any other time during the Reduction Period in the event of the death of the Shareholder or of any member of a partnership, direct or indirect shareholder, or trustee of the Shareholder,

and any person or persons to whom Co-operative Shares are transferred in accordance with subclauses (i) or (ii) above must continue to comply with the Reduction Maximum throughout the remaining Reduction Period as if they were the transferring Shareholder (in each case subject to any re-determination in accordance with clauses 3.10(f) and 3.10(k)), but in proportion to the number of the transferor's Co-operative Shares transferred to them, and must otherwise continue to comply with the rules established by the Board from time to time for Permitted Transferees; and

- (m) if at any time the number of Co-operative Shares held by Shareholders whose applications made, or treated as having been made, under clause 3.10(a) have been accepted by the Board, or who are Permitted Transferees of such persons, is greater than 25% of the total number of Co-operative Shares on issue by the Company (excluding treasury stock):
 - (i) the Board shall take such steps and do such things, within such timeframes as the Board considers appropriate, with a view to returning to within that 25% threshold; and
 - (ii) the provisions of clause 3.3 shall apply as if the excess Co-operative Shares above that 25% threshold were Co-operative Shares outside the Aggregate Threshold, as referred to in that clause.

3.11 Compliance in transitional periods: If the provisions of clauses 3.9 or 3.10 apply and, as at any Compliance Date in a Transition Period or Reduction Period applicable under those clauses, a Shareholder is holding a number of Co-operative Shares which is more than the maximum or less than the minimum number of Co-operative Shares which the Shareholder is permitted or required (as applicable) to hold, the provisions of clauses 3.14 to 3.17 inclusive, and clause 4.3 and (if the Shareholder does not comply with a notice given under clause 4.3(c)) clause 4.4 shall apply.

3.12 **Continuous Supply:** Where:

- (a) under clause 3.9, a Shareholder is permitted to achieve compliance with the Minimum Holding over a Transition Period specified under that clause, the Shareholder may not, at any time prior to the end of the applicable Transition Period, give a notice under clause 3.10(a), that it intends to cease or reduce, nor otherwise cease or reduce, the supply of Milk to the Company (in each case unless otherwise determined by the Board and notified to the Shareholder);
- (b) under clause 3.10(a), a Shareholder has given a notice that it intends to cease the supply of Milk to the Company on a particular date, the Shareholder must continue to supply Milk to the Company up to that date; and
- (c) the Board estimates a quantity of Milk to be supplied by a Shareholder under clauses 3.9 or 3.10, the Shareholder must (in accordance with clause 9) supply Milk to the Company throughout the period, and in accordance with quantities, referred to in those clauses.

3.13 **Measurement Dates:** Each Shareholder's compliance with the requirements of this clause 3 in relation to a Season shall be determined by the Board on or with effect from the first day in that Season ("**Measurement Date**") and the Company shall, not later than 20 Working Days after that date, issue to each Shareholder a statement ("**Measurement Statement**") setting out such information as the Board may from time to time consider appropriate in relation to the numbers of Co-operative Shares which the Shareholder is required, or permitted, to hold in that Season. Each Measurement Statement shall, absent manifest error, be conclusive and binding. Nothing in this clause 3.13 limits the provisions of clause 3.8.

3.14 **Obligation to comply - Individual Limit:** The Individual Limit applies throughout each Season, and applies on each day in the Season. Each Shareholder must give notice in writing to the Company if at any time it becomes aware that the number of Co-operative Shares which it holds, or in which it has Relevant Interests is, or may be, in excess of the Individual Limit. If a Shareholder gives such a notice to the Company or the Company otherwise ascertains at any time that the Shareholder is in breach of the Individual Limit, the Shareholder must, within such period as is determined by the Board (not being less than 10 Working Days), dispose of such number of Co-operative Shares as will result in the number of Co-operative Shares held by that Shareholder, or in which it has Relevant Interests, being reduced to a number of Co-operative Shares which is less than the Individual Limit. If the Shareholder fails to comply with the requirements of this clause 3.14, the provisions of clause 4.3 and (if the Shareholder does not comply with a notice given under clause 4.3(c)) clause 4.4 shall apply.

3.15 **Obligation to comply - other limits:** Without limiting clause 3.14, in the period between the Measurement Date and the Compliance Date (specified under clause 3.16) in each Season the Shareholder must, to the extent required:

- (a) dispose of such number of Co-operative Shares as will result in the number of Co-operative Shares held by that Shareholder being not more than the maximum number of Co-operative Shares that the Shareholder is permitted, under this clause 3, to hold in that Season; and
- (b) acquire such number of Co-operative Shares as will result in the number of Co-operative Shares held by that Shareholder being not less than the minimum number of Co-operative Shares that the Shareholder is required, under this clause 3, to hold in that Season,

and all disposals and acquisitions necessary to achieve compliance with this clause 3.15 must be completed by the Compliance Date. In order to give effect to the requirements in this clause 3.15:

- (c) the Shareholder may, if and to the extent that the Company offers such a facility to Shareholders from time to time, either following receipt of a Measurement Statement in relation to any Season, or as a standing instruction to the Company, request that an Independent Agent disposes of, or acquires, such number of Co-operative Shares as the Shareholder is required to dispose of or acquire under subclauses (a) or (b) (as applicable);

- (d) each request by a Shareholder under subclause (c) shall operate to appoint an Independent Agent as the attorney and agent of the Shareholder, with power to delegate to any director or employee of the Independent Agent, to dispose of or acquire (as applicable) the relevant number of Co-operative Shares;
- (e) any facility provided under subclause (c) shall be established:
 - (i) with such Independent Agent as the Company may from time to time select; and
 - (ii) on terms and conditions notified by the Company to Shareholders from time to time,
 and each request by a Shareholder under subclause (c) shall be processed and acted upon by the Independent Agent in accordance with those terms and conditions; and
- (f) without limiting the content of those terms and conditions, each such transaction shall be processed on the basis that the Independent Agent shall not be required to obtain any particular price for any Co-operative Shares disposed of, or to pay any particular price for any Co-operative Shares acquired, under such facility, and none of the Company, the Independent Agent, nor their respective directors and employees shall be liable to any person on any basis in relation to any such disposals or acquisitions.

If the Shareholder fails to comply with the requirements of this clause 3.15, the provisions of clause 4.3 and (if the Shareholder does not comply with a notice given under clause 4.3(c)) clause 4.4 shall apply.

3.16 **Review of compliance:** The Board shall review each Shareholder's compliance with clause 3.15 on a date ("**Compliance Date**") set by the Board and notified to Shareholders prior to the commencement of each Season (such date being not less than 6 months after the Measurement Date). The Board may postpone the Compliance Date by further notice to Shareholders. The Board shall, not later than 20 Working Days after the Compliance Date, issue to each Shareholder a second statement ("**Compliance Statement**") setting out the number of Co-operative Shares held by the Shareholder as at the Compliance Date. The Board's determination on that issue shall, absent manifest error, be conclusive and binding. Nothing in this clause 3.16 limits the provisions of clause 3.8.

3.17 **Consequences:** If the Compliance Statement issued to a Shareholder indicates that, as at the Compliance Date, the Shareholder held:

- (a) a number of Co-operative Shares which is more than the maximum number of Co-operative Shares which the Shareholder is permitted, under this clause 3, to hold in that Season; or
- (b) a number of Co-operative Shares which is less than the minimum number of Co-operative Shares which the Shareholder is required, under this clause 3, to hold in that Season,

the Shareholder shall be deemed to be in breach of this Constitution and an Independent Agent shall automatically and irrevocably (and without the need for any further confirmation by, or notice to, the Shareholder) be appointed to act as the attorney and agent of the Shareholder (with power to delegate to any director or employee of the Independent Agent) to dispose of or acquire (as applicable) such number of Co-operative Shares as will result in the Shareholder holding a number of Co-operative Shares which complies with the limits and requirements in this clause 3, and in any such case the provisions of clause 4.3 and (if the Shareholder does not comply with a notice given under clause 4.3(c)) clause 4.4 shall apply.

3.18 **Information:** Each Shareholder shall provide such information as the Board may from time to time require to enable the Board to determine whether the Shareholder holds, or has Relevant Interests in, a number of Co-operative Shares required, or permitted, to be held by that Shareholder under this clause 3.

- 3.19 **Declarations:** Without limiting clause 3.18, the Board may at any time, by notice in writing to any Shareholder, require that Shareholder to give a statutory declaration (or other disclosure in a form acceptable to the Board) confirming such matters as the Board may require, including whether the Shareholder holds, or has Relevant Interests in, a number of Co-operative Shares which the Shareholder is required, or permitted, to hold or have Relevant Interests in under this clause 3. On receipt of any such notice, the Shareholder must provide such declaration or disclosure to the Board (or as the Board directs), within 10 Working Days of the date of the Board's notice. If the Shareholder fails or refuses to provide such declaration or disclosure in accordance with this clause, the Board shall be entitled to make a determination on the relevant issue on the basis of the information available to it and (without limiting the Company's other rights and remedies) the provisions of clause 4.3 and (if the Shareholder does not comply with a notice given under clause 4.3(c)) clause 4.4 shall apply to compel compliance by the Shareholder with any requirement under this Constitution which the Board determines is applicable to that Shareholder.
- 3.20 **Split Supply Shareholders:** A Shareholder must give not less than 20 Working Days notice in writing prior to the commencement of the relevant Season where it intends to not supply, in that Season, a percentage of the Milk previously supplied by that Shareholder from a Farm (the percentage so notified being called "**Diverted Milk Percentage**") where that Milk is to be supplied by that Shareholder to another purchaser. In that event the Company may require that Shareholder to reduce the number of Co-operative Shares held by that Shareholder (such that the Shareholder will hold a number of Co-operative Shares not exceeding the Maximum Holding determined by the Board in relation to that Shareholder for the relevant Season, based on the Company's estimate of the quantity of Milk (excluding Milk to be supplied on Contract Supply) which that Shareholder is expected to supply to the Company during that Season). The Diverted Milk Percentage shall not at any time exceed 20% of the total Milk produced in the whole of the applicable Season and in each day of that Season on that Farm. Whether any such notice may be given by any Shareholder, the time for giving any such notice, and the conditions on which it shall be given or accepted and the dates by which the Shareholder must reduce its holding of Co-operative Shares, shall in each case be determined by the Board from time to time in a manner consistent with any applicable enactment.
- 3.21 [Not used]
- 3.22 **Contract Supply:** Without limiting any other provision of this Constitution, the Board may, at its discretion and on such terms as it sees fit, permit a Shareholder to supply Milk to the Company in a Season on Contract Supply. The aggregate amount of Milksolids obtained from Milk supplied to the Company by Shareholders in a Season on Contract Supply shall not exceed 15% of the total Milksolids obtained from all Milk supplied by Shareholders to the Company in a 12-month period prior to the commencement of that Season selected by the Board. Without limiting the terms which the Board may set for Contract Supply under clause 9.4, the Board:
- (a) shall set, or determine the methodology for setting, the amount to be paid to a Shareholder for Milk supplied to the Company on Contract Supply;
 - (b) may require a Shareholder to hold a number of Co-operative Shares continuously throughout the term of any arrangements for the supply of Milk to the Company by that Shareholder on Contract Supply; and
 - (c) may set different terms under this clause 3.22 as between individual Shareholders.
- 3.23 **Continuous Shareholding:** Notwithstanding that each Shareholder's compliance with the requirements of this clause 3 (specifying minimum and maximum numbers of Co-operative Shares which Shareholders are required to hold) are intended to be tested on the Measurement Date and the Compliance Date, the Board may from time to time specify a minimum number ("**Base Limit**") of Co-operative Shares (which may be expressed numerically, in percentage terms relative to the Share Standard, or otherwise) which a Shareholder is required to hold continuously, throughout the relevant Season provided that:
- (a) the number of Co-operative Shares specified as the Base Limit in respect of a Shareholder shall not exceed the number of Co-operative Shares which the Shareholder would have been required to hold under the Minimum Holding; and

- (b) in setting a Base Limit under this clause the Board must give not less than 20 Working Days prior notice in writing to Shareholders of the introduction of (or any variation to) the Base Limit, and no such Base Limit shall operate retrospectively.

If the Board specifies a Base Limit under this clause:

- (c) each Shareholder must hold a number of Co-operative Shares which is not less than the Base Limit on each day, and at all times, during the relevant Season; and
- (d) the provisions of clause 4.3 and (if the Shareholder does not comply with a notice given under clause 4.3(c)) clause 4.4 shall apply to compel compliance by the Shareholder with the Base Limit.

3.24 Termination: If at any time:

- (a) the Company becomes aware that a Shareholder is a person who the Board is not permitted to admit as a Shareholder in accordance with clause 2.4; or
- (b) a Shareholder has failed to comply in any material respect with the Terms and Conditions on which that Shareholder supplies Milk to the Company,

the Board may give that Shareholder a notice in writing to that effect and:

- (c) the Board may require that Shareholder to cease the supply of Milk to the Company; and
- (d) the Board may require that Shareholder to dispose of all of the Co-operative Shares which that Shareholder holds, such disposal to be effected within a timeframe specified by the Board (not being less than 10 Working Days).

3.25 Extensions etc: The Board may, at its discretion, at any time grant extensions in relation to, or waivers of, dates and time periods for compliance with obligations arising under this clause 3 provided that, in doing so, it treats all Shareholders in similar circumstances equitably.

3.26 No application to certain persons: The provisions of clauses 2 and 3 do not apply to any RVP, any Custodian, or any Authorised Fund, and no RVP, Custodian, or Authorised Fund is required to hold Co-operative Shares under this clause 3.

4. COMPLIANCE AND REMEDIES

4.1 Application of Clause 3 restrictions: The requirements contained in clause 3 relating to the numbers of Co-operative Shares which Shareholders are required, or permitted, to hold (or have Relevant Interests in) are in each case of fundamental importance to the Company. Each Shareholder must comply with, and give effect to, those requirements (and, in the case of Associated Shareholders and Permitted Transferees, the requirements of the rules from time to time applicable to Associated Shareholders and Permitted Transferees), in form and in substance, and each such requirement shall be construed having regard to its purpose and intent.

4.2 Ensuring compliance: If at any time the Board determines, in its discretion, that any Shareholder has arranged its affairs or is circumventing, or may be seeking to circumvent, the purpose and/or intent of the restrictions in clause 3 or any applicable rules the Board may, after taking such steps as it considers practicable and available (including but not limited to exercise of the powers in clauses 3.18 and 3.19) declare any such Shareholder to be in breach of the requirements of the Constitution, in which case clause 4.3 and (if the Shareholder does not comply with a notice given under clause 4.3(c)) clause 4.4 shall apply.

4.3 Final opportunity to comply: If it is found (whether as a result of information provided under clauses 3.18 and 3.19 or otherwise) that any Shareholder holds (or, where the Individual Limit applies, has Relevant Interests in) a number of Co-operative Shares which is more than the maximum number of Co-operative Shares that the Shareholder is permitted to hold, or is less than the minimum number of Co-operative Shares that the Shareholder is required to hold, in each case under clause 3 then, in any such case:

- (a) all dividends or other Distributions which would otherwise accrue or be payable on or in relation to Co-operative Shares held by the Shareholder (or, where the Individual Limit applies, in which it has Relevant Interests) which are in excess of an applicable limit under clause 3 shall be forfeited by the Shareholder and retained by the Company;
- (b) no vote may be exercised in relation to any Co-operative Shares held by the Shareholder (or, where the Individual Limit applies, in which it has Relevant Interests), and any purported exercise of any right to vote by such Shareholder may be disallowed by the Company; and
- (c) the Board may give the Shareholder notice in writing requiring the Shareholder to take all steps (within a period specified by the Board, but not to be less than 10 Working Days after the date of the notice) to reduce or increase (as the case may require) the number of Co-operative Shares which it holds, or, where the Individual Limit applies, in which it has Relevant Interests, to such level as will result in the Shareholder being in compliance with the relevant obligation.

4.4 **Breach:** If the Shareholder fails to comply with a notice given by the Board under clause 4.3(c) within the period specified in the notice given under that clause:

- (a) an Independent Agent selected by the Board shall automatically and irrevocably (without the need for any further confirmation by, or notice to, the Shareholder) be appointed to act as the attorney and agent of the Shareholder, with power to delegate to any director or employee of the Independent Agent to dispose of or acquire, or procure the disposal or acquisition (either through the RVP or otherwise) of, such number of Co-operative Shares ("**Breach Shares**") as will result in the Shareholder being in compliance with the relevant obligation;
- (b) such disposal or acquisition may be effected by one or more transactions at such time or times as the Independent Agent determines;
- (c) such disposals or acquisitions shall be effected at the prices for Co-operative Shares prevailing on the Fonterra Shareholders Market at the time(s) and on the date(s) on which the relevant transactions are conducted;
- (d) none of the Company, the Independent Agent, any RVP, or any of their respective directors or employees, any other third party used to effect any such transaction, nor any other person, shall be under any duty or obligation to obtain (or to pay) any particular price for the Breach Shares, and none of such persons shall be liable to the Shareholder on any basis for, or in relation to, the relevant disposal or acquisition, or for any loss suffered or claimed to have been suffered by the Shareholder as a result of such transaction;
- (e) the proceeds of disposal of any such Breach Shares, less any or all of the following (which the Board may determine to deduct):
 - (i) any amount payable by the Shareholder under Fund Arrangements entered into with an Authorised Fund; and
 - (ii) all external costs and expenses incurred by the Independent Agent or the Company in connection with the sale, and all fees charged by any Independent Agent, any RVP, or any other third party utilised to effect such disposal,
 shall be paid to the Shareholder as and when they are available for payment;
- (f) where any Co-operative Shares are acquired under the foregoing provisions, an amount equal to any or all (as the Board may determine) of the following:
 - (i) the cost of acquisition of the relevant Co-operative Shares; and
 - (ii) all external costs and expenses incurred by the Independent Agent or the Company in connection with the purchase, and all fees charged by any

Independent Agent, any RVP, or any other third party utilised to effect such acquisition,

shall be charged to the account of the Shareholder with the Company and may be set off and deducted by the Company from any other amount due by the Company to the Shareholder and/or recovered by the Company from the Shareholder as a debt due. Any such amount shall accrue (and the Shareholder shall pay) interest at the Interest Rate in the period between acquisition of the relevant Co-operative Shares and payment of the amount specified in this subclause (f), such interest to accrue on a daily basis both before and after judgment;

- (g) the Shareholder irrevocably indemnifies the Company, each Independent Agent, and each other person utilised to effect any disposal or acquisition of Co-operative Shares or to take any other step contemplated by this clause 4.4 in relation to all costs, losses, expenses, claims and liabilities suffered or incurred by any of such persons in giving effect to such matters;
- (h) no person shall be concerned or shall need to make any inquiry in relation to the exercise of the powers conferred under this clause or the disposal or acquisition of any Co-operative Shares arising from the exercise of such powers; and
- (i) any determination of the Board or exercise of any discretion or power by the Board or its delegates under this clause 4.4 shall, absent manifest error, be conclusive and binding, and no disposal or acquisition or other action taken by the Board, the Independent Agent or any other person under this clause shall be open to challenge (whether as to its validity or otherwise on any ground whatsoever). A certificate signed by a Director or a delegate of the Board as to the exercise of the powers in this clause 4.4 shall be conclusive evidence of the facts stated therein.

5. THE FONTERRA SHAREHOLDERS MARKET

5.1 **Trading Agreement:** The Board may cause, or may prior to the date on which this Constitution takes effect have caused, the Company to enter into a Trading Agreement with the Operator. The Board may do such things and take such steps as may be necessary or appropriate to facilitate quotation and trading of Co-operative Shares on the Fonterra Shareholders Market pursuant to any such Trading Agreement, to maintain such quotation and trading and to agree any modified, additional, or replacement arrangements in relation to the Fonterra Shareholders Market as the Board considers appropriate including:

- (a) specifying or agreeing access protocols, rules, and procedures for trading of Co-operative Shares on the Fonterra Shareholders Market; and
- (b) facilitating compliance by the Company with the Trading Agreement, the Market Rules, and any legislative or regulatory requirements applicable to the Company in relation to the Fonterra Shareholders Market.

6. REGISTERED VOLUME PROVIDERS

6.1 **Engagement:** The Board may, from time to time and on such terms as it thinks fit, appoint, engage, or authorise one or more persons to:

- (a) provide services intended to enhance the operation and liquidity of the Fonterra Shareholders Market and/or any market for securities issued by any Authorised Fund; and
- (b) provide such other services as the Company may from time to time require for the purposes referred to in subclause (a),

and the Board may terminate the services of, or replace, any such person, or appoint additional persons to perform such roles, at any time. The terms on which any such person is appointed shall be set out in a contract ("**RVP Contract**"). Any such RVP Contract:

- (c) must contain provisions which reflect, or give effect to, the restrictions contained in clauses 6.4 and 6.5; and
- (d) subject to subclause (a) above, may be varied, supplemented or replaced at any time.

6.2 **Custodian:** The Board may from time to time and on such terms as it thinks fit require, or permit, some or all of the rights and interests in Co-operative Shares to which an RVP is entitled to be held by a Custodian for the purposes outlined in this clause 6, in which case the Board may require such Custodian to enter into a contract (which is for the benefit of, and is enforceable by, the Company) which contains provisions which reflect, or give effect to, the restrictions contained in clauses 6.4 and 6.5.

6.3 **No Liability for the Company:** Notwithstanding that the Board may appoint, engage, or authorise a person to perform the role of a RVP under clause 6.1, none of the Company, any Director, nor any employee of the Company shall have any liability to any person for, or in connection with, anything done or not done by a RVP or a Custodian, any termination or variation of any RVP Contract, or any termination or variation of any contract with a Custodian.

6.4 **Restricted capacity:** No RVP shall be entitled to hold any Co-operative Shares for any purpose, or in any capacity. If any RVP ceases to perform the role described in the RVP Contract (whether as a result of termination of the relevant RVP Contract or otherwise) the RVP must cause the Custodian to transfer all Co-operative Shares held by it for or on behalf of the RVP (or in which it holds rights or interests for or on behalf of the RVP) to such person or persons as the Board may (by notice in writing to the RVP and the Custodian) direct.

6.5 **No exercise of voting rights:** Each RVP Contract shall contain such mechanisms as the Board thinks fit which prohibit the RVP (and any Custodian) from exercising, Controlling or exerting any influence over any voting rights attached to any Co-operative Shares held by the Custodian (or in which it holds rights or interests) for any RVP from time to time or appointing any proxy or Representative to do so on its behalf. No exercise or purported exercise by any RVP or any Custodian (or by any person for or on behalf of such parties, whether as proxy, Representative, or otherwise) of any voting rights attached to Co-operative Shares shall be recognised or of any effect.

6.6 **RVP limit:** The aggregate number of Co-operative Shares in which rights or interests may be held for any (or all) RVPs at any time shall not exceed an amount equal to 5% of the total number of Co-operative Shares then on issue in the capital of the Company, excluding any Co-operative Shares which are, at the relevant time, on issue but have been surrendered to, or have been acquired by, the Company, and have not been cancelled.

7. AUTHORISED FUND

7.1 **Authorisation:** The Board may, from time to time and on such terms as it thinks fit, authorise any person ("**Authorised Fund**") to acquire, hold, or dispose of some or all of the or rights or interests in Co-operative Shares for the purpose set out in clause 1.6 and for that purpose:

- (a) permit any such Authorised Fund to enter into contracts or arrangements ("**Fund Arrangements**") with any person ("**Disposing Holder**") holding or controlling Co-operative Shares, and to receive any rights or benefits arising from any such Fund Arrangements at any time. The terms on which any such Authorised Fund is authorised by the Board to perform this role shall be set out in a contract ("**Fund Contract**"). Any such Fund Contract:
 - (i) must contain provisions which reflect, or give effect to, the restrictions in clauses 7.7 and 7.8; and
 - (ii) subject to subclause (i), may be varied, supplemented or replaced at any time; and
- (b) require rights or interests in Co-operative Shares to which any such Authorised Fund is entitled to be held by a Custodian, in which case the Board may require that Custodian to enter into a contract (which is for the benefit of, and is enforceable by,

the Company) which contains provisions which reflect, or give effect to, the restrictions contained in clauses 7.7 and 7.8.

7.2 **No liability for the Company:** Notwithstanding that the Company may authorise a person to perform the role of an Authorised Fund under this clause, none of the Company, any Director, nor any employee of the Company shall have any liability to any person for, or in connection with, anything done or not done by an Authorised Fund, any termination or variation of any Fund Contract, or any termination or variation of a contract with a Custodian.

7.3 **Participation:** The Board may from time to time:

- (a) specify limits on the extent to which any Disposing Holder may:
 - (i) dispose of any Co-operative Shares or rights or interests in Co-operative Shares to or for the benefit of any Authorised Fund; or
 - (ii) enter into any agreement, arrangement or understanding with any person to that effect or for that purpose; and/or
- (b) approve the terms of any Fund Arrangements proposed to be entered into by an Authorised Fund with Disposing Holders pursuant to clause 7.1,

provided that at any time the maximum number of Co-operative Shares in which any Disposing Holder (except an RVP or any Custodian acting on behalf thereof) may dispose of rights or interests to or for the benefit of any Authorised Fund shall not exceed 33% of the minimum number of Co-operative Shares required to be held by the Disposing Holder at that time in accordance with this Constitution.

7.4 **Basis:** Any limit specified by the Board under clause 7.3(a) may be set by the Board on any basis, by reference to any benchmarks, and incorporating any restrictions (whether expressed numerically, in percentage terms, or otherwise) that the Board determines, and may be re-determined by the Board at any time and from time to time.

7.5 **Overall limit:** The aggregate number of Co-operative Shares which are at any time the subject of Fund Arrangements shall not exceed an amount ("**Overall Limit**") equal to 10% of the total number of Co-operative Shares then on issue in the capital of the Company, excluding any Co-operative Shares which are, at the relevant time, on issue but have been surrendered to, or have been acquired by, the Company, and have not been cancelled.

7.6 **Consequences:** If at any time the aggregate number of Co-operative Shares which are the subject of Fund Arrangements exceeds the Overall Limit:

- (a) the Board shall, take such steps and do such things, within such timeframes as the Board considers appropriate, to cause, or to require any Authorised Fund to cause, the number of Co-operative Shares which are the subject of Fund Arrangements to be reduced to a number which is less than the Overall Limit; but
- (b) all Fund Arrangements entered into in excess of the Overall Limit shall remain valid and enforceable;
- (c) the rights and powers conferred on Disposing Holders (and on the Authorised Fund) under Fund Arrangements entered into in excess of the Overall Limit shall not be affected; and
- (d) no person shall be entitled to take any action (whether against, or in respect of, the Company, any Director, any Shareholder, or the Authorised Fund), in respect of the entry into Fund Arrangements in excess of the Overall Limit, and none of the persons referred to in this subclause (d) shall have any liability in respect of the entry into, or continuation of, such Fund Arrangements.

7.7 **Restricted Capacity:** No Authorised Fund shall be entitled to hold any Co-operative Shares for any other purpose, or in any other capacity. If any Authorised Fund ceases to perform the role

described in the Fund Contract (whether as a result of termination of the relevant Fund Contract or otherwise) the Authorised Fund must transfer, or cause the Custodian to transfer, all Co-operative Shares or rights or interests which it may, at the relevant time, hold in any Co-operative Shares to such person or persons as the Board (by notice in writing to the Authorised Fund) directs.

7.8 **No exercise of voting rights:** Each Fund Contract shall contain such mechanisms as the Board thinks fit which prohibit the Authorised Fund (and any Custodian) from exercising, Controlling, or exerting any influence over, any voting rights attached to any Co-operative Shares in which it holds rights or interests from time to time, or appointing any proxy or Representative to do so on its behalf. No exercise or purported exercise by any Authorised Fund or any Custodian (or by any person for or on behalf of such parties, whether as proxy, Representative, or otherwise) of any voting rights attached to Co-operative Shares shall be recognised or of any effect.

7.9 **No alienation of economic rights or establishment of unauthorised funds:**

(a) Notwithstanding the provisions for capping of the size of any Authorised Fund in this clause 7, the Company expects that Shareholders will retain an economic interest in the Company's financial performance in proportion to their shareholding.

(b) To give effect to clause 7.9(a) above, the Board may, by notice to any Shareholder, prohibit that Shareholder from entering into or giving effect to, or require that Shareholder to terminate or reverse (or procure the termination or reversal of) any structure, arrangement or understanding to which the Shareholder is a party, or of which it forms a part, if in the Board's view:

(i) the structure, arrangement or understanding involves (or is likely to involve) the Shareholder directly or indirectly and whether by one or more transactions, assigning, transferring, or otherwise Disposing of, or conferring Control over, any economic or legal right or interest attaching to, or any benefit derived from or associated with the holding of, Co-operative Shares (including an entitlement to all or part of any Distributions, and the benefit of all or part of any changes in the price or value of Co-operative Shares);

(ii) the structure, arrangement or understanding is of a kind that the Board determines (in its discretion) involves the giving or receipt of commercial benefits or rights (other than a bona fide arm's-length security arrangement in favour of a lender or a bona fide Farm holding structure); and

(iii) a material purpose or effect of the agreement, arrangement or understanding is to provide a mechanism for persons that are not Shareholders to receive or participate in any economic rights in, or arising from, Co-operative Shares.

(c) Clauses 8.6 and 8.7 of this Constitution apply to any structure, arrangement or understanding to which this clause 7.9 applies, as if references in those clauses to "clause 8.5" were to this clause 7.9. In addition to the consequences in clause 8.6, the Board may withhold any dividends declared or other economic rights in or arising from, Co-operative Shares where a Shareholder has not retained an economic interest in breach of clause 7.9(a).

(d) No person shall be concerned or shall need to make any inquiry in relation to the exercise of the powers conferred under this clause 7.9, and none of the Company, any Director, nor any employee of the Company shall have any liability to any person for, or in connection with, any step taken by the Board in accordance with this clause 7.9.

8. SHAREHOLDERS' VOTING ENTITLEMENTS

8.1 **Voting in Person or by Representative:** At a meeting of Shareholders where voting is by show of hands or by voice every Shareholder who is supplying Milk to the Company in the current Season and who is present in person or by Representative has one vote.

8.2 **Number of votes:** Subject to clause 8.3 (and except where otherwise provided in this Constitution), on a poll or postal ballot every Shareholder who is supplying Milk to the Company in the current Season has one vote for every 1,000 kilograms of Milksolids obtainable:

- (a) from Milk supplied by the Shareholder to the Company during the Season preceding the taking of the poll or postal ballot; or
- (b) if a Shareholder did not supply Milk to the Company during the Season preceding the taking of a poll or postal ballot, from Milk supplied from the Farm during that preceding Season from which the Shareholder is now supplying Milk to the Company,

but in either case excluding Milk supplied to the Company on Contract Supply or in accordance with either of clauses 2.3(a)(ii) or 2.7, and excluding any amount of Milk for which the supplier of the Milk does not hold a number of Co-operative Shares in accordance with the Share Standard.

8.3 **Estimated supply:** If in a Season the Farm from which a Shareholder is supplying Milk to the Company did not supply Milk to the Company during the Season preceding the taking of a poll or postal ballot then the number of votes shall be based on the Board's reasonable estimation of Milksolids obtainable from the Milk to be supplied by that Shareholder during the Season in which the poll or postal ballot is taken, but excluding Milk supplied to the Company on Contract Supply or in accordance with either of clauses 2.3(a)(ii) or 2.7, and excluding any amount of Milk for which the supplier of the Milk does not hold a number of Co-operative Shares in accordance with the Share Standard.

8.4 **Change in basis of supply:** The Company shall, in determining the quantity of Milksolids obtainable from Milk supplied by the Shareholder to the Company for the purposes of clause 8.2, take into account any change in the basis of supply used by the relevant supplier (including but not limited to any cessation or reduction of supply, and any commencement or termination of Contract Supply).

8.5 **Prohibition on assignment or alienation:** Subject to any applicable enactment, and except as permitted by the Board from time to time, no Shareholder may, directly or indirectly and whether by one or more transactions:

- (a) except as permitted under subclause (b), assign, transfer, or otherwise Dispose of, or confer Control over, any right to exercise any vote attaching to any Co-operative Shares held by the Shareholder from time to time; or
- (b) appoint a proxy or Representative to vote on behalf of the Shareholder at a meeting of Shareholders,

to or in favour of any person under, or as a result of, any agreement, arrangement or understanding which, the Board determines (in its discretion):

- (c) is not, or is inconsistent with, a bona fide appointment of a proxy or Representative; or
- (d) involves the giving or receipt of commercial benefits or rights (other than by reason of a proxy or Representative being an Associated Shareholder),

and in particular no Shareholder may (whether through any arrangement described in this clause or otherwise) cause or allow any RVP, any Authorised Fund, any Custodian, or any other entity which the Board determines is performing a similar role or function, to exercise, Control, or exert influence over, the exercise by any Shareholder of any such vote.

8.6 **Power to require declaration:** The Board may at any time and from time to time, by notice in writing, require any Shareholder to lodge with the Company a statutory declaration (or other disclosure in a form acceptable to the Board) stating whether or not the Shareholder has complied, and is complying, with the restrictions in clause 8.5 (and, for a Permitted Transferee, clause 3.10). On receipt of any such notice the Shareholder must provide such declaration or disclosure to the Board (or as the Board directs) within 10 Working Days of the date of that notice. If the Shareholder fails or refuses to provide such declaration or disclosure in accordance with this clause the Board shall be entitled to make a determination on the relevant issue on the basis of the information available to it and (without limiting the Company's other rights and remedies) the provisions of clause 8.7 shall apply.

- 8.7 **Consequences:** If the Board at any time determines (whether as a result of a declaration or disclosure under clause 8.6 or otherwise) that any person:
- (a) has entered into or is a party to any agreement, arrangement or understanding of a type prohibited under clause 8.5;
 - (b) is attempting, or has purported, to exercise any vote, or to Control or exert influence over any votes, attached to Co-operative Shares as a result of any such agreement, arrangement or understanding; or
 - (c) is otherwise circumventing, or attempting to circumvent, the purpose and intent of the restrictions contained in clause 8.5,

the Board may disallow any votes exercised, or proposed to be exercised, pursuant to any such arrangement, and the Board's determination on that issue shall be conclusive and binding.

9. TERMS AND CONDITIONS OF SUPPLY OF MILK BY SHAREHOLDERS

- 9.1 **Shareholders to supply all Milk to the Company:** Except as may otherwise expressly be agreed in writing between a Shareholder and the Company or required pursuant to and on conditions permitted or required by any enactment, and subject to this Constitution, each Shareholder is required to make available for supply to the Company, all Milk produced on each Farm referred to in clause 2.6 except for:
- (a) Milk required for the personal use of the Shareholder's family, employees or by a Sharemilker or Contract Milker engaged by the Shareholder on that Farm;
 - (b) Milk required for the raising of calves reared on that Farm;
 - (c) Milk from that Farm which the Company and the Shareholder have expressly agreed in writing is not required for supply to the Company;
 - (d) any Diverted Milk Percentage; and
 - (e) Milk which the Company has agreed need not be supplied from that Farm in accordance with clause 2.6 and clause 2.3(a)(ii).
- 9.2 **Notice may not be given if inconsistent with Terms and Conditions:** A notice of intention to cease or reduce the supply of Milk to the Company may not be given by a Shareholder under clause 3.10 if the giving of such notice would be inconsistent with the Terms and Conditions on which that Shareholder supplies Milk to the Company, or would be in breach of a requirement under clause 3, including but not limited to the requirements in clauses 3.9, 3.10, 3.12, 3.20 and 3.22.
- 9.3 **Terms and Conditions of supply:** The Board may fix from time to time such standard Terms and Conditions as it sees fit which shall apply to the supply of Milk by Shareholders to the Company, in cases where special Terms and Conditions do not apply.
- 9.4 **Special Terms and Conditions:** The Board may fix from time to time special Terms and Conditions for the supply of Milk to the Company by specified Shareholders which reflect the costs and benefits to the Company of the supply of that Milk at different times, of different qualities, at different places and on different commercial terms from other Milk, and/or arrangements for the Contract Supply of Milk under clause 3.22, and/or requirements of the Board under clauses 3.9, 3.10, 3.12 and 3.20.
- 9.5 **Terms and Conditions to be notified:** The Company shall notify all Shareholders in writing of the standard Terms and Conditions and shall notify Shareholders concerned in writing of special Terms and Conditions fixed by the Board.
- 9.6 **Terms and Conditions binding:** The standard or special Terms and Conditions shall be binding on the Company and on each Shareholder to whom they apply.

9.7 **Other Terms and Conditions:** The Company may agree such terms for the supply of Milk by suppliers other than Shareholders as it thinks fit.

10. PAYMENT FOR MILK SUPPLIED BY SHAREHOLDERS

10.1 **Payment for Milk supplied:** After each Season the Board shall determine the payment to be made for Milk supplied by Shareholders during that Season by reference to such components as shall be identified by the Board, including but not limited to such adjustments for Milk volumes or such other factors as the Board determines (including any adjustment the Board considers appropriate for Shareholders that hold fewer Co-operative Shares than the Share Standard for that Season). In determining that payment, the Board shall have regard to the income from all activities of the Company, including any dividends received or receivable by the Company and any transfers to or from reserves as the Board, in its absolute discretion, determines are desirable, less the costs of the Company. The costs of the Company include all manufacturing costs, principal repayments, interest and financing costs, and other costs directly attributable to the other activities of the Company.

10.2 **Determination of Milk Price:** The Company shall maintain, in a form approved by the Board from time to time, a manual ("**Milk Price Manual**") setting out the policies and methodology for the determination of the Milk Price. The Milk Price Manual must reflect the application of the Milk Price Principles which, for the purposes of this Constitution, are deemed to be included in Part A of this Constitution. The Milk Price must be determined in accordance with the Milk Price Manual.

10.3 **Milk Price Panel:** The Board shall establish and maintain a committee known as the "Milk Price Panel" ("**Panel**"). The following requirements shall apply to the Panel:

- (a) The Board shall set the terms of reference for the Panel which must provide that, for each Season, the Panel will:
 - (i) supervise the calculation of the Milk Price;
 - (ii) advise the Company on the application of the Milk Price Manual; and
 - (iii) recommend to the Board the Milk Price.
- (b) The Panel may make recommendations to the Board in respect of the Milk Price Manual.
- (c) The Panel must at all times comply with the following requirements:
 - (i) it must comprise six members;
 - (ii) a majority of the members must qualify for appointment as "independent" ("**independent**") members (within the meaning of any applicable enactment or, if there is no applicable enactment, as determined by the Board from time to time);
 - (iii) the Co-operative Council is entitled to appoint up to two members (at least one of whom must be independent);
 - (iv) one member of the Panel must be the person (who must be independent) nominated by the responsible Minister for appointment as a member of the Panel under subsection 150E(1A) of the Dairy Industry Restructuring Act 2001 so long as such provision remains in force;
 - (v) the remaining members shall be appointed by the Board; and
 - (vi) the chairman of the Panel must be independent and shall have no casting vote.
- (d) The Board must identify (and annually disclose) which members it has determined, in its view, to be independent.

- 10.4 **Special Terms and Conditions:** The payment for Milk supplied under special Terms and Conditions determined pursuant to clause 9.4 may be adjusted by the Board, in accordance with those Terms and Conditions.
- 10.5 **Shareholder accounts:** The Company shall establish an account in respect of each Shareholder to which the Company shall credit from time to time all amounts payable by the Company to that Shareholder and may debit from time to time all amounts payable by the Shareholder to the Company or any subsidiary of the Company in accordance with the provisions of this Constitution or the Terms and Conditions.
- 10.6 **Interim payments:** The Board may, in its absolute discretion, and in accordance with the standard or special Terms and Conditions, decide to set and to credit to Shareholders' accounts interim part payments of the payment to be made for Milk.

11. DISTRIBUTIONS

- 11.1 **Power to authorise:** Subject to the Act and this Constitution the Board may, if satisfied on reasonable grounds that the Company will immediately after the Distribution satisfy the solvency test, authorise Distributions by the Company at times, and of amounts, and to any Shareholders, as it thinks fit and may do everything which is necessary or expedient to give effect to any such Distribution.
- 11.2 **Form of Distribution:** Subject to the rights of holders of any Shares in a Class and to any enactment, the Board may make a Distribution in such form as it thinks fit, but shall not differentiate between Shareholders in a Class as to the form in which a Distribution is made without the prior approval of the Shareholders.
- 11.3 **Method of payment:** A Distribution payable in cash may be paid in such manner as the Board thinks fit to the entitled Shareholders or, in the case of joint Shareholders, to the Shareholder named first in the Share Register, or to such other person and in such manner as the Shareholder or joint Shareholders may in writing direct. Any one of two or more joint Shareholders may give a receipt for any payment in respect of the Shares held by them as joint Shareholders.
- 11.4 **No interest on Distributions:** The Company is not liable to pay interest in respect of any Distribution.
- 11.5 **Unclaimed Distributions:** Dividends or other monetary Distributions unclaimed for more than one year after the date determined for payment, may be used for the benefit of the Company until claimed. All dividends or other monetary Distributions unclaimed for more than five years after the date determined for payment may be forfeited by the Board for the benefit of the Company. The Board shall nevertheless, at any time after such forfeiture, annul the forfeiture and agree to pay a claimant who produces satisfactory evidence of entitlement.

12. APPOINTMENT ROTATION AND REMOVAL OF DIRECTORS

- 12.1 **Number of Directors:** There shall be not more than 13 Directors until the conclusion of the 2016 annual meeting of the Company, not more than 12 Directors until the conclusion of the 2017 annual meeting of the Company, and not more than 11 Directors thereafter, of whom:
- (a) not more than 9 until the conclusion of the 2016 annual meeting, 8 until the conclusion of the 2017 annual meeting, and 7 thereafter, are Directors elected by Shareholders in accordance with clauses 12.2 and 33.4 or appointed by the Board in accordance with clause 33.1; and
 - (b) not more than 4 are Directors appointed by the Board in accordance with clause 12.4.
- 12.2 **Election by Shareholders:** Subject to clause 12.1, a person may be elected or removed as a Director by a postal ballot of Shareholders held in accordance with the written procedures adopted by the Co-operative Council from time to time for holding postal ballots by Shareholders for the election or removal of Directors.

12.3 **Qualifications of Directors:** No person shall be elected as a Director by Shareholders or hold office as a Director elected by Shareholders in accordance with clause 12.1(a) unless he or she has a direct or indirect interest in a Shareholder that is supplying Milk to the Company which comprises either:

- (a) a direct or indirect legal or beneficial interest in that Shareholder (including as a beneficiary of a trust); or
- (b) a right or entitlement to participate (directly or indirectly) in the distributions of, or made by, that Shareholder,

and, without limiting the entities, arrangements or structures through which any such interest may arise or be held, a person will be deemed to hold such an interest if he or she:

- (c) is a Shareholder that is supplying Milk to the Company; or
- (d) is a shareholder of a company that is a Shareholder that is supplying Milk to the Company; or
- (e) is a member of a partnership that is a Shareholder that is supplying Milk to the Company.

No person shall take office as a Director unless he or she has signed a Confidentiality Deed and Indemnity in the form determined by the Board relating to information he or she may receive in his or her capacity as a Director.

12.4 **Appointment by Board:** Subject to clause 12.1, the Board may at any time appoint a person to be a Director for such period, and on such terms, as the Board thinks fit, provided however that the Board may not alter the rights or powers of a Director appointed pursuant to this clause. If the Shareholders do not ratify the appointment of any Director appointed pursuant to this clause by the first annual meeting of the Company following the appointment of that Director then that Director shall cease to hold office at the conclusion of that meeting. If a Director is appointed for a term exceeding three years, then that Director's appointment shall be ratified by Shareholders every three years.

12.5 **Managing Director:** The Board may from time to time appoint one of the Directors appointed by the Board in accordance with clause 12.4 to the office of managing Director for such period, and on such terms, as the Board thinks fit and, subject to the terms of any agreement entered into in any particular case, may revoke such appointment.

12.6 **Continuation of current directors:** The persons who are, at the date on which this Constitution takes effect, the directors of the Company continue in office on the terms on which each such director holds office at such date.

12.7 **Rotation of Directors:** At each annual meeting of the Company one third of the Directors elected by Shareholders pursuant to clause 12.2, or if their number is not a multiple of three then the number nearest to one third, shall retire from office. The Directors to retire shall be those who have been longest in office since their last election. If two or more of those Directors were last elected on the same day, the Directors to retire shall (unless they otherwise agree among themselves) be determined by lot. A retiring Director is eligible for re-election. Where the application of this rule would cause an elected Director to serve a term exceeding three years, then that Director must also retire from office.

13. POWERS OF DIRECTORS

13.1 **Management of Company:** The business and affairs of the Company shall be managed by, or under the direction or supervision of, the Board, provided that the chairperson of the Board shall be a Director elected in accordance with clause 12.2.

13.2 **Exercise of powers by Board:** The Board may exercise all the powers of the Company which are not required either by the Act, the Co-operative Companies Act or this Constitution to be exercised by the Shareholders.

13.3 **Delegation of powers:** The Board may delegate to a committee of Directors, a Director, an employee of the Company, or to any other person, any one or more of its powers, other than a power set out in the second schedule to the Act.

14. EXERCISE OF POWERS OF SHAREHOLDERS

14.1 **Powers exercisable by Ordinary Resolution:** Unless otherwise specified in the Act or the Co-operative Companies Act 1996 or this Constitution, a power or right of approval reserved to Shareholders may be exercised by Ordinary Resolution.

15. SHAREHOLDER PROPOSALS AND MANAGEMENT REVIEW

15.1 **Shareholder proposals:** A Shareholder may give written notice to the Board of a matter which the Shareholder proposes to raise for discussion or resolution at the next meeting of Shareholders at which the Shareholder is entitled to vote. The provisions of section 9 of the first schedule to the Act apply to any notice given pursuant to this clause.

15.2 **Management review by Shareholders:** The chairperson of a meeting of Shareholders shall allow a reasonable opportunity for Shareholders at the meeting to question, discuss, or comment on the management of the Company. The Shareholders may pass a resolution relating to the management of the Company at that meeting but the resolution will not be binding on the Board.

16. FONTERRA CO-OPERATIVE COUNCIL

16.1 **Establishment of Co-operative Council:** Clause 16 establishes the Co-operative Council. While the Co-operative Council is not a separate legal entity, it shall, so far as is practicable, operate as an independent body within the organisational framework of the Company. This clause 16 does not alter the Directors' duty to act in the best interest of the Company notwithstanding the Co-operative Council's role, functions or powers as set out in this clause 16 and such duty will apply notwithstanding anything to the contrary in this clause.

16.2 **Membership of the Co-operative Council:** Subject to casual vacancies there shall be a Co-operative Council of not fewer than 25 Ward Councillors and up to three Appointed Councillors, which shall be elected or appointed in accordance with the by-laws of the Co-operative Council.

16.3 **Role:** The role of the Co-operative Council is to support Shareholders' democratic control of their Company and to actively represent and seek to protect Members' interests as owners, investors, suppliers and members of the Fonterra co-operative community.

16.4 **Functions:** The Co-operative Council shall have the following functions:

- (a) fostering Member engagement with the Company;
- (b) understanding and representing to the Board the interests, needs, views and expectations of Members;
- (c) subject to any applicable legislative or regulatory requirement and to the Market Rules, receiving from and discussing with the Board, at least four times each financial year, reports on the Company's consolidated and key business unit operations. Such reports will include commentary on actual achievements compared with the Board's key measures for the Company's performance and any identified risks to the Company's on-going performance. The reports and discussions will only utilise publicly available information or information which is not Inside Information. The Co-operative Council will report to Members on those engagements;
- (d) monitoring information provided by the Company to Members and assisting Members to understand the implications of that information to them;
- (e) seeking Board explanation of, and responsibility for, the Company's strategy and performance;

- (f) communicating to Members on how the Co-operative Council represents Members' interests;
- (g) working with the Board as joint guardians of the Company's co-operative philosophy as expressed in the Company's Co-operative Principles, Purpose Statement and Values. Either the Board or Council may, from time to time, require that the co-operative philosophy is reviewed. In this context guardianship includes:
 - (i) considering the extent to which the co-operative philosophy reflects Members' overall interests; and
 - (ii) ensuring that the co-operative philosophy is not changed except with the consent of the Co-operative Council and the Board;
- (h) consulting with the Board and/or management on decisions which have the potential to affect Members' interests in their co-operative;
- (i) advocating publicly, after consultation with the Board, on Members' collective behalf on matters relating directly to their interests in their co-operative and, when it considers it appropriate, on matters relating to the dairy industry;
- (j) adopting from time to time such written procedures as the Co-operative Council thinks fit for holding a postal ballot of Shareholders for the election and removal of Directors pursuant to clause 12.2;
- (k) administering training programmes for prospective Directors and for Councillors and providing to Members learning and development opportunities with a view to facilitating informed and participating Members;
- (l) consulting with the Board in relation to specific projects or activities, if the Co-operative Council considers that the projects or activities warrant discussion;
- (m) considering and, in consultation with the Board, proposing to Shareholders changes to this Constitution;
- (n) consulting with the Board in relation to the operation of the Fonterra Shareholders Market and any Authorised Fund;
- (o) consulting with the Board in relation to any changes to the Milk Price Manual and the Milk Price Principles;
- (p) appointing any Valuer and procuring that any such Valuer acts in accordance with the provisions of this Constitution; and
- (q) in relation to the Milk Commissioner:
 - (i) appointing the Milk Commissioner in accordance with clause 17.1;
 - (ii) giving such assistance to the Milk Commissioner concerning the performance of its duties as shall seem expedient to the Co-operative Council;
 - (iii) receiving reports from the Milk Commissioner on the status and outcome of concerns or complaints referred to it;
 - (iv) receiving and considering recommendations from the Milk Commissioner for changes to the by-laws of the Milk Commissioner;
 - (v) monitoring the by-laws of the Milk Commissioner and subject to clause 17 from time to time amending or fixing the by-laws of the Milk Commissioner;
 - (vi) receiving the report of the Milk Commissioner for each Season;

- (vii) including provision for the costs of the Milk Commissioner for each financial year in the Co-operative Council budget;
 - (viii) suspending or removing the Milk Commissioner; and
 - (ix) at any time and from time to time obtaining additional money for the purposes of the Milk Commissioner by levying the Company, the amount of any such levy being determined by the Milk Commissioner and approved by the Co-operative Council, which shall be due and payable by the Company four weeks after a notice in writing requesting the money has been given to the Company by the Co-operative Council; and
- (r) at each annual meeting of the Company:
- (i) reporting on the activities of the Co-operative Council in the preceding financial year;
 - (ii) reporting the view of the Co-operative Council on the alignment of the Company strategy and performance to Members' expectations and aspirations, including a commentary on actual achievements compared with the Board's key measures for the Company's performance;
 - (iii) presenting the Milk Commissioner's report for the most recently completed Season provided that, at the Milk Commissioner's discretion, the Milk Commissioner may present that report; and
 - (iv) presenting the Co-operative Council's programme and budget for the current financial year to Shareholders for approval.

16.5 **Powers:** The Co-operative Council shall have the following powers:

- (a) recommending to the Board, if the Co-operative Council decides (by a majority of 75% or more of Councillors) that circumstances have arisen which require a report, the commissioning by the Company of a special report (whether internal or independent) on specific projects or activities as identified by the Co-operative Council;
- (b) if the Co-operative Council decides (by a majority of 75% or more of Councillors) that circumstances have arisen which require a report, the commissioning by the Co-operative Council of a special report on specific projects or activities as identified by the Co-operative Council; and
- (c) calling a special meeting of Shareholders, if the Co-operative Council has serious concerns about:
 - (i) the Company's compliance with the co-operative philosophy referred to in clause 16.4(g); or
 - (ii) whether the Company is achieving the purpose set out in clause 1.2 of this Constitution of maximising the wealth of its Shareholders; or
 - (iii) the achievement of the Board's key performance measures for the Company; or
 - (iv) the alignment of the Board's strategy or key performance measures to Members' expectations and aspirations, as set out in the then current Letter of Members' Expectations; or
 - (v) any other material issue which the Co-operative Council considers has or may have a detrimental effect on the Company,

and the calling of that meeting is supported by a majority of 75% or more of Councillors.

16.6 **Wards:** Pursuant to determinations of the Co-operative Council:

- (a) the area covered by the operations of the Company in New Zealand is divided into Wards; and
 - (b) the number of Councillors by whom each Ward is entitled to be represented is set.
- 16.7 **Review of Wards:** The Co-operative Council shall from time to time review the Ward boundaries and Ward representation and determine whether they should be changed. The Co-operative Council may then change the Ward boundaries and representation having regard, with respect to each Ward, to the number of Shareholders, the amount of Milksolids supplied and communities of interest, provided that:
- (a) a minimum of one and no more than two Councillors shall be allocated to each Ward; and
 - (b) the Co-operative Council shall not reduce the number of Wards below 25.
- 16.8 **Election and Appointment of Councillors:** Subject to the provisions of this clause 16, the manner in which Councillors are nominated, elected, appointed and removed shall be governed by the by-laws of the Co-operative Council. Every election of Councillors shall be held, and every appointment of Councillors shall be made, in the manner for the time being approved pursuant to this clause. The Co-operative Council at the date of this Constitution shall continue in office.
- 16.9 **Qualifications of Councillors:** No person may be elected or hold office as a Councillor unless he or she:
- (a) is a person who would be qualified for election as a Director in terms of clause 12.3, provided that this requirement shall not apply to persons who are appointed by the Co-operative Council to hold office as an Appointed Councillor pursuant to the by-laws of the Co-operative Council;
 - (b) is not during their tenure as a Councillor, a Director or executive of the Company or the Milk Commissioner; and
 - (c) has signed a Confidentiality Deed and Indemnity in the form determined by the Board relating to information he or she receives in his or her capacity as a Councillor.
- 16.10 **Councillors to be bound by Constitution:** If a Councillor is not a Shareholder, that Councillor shall, before taking office, execute a document agreeing to be bound by the provisions of this Constitution.
- 16.11 **By-laws of Co-operative Council:** Subject to this clause 16, the Co-operative Council has the rights, powers, duties and obligations set out in the by-laws of the Co-operative Council. The Co-operative Council may with the approval of Shareholders by Special Resolution amend the by-laws of the Co-operative Council from time to time.
- 16.12 **Indemnity for Councillors:** Each Councillor shall be granted an indemnity by the Company in respect of liability to any person other than the Company or a related company. The indemnity will be for any act or omission of the Councillor in his or her capacity as a Councillor and for costs incurred by the Councillor in defending or settling any claim or proceeding relating to any such liability. The indemnity will not cover criminal liability or liability in respect of a breach of any duty owed by the Councillor to the Company. The form of the indemnity will be determined by the Board.
- 16.13 **Power to retain advisers:** The Co-operative Council shall, for the purpose of performing its functions, have power to retain such legal, accounting, financial and other advisers as the Chairperson of the Co-operative Council acting reasonably deems fit.
- 16.14 **Board to Provide Information to Co-operative Council:** The Board will, subject to all relevant legislative and regulatory requirements and to the Market Rules, including by only disclosing information which is not Inside Information:

- (a) provide the level of information to the Co-operative Council that enables the Co-operative Council to fully perform its role and functions and exercise its powers as envisaged by this Constitution; and
- (b) consult with the Co-operative Council in relation to matters on which consultation is contemplated in clause 16.4, including the terms of the Risk Management Policy adopted from time to time by the Board (and on any changes thereto) in relation to the total number of Co-operative Shares on issue and the proportion of Co-operative Shares that are not held by Shareholders that supply Milk to the Company (including Co-operative Shares that are the subject of Fund Arrangements), and the Board will take all practical steps to facilitate such consultation.

To the extent that information is provided to the Co-operative Council it shall be subject to the Confidentiality Deed and Indemnity referred to in clause 16.9(c) of this Constitution being entered into by each Councillor.

16.15 **Working Interface between Board and Co-operative Council:** The Board and the Co-operative Council will comply with the document entitled "Board, Co-operative Council and Management Working Interface" agreed between the Board and the Co-operative Council from time to time, which shall include a consultation framework.

17. MILK COMMISSIONER

17.1 **Appointment of Milk Commissioner:** The Co-operative Council shall, in consultation with the Minister, appoint a Milk Commissioner for such period (not exceeding two years) and on such terms as the Co-operative Council thinks fit.

17.2 **Functions and jurisdiction:** The Milk Commissioner's principal functions are to:

- (a) consider, at no cost to a complainant Shareholder, Shareholders' complaints or disputes which cannot be resolved in accordance with the Company's internal complaints procedure, arising out of:
 - (i) the supply of Milk to the Company pursuant to this Constitution and the Terms and Conditions; or
 - (ii) the Board's determination of the Average Quantity applicable to that Shareholder; and
- (b) subject to clause 17.3, facilitate the settlement, resolution or withdrawal of such complaints by agreement, by making non-binding recommendations or by such other means as seem expedient. In particular, in relation to disputes under clause 17.2(a)(ii), the Milk Commissioner may, if he or she considers such action to be fair and equitable as between the Company and the relevant Shareholder, recommend to the Company that the Company not enforce any provision of this Constitution relating to the number of Co-operative Shares that the Shareholder is permitted, or required, to hold where the Company's determination of that issue may be affected by the outcome of a dispute referred to in clause 17.2(a)(ii).
- (c) report to the Board and Co-operative Council on the status and outcome of all concerns or complaints referred to the Milk Commissioner.

17.3 **Limits on jurisdiction of Milk Commissioner:** The Milk Commissioner shall not have jurisdiction to bind the Company to its recommendations.

17.4 **Persons not to be Milk Commissioner:** No person shall be appointed as the Milk Commissioner that is a Director, Councillor or an employee of, or holds any office or position with the Company or subsidiary of the Company, (nor shall he or she, either personally or by his or her firm, act in a professional capacity for the Company) and if any person holding office as Milk Commissioner becomes a person of the nature referred to in this clause, that person thereupon ceases to be the Milk Commissioner.

- 17.5 **Company's response to recommendations of Milk Commissioner:** If the Company does not accept a recommendation made by the Milk Commissioner, then it shall not be bound to follow that recommendation but shall:
- (a) respond to the Milk Commissioner in writing stating the reasons for not accepting the recommendation;
 - (b) report to the Co-operative Council both:
 - (i) the substance of the recommendation; and
 - (ii) the reasons for not accepting the recommendation.
- 17.6 **Milk Commissioner by-laws:** Subject to this clause 17, the powers, duties and obligations of the Milk Commissioner shall be set out in the by-laws fixed by the Co-operative Council from time to time, which shall be binding on the Company.
- 17.7 **Complaints to be in writing:** Complaints to the Milk Commissioner are to be made in writing.
- 17.8 **Company to develop complaints procedure:** The Company shall, promptly after the first meeting of the Board, develop and publish guidelines for the purpose of dealing with complaints arising out of the supply of Milk to the Company pursuant to this Constitution and the Terms and Conditions or the issue and surrender of Co-operative Shares. These guidelines shall be made available to Shareholders on request free of charge.
- 18. ALTERATIONS TO PART A OF THIS CONSTITUTION**
- 18.1 **Not without support of Co-operative Council:** Part A of this Constitution (except clause 16) may not be altered or revoked unless the proposal to alter or revoke Part A of this Constitution (except clause 16) is supported by a majority of 50% or more of Councillors.
- 18.2 **Evidence of Co-operative Council support:** A certificate signed by the chairperson of the Co-operative Council stating the requisite majority of Councillors support a proposal to alter or revoke Part A of this Constitution and given to the chairperson of the Board is conclusive evidence of that fact.

PART B - OTHER PROVISIONS

19. REGISTRATION AS A CO-OPERATIVE DAIRY COMPANY

- 19.1 **Authorisation to register as a Co-operative company:** Any Director of the Company is authorised to make an application for the registration of the Company as a co-operative dairy company under Part III of the Co-operative Companies Act.

20. VALUER

- 20.1 **Appointment of Valuer:** The Co-operative Council may, but shall not be obliged to, appoint a Valuer to estimate the value from time to time of Co-operative Shares, having regard to the ability of Shareholders to trade Co-operative Shares between themselves on the Fonterra Shareholders Market, and to the other matters contained or provided for in this Constitution. Any report of the Valuer on that issue must confirm that the amount determined by the Valuer is an estimate only, is for the information of Shareholders, and does not affect or limit the prices at which Shareholders may sell or purchase Co-operative Shares from time to time.

- 20.2 **Vacancies:** The Co-operative Council may fill any vacancy in the office of Valuer.

- 20.3 **Valuer's fees and expenses:** The fees, expenses and other terms and conditions of appointment of the Valuer shall be fixed by the Co-operative Council, in a manner consistent with this Constitution.

- 20.4 **Qualifications of Valuer:** A person shall not be appointed or act as Valuer unless that person:

- (a) is a person with a firm of international repute as a valuer of shares in large widely held companies in the food and primary sectors;

and that person:

- (b) is not a Director or employee of, and does not hold any office or position with the Company or a subsidiary of the Company; and
- (c) is not, either personally or by his or her firm, engaged by the Company or a subsidiary of the Company in any capacity that, in the reasonable view of the Co-operative Council, compromises the independence of the Valuer; and
- (d) does not, either personally or by his or her firm, benefit financially from the supply of milk within the dairy industry of any country including New Zealand in any way that, in the reasonable view of the Co-operative Council, compromises the independence of the Valuer; and
- (e) is not a Shareholder or Councillor; and
- (f) is not the Milk Commissioner; and
- (g) has signed a Confidentiality Deed and Indemnity in the form determined by the Board relating to information that person receives in that person's capacity as Valuer.

- 20.5 **Vacancy of Office:** The Valuer ceases to be the Valuer if:

- (a) the Valuer is not qualified to hold the office of Valuer; or
- (b) the Co-operative Council appoints another person to be the Valuer; or
- (c) the Valuer has given notice to the Company resigning as Valuer; or
- (d) the Valuer is removed from office by the Co-operative Council.

20.6 **Company to provide information:** The Company shall, subject to all applicable legislative and regulatory requirements and to the Market Rules, promptly provide the Valuer with any information the Valuer may reasonably require for the purposes of this clause 20.

21. SHARES GENERALLY

21.1 **No pre-emptive rights:** The provisions of sections 45(1) and 45(2) of the Act shall not apply to any issue or proposed issue of Shares by the Company.

21.2 **Board may issue Shares and other securities:** The Board may issue Shares, securities that are convertible into or exchangeable for Shares, or options to acquire Shares, to any person in any number the Board thinks fit. In addition, different Classes of Shares may be issued by the Company in accordance with the provisions of this Constitution. Without limiting the Classes which may be issued, any Share may be issued upon the basis that it:

- (a) confers preferential rights to distributions of capital or income;
- (b) confers special, limited or conditional voting rights;
- (c) does not confer voting rights; or
- (d) is redeemable in accordance with section 68 of the Act.

No issue may be made under this clause 21.2 which will jeopardise the Company's status as a co-operative company.

21.3 **Bonus issues:** Without limiting the rights of the Board under any enactment, the Board may resolve to apply any amount which is available for Distribution:

- (a) in paying up in full Shares or other securities of the Company to be issued credited as fully paid to:
 - (i) the Shareholders who would be entitled to that amount if it were distributed by way of dividend, and in the same proportions; or
 - (ii) Shareholders who hold Shares of the same Class, in proportion to the Shares held by those Shareholders of that Class; or
 - (iii) Shareholders who hold Shares of the same Class, in proportion to the quantity of Milksolids obtainable from Milk supplied by each such Shareholder to the Company or the value of, or profit derived from, the supply of Milk, by Shareholders of that Class to the Company; or
 - (iv) the holders of any other securities of the Company who are entitled by the terms of issue of such securities to participate in bonus issues by the Company, whether at the time the bonus issue is made to the Shareholders, or at some later time, in accordance with their respective entitlements; or

(b) in paying up any amount which is unpaid on any Shares held by any Shareholder,

or partly in one way and partly in the other.

21.4 **Payment for the issue of Shares:** The Board may issue Shares on the basis that the consideration for the issue of those Shares may be debited to an account of the Shareholder held with the Company and may require payment in cash of the issue price at such time or times as the Board shall specify.

21.5 **Consolidation and subdivision of Shares:** The Board may:

- (a) consolidate, or consolidate and divide, the Shares or any Class; and

- (b) subdivide the Shares or any Class,

in each case in proportion to those Shares or the Shares in that Class, as the case may be, and in each case without cancellation or issue of Shares.

21.6 **Shares in lieu of dividends:** The Board may exercise the right conferred by section 54 of the Act to issue Shares to any Shareholders, wholly or partly, in lieu of proposed dividends or proposed future dividends.

21.7 **Fractional entitlements:** The Board may, in exercising any powers pursuant to this Constitution relating to Shares, deal with fractional entitlements to Shares or other securities in such manner as the Board considers equitable and as being in the interests of the Company.

22. SHAREHOLDING STATEMENTS

22.1 **Statements for lenders:** If requested by a Shareholder by written notice to the Company to provide the information contained in the statements referred to in clauses 3.13 and 3.16 to any lender to that Shareholder specified in that notice, the Company may, at its discretion, provide that information.

23. ACQUISITION, REDEMPTION AND HOLDING OF OWN SHARES

23.1 **Power to acquire, redeem and hold Shares:** The Company may:

- (a) purchase or otherwise acquire Shares from one or more Shareholders;
- (b) require or accept the surrender of Shares, or redeem any redeemable Shares, from one or more Shareholders; and
- (c) hold any Shares surrendered, purchased, acquired or redeemed,

in accordance with the provisions of the Co-operative Companies Act (including sections 21(1)(a) and (b)) and any other enactment, and subject to the restrictions of the Act, the Co-operative Companies Act, and this Constitution, and otherwise on such terms as the Board may from time to time determine.

23.2 **Transfer of own Shares:** The transfer by the Company of a Share held pursuant to the provisions of the Act, the Co-operative Companies Act and this Constitution shall for the purpose of clause 21 constitute an issue of a Share.

24. ALTERATION OF SHAREHOLDER RIGHTS

24.1 **Special Resolution required:** Any action affecting the rights, privileges, limitations or conditions attached to any Shares by this Constitution or the Act shall be approved by Special Resolution of each Interest Group. The holding of a greater or lesser number of Co-operative Shares than the Share Standard or Minimum Holding in accordance with clause 3 is not a right attached to Co-operative Shares, and neither is being an Associated Shareholder or Permitted Transferee, or making Contract Supply. The Shareholders at any time that are Associated Shareholders or Permitted Transferees, making Contract Supply, or holding a greater or lesser number of Co-operative Shares than the Share Standard or Minimum Holding in accordance with clause 3, shall not constitute separate Interest Groups, nor shall the Co-operative Shares held by any of them constitute a separate Class or separate Classes.

24.2 **Meetings of Interest Groups:** The provisions of this Constitution relating to meetings of Shareholders shall apply to separate meetings of the Shareholders in each Interest Group, except that:

- (a) the necessary quorum shall be two persons holding, or representing the holders of, not less than one third of the Shares of the relevant Interest Group;
- (b) any Shareholder in the Interest Group present in person or by Representative may demand a poll; and

- (c) if the result of this clause 24.2 would be that, in relation to any particular meeting of an Interest Group, there would be no Shareholders who are entitled to vote at the relevant meeting, each Shareholder in that Interest Group shall have one vote.

24.3 **Issue of further Shares:** The issue of further Shares ranking equally with, or in priority to, any existing Shares, whether as to voting rights, Distributions or otherwise, is deemed not to be an action affecting the rights attaching to the existing Shares of that Class.

25. EQUITABLE INTERESTS IN SHARES

25.1 **No notice of trusts:** Subject to clause 25.3, no notice of a trust, whether express, implied, or constructive, may be entered on the Share Register.

25.2 **No recognition of equitable interests:** Subject to clause 25.3, except as required by law, no person shall be recognised by the Company as holding any Share upon trust and the Company shall not be bound by, nor be compelled to recognise (even after notice), any equitable, contingent, future or partial interest in any Share (or in any rights attaching to a Share, or in any benefit derived from or associated with the holding of a Share), or any interest in any fraction or part of a Share or (except as provided by this Constitution or by law) any other rights in respect of any Share, except an absolute right of the registered holder to the entire Share and all rights attaching to it and benefits derived from or associated with the holding of the Share.

25.3 **Recognition of Fund interests:** To the extent permissible by law the Company may establish and maintain systems and processes for recording any rights or interests granted under Fund Arrangements entered in to with an Authorised Fund, and may provide access to that data to the Operator from time to time, and each Shareholder irrevocably consents to the provision of that data to the Operator.

26. CALLS ON SHARES

26.1 **Consideration payable on issue:** Unless the Board decides otherwise, the amount payable for the issue of each Share will be payable in full to the Company at its registered office on the date of issue of that Share.

26.2 **Consideration payable by instalments:** Notwithstanding clause 26.1, the Board may, for so long as a Shareholder supplies Milk to the Company, agree to the amount payable for the issue of each Co-operative Share being made payable by such instalments and on such terms (including the payment of interest) as the Board thinks fit and by deducting such amounts from time to time from any amount payable by the Company to the Shareholder. If a Shareholder ceases to supply Milk to the Company or has failed to comply in any material respect with the Terms and Conditions on which that Shareholder supplies Milk to the Company the Board may make a call of any amount unpaid on any Co-operative Shares held by that Shareholder in accordance with clause 26.3.

26.3 **Board may make calls:** The Board may, from time to time, make such calls as it thinks fit upon the Shareholders in respect of any amounts unpaid on any Shares held by them which are not made payable at fixed times by the terms of issue of those Shares. A call may be made payable by instalments. The Board may revoke or postpone any call.

26.4 **Time of call:** A call is deemed to be made at the time when the resolution of the Board making the call is passed.

26.5 **Fixed instalments deemed calls:** An amount which, by the terms of issue of a Share, is payable on allotment or at a fixed date is deemed for the purposes of this Constitution to be a call duly made and payable on the date on which the amount is payable.

26.6 **Notice of call:** At least 14 Working Days' notice of any call shall be given to the holder of the Share in respect of which the call is made, specifying the time and place of payment.

26.7 **Differential calls:** The Board may, on the issue of Shares, differentiate between Shareholders as to the amounts to be paid in respect of Shares and the times of payment of such amounts.

- 26.8 **Manner of payment:** A Shareholder by whom a call is payable shall pay the amount of the call to the Company at the time and place specified by the Board.
- 26.9 **Joint Shareholders:** Joint Shareholders are jointly and severally liable to pay all calls in respect of Shares registered in their names.
- 26.10 **Default interest:** If a call in respect of a Share is not paid on or before the due date, the Shareholder by whom the call is payable shall pay interest on the call from the due date to the date of actual payment at such rate as the Board may reasonably determine, unless the Board waives payment of interest wholly or in part.
- 26.11 **Proceedings for recovery of call:** In any proceedings for recovery of a call:
- (a) it is sufficient to prove that:
- (i) the name of the relevant Shareholder is entered in the Share Register as the holder, or as one of the holders, of the Shares to which the call relates; and
- (ii) except in relation to any amount which, by the terms of issue of a Share, is payable on allotment or at a fixed date, the resolution making the call is entered in the Records and notice of the call has been duly given,
- and proof of the matters mentioned in this clause is conclusive evidence of the debt; and
- (b) it is not necessary to prove the appointment or qualification of any member of the Board which made the call nor any other matter.
- 26.12 **Payment in advance of calls:** The Company may receive from any Shareholder in advance any amount uncalled and unpaid upon any Shares held by that Shareholder and may, until the date on which the amount becomes payable pursuant to a call, pay interest on the amount at such rate as the Board and the Shareholder agree.
- 26.13 **Order of Surrender of Co-operative Shares:** At any time that a Shareholder is required to surrender Co-operative Shares under this Constitution, the Board may, in accordance with its procedures established from time to time, require that certain Co-operative Shares be surrendered prior to other Co-operative Shares.
- 27. FORFEITURE OF SHARES**
- 27.1 **Notice requiring payment of call:** If a Shareholder fails to pay any call or instalment of a call on the due date, the Company may at any time thereafter by written notice to that Shareholder require payment of the amount unpaid together with any accrued interest and all expenses incurred by the Company by reason of such non-payment.
- 27.2 **Contents of notice:** The notice shall specify a further date (not earlier than 10 Working Days after the date of service of the notice) on or before which the payment is to be made, and shall state that, if payment is not made by the specified date, the Share in respect of which the call or instalment of a call is due, is liable to be forfeited.
- 27.3 **Forfeiture for non-payment:** If payment is not made by the date specified in the notice then, at any time thereafter before the payment required by the notice has been made, any Share in respect of which the notice has been given may be forfeited by a resolution of the Board to that effect. The forfeiture shall include all dividends declared in respect of the forfeited Share and not paid before the forfeiture.
- 27.4 **Notice of forfeiture:** When a Share has been forfeited, the Company shall give written notice of the resolution to the Shareholder in whose name the Share stood immediately prior to the forfeiture, and shall enter in the Share Register details of the forfeiture.
- 27.5 **Cancellation of forfeiture:** A forfeiture may be cancelled at any time before the sale of the forfeited Share, on such terms as the Board thinks fit.

27.6 **Effect of forfeiture:** The holder of a Share which has been forfeited ceases to be a Shareholder in respect of the forfeited Share, but remains liable to the Company for all money payable in respect of the forfeited Share.

28. LIEN ON SHARES AND PAYMENTS

28.1 **Lien on Shares and other payments:** The Company has a first and paramount lien upon each Share, the proceeds of sale of the Share, all Distributions made in respect of the Share, and any other amount payable by the Company to a Shareholder for:

- (a) all unpaid calls owing in respect of the Share and interest thereon (if any); and
- (b) any amount which the Company may be called upon to pay under any legislation in respect of the Share, whether or not the due date for payment thereof has arrived; and
- (c) all liabilities and obligations of the Shareholder to the Company, whether solely or jointly with any other person, and whether or not the date for payment, fulfilment or discharge thereof has arrived, in relation to the purchase or subscription of Co-operative Shares.

28.2 **Waiver of lien:** Unless otherwise agreed between the Company and the relevant Shareholder, the registration of a transfer of a Share shall operate as a waiver of any lien which the Company may have on that Share, except as provided in clauses 31.1 and 32.1.

28.3 **Deduction of money:** The Company may deduct from a Distribution or any other amount payable by the Company to a Shareholder any amount which is due and payable by the Shareholder to the Company on account of calls in relation to any Shares held by that Shareholder or otherwise in relation to any liability or obligation of the Shareholder to the Company.

29. SALE OF SHARES SUBJECT TO FORFEITURE OR LIEN

29.1 **Company may sell Shares:** The Company may sell any forfeited Share, or any Share on which the Company has a lien, in such manner as the Board thinks fit, but the Company shall not sell any Share:

- (a) if the purchaser would after that sale hold more Co-operative Shares than permitted by clause 3;
- (b) unless the amount in respect of which a lien exists is due and payable;
- (c) until the expiry of 10 Working Days after written notice demanding payment of the amount owing has been given to the person entitled to receive notice of meetings of Shareholders in respect of the Shares.

29.2 **Proceeds of sale:** The net proceeds (after deduction of any expenses) of the sale of a forfeited Share or of any Share sold for the purpose of enforcing a lien shall be applied in or towards satisfaction of any unpaid calls, interest or other amount in respect of which any lien exists (as the case may require). The residue, if any, shall be paid to the holder of the Share at the time of its forfeiture or, in the case of a Share sold for the purpose of enforcing a lien, the holder immediately prior to the sale or, if applicable in either case, to the Personal Representative of the holder.

29.3 **Evidence:** A certificate by a Director that any power of sale has arisen and is exercisable by the Company under this Constitution, or that a Share has been forfeited on the date stated in the certificate, shall be conclusive evidence of those facts.

29.4 **Sale procedure:** For giving effect to any sale after forfeiture of any Share or for enforcing a lien over any Share, the Board may authorise any person to transfer any Share to the purchaser. The purchaser shall be registered as the holder of the Share and shall not be bound to see to the application of the purchase money, and the title of the purchaser shall not be affected by any irregularity or invalidity in relation to the sale. The remedy of any person having a cause of action in relation to the sale is in damages only and solely against the Company.

30. TRANSFER OF CO-OPERATIVE SHARES

30.1 **Right to transfer:** Subject to any restrictions contained in this Constitution, a Shareholder or Personal Representative may transfer any Co-operative Share:

- (a) under a system of transfer approved under section 376 of the Financial Markets Conduct Act 2013 or any replacement legislation which is applicable to the Company;
- (b) under any other share transfer system which operates in relation to the trading of Co-operative Shares on the Fonterra Shareholders Market; or
- (c) by an instrument of transfer which complies with this Constitution.

30.2 **Method of Transfer:** A Co-operative Share which is disposed of in a transaction which complies with the requirements of a system of transfer authorised under clauses 30.1(a) or (b) may be transferred in accordance with the requirements of that system. Where an instrument of transfer executed by a transferor would have complied with the requirements of such a system if it had been executed in New Zealand, it may nevertheless be registered by the Company if it is executed in a manner acceptable to the Company or the share registrar from time to time appointed by the Company.

30.3 **Other forms of transfer:** An instrument of transfer to which the provisions of clause 30.1 are not applicable shall:

- (a) be in any common form or any other form which the Board may approve;
- (b) be signed or executed by or on behalf of the transferor; and
- (c) if registration as holder of the Co-operative Share imposes a liability on the transferee, be signed or executed by or on behalf of the transferee.

30.4 **Restrictions on Transfer:** No Co-operative Shares may be transferred by a Shareholder to:

- (a) any person who is not:
 - (i) a Shareholder or Permitted Transferee;
 - (ii) a person whose application to become a Shareholder has been accepted in writing by the Company in accordance with clause 2.3; or
 - (iii) a Custodian (but only for the purposes of carrying out duties under clauses 6 and 7); or
- (b) a Shareholder who, following the transfer, would hold more than the maximum number of Co-operative Shares that the Shareholder is permitted to hold under clause 3 (but this subclause (b) does not apply to a Custodian for the purposes of carrying out duties under clauses 6 and 7).

30.5 **Transfer to a Sharemilker:** Notwithstanding clause 30.4(a), a Shareholder may transfer Co-operative Shares to a Sharemilker subject to satisfaction of the condition that the Shareholder and the Sharemilker comply with any rules established by the Board from time to time in relation to the transfer of Co-operative Shares to Sharemilkers, which rules may include provisions requiring the Shareholder and the Sharemilker to enter into agreements or deeds with each other and with the Company, and requiring the Shareholder to retain at least 1 Co-operative Share.

30.6 **Delivery to Company:** Except where the instrument of transfer is of the type permitted under clauses 30.1(a) or (b), an instrument transferring Co-operative Shares shall be delivered to the Company or to the agent of the Company who maintains the Share Register and the transferee shall provide such evidence as the Board or the agent reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the relevant Co-operative Shares.

30.7 **Board may refuse to register:** Subject to section 84 of the Act (which imposes certain procedural requirements on a board), the Board may refuse to register a transfer of any Co-operative Share if:

- (a) the transfer is prohibited by clause 30.4;
- (b) in the Board's opinion the transfer is prohibited by law or does not comply with the Market Rules;
- (c) the Company has a lien on the Co-operative Share;
- (d) the transferor has any liability or obligation to the Company, whether solely or jointly with any other person, and whether or not the date for payment, fulfilment or discharge thereof has arrived, including where the Co-operative Share is not fully paid up (whether by way of consideration for the issue of the Co-operative Share or in respect of sums payable by the holder of the Co-operative Share in accordance with the Constitution) or any instalments payable on that Co-operative Share remain outstanding (whether due or not);
- (e) the transferor has entered in to Fund Arrangements in relation to the relevant Co-operative Share, unless the Board is satisfied that any obligations of the Shareholder under those arrangements will be satisfied, extinguished, or assumed by the transferee at, or prior to, registration of the relevant transfer;
- (f) the instrument of transfer is not accompanied by any evidence which the Board reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Co-operative Share and any other documentation required by the Board from time to time;
- (g) the Board, in its absolute discretion, believes that the proposed transferee is either not a desirable person to become a Shareholder or that registration of the transfer would not be in the best interests of the Company;
- (h) the instrument of transfer and any other documentation required has not been provided or has not been duly executed;
- (i) the transferee has failed to comply with any request to identify the current or intended beneficial owner of the Share subject of the transfer;
- (j) in the Board's opinion the transfer does not comply with any share trading policy adopted by the Board from time to time; or
- (k) the transfer would cause the transferor to be in breach of any terms set under clause 3 or of any Terms and Conditions applicable to the transferor,

provided that the Board resolves to exercise its power pursuant to this clause within 30 Working Days after receipt of the relevant transfer and written notice of the resolution is sent to the transferor and to the transferee within five Working Days of the resolution being passed by the Board.

30.8 **When transfer effective:** A transferor of a Co-operative Share is deemed to remain the holder of the Co-operative Share until the name of the transferee is entered in the Share Register in respect of the Co-operative Share.

30.9 **Company to retain transfer:** If the Company registers a transfer it shall retain the instrument of transfer.

30.10 **Multiple registers:** The Share Register may, by resolution of the Board, be divided into two or more registers, which may be kept in different places.

30.11 **Securities other than Co-operative Shares:** The provisions of this clause 30 shall apply, with any necessary modifications, to Securities of the Company other than Co-operative Shares

except to the extent (if any) provided otherwise by the terms of issue of such Securities, by the Market Rules, or by law.

31. TRANSMISSION OF SHARES

31.1 **Transmission on death of Shareholder:** If a Shareholder dies the survivor, if the deceased was a joint Shareholder, or the Personal Representative, shall (subject to clause 25.3) be the only persons recognised by the Company as having any title to or interest in the Shares of the deceased Shareholder, but nothing in this clause shall release the estate of a deceased joint Shareholder from any liability in respect of any Share, or constitute a release of any lien which the Company may have in respect of any Share.

32. PERSONAL REPRESENTATIVES

32.1 **Rights of Personal Representatives:** A Personal Representative of a Shareholder:

- (a) is entitled to exercise all rights (including without limitation the rights to receive Distributions, to attend meetings and to vote in person or by Representative), and is subject to all limitations, attached to the Shares held by that Shareholder; and
- (b) is entitled to be registered as holder of those Shares, but such registration shall not operate as a release of any rights (including any lien) to which the Company was entitled prior to registration of the Personal Representative pursuant to this sub-clause.

32.2 **Joint Personal Representatives:** Where a Share is subject to the control of two or more persons as Personal Representatives, they shall, for the purposes of this Constitution, be deemed to be joint holders of the Share.

33. GENERAL PROVISIONS RELATING TO DIRECTORS

33.1 **Casual vacancies:** Subject to clause 12.1, the Board may at any time appoint a person to fill a casual vacancy in the Directors to be elected by Shareholders pursuant to clause 12.2 who is qualified in terms of clause 12.3 to be a Director and shall appoint such a person if a casual vacancy would otherwise continue for six months or more. A Director so appointed holds office only until the conclusion of the next annual meeting of the Company but is eligible for re-election.

33.2 **Exceptions to rotation:** In determining the Directors who are to retire by rotation at each annual meeting of the Company pursuant to clause 12.7:

- (a) a Director who is retiring pursuant to clause 33.1 is not liable to retire by rotation or be taken into account in calculating the number of Directors to retire; and
- (b) a Director who is retiring pursuant to clause 33.5 shall be taken into account in calculating the number of Directors to retire, but shall not be counted as one of the Directors retiring unless he or she is also due to retire by rotation.

33.3 [Not used]

33.4 **Nomination of Directors:** Notwithstanding anything in clauses 12.7 or 33.1, no person may be elected as a Director by a postal ballot of Shareholders in accordance with clause 12.2 unless that person qualifies to be appointed as a Director in terms of clause 12.3 and has been nominated in accordance with the written procedures adopted by the Co-operative Council in accordance with clause 12.2 for holding postal ballots of Shareholders for the election or removal of Directors. Notice of every valid nomination of a Director received by the Company before the closing date for nominations shall be sent by the Company to all persons entitled to vote in the postal ballot in accordance with the written procedures adopted by the Co-operative Council in accordance with clause 12.2.

33.5 **Vacation of office:** A Director ceases to be a Director if he or she:

- (a) retires by rotation pursuant to clause 12.7 and is not re-elected or deemed to have been re-elected; or

- (b) is removed from office by an Ordinary Resolution; or
- (c) dies, or becomes mentally disordered or subject to a property order or personal order made under the Protection of Personal and Property Rights Act 1988; or
- (d) resigns by written notice delivered to the Company at its address for service or at its registered office (such notice to be effective at the time when it is so received unless a later time is specified in the notice); or
- (e) becomes disqualified from being a Director pursuant to the Act or this Constitution; or
- (f) becomes bankrupt or makes an arrangement or composition with his or her creditors generally; or
- (g) has for more than three months been absent without approval of the Board from meetings of the Board held during that period.

33.6 Timing of retirement and appointment: If:

- (a) a Director retires at an annual meeting of the Company and is not re-elected or deemed to be re-elected in accordance with this Constitution, the Director shall remain in office until, and his or her retirement shall take effect at, the conclusion of that annual meeting;
- (b) a Director is removed from office at a meeting of Shareholders by Ordinary Resolution, the Director shall remain in office until, and his or her removal shall take effect at the conclusion of the meeting;
- (c) a person who is not already a Director is elected as a Director by a postal ballot of Shareholders prior to an annual meeting of the Company, that person shall take office as a Director at the conclusion of that annual meeting.

34. REMUNERATION AND OTHER BENEFITS OF DIRECTORS

- 34.1 Power to authorise:** Except in the case of Directors appointed by the Board in accordance with clause 12.4 the Board may not exercise the power conferred by section 161 of the Act to authorise any payment or other benefit of the kind referred to in that section to or in respect of a Director in his or her capacity as such, without the prior approval of the Shareholders, except as provided in this clause 34. There is, at the date this Constitution takes effect, and there shall continue to be, a committee of six Shareholders ("**Directors' Remuneration Committee**") elected by postal ballot of Shareholders. The provisions of this Constitution relating to the appointment, rotation and removal of Directors shall apply to the appointment, rotation and removal of members of the Directors' Remuneration Committee, with necessary modifications. The Board shall consider and recommend to Shareholders for their approval the form and amount of the remuneration to be paid to members of the Directors' Remuneration Committee. The Directors' Remuneration Committee shall consider and recommend the form and amount of Directors' remuneration to the Shareholders for their approval. No such recommendation may be made which would result in any change to the terms of the remuneration for any Director appointed in accordance with clause 12.4. The Board may exercise the power conferred by section 161 of the Act to authorise any payment or other benefit of the kind referred to in that section to or in respect a Director appointed by the Board pursuant to clause 12.4.
- 34.2 Payment of expenses:** Notwithstanding the provisions of clause 34.1, Directors are entitled to be paid for all travelling, accommodation and other expenses properly incurred by them in attending meetings of the Board, or any committee of the Board, or meetings of Shareholders, or in connection with the business of the Company.
- 34.3 Special remuneration:** The Board may authorise the Company to pay special remuneration to any Director who is, or has been, engaged by the Company to carry out work in a capacity other than that of Director.

- 34.4 **Special skills:** The Board may authorise the Company to pay greater remuneration to a Director who is called upon to utilise special skills for the benefit of the Company.

35. INDEMNITY AND INSURANCE

- 35.1 **Indemnity of Directors:** Every Director shall be indemnified by the Company to the maximum extent permitted by section 162 of the Act and this indemnity shall continue in force, despite any subsequent revocation or amendment of this clause, in relation to any liability which arises out of any act or omission by a Director prior to the date of such revocation or amendment.

- 35.2 **Other indemnities:** The Company may, with the prior approval of the Board, indemnify a director of a related company, or an employee of the Company or a related company to the extent permitted by section 162 of the Act.

- 35.3 **Insurance:** The Company may, with the prior approval of the Board, effect insurance for a Director or employee of the Company or a director or employee of a related company, to the extent permitted by section 162 of the Act.

36. PROCEEDINGS OF BOARD

- 36.1 **Third schedule to Act to apply:** The provisions of the third schedule to the Act (relating to proceedings of a board) apply to the Company, except to the extent expressly negated, altered, or added to by this Constitution.

- 36.2 **Notice of meeting:** Not less than two days' notice of a meeting shall be given to each Director (other than a Director who has waived that right). A notice of meeting shall specify the date, time and place of the meeting and, in the case of a meeting by means of audio, or audio and visual, communication, the manner in which each Director may participate in the proceedings of the meeting. Notice to a Director of a meeting may be:

- (a) given to the Director in person by telephone or other oral communication;
- (b) delivered to the Director;
- (c) posted to the address given by the Director to the Company for such purpose;
- (d) sent by facsimile transmission to the facsimile telephone number given by the Director to the Company for such purpose; or
- (e) sent by electronic means in accordance with any request made by the Director from time to time for such purpose;

and is deemed to be given:

- (f) in the case of oral communication, at the time of notification;
- (g) in the case of delivery, by handing the notice to the Director or by delivery of the notice to the address of the Director;
- (h) in the case of posting, three days after it is posted;
- (i) in the case of facsimile transmission, when the Company receives a transmission report by the sending machine which indicates that the facsimile was sent in its entirety to the facsimile telephone number given by the Director;
- (j) in the case of electronic means, at the time of transmission;

but the forgoing provisions relating to the timing, method and giving of notice of meeting may be amended or applied in such manner as the Directors may unanimously resolve from time to time.

36.3 **Director may convene meeting:** A Director or, if requested by a Director to do so, an employee of the Company, may convene a meeting of the Board by giving notice in accordance with clause 36.2.

36.4 **Committees:** A committee of Directors shall, in the exercise of the powers delegated to it, comply with any procedural or other requirements imposed on it by the Board. Subject to any such requirements, the provisions of this Constitution relating to proceedings of Directors apply, with appropriate modification, to meetings of a committee of Directors.

37. MEETINGS OF SHAREHOLDERS

37.1 **Annual meetings:** The Company shall hold an annual meeting of Shareholders in accordance with section 120 of the Act.

37.2 **Special meetings:** A special meeting of Shareholders entitled to vote on the issue:

- (a) may be called by the Board at any time;
- (b) shall be called promptly by the Board on the written request of the Co-operative Council, if the calling of the meeting is supported by 75% or more of the Councillors;
- (c) shall be called promptly by the Board on the written request of Shareholders holding Shares carrying together not less than 5% of the voting rights entitled to be exercised on any of the questions to be considered at the meeting.

37.3 **Time and place of meetings:** Each meeting of Shareholders shall be held at such time and place as the Board appoints.

37.4 **Alternative forms of meeting:** A meeting of Shareholders may be held either:

- (a) by a number of Shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) if determined by the Board, by means of audio, or audio and visual, communication by which all Shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

38. NOTICE OF MEETINGS OF SHAREHOLDERS

38.1 **Written notice:** Written notice of the time and place of a meeting of Shareholders shall be sent to every Shareholder entitled to receive notice of the meeting and to every Director, and to the auditor of the Company, not fewer than 10 Working Days before the meeting, but with the consent of all Shareholders entitled to attend and vote at a meeting, it may be convened by such shorter notice and in such manner as those Shareholders agree.

38.2 **Contents of notice:** A notice of meeting shall state:

- (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it; and
- (b) the text of any Special Resolution to be submitted to the meeting.

38.3 **Waiver of notice irregularity:** An irregularity in a notice of a meeting is waived if all Shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Shareholders agree to the waiver.

38.4 **Accidental omission of notice:** The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, any person, does not invalidate the proceedings at that meeting.

38.5 **Notice of adjourned meeting:** If a meeting of Shareholders is adjourned for fewer than 30 days it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned. In any other case, notice of the adjourned meeting shall be given in accordance with clause 38.1.

39. PROCEEDINGS AT MEETINGS OF SHAREHOLDERS

39.1 **Requirement for quorum:** Subject to clause 39.3, no business may be transacted at a meeting of Shareholders if a quorum is not present.

39.2 **Quorum:** Subject to clause 39.3, a quorum for a meeting of Shareholders is present if not fewer than 50 Shareholders have cast postal votes (where permitted under clause 41.3) or are present in person or by Representative, who between them hold, or represent the holder or holders of, not less than 2% of the voting rights entitled to be exercised on any of the questions to be considered at the meeting.

39.3 **Lack of quorum:** If a quorum is not present within 30 minutes after the time appointed for the meeting:

- (a) in the case of a meeting called by the Board on the written request of Shareholders entitled to exercise that right, the meeting is dissolved;
- (b) in the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the Board may appoint and, if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the Shareholders or their Representatives present are a quorum.

39.4 **Regulation of procedure:** Subject to the provisions of the Act, and except as provided in this Constitution, the chairperson may regulate the procedure at meetings of Shareholders.

39.5 **Adjournment of meeting:** The chairperson may, with the consent of a meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business may be transacted at an adjourned meeting other than the business left unfinished at the relevant meeting.

40. CHAIRPERSON OF MEETINGS OF SHAREHOLDERS

40.1 **Chairperson:** If the Directors have elected a chairperson of the Board, and he or she is present at a meeting of Shareholders, he or she shall chair the meeting, unless or except to the extent that the chairperson considers it not proper or desirable to act as chairperson, either in relation to the entire meeting or in relation to any particular business to be considered at the meeting.

40.2 **Directors may appoint chairperson:** If no chairperson of the Board has been elected or if, at any meeting of Shareholders, the chairperson of the Board is not present within 15 minutes after the time appointed for the commencement of the meeting, or considers it not proper or desirable to act as chairperson, either in relation to the entire meeting or in relation to any particular business to be considered at the meeting, the Directors present may elect one of their number to chair the meeting or that part of the meeting which relates to the particular business, as the case may require.

40.3 **Shareholders may appoint chairperson:** If at any meeting of Shareholders no Director is willing to act as chairperson or no Director is present within 15 minutes after the time appointed for the commencement of the meeting, the Shareholders present may choose one of their number to chair the meeting.

41. VOTING AT MEETINGS OF SHAREHOLDERS

41.1 **Voting at meeting in one place:** In the case of a meeting of Shareholders held in the form described in clause 37.4(a), unless a poll is demanded in accordance with clause 42.1, the chairperson of the meeting shall determine whether voting shall be by voice or by show of hands.

- 41.2 **Voting at audio/visual meeting:** In the case of a meeting of Shareholders held in the form described in clause 37.4(b), unless a poll is demanded in accordance with clause 42.1, voting at the meeting shall be by the Shareholders signifying individually their assent or dissent by voice.
- 41.3 **Postal votes:** If the Board determines in relation to any meeting of Shareholders, Shareholders may exercise the right to vote at a meeting by casting postal votes and in any such case, the provisions of section 7 of the first schedule to the Act (relating to postal votes) shall apply, with such modifications (if any) as the Board thinks fit.
- 41.4 **Electronic votes:** To the extent permitted by law the Board may permit, in relation to any particular meeting or generally:
- (a) postal votes to be cast by electronic means; and
 - (b) votes to be cast on resolutions at meetings of Shareholders (or of other groups) by electronic means.
- The procedures in relation to such electronic voting shall be those required by law (if any) together with any other procedures determined by the Board. If the Board permits electronic voting in accordance with this clause, such electronic votes may be cast notwithstanding any other provision of this Constitution.
- 41.5 **Entitlement to vote:** A Shareholder may exercise the right to vote either in person or by Representative in the manner prescribed in clause 8.
- 41.6 **Chairperson may declare voting entitlement:** In the event that there is any dispute as to the voting entitlement of a Shareholder on any vote, a declaration by the Chairperson of that person's voting entitlement shall be treated as binding for the purposes of that vote or for a series of votes held at the same meeting.
- 41.7 **Declaration by chairperson:** A declaration by the chairperson of a meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 42.1.
- 41.8 **Chairperson's casting vote:** The chairperson of a meeting of Shareholders is not entitled to a casting vote.
- 41.9 **Joint Shareholders:** Where two or more persons are registered as joint Shareholders, any of the joint Shareholders is entitled to exercise the right to vote. However where more than one joint Shareholder votes, the vote of the person named first in the Share Register and voting on a matter shall be accepted to the exclusion of the votes of the other joint holders.

42. POLLS

- 42.1 **Right to demand poll:** At a meeting of Shareholders a poll may be demanded by:
- (a) the chairperson; or
 - (b) not fewer than five Shareholders having the right to vote at the meeting; or
 - (c) a Shareholder or Shareholders representing not less than 10% of the total voting rights of all Shareholders having the right to vote at the meeting; or
 - (d) a Shareholder or Shareholders holding Shares that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10% of the total amount paid up on all Shares that confer that right.
- 42.2 **When poll may be demanded:** A poll may be demanded either before or after the vote is taken on a resolution. The demand for a poll may be withdrawn.
- 42.3 **Poll procedure:** A poll shall be taken in such manner as the chairperson directs and the result of a poll is deemed to be a resolution of the meeting at which the poll is demanded.

42.4 **When poll taken:** A poll demanded on the election of a chairperson of a meeting or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken at such time as the chairperson directs and any business, other than that upon which a poll is demanded, may proceed pending the taking of the poll.

42.5 **Votes:** On a poll:

- (a) votes may be given either personally or by Representative;
- (b) votes shall be counted according to the votes of each Shareholder, determined in accordance with clause 8, present in person or by Representative and voting;
- (c) a Shareholder need not cast all the votes to which the Shareholder is entitled and need not exercise in the same way all of the votes which the Shareholder casts.

42.6 **Declaration of result:** The chairperson is entitled to declare the result of a poll upon receipt of a certificate from the scrutineers stating that sufficient votes to determine the result of the resolution have been counted and setting out the basis for that determination.

43. PROXIES

43.1 **Right to appoint:** A Shareholder may, subject to clause 8.5, appoint a proxy to vote on behalf of the Shareholder at a meeting of Shareholders. The proxy is entitled to attend and be heard at the meeting and to demand or join in demanding a poll, as if the proxy were the Shareholder.

43.2 **Notice of appointment:** A proxy shall be appointed by written notice signed by the appointing Shareholder and the notice shall state whether the appointment is for a particular meeting or for a specified term. The notice shall (so far as the subject matter and form of the resolutions to be proposed at the relevant meeting reasonably permit) provide for two way voting on all resolutions, enabling the appointer to instruct the proxy as to the casting of the vote.

43.3 **Proxy form to be sent with notice of meeting:** The Company shall send a form of notice of appointment of proxy to every Shareholder entitled to attend and vote at a meeting, with the notice convening the meeting.

43.4 **Production of notice:** No appointment of a proxy is effective in relation to a meeting unless a copy of the notice of appointment is received by the Company at its registered office, or at such other address as is specified for that purpose in the notice convening the meeting, not later than 48 hours before the start of the meeting.

43.5 **Validity of proxy vote:** A vote given in accordance with the terms of a notice of appointment of a proxy is valid notwithstanding the previous death or mental disorder of the principal, the revocation of the appointment or of the authority under which the notice of appointment was executed, or the transfer of the Share in respect of which the proxy is appointed, if no written notification of such death, mental disorder, revocation, or transfer is received by the Company at its registered office at least three hours before the commencement of the meeting or adjourned meeting for which the proxy is appointed.

43.6 **Electronic proxy appointment:** The Board may permit, in relation to a particular meeting or generally, the appointment of proxies to be made by electronic means. The procedures in relation to such electronic appointment shall be those required by law (if any) together with any other procedures determined by the Board. If the Board permits electronic appointment of proxies in accordance with this clause, such electronic appointments may be made notwithstanding any other provision of this Constitution.

44. CORPORATE REPRESENTATIVE

44.1 **Appointment of representative:** A corporation which is a Shareholder may appoint a person to attend a meeting of Shareholders on its behalf in the same manner as that in which it could appoint a proxy, and subject to the same restrictions as would apply if the Shareholder were to appoint a proxy. In any such case the provisions of clause 43.6 shall apply equally to the appointment of such Representatives.

45. ADDITIONAL METHODS OF CONTRACTING

45.1 **Deeds:** A deed which is to be entered into by the Company may be signed on behalf of the Company by a Director, or any other person authorised by the Board, whose signature or signatures shall be witnessed.

46. NOTICES

46.1 **Reports, etc to Shareholders:** Annual reports, notices and other documents required to be sent to a Shareholder shall be sent in the manner provided in section 391 of the Act.

46.2 **Accidental omissions:** The failure to send an annual report, notice, or other document to a Shareholder in accordance with the Act or this Constitution does not invalidate the proceedings at a meeting of Shareholders if the failure to do so was accidental.

46.3 **Joint Shareholders:** A notice may be given by the Company to joint Shareholders by giving the notice to the joint Shareholder named first in the Share Register in respect of the Share.

46.4 **Shareholder deceased or bankrupt:** If a Shareholder dies or is adjudicated bankrupt, notice may be given in any manner in which notice might have been given if the death or bankruptcy had not occurred, or by giving notice in the manner provided in section 391 of the Act to the Personal Representative of the Shareholder at the address supplied to the Company for that purpose.

46.5 **Waiver by Shareholders:** Subject to any applicable legislation, a Shareholder may from time to time, by written notice to the Company, waive the right to receive all or any documents from the Company and may at any time thereafter revoke the waiver in the same manner. While any waiver is in effect, the Company need not send to the Shareholder the documents to which the waiver relates.

47. LIQUIDATION

47.1 **Distribution of assets:** If the Company is liquidated the liquidator may, with the approval of Shareholders by Special Resolution and any other sanction required by the Act:

- (a) divide among the Shareholders in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not) and may for that purpose fix such value as the liquidator deems fair in respect of any property to be so divided, and may determine how the division shall be carried out as between Shareholders or between different Classes; and
- (b) for the avoidance of doubt, all Co-operative Shares are Shares of the same Class and rank pari-passu and without priority or preference among themselves on liquidation notwithstanding that they may have been issued for different Fair Values; and
- (c) vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the persons so entitled as the liquidator thinks fit, but so that no Shareholder is compelled to accept any shares or other securities on which there is any liability.

48. DEFINITIONS AND INTERPRETATION

48.1 **Definitions:** In this Constitution, unless the context otherwise requires:

"Act" means the Companies Act 1993.

"Aggregate Threshold" has the meaning set out in clause 3.2.

"Appointed Councillor" has the meaning set out in the by-laws of the Co-operative Council.

"Associated Shareholder" means a Shareholder that is a Farm Lessor, Sharemilker or Contract Milker, and the provisions of this Constitution that refer to Associated Shareholders apply to them separately in respect of each such arrangement to which they are a party (and if they also supply Milk to the Company, the provisions of this Constitution that apply to them as Associated Shareholders are without prejudice to their rights and obligations as a Shareholder that is supplying Milk to the Company).

"Authorised Fund" means any person or persons authorised by the Board (under clause 7.1) to perform the role and functions outlined in that clause.

"Base Limit" has the meaning set out in clause 3.23.

"Board" means Directors who number not less than the required quorum, acting together as a board of Directors.

"Breach Shares" has the meaning set out in clause 4.4.

"Class" means a class of Shares having attached to them identical rights, privileges, limitations and conditions.

"Commencement Date" has the meaning set out in clause 3.9.

"Company" means Fonterra Co-operative Group Limited.

"Compliance Date" has the meaning set out in clause 3.16.

"Compliance Statement" has the meaning set out in clause 3.16.

"Constitution" means this constitution, as altered from time to time.

"Contract Milker" means a person that the Board is satisfied (in accordance with any rules adopted by the Board and applicable from time to time):

- (a) has entered into a bona fide contract milking arrangement with another Shareholder that is supplying Milk to the Company, in respect of one or more Farms; and
- (b) complies with any further requirements specified in those rules.

"Contract Supply" means the supply of Milk to the Company by a Shareholder pursuant to clause 3.22 in a Season without the Milksolids obtainable from that Milk being taken into account for the purposes of the Share Standard for that Season.

"Control" means, in relation to a voting right or right to vote, having, directly or indirectly, effective control of the voting right or right to vote.

"Co-operative Companies Act" means the Co-operative Companies Act 1996.

"Co-operative Council" means the Councillors who number not less than the required quorum, acting together as the Co-operative Council.

"Co-operative Principles" means the Company's co-operative principles from time to time, which are set out in the annual report of the Co-operative Council.

"Co-operative Shares" means any Share issued by the Board as a co-operative share, whether before or after the date this Constitution takes effect.

"Councillor" means a person elected or appointed as a councillor of the Co-operative Council in accordance with this Constitution.

"Custodian" means any custodian, trustee, or other third party who is at any time engaged to hold or deal with any Co-operative Shares or rights or interests in Co-operative Shares.

"Director" means a person elected or appointed as a director of the Company in accordance with this Constitution.

"Directors' Remuneration Committee" means a committee of Shareholders constituted in accordance with clause 34.1.

"Dispose" includes any transfer, sale, grant or conferral of rights, assignment, alienation, holding on trust, or gift (in each case whether directly or indirectly), and includes agreeing to do any of such things, and "dispose", and "disposal" have corresponding meanings.

"Disposing Holder" has the meaning set out in clause 7.1(a).

"Distribution" means:

- (a) the direct or indirect transfer of money or property, other than Shares, to or for the benefit of a Shareholder; or
- (b) the incurring of a debt to or for the benefit of a Shareholder,

in relation to Shares held by that Shareholder, whether by means of a purchase of property, the redemption or other acquisition of Shares, a distribution of indebtedness or by some other means.

"Diverted Milk Percentage" has the meaning set out in clause 3.20.

"Farm" means any farm, farm dairy, or group of farm dairies (whether physically located on the same property or not), that the Board may from time to time determine to constitute a Farm for the purposes of this Constitution, and the Board's determination on that issue shall be made on a case by case basis may differ according to the circumstances.

"Farm Lessor" means a person that the Board is satisfied (in accordance with any rules adopted by the Board and applicable from time to time):

- (a) owns the land on which one or more Farms is located, and has entered into a bona fide Farm lease or similar arrangement with another Shareholder that is supplying Milk to the Company, in respect of one or more of such Farms; and
- (b) complies with any further requirements specified in those rules.

"Fonterra Shareholders Market" means any exchange or trading facility selected by the Board which provides a facility for the trading of Co-operative Shares among Shareholders and/or persons who have applied to supply Milk to the Company where such application has been accepted.

"Fund Arrangements" has the meaning set out in clause 7.1(a).

"Fund Contract" has the meaning set out in clause 7.1(a).

"Individual Limit" has the meaning given to that term in clause 3.1(b).

"Independent Agent" means any one or more independent investment broker or similar firm appointed by the Company to deal with disposals and acquisitions of Co-operative Shares under clauses 3.15, 3.17 and 4.4.

"Inside Information" has the meaning ascribed to that term in the Financial Markets Conduct Act 2013.

"Interest Group" has the meaning set out in section 116 of the Act.

"Interest Rate" means a rate which is equal to the Company's cost of capital at the relevant time (as determined by the Board in its absolute discretion) plus a margin of 5%.

"Interested", in relation to a Director, has the meaning set out in section 139 of the Act.

"Letter of Members' Expectations" means the letter from the Co-operative Council to the Board from time to time setting out the expectations of Members, which is set out in the annual report of the Co-operative Council.

"Limiting Factor" has the meaning set out in clause 3.1(b).

"Market Rules" means the rules of the Fonterra Shareholders Market, in so far as they are applicable to the Company and the quotation and trading of Co-operative Shares.

"Material Change" means, in relation to a Farm, a material change to farming systems or processes, herd sizes, size of farm property, or basis of supply (including any commencement or termination of Contract Supply).

"Maximum Holding" has the meaning set out in clause 3.1(b).

"Measurement Date" has the meaning set out in clause 3.13.

"Measurement Statement" has the meaning set out in clause 3.13.

"Member" means a Shareholder who is supplying Milk to the Company, a Sharemilker or contract milker of a Shareholder who is supplying Milk to the Company, and other persons supplying Milk to the Company or any of its subsidiaries in New Zealand, under the standard Terms and Conditions of the Company or any of its subsidiaries.

"Milk" means whole milk, cream and any other component or classification of a mammary secretion of a cow, as may be specified by the Board.

"Milk Commissioner" means the person appointed to the office of Milk Commissioner in accordance with this Constitution.

"Milk Price" means a price for Milk supplied to the Company by Shareholders in a Season.

"Milk Price Manual" has the meaning set out in clause 10.2.

"Milk Price Principles" means the principles set out in Annexure 1 to this Constitution.

"Milksolids" means those components of Milk which are determined by the Board from time to time to be Milksolids.

"Minimum Holding" has the meaning set out in clause 3.1(a).

"Minister" means any Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for any function or matter contemplated by this Constitution.

"month" means calendar month.

"Operator" means the operator from time to time of the Fonterra Shareholders Market.

"Ordinary Resolution" means a resolution that is approved by a simple majority of the votes of those Shareholders entitled to vote and voting on the question.

"Overall Limit" has the meaning given to that term in clause 7.5.

"Permitted Transferee" has the meaning given to that term in clause 3.10.

"person" includes an individual, partnership, firm, company, body corporate, corporation, association, organisation, trust, unit trust, a state or government or any agency thereof, a

municipal, local or regional authority, and any other entity or organisation, whether incorporated or not (in each case whether or not having a separate legal personality).

"Personal Representative" means:

- (a) in relation to a deceased individual Shareholder, the executor, administrator or trustee of the estate of that Shareholder;
- (b) in relation to a bankrupt individual Shareholder, the assignee in bankruptcy of that Shareholder; and
- (c) in relation to any other individual Shareholder, a person appointed or deemed to have been appointed to administer property under the Protection of Personal and Property Rights Act 1988, a manager appointed or deemed to have been appointed thereunder, and a donee of an enduring power of attorney complying with that Act.

"Purpose Statement" means the Company's purpose statement from time to time, which is set out in the annual report of the Co-operative Council.

"Records" means the documents required to be kept by the Company under section 189(1) of the Act.

"Reduction Date", "Reduction Maximum", "Reduction Minimum", and "Reduction Period" have the respective meanings set out in clause 3.10.

"Registered Volume Provider" or "RVP" means a person appointed, engaged or authorised under clause 6.1.

"Relevant Interest" has the meaning in sections 235 to 237 of the Financial Markets Conduct Act 2013, on the basis that those provisions shall be read as if references to a "listed issuer" were to the Company, subject to:

- (a) the exceptions contained in section 238 of that Act; and
- (b) the proviso that a person will not have a Relevant Interest in a Co-operative Share for the purposes of this Constitution if, having regard to information provided by any person, the Board determines, at its discretion, that the person does not have a Relevant Interest in that Co-operative Share.

"Representative" means:

- (a) a person appointed as a proxy pursuant to clause 43;
- (b) a Personal Representative; or
- (c) a representative appointed by a corporation pursuant to clause 44.1.

"Ruling" means any ruling, waiver, consent, decision or determination by the Operator in relation to the meaning, interpretation or application of the Market Rules.

"RVP Contract" has the meaning set out in clause 6.1.

"Season" means a period of 12 months ending on 31 May (or such other date as the Board may specify from time to time) in each year.

"Security" has the meaning set out in section 6 of the Financial Markets Conduct Act 2013.

"Share" means a share issued, or to be issued, by the Company, as the case may require.

"Share Register" means the share register for the Company kept in accordance with the Act.

"Share Standard" means the number of Co-operative Shares determined in accordance with clause 3.4.

"Shareholder" means a person whose name is entered in the Share Register as the holder for the time being of one or more Shares.

"Sharemilker" has the meaning set out in section 34 of the Co-operative Companies Act and includes any other person that the Board is satisfied (in accordance with any rules adopted by the Board and applicable from time to time):

- (a) has entered into a bona fide sharemilking arrangement with another Shareholder that is supplying Milk to the Company, in respect of one or more Farms; and
- (b) complies with any further requirements specified in those rules.

"Special Resolution" means a resolution approved by a majority of 75% or more of the votes of those Shareholders entitled to vote and voting on the question.

"Terms and Conditions" means, at any time, the provisions in this Constitution and the terms and conditions and policies relating to the supply of Milk to the Company by Shareholders, including such provisions relating to information about the farm, herd and breeding of each cow supplying that Milk, as the Board considers is necessary for the business of the Company, as applicable to Shareholders in accordance with this Constitution.

"Trading Agreement" means an agreement entered into between the Company and the Operator relating to the Fonterra Shareholders Market.

"Transition Maximum", **"Transition Minimum"**, and **"Transition Period"** have the respective meanings set out in clause 3.9.

"Valuer" means, at any time, the person appointed and holding office as the Valuer in accordance with clause 20.

"Values" means the Company's values from time to time, which are set out in the annual report of the Co-operative Council.

"Ward" means a geographical area within New Zealand represented by a Councillor or Councillors, created pursuant to clause 16.2 and reviewed from time to time in accordance with clause 16.3.

"Ward Councillor" has the meaning set out in the by-laws of the Co-operative Council.

"Working Day" has the meaning set out in section 2 of the Act.

48.2 **Interpretation:** In this Constitution, unless the context otherwise requires:

- (a) the table of contents, headings, and descriptions relating to sections of the Act and the Co-operative Companies Act, are inserted for convenience only and shall be ignored in construing this Constitution;
- (b) the singular includes the plural and vice versa;
- (c) reference to any legislation or to any provision of any legislation (including regulations and orders) includes:
 - (i) that legislation or provision as from time to time amended, re-enacted or substituted;
 - (ii) any statutory instruments, regulations, rules and orders issued under that legislation or provision;

- (d) **"written"** and **"in writing"** include any means of representing or reproducing words, figures and symbols in a tangible and visible form;
- (e) words and expressions defined or explained in the Act or Co-operative Companies Act, as the case may require, have the same meaning in this Constitution;
- (f) words and expressions cognate with words or expressions defined in this Constitution have meanings corresponding to those of the defined words and expressions;
- (g) references to clauses and sections (other than sections of the Act or the Co-operative Companies Act) are references to clauses and sections in this Constitution, unless stated otherwise;
- (h) where a legal requirement under the Act is substantially reproduced in this Constitution that legal requirement may be met by electronic means in accordance with the Contract and Commercial Law Act 2017. In this subclause the term 'legal requirement' has the meaning given to that term by the Contract and Commercial Law Act 2017; and
- (i) references to a "postal ballot" include a postal ballot conducted by electronic means.

48.3 **Constitution to prevail:** If there is any conflict between:

- (a) a provision in this Constitution and a provision in the Act or the Co-operative Companies Act which is expressly permitted to be altered by this Constitution; or
- (b) a word or expression defined or explained in the Act or the Co-operative Companies Act and a word or expression defined or explained in this Constitution,

the provision, word or expression in this Constitution prevails.

48.4 **The Market Rules:** In relation to the Market Rules (and except to the extent that the Market Rules otherwise provide):

- (a) failure to comply with any Market Rule shall not affect the validity or enforceability of any transaction, contract, action or other matter whatsoever done or entered into by, or affecting, the Company;
- (b) if the Operator has given a Ruling authorising any act or omission which, in the absence of that Ruling would have been in contravention of the Market Rules or this Constitution, that act or omission is deemed to be authorised by the Market Rules and by this Constitution notwithstanding such contravention or inconsistency;
- (c) any reference to a specific Market Rule includes that Market Rule as it may be amended from time to time and any Market Rule which may be substituted for that Market Rule;
- (d) if any provision of this Constitution is inconsistent with the Market Rules, that provision shall be deemed to be amended, or deleted, to the extent necessary to make that provision consistent with the Market Rules; and
- (e) subclauses (a) to (d) inclusive apply only for so long as the Company is a party to a Trading Agreement with the Operator. If the Company ceases to be a party to a Trading Agreement those clauses shall cease to have any effect.

ANNEXURE 1

MILK PRICE PRINCIPLES

- The Milk Price for a Season should reflect the benefits that arise from the collective selling power of Shareholders as suppliers to the Company, and from the scale and other economies the Company enjoys in production and sales.
- In this context, the Milk Price should be the maximum amount that the Company, reflecting its status as a properly managed and efficiently run sustainable co-operative, could pay for the Milk supplied to it in a Season if:
 - Shareholders and other suppliers of Milk to the Company collectively contracted to supply all their Milk to the Company;
 - The Company, on their behalf, processed that Milk into commodity products which were sold on freely contested global markets;
 - The Company was appropriately encouraged to make investment, production and sales decisions that maximised the Milk Price, both now and in the future; and
 - The Company was able to earn a risk-adjusted return on the assets required to collect, process and sell that Milk sufficient to warrant long-term investment in the new and replacement assets necessary to collect, process and sell the Milk reasonably expected to be supplied to the Company in future Seasons.
- Risks should be allocated between Milk suppliers and the Company in a manner which appropriately reflects the relative abilities of each party to manage those risks.