

FONTERRA FARMER CUSTODIAN LIMITED
Custodian

THE NEW ZEALAND GUARDIAN TRUST COMPANY LIMITED in its capacity as
trustee of the Fund
NZGT

FSF MANAGEMENT COMPANY LIMITED in its capacity as manager of the Fund
Manager

FONTERRA CO-OPERATIVE GROUP LIMITED
Fonterra

**CUSTODY TRUST DEED FOR
THE FONTERRA ECONOMIC RIGHTS TRUST**

RUSSELL McVEAGH

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DEED dated

25 October

2012

PARTIES

FONTERRA FARMER CUSTODIAN LIMITED ("Custodian")

THE NEW ZEALAND GUARDIAN TRUST COMPANY LIMITED in its capacity as trustee of the Fund ("**NZGT**")

FSF MANAGEMENT COMPANY LIMITED in its capacity as manager of the Fund ("**Manager**")

FONTERRA CO-OPERATIVE GROUP LIMITED ("Fonterra")

INTRODUCTION

- A. The Fund is a unit trust established by deed ("**FSF Trust Deed**") dated on or about the date of this Deed pursuant to the Unit Trusts Act 1960.
- B. The parties are party to an Authorised Fund Contract dated on or about 25 October 2012 under which Fonterra has authorised the Fund to be an Authorised Fund and has specified the terms on which persons known as "Permitted Persons" are to be permitted to sell Economic Rights in Fonterra Shares to the Fund.
- C. The Custodian is a company incorporated in New Zealand for the purpose of holding legal title to Fonterra Shares as part of a share trading system for the trading of Fonterra Shares known as Trading Among Farmers.
- D. To give effect to this arrangement, it is intended that:
- (a) Permitted Persons will transfer legal title to Fonterra Shares to the Custodian; and
 - (b) the Custodian will hold the Economic Rights of those Fonterra Shares on trust for the Economic Rights Beneficiary.
- E. The Final Beneficiary will have certain rights and interests with respect to the Trust Property, as set out in this Deed.
- F. The parties have agreed to enter into this Deed to record the terms on which, including the trusts subject to which, the Custodian will hold the Trust Property.

OPERATIVE PROVISIONS

1. NAME OF TRUST

- 1.1 **Name:** The trust created by this Deed shall be known as the "Fonterra Economic Rights Trust".
- 1.2 **Change of name:** The Custodian may, with the prior written approval of Fonterra, change the name of the Trust by execution of a deed recording the same.

2. DEFINITIONS AND INTERPRETATION

2.1 **Definitions:** In this Deed, including the Introduction section, unless the context otherwise requires:

"Acquired Shares" means any Fonterra Shares in respect of which Economic Rights are from time to time held by the Custodian for the Economic Rights Beneficiary, including Fonterra Shares which are:

- (a) issued to the Custodian to ensure that the Fund meets the preconditions specified in section 109D of the Dairy Industry Restructuring Act 2001;
- (b) transferred to the Custodian by Permitted Persons pursuant clause 7 of the Constitution; or
- (c) acquired by the Custodian through the issue of bonus or other Fonterra Shares as a result of the Custodian already holding Acquired Shares under this Deed.

"Authorised Fund" means a fund authorised, by the Board, from time to time under clause 7.1 of the Constitution to perform the role and functions outlined in that clause.

"Authorised Fund Contract" means the contract referred to in paragraph B of the Introduction to this Deed.

"Beneficiaries" means the Economic Rights Beneficiary and the Final Beneficiary.

"Board" has the meaning given to that term in the Constitution.

"Companies Act" means the Companies Act 1993.

"Constitution" means the "New Constitution" (as that term is defined in the constitution of Fonterra in force at the date of this deed) to be adopted by Fonterra on the launch of Trading Among Farmers, as that constitution may be amended from time to time.

"Convertible" has the meaning given to that term in the FSM Rules.

"Custodian FSF Account" means the account to be established and maintained by the Custodian pursuant to clause 4.4.

"Deed" means this trust deed.

"Distribution" has the meaning given to that term in section 2(1) of the Companies Act.

"Economic Rights" means all Monetary Rights and all Other Benefits derived from the holding of an Acquired Share.

"Economic Rights Beneficiary" means:

- (a) NZGT acting in its capacity as trustee of the Fund, and not in any other capacity; or
- (b) any other person from time to time performing the role as the trustee of the Fund.

"Final Beneficiary" means Fonterra.

"Fonterra Share" means a co-operative share issued by Fonterra, but does not include a share which is, at the relevant time, held by Fonterra itself as treasury stock.

"Fonterra Shareholder" means:

- (a) a person whose name is entered into the share register of Fonterra as the holder of Fonterra Shares; and
- (b) a person whose application to become a person referred to in paragraph (a) has been accepted in writing by Fonterra in accordance with the Constitution.

"Fund" means the unit trust referred to in paragraph A of the Introduction.

"FSF Trust Deed" has the meaning given to that term in paragraph A of the Introduction.

"FSM" means the Fonterra Shareholders' Market, being the securities market established for the trading of Fonterra Shares and granted market registration under the Securities Markets Act 1988.

"FSM Rules" means the listing rules of the FSM.

"GST" means goods and services tax chargeable pursuant to the Goods and Services Tax Act 1985.

"Manager" means the Manager acting in its capacity as the manager of the Fund, or any entity which is appointed as a replacement manager of the Fund in accordance with the FSF Trust Deed acting in its capacity as the manager of the Fund.

"Monetary Right" means a right to receive a dividend or other Distribution in monetary form paid or made by Fonterra to Fonterra Shareholders and any sum received in accordance with clauses 4.5(c), 4.6(a)(ii), or 4.6(c).

"Other Benefits" means all rights which are not in monetary form and which arise from the holding of a Fonterra Share, including all rights to receive (or to receive the economic benefits arising from) bonus issues, rights issues and other issues of securities by Fonterra, and all other rights, in respect of, or derived from, the holding of a Fonterra Share, in each case excluding:

- (a) any right or benefit which is a Monetary Right; and
- (b) any right to do any of the things referred to in clauses 4.8(a) and (b) or 4.9(c) to (f) inclusive.

"Permitted Person" means:

- (a) a Fonterra Shareholder;
- (b) the Custodian on behalf of a RVP; and
- (c) Fonterra.

"Perpetuity Period" means the perpetuity period described in clause 12.1.

"Representative" has the meaning given to that term in the Constitution.

"Right" has the meaning given to that term in the FSM Rules.

"**RVP**" means an entity appointed, engaged or authorised by the Board (under the Constitution) to act as a Registered Volume Provider, as that term is defined in the Constitution.

"**Trading Among Farmers**" means the share trading system referred to as such in the constitution of Fonterra which is in force at the date of this Deed.

"**Trust**" means the trust created pursuant to this Deed.

"**Trust Property**" means:

- (a) the sum paid by Fonterra pursuant to clause 4.1 as the initial settlement of this Trust;
- (b) all Acquired Shares; and
- (c) all Economic Rights derived from the Acquired Shares.

"**Unit**" means a unit in the Fund issued by the Manager.

"**Vesting Day**" means the earlier of:

- (a) the day prior to the day upon which the Perpetuity Period expires; and
- (b) the day one day earlier than the "Date of Termination" specified in the FSF Trust Deed.

2.2 **Interpretation:** In this Deed:

- (a) Unless the context otherwise requires, terms used in this Deed which are not defined specifically herein shall have the meaning provided in the Constitution.
- (b) A reference in this Deed to the issue of a Fonterra Share to, or the transfer of a Fonterra Share to (or by), a Permitted Person includes a reference to an issue or transfer to, or a transfer by, any broker or other intermediary on behalf of the relevant Permitted Person pursuant to a settlement system used to facilitate issues and transfers to, and transfers by, Permitted Persons.
- (c) Unless the context otherwise requires:
 - (i) the word "**company**" includes a corporation or other body corporate and a body of persons (whether incorporated or not);
 - (ii) the word "**person**" and words importing a person or persons include a company, firm, organisation or trust and any state, government or governmental agency;
 - (iii) the term "**working day**" has the meaning given to that term in section 2(1) of the Companies Act;
 - (iv) words importing the singular include the plural and vice versa;
 - (v) words importing one gender include the other genders;
 - (vi) reference to a statute shall be deemed to be reference to that statute as from time to time amended, re-enacted or substituted;

- (vii) reference to a clause is, unless, otherwise specified, a reference to a clause of this Deed; and
 - (viii) references to an agreement or deed includes that agreement or deed as amended, supplemented, replaced, assigned or novated from time to time.
- (d) Headings have been inserted for guidance only, and shall not be deemed to form part of the context of this Deed.

3. APPOINTMENT OF THE CUSTODIAN

- 3.1 **Appointment:** The Custodian is hereby appointed to act as custodian and trustee of the Trust, and to hold legal title to all Acquired Shares on the terms of the Trust. The Custodian accepts that appointment and agrees to hold and deal with the Acquired Shares in accordance with this Deed.
- 3.2 **Legal title to be held by the Custodian:** In acting in its capacity as the trustee of the Fund, the Economic Rights Beneficiary acknowledges and agrees that:
- (a) it shall not at any time hold legal title to any Fonterra Shares; and
 - (b) legal title to all Acquired Shares will at all times be held by the Custodian in accordance with the terms of this Deed.

4. DECLARATION OF TRUST

- 4.1 **Initial settlement:** Fonterra, as the settlor of the Trust, agrees to settle on the Custodian the sum of \$10.00 (the receipt of which is acknowledged) as the initial settlement upon the Trust.
- 4.2 **Trust Property to be held on trust:** The Custodian declares and acknowledges that it shall stand possessed of the Trust Property upon the following trust, and subject to the following rights and interests:
- (a) the Economic Rights in Acquired Shares from time to time shall be held on trust exclusively for the Economic Rights Beneficiary on the terms set out in this Deed; and
 - (b) all other right, title and and interests in or to, or derived from, the Acquired Shares shall be held on trust exclusively for the Final Beneficiary on the terms set out in this Deed,
- and to avoid doubt:
- (c) the Economic Rights Beneficiary shall have no right, title or interest in or to any part of, or anything derived from, the Trust Property, except to the extent set out in paragraph (b); and
 - (d) the Trust Property shall, on the Vesting Day, vest in the Final Beneficiary, in accordance with clause 5.1.
- 4.3 **Custodian to perform obligations:** The Custodian shall perform the obligations assumed by it, and exercise the powers and discretions conferred on it, as set out in this Deed unless otherwise required by law.

- 4.4 **Custodian FSF Account:** The Custodian shall establish, and at all times maintain, during the term of this Deed, a separate account to record the holding of Acquired Shares (in which Economic Rights are held on trust for the Economic Rights Beneficiary pursuant to this Deed) separately from other Fonterra Shares or other property which the Custodian holds from time to time for other persons or on its own account.
- 4.5 **Distributions and similar benefits derived from Economic Rights:** The Custodian acknowledges that on each occasion on which it receives or is entitled to any Economic Right in respect of a Fonterra Share that is (at that time) an Acquired Share, it will:
- (a) account to the Economic Rights Beneficiary for any Monetary Rights or Other Benefits immediately upon receipt by it of those Monetary Rights or Other Benefits; but
 - (b) where the Other Benefit received by the Custodian is a Fonterra Share, paragraph (a) shall not apply and in that case the Other Benefit must not be transferred or conveyed in any way to the Economic Rights Beneficiary, but shall instead be retained by the Custodian in the Custodian FSF Account and shall form part of the Trust Property; and
 - (c) where the Other Benefit received by the Custodian is a security issued by Fonterra which is Convertible in to a Fonterra Share, the Custodian will dispose of that security in accordance with instructions received from the Manager and account to the Economic Rights Beneficiary for any payment received in connection with the disposal of such security.
- 4.6 **Custodian to act on directions of the Manager:** Subject always to clauses 4.5(b) and (c), the Custodian agrees to act on any direction in writing issued by the Manager in relation to Economic Rights relating to, or arising from, Acquired Shares including:
- (a) if Fonterra gives holders of Fonterra Shares, including Acquired Shares, the Right to acquire further Fonterra Shares, the Custodian will, (subject always to clause 4.5(b)), follow any direction received from the Manager as to whether the Right is to be taken up or disposed of. To the extent that the Right is:
 - (i) taken up, the resulting Fonterra Shares shall become Acquired Shares and form part of the Trust Property; or
 - (ii) not taken up, the Custodian will dispose of the property the subject of that Right and account to the Economic Rights Beneficiary for any payment received in connection with the disposal of such Right;
 - (b) if Fonterra gives holders of Fonterra Shares, including Acquired Shares, the Right to acquire securities (other than Fonterra Shares), then the Custodian will follow any instructions received from the Manager as to how to deal with those Rights;
 - (c) if Fonterra or a third party who is entitled to do so makes an offer to acquire Fonterra Shares held by the Custodian, the Custodian will follow any direction received from the Manager as to whether such offer is to be accepted or declined in relation to Acquired Shares then held by it. If such offer is accepted, the Custodian shall account to the Economic Rights Beneficiary for any payment received in connection with such acceptance; and
 - (d) in circumstances where the Custodian is entitled to exercise or take steps to protect any other right which may accrue to it, or be exercisable by it, at law as the holder of Acquired Shares, whether such rights arise under the

Constitution, the Companies Act, as party to a document referred to in clause 4.1 of the Authorised Fund Contract, or otherwise, and for that purpose the Custodian will (at the direction of the Manager and in the Custodian's capacity as holder of Acquired Shares) institute and prosecute legal proceedings against any party (as the Manager may direct) under any document referred to in this paragraph (d), or otherwise,

provided that:

- (e) any such direction must be given in accordance with the terms of this Deed; and
- (f) if any such direction is received from the Manager under paragraphs (a) to (d) above which requires the Custodian to make any payment of money, the Custodian need not follow such instruction unless and until the Custodian has been paid (in immediately available cleared funds) all funds required by the Custodian to meet any resulting payment obligation.

4.7 Transfer of Fonterra Shares to Permitted Persons upon redemption of Units or otherwise: The Custodian:

- (a) must transfer a Fonterra Share on behalf of the Economic Rights Beneficiary (and in satisfaction of the obligations of the Manager under the FSF Trust Deed), by direct transfer to a Permitted Person if, and whenever, the Manager redeems a Unit held by that Permitted Person or any RVP, and the Manager instructs the Custodian to transfer a Fonterra Share to that Permitted Person; and
- (b) must transfer a Fonterra Share on behalf of the Economic Rights Beneficiary (and in satisfaction of the obligations of the Manager under the FSF Trust Deed) to a Permitted Person (or to any other person in any particular circumstance, including (but not limited to) a termination circumstance referred to in clause 38 of the FSF Trust Deed) as directed by the Manager and specifically approved in writing by Fonterra.

The Manager confirms that:

- (c) if, and whenever, it redeems Units in accordance with the FSF Trust Deed (as referred to in clause 4.7(a), the Custodian is automatically instructed to transfer, to the relevant Permitted Person, such number of Fonterra Shares as corresponds to the number of Units redeemed by that Permitted Person or any RVP; and
- (d) no direction under clause 4.7(b) shall be binding on the Custodian, or of any other effect, except to the extent specifically approved in writing by Fonterra under that clause.

4.8 No call or interference: The Manager and the Economic Rights Beneficiary acknowledge that neither of them may, and each of them irrevocably covenants that it will not, at any time:

- (a) call for, demand or seek, directly or indirectly, by any means, the transfer of any part of the Trust Property (including but not limited to legal title to any Acquired Shares) to itself or any other person who is not a Permitted Person;
- (b) do anything or take any step which has the purpose or effect of transferring, or otherwise vesting, legal title, or any rights or interests, in any Acquired Shares,

to the Economic Rights Beneficiary or any other person who is not a Permitted Person; or

- (c) otherwise interfere in, or take any step or do anything which affects, the holding of the Trust Property by the Custodian,

but nothing in this clause affects the operation of clauses 4.5 or 4.7.

4.9 **No control or influence by Custodian:** Without limiting any other restriction in this clause 4:

- (a) the Custodian irrevocably covenants that it will not; and
- (b) each of the Manager and the Economic Rights Beneficiary each acknowledge that it may not, and irrevocably covenants that it will not, directly or indirectly, at any time request, direct or instruct the Custodian to,

do any of the following things:

- (c) cast any votes attached to or arising from any Acquired Shares including, directly or indirectly, appointing, or procuring the Custodian to appoint, any proxy or Representative to cast any vote attached to such Acquired Shares, and each of the Manager and the Economic Rights Beneficiary acknowledge that any purported or attempted exercise of any such vote shall be of no effect; or
- (d) requisition or join in requisitioning any meeting of Fonterra Shareholders; or
- (e) propose or join with any other party in proposing any matter for discussion or resolution at any meeting of Fonterra Shareholders; or
- (f) attend or speak at any meeting of Fonterra Shareholders, unless invited to do so by Fonterra.

4.10 **Statutory rights:** Nothing in clause 4.9 prevents or is intended to prevent the Manager from instructing the Custodian how to exercise any voting right arising under sections 116 and 117 of the Companies Act to the extent that the Custodian acquires any voting right in circumstances referred to in those sections and pursuant to the Constitution, in which case the relevant voting right may only be exercised in the manner, and to the extent, provided in the Constitution and in the Authorised Fund Contract. The Custodian and the Manager each acknowledge that the Manager's entitlement to instruct the Custodian how to exercise any voting right arising under sections 116 and 117 of the Companies Act is a contractual entitlement conferred by the Authorised Fund Contract and does not constitute part of the Trust Property.

4.11 **Invalidity of other voting directions:** Any request, direction, or instruction received by the Custodian from any person in respect of the exercise of any voting right on any Fonterra Shares must, except to the extent otherwise provided in clause 4.10, be ignored and not given effect to by the Custodian, and the Custodian shall not be liable on any basis to the Manager or the Economic Rights Beneficiary in respect of any failure or refusal by it to give effect to any such request, direction or instruction.

4.12 **Confirmations by Manager:** The Manager agrees that the Custodian:

- (a) will be entitled to rely upon any written request, direction or instruction received by it from the Manager where, on its face, such request, direction or instruction

appears to have been given in accordance with the provisions of this Deed and which is believed by the Custodian in good faith to be genuine;

- (b) is not obliged to verify any facts stated in any request, direction or instruction received by it from the Manager, or to verify the identity of the signatories to such document or the positions of the persons who have purported to execute or complete any such document;
- (c) is not obliged to consult with, or seek further instructions or confirmation from, any other party before taking any action which it is permitted or required to take under this Deed;
- (d) may appoint and engage and act upon the opinion, advice or information obtained from any solicitors, barristers, accountants or other qualified advisors having expertise pertinent to the functions of the Custodian under this Deed and may rely on any advice received from such persons, but for the avoidance of doubt shall not be obliged to seek such opinion, advice or information nor be in breach of this Deed or its obligations at law simply by virtue of any decision not to, or any failure to, obtain such opinion, advice or information; and
- (e) may refuse to follow or give effect to any request, direction or instruction given by the Manager if, or to the extent that:
 - (i) giving effect to the request, direction or instruction would result in any breach of law by the Custodian or breach of any other obligation binding upon the Custodian; or
 - (ii) the Custodian considers on reasonable grounds (supported by a legal opinion given by a Queen's Counsel or Senior Counsel practising in New Zealand) that such direction or instruction has not been properly given or is not in accordance with this Deed.

4.13 **Sub-custodians:** The Custodian shall not, without the prior written consent of Fonterra and the Economic Rights Beneficiary (which may be withheld at the sole discretion of either Fonterra or the Economic Rights Beneficiary), appoint any sub-custodian to carry out any or all of its obligations and functions under this Deed, or otherwise subcontract its powers, authorities or discretions under this Deed.

4.14 **Notices and other communications:** The Custodian shall provide to the Manager a copy of any notice, statement or other communication that it receives in its capacity as the registered holder of Acquired Shares as soon as is practicable following the receipt of the same.

5. DISTRIBUTION ON THE VESTING DAY

5.1 **Distribution of capital:** On the Vesting Day the Custodian shall hold upon trust for the Final Beneficiary such of the Trust Property as the Custodian holds on that day, and the Final Beneficiary shall have an unconditional right to the Trust Property on and following the Vesting Day.

6. OPERATION OF THE TRUST

6.1 **Holding of interests in other entities:** Nothing in this Deed prohibits:

- (a) the Custodian from holding or dealing in securities issued by Fonterra, the Fund or any other entity for its own account or for any other person. No such holding or dealing shall be a breach of any of the obligations arising out of the fiduciary relationship created by this Deed or imposed or implied by law; or
- (b) the Custodian performing any other role from time to time, and the other parties specifically acknowledge that the Custodian may from time to time hold Fonterra Shares on separate trusts, and for other purposes, distinct from the Trust created by this Deed,

provided that, in each case, the Custodian keeps separate records and ensures that the Trust Property is not intermingled with any other property held by the Custodian.

6.2 **Negation of conflict:** The Custodian may act as such and exercise all of its powers and discretions notwithstanding:

- (a) any other role performed by the Custodian (as contemplated by clause 6.1(b)); or
- (b) that the interests or duties of the Custodian in any particular matter may conflict with the duty of the Custodian to the Trust or any Beneficiary; or
- (c) any rule of law or equity to the contrary.

6.3 **No duty to diversify etc:** The Custodian may acquire and deal with the Trust Property in the manner contemplated by this Deed notwithstanding that any act or omission by the Custodian in the exercise of those powers and discretions would be, or could be, contrary to the principles governing the investment of trust funds set out in the Trustee Act 1956. This clause expresses a "contrary intention" for the purposes of section 13D of that Act.

6.4 **Reporting:** If required by the Manager or the Economic Rights Beneficiary, the Custodian will provide to the Manager or the Economic Rights Beneficiary (as the case may be) details of the number of Acquired Shares held by the Custodian as Trust Property as at 5.00pm on any relevant trading day.

7. DISTRIBUTION OF TRUST INCOME

7.1 **Income of the Trust includes taxable income:** The income of the Trust includes amounts that are income in accordance with the Income Tax Act 2007, whether actual or deemed income or otherwise treated as income for the purposes of the Income Tax Act 2007 ("**Taxable Income**"). The Custodian may distribute the Taxable Income of the Trust to the Beneficiaries in accordance with the terms of this Deed.

7.2 **Disposal of Fonterra Shares:** Where the Custodian transfers a Fonterra Share on the direction of the Manager under clause 4.7, the Custodian must have previously resolved that such transfer is a distribution of property subject to the Trust and is for the benefit, and at the direction, of the Economic Rights Beneficiary.

8. CUSTODIAN REMUNERATION

8.1 **No remuneration payable:** The Custodian shall not receive any remuneration for acting in its capacity as the trustee of the Trust but shall be entitled to be reimbursed by Fonterra for all out of pocket expenses properly and reasonably incurred by it in the course of discharging its duties.

8.2 **Amount of reimbursement:** The amount required to be paid by Fonterra under clause 8.1 will be the amount of the reimbursable cost or expense inclusive of any GST paid when that cost or expense was incurred less the amount of any credit for input tax claimed by the Custodian in respect of the reimbursable cost or expense.

8.3 **No other amounts payable:** The Custodian shall not charge Fonterra or the Economic Rights Beneficiary any fees or amounts in respect of its performance of the role described in this Deed, except (in relation to Fonterra only) as expressly provided in this Deed.

9. LIABILITY AND INDEMNITY OF CUSTODIAN

9.1 **No liability of Custodian with exceptions:** Subject to clause 9.5, the Custodian shall not be responsible for any loss incurred by the Trust or by a Beneficiary as a result of any act, neglect, mistake or default of the Custodian, or be responsible to check the accuracy or authenticity of any information, document or form supplied to the Custodian by Fonterra, the Economic Rights Beneficiary, or the Manager.

9.2 **No personal liability:** The Custodian in incurring any debts, liabilities or obligations, or in taking or omitting to take any action, in connection with the Trust created by this Deed is and shall be deemed to be acting for and on behalf of the Trust and not in its own capacity, and shall not be under any personal liability in respect of such actions or omissions. No person enforcing any liability entered into or incurred by the Custodian shall have recourse to any property belonging to or held by the Custodian which does not form part of the Trust Property. For the avoidance of doubt, the implied indemnity of trustees at law and as provided for in section 38(2) of the Trustee Act 1956 is excluded for the purposes of this Deed. This clause is an expression to the contrary for the purposes of clause 38(2) of the Trustee Act 1956. The intention of this exclusion is to prevent any person from seeking subrogation to the position of the Custodian in relation to the Trust Property to satisfy any liability incurred by the Custodian.

9.3 **Indemnification:** Subject to clauses 9.5 to 9.8 inclusive, if the Custodian is held personally liable in respect of any debt, liability or obligation incurred by or on behalf of the Trust or any action taken or omitted in connection with the Trust, then the Custodian shall be indemnified by Fonterra (as settlor of the Trust) from and against any and all such debts, liabilities and obligations and associated costs, losses and expenses incurred by it.

9.4 **Beneficiary income tax:** Fonterra (as settlor of the Trust) shall also indemnify the Custodian for any tax the Custodian is required to pay under section HC 32 of the Income Tax Act 2007 on behalf of a Beneficiary.

9.5 **Exception to indemnity:** The exclusion of liability in clause 9.1 and the indemnity in clause 9.3 shall not apply in respect of the Custodian, or any director or former director of the Custodian, in relation to any dishonesty, fraud, gross negligence or wilful breach of trust, or commission or omission of an act known to be a breach of trust, by the Custodian or by that director or former director of the Custodian (as the case may be). The indemnity in clause 9.3 shall not apply in respect of costs of legal proceedings against Fonterra, but that does not affect the obligations of Fonterra under clause 13.6 and 13.7 of the Authorised Fund Contract.

9.6 **Custodian's insurance:** The Custodian and Fonterra shall co-operate with a view to obtaining and maintaining indemnity insurance to cover the Custodian in respect of:

- (a) any actual or alleged liability attaching to the Custodian in respect of any negligence, default, breach of duty or breach of trust;

- (b) all costs, charges and expenses which may be incurred by the Custodian in contesting any actual or alleged liability under paragraph (a); and
- (c) all costs of a successful defence to any proceedings (civil or criminal) against the Custodian,

and:

- (d) the terms (including cost) of that insurance cover shall be subject to Fonterra's approval, and Fonterra shall be entitled to decline to effect (and pay for) any such cover; and
- (e) if the terms and cost of such cover are approved by Fonterra, the cost of the cover shall be met by Fonterra; but
- (f) Fonterra shall not be liable for any such cost to the extent that cover is sought or obtained in relation to any actual or alleged liability arising from any dishonesty, fraud, gross negligence or wilful breach of trust, or commission or omission of an act known to be a breach of trust, by the Custodian or any director or former director of the Custodian.

9.7 **Proceedings:** The Custodian may defend and institute or prosecute any legal or other proceedings anywhere in the world affecting the Custodian or the Trust Property, and the Custodian may compromise any matter of difference or submit it to arbitration, and may compromise or compound any debts owing to it as the Custodian or any other claims against the Custodian affecting it or the Trust Property.

9.8 **No recourse to Trust Property:** Under no circumstances may the Custodian pay any costs or expenses incurred by it in exercising its powers under this Deed from the capital of the Trust Property or the part or share of it to which any action, proceeding or claim relates, nor may it have recourse to that capital at any time during the course of such proceedings or after their conclusion. The costs of such actions are to be met first by recourse to the insurance cover (if any) obtained under clause 9.6, and secondly, where such insurance cover is not obtained or (having been obtained) fails to respond to the particular loss (and such failure is not due to any dishonesty, fraud, gross negligence or wilful breach of trust, or commission or omission of an act known to be a breach of trust, by the Custodian or any director or former director of the Custodian) by Fonterra pursuant to the indemnity provided in clause 9.3.

10. RESTRICTED REMEDIES

10.1 **Restrictions:** The Economic Rights Beneficiary and the Manager agree that neither of them shall:

- (a) except in the case that any of the exceptions in clause 9.5 apply, obtain a judgment for the payment of money or damages by the Custodian in its personal capacity; or
- (b) issue any demand under section 289 of the Companies Act (or any analogous provision under any law) against the Custodian; or
- (c) apply for the liquidation or dissolution of the Custodian; or
- (d) levy or enforce any distress or other execution to, or on, or against any asset of, or held by, the Custodian; or

- (e) apply for the appointment by a Court of a receiver or manager to any of the assets of, or held by, the Custodian from time to time; or
- (f) exercise or seek to exercise any set off or counterclaim against the Custodian in the performance of its duties under this Deed; or
- (g) appoint, or agree to the appointment of, any administrator (or person having a similar function) to, or in respect of, the Custodian; or
- (h) take any step which would lead to a recommendation being made supporting the appointment of a statutory manager in respect of the Custodian; or
- (i) propose or approve any proposal for a compromise under Part XV of the Companies Act 1993 (or any analogous provision under any other legislation having substantially similar effect) in respect of the Custodian, or take any proceedings for any of the above,

and each such party waives its rights to make those applications or to take those proceedings.

10.2 **Limitation for NZGT:** NZGT, in taking or omitting any action for or in connection with the affairs of the Trust or the Trust Property, is, and shall be deemed to be, acting for and on behalf of the Trust and not in its own capacity. NZGT shall not be under any personal liability, nor shall resort be had to its private property, for the satisfaction of any obligation or claim arising out of or in connection with any contract or other obligation of the Trust, and the Trust Property only shall be liable or subject to levy or execution.

10.3 **Liability for breach of trust or default:** NZGT shall be liable to the Trust for any loss arising out of wilful default, or wilful breach, of trust but subject thereto NZGT shall not be liable to the Trust or to any Beneficiary for any act or omission, or be subject to any liability whatsoever at law or in equity, in connection with the affairs of the Trust.

11. VARIATION AND AMENDMENT

11.1 **Power of variation:** Subject to clause 11.2, this Deed may be amended by means of a deed executed by all parties.

11.2 **Restrictions on the power of variation:** The Custodian must not:

- (a) without the prior written consent of the Final Beneficiary and the Economic Rights Beneficiary:
 - (i) retire from its role under this Deed; or
 - (ii) take any step or do anything, or allow anything to be done, to wind up the Trust; or
- (b) without the prior written consent of the Final Beneficiary take any step which is inconsistent with the Custodian's constitution.

In considering whether to give its written consent under paragraphs (a) or (b), the Final Beneficiary will consider what will serve to facilitate and, where appropriate, enhance Trading Among Farmers. The Final Beneficiary and the Economic Rights Beneficiary will not be accountable or liable to any other party in relation to its decision, nor will the Final Beneficiary or the Economic Rights Beneficiary be accountable or liable to any other party for providing, or withholding, consent to any such action.

12. PERPETUITY PERIOD

12.1 **Perpetuity period:** The perpetuity period for the purposes of the Perpetuities Act 1964 is the period commencing on the date of this Deed and ending on:

- (a) the date falling eighty years from the date of this Deed (the period so specified being the perpetuity period for the purposes of section 6 of the Perpetuities Act 1964); or
- (b) if the Perpetuities Act 1964 is amended, such later date as may be permitted by the Perpetuities Act 1964.

If section 6 of the Perpetuities Act 1964 is repealed and not substituted with a perpetuity period, this clause will cease to apply as from the date of repeal.

13. GENERAL

13.1 **Counterparts:** This Deed may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one instrument.

13.2 **Notices:** Any notice given under this Deed:

- (a) must be in writing;
- (b) must be left at the address of the addressee, or sent by prepaid ordinary post (airmail if posted from a place outside New Zealand) to the address of the addressee or sent by facsimile to the facsimile number of the addressee which is specified in this clause or if the addressee notifies another address or facsimile number then to that address or facsimile number. The address and facsimile number of each party is:

Fonterra:

Physical address:	Fonterra Centre, 9 Princes Street, Auckland 1010, New Zealand
Postal address:	Private Bag 92032, Auckland Mail Centre, Auckland 1142, New Zealand
Facsimile number:	+64 9 379 8281
Email address:	taf.ops@fonterra.com
Attention:	The General Counsel

Manager:

Physical address:	Fonterra Centre, 9 Princes Street, Auckland 1010, New Zealand
Postal address:	Private Bag 92032, Auckland Mail Centre, Auckland 1142, New Zealand
Facsimile number:	+64 9 379 8281
Attention:	The Directors

Custodian:

Physical address: Fonterra Centre, 9 Princes Street, Auckland 1010,
New Zealand
Postal address: Private Bag 92032, Auckland Mail Centre,
Auckland 1142, New Zealand
Facsimile number: +64 9 379 8281
Attention: The Directors

NZGT:

Physical address: Vero Centre, Level 7, 48 Shortland Street,
Auckland 1140, New Zealand
Postal address: PO Box 1934, Auckland, New Zealand
Facsimile number: +64 9 969 3732
Email address: auckland@nzgt.co.nz
Attention: Relationship Manager - Corporate Client Services

- (c) must be signed by a person duly authorised by the sender;
- (d) takes effect from the time it is received unless a later time is specified in it; and
- (e) a letter or facsimile (unless actually received earlier by the addressee) is taken to be received by the addressee:
 - (i) in the case of a posted letter, on the third working day after posting; and
 - (ii) in the case of facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.

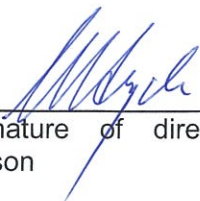
13.3 **No assignment:** No party may assign or novate or attempt to assign or novate its rights or obligations under this Deed without the prior written consent of the other parties, except to the extent necessary to permit the removal or retirement of the Manager or NZGT (in its capacity as trustee of the Fund) in accordance with the FSF Trust Deed.

13.4 **Governing law:** The Trust is established under the laws of New Zealand. This Deed shall be governed by and interpreted in accordance with the laws of New Zealand. Each party to this Deed irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New Zealand.

SIGNED AS A DEED


FONTERRA CO-OPERATIVE GROUP LIMITED by:

and witnessed by:



Signature of director / authorised person
Henry van der Heyden

Name of director / authorised person



Signature of witness

Carraeme Prigley

Name of witness

Lawyer

Occupation

Auckland

City/town of residence

SIGNED by **FONTERRA FARMER CUSTODIAN LIMITED** as Custodian by:



Signature of director

KEVIN JOHN TURNBULL

Name of director

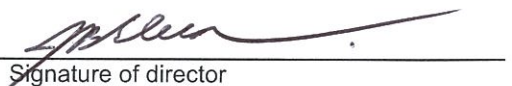


Signature of director

MALCOLM GUY BAILEY

Name of director

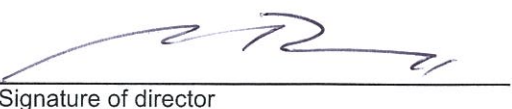
SIGNED by **FSF MANAGEMENT COMPANY LIMITED** in its capacity as Manager of the Fund by:



Signature of director

John Shewan

Name of director



Signature of director

PIP DUNPHY

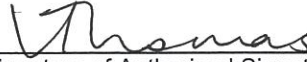
Name of director

EXECUTED under the name and seal of
**THE NEW ZEALAND GUARDIAN
TRUST COMPANY LIMITED** as Trustee
of the Fund by:



Signature of Authorised Signatory
BRYAN DAVID CONNOR

Name of Authorised Signatory



Signature of Authorised Signatory
VANJA NADINE THOMAS

Name of Authorised Signatory

WITNESS TO BOTH SIGNATURES

FULL NAME KAREN ANNE DONALD
RESIDENTIAL ADDRESS 69A HAMLIN RD

MT WELLINGTON
OCCUPATION RECEPTIONIST

SIGNATURE:

