

**FONTERRA FARMER CUSTODIAN LIMITED**  
Custodian

**CRAIGS INVESTMENT PARTNERS LIMITED**  
RVP

**FONTERRA CO-OPERATIVE GROUP LIMITED**  
Fonterra

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**CUSTODY DEED RELATING TO FONTERRA  
SHARES HELD FOR THE RVP**

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**RUSSELL McVEAGH**

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**PARTIES**

**FONTERRA FARMER CUSTODIAN LIMITED ("Custodian")**

**CRAIGS INVESTMENT PARTNERS LIMITED ("RVP")**

**FONTERRA CO-OPERATIVE GROUP LIMITED ("Fonterra")**

**INTRODUCTION**

- A. 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.
- B. Fonterra has agreed to enter into the RVP Agreement appointing the RVP to act as a Registered Volume Provider. Under the RVP Agreement, the RVP agrees to (amongst other things) provide market maker services in relation to the FSM.
- C. Under Fonterra's Constitution:
- (a) the Registered Volume Provider is prohibited from holding Fonterra Shares for any purpose or in any capacity; and
  - (b) the Fonterra Board may require, or permit, rights or interests in Fonterra Shares to which the Registered Volume Provider is entitled to be held by a custodian on such terms as it thinks fit.
- D. In accordance with Fonterra's Constitution, the Fonterra Board requires that the Custodian hold all rights and interests in the Fonterra Shares to which the RVP is entitled (whether these Fonterra Shares are acquired upon an initial issue to facilitate the role of the RVP, while trading on the FSM in accordance with the RVP Agreement, through the redemption of Units by the Manager of the Authorised Fund and the subsequent transfer of a Fonterra Share in respect of each Unit so redeemed, through the acquisition of bonus or other Fonterra Shares which may be issued to the Custodian as a result of the Custodian holding other Acquired Shares in trust for the RVP, or otherwise).
- E. 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. DEFINITIONS AND INTERPRETATION**

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

**"Acquired Shares"** means, in relation to the RVP acting in its capacity as a Registered Volume Provider and not acting in any other capacity, any Fonterra Shares which the RVP acquires (but recognising that the RVP cannot hold legal title in such Fonterra Shares and such legal title is to be held by the Custodian), including upon an initial issue to facilitate the role of the RVP; while trading on the FSM in accordance with the RVP Agreement; through the redemption of Units by the Manager of the Authorised Fund and

the subsequent transfer of a Fonterra Share in respect of each Unit so redeemed; and through the issue of bonus or other Fonterra Shares to the Custodian as a result of the Custodian holding other Acquired Shares in trust for the RVP.

**"Authorised Fund"** means the person authorised by the Fonterra Board from time to time under clause 7.1 of Fonterra's Constitution to perform the role and functions outlined in that clause, being, as at the date of this Deed, the FSF.

**"Companies Act"** means the Companies Act 1993.

**"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 of the Custody Trust Deed, recording the Fonterra Shares held by the Custodian on behalf of the Trustee of the Authorised Fund, being Fonterra Shares in which Economic Rights have been acquired by the Trustee of the Authorised Fund in accordance with the Economic Rights Trust.

**"Custodian RVP Account"** means the account (to be established and maintained by the Custodian) recording the Fonterra Shares and Other Benefits held by the Custodian on behalf of the RVP, pursuant to clause 3.5 of this Deed.

**"Custody Trust Deed"** means the deed of trust entered into between the Custodian, Fonterra, the Trustee and the Manager dated on or about 25 October 2012, which establishes the "Fonterra Economic Rights Trust" under which the Custodian will hold Economic Rights in Fonterra Shares for the Trustee.

**"Deed"** means this trust deed.

**"Distribution"** has the meaning given to that term in section 2(1) of the Companies Act 1993.

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

**"Economic Rights Trust"** means the trust constituted by the Custody Trust Deed.

**"Final Beneficiary"** means Fonterra.

**"Fonterra Board"** has the meaning given to the term "Board" in Fonterra's Constitution.

**"Fonterra's 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.

**"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 in 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 Fonterra's Constitution.

**"FSF"** means the fund established by the Unit Trust Deed as the Fonterra Shareholders' Fund, which is, as at the date of this Deed, approved by Fonterra as an Authorised Fund.

**"FSM"** means the Fonterra Shareholders' Market, being the securities market established for the trading of Fonterra Shares between persons permitted to hold Fonterra Shares under Fonterra's Constitution, and granted market registration under the Securities Markets Act 1988.

**"FSM Rules"** means the listing rules applying to the FSM.

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

**"Manager"** means the appointed manager of the FSF.

**"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 3.7(a)(ii), 3.7(b), 3.7(c).

**"NZX Participant Rules"** means the NZX Participant Rules made by NZX Limited, as amended from time to time, as those rules apply to the FSM.

**"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 3.8(c) to (f) inclusive.

**"Permitted Person"** means:

- (a) a Fonterra Shareholder;
- (b) the Custodian on behalf of a Registered Volume Provider; or
- (c) Fonterra.

**"Perpetuity Period"** means the perpetuity period described in clause 11.

**"Registered Volume Provider"** means a person appointed, engaged or authorised under clause 6.1 of Fonterra's Constitution to provide services intended to enhance the operation and liquidity of the FSM and/or any market for securities issued by the FSF and such other related services as Fonterra may from time to time require.

**"Representative"** has the meaning given to that term in Fonterra's Constitution.

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

**"RVP Agreement"** means the agreement dated on or about the date of this Deed between Fonterra and the RVP, which sets out the terms on which the RVP is appointed as a Registered Volume Provider.

"**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 of \$10.00 to be paid by Fonterra pursuant to clause 3.1 of this Deed as the initial settlement of this Trust;
- (b) all Acquired Shares; and
- (c) all Distributions and other benefits derived from holding the Acquired Shares.

"**Trustee**" means the trustee of the Authorised Fund for the time being under the Unit Trust Deed.

"**Unit**" means a unit in the Authorised Fund, issued by the Manager from time to time.

"**Unit Trust Deed**" means the trust deed establishing the Authorised Fund, to be executed by the Trustee, Fonterra and the Manager.

"**Vesting Day**" means the day prior to the day upon which the Perpetuity Period expires.

## 1.2 Interpretation: In this Deed:

- (a) unless the context otherwise requires, terms used in the Deed which are not defined specifically herein shall have the meaning provided in Fonterra's 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 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 the agreement or deed as amended, supplemented, replaced, assigned or novated from time to time; and
- (d) headings have been inserted for guidance only, and shall not be deemed to form part of the context of this Deed.

## 2. APPOINTMENT OF THE CUSTODIAN

- 2.1 **Appointment:** The Custodian is hereby appointed to act as custodian and trustee of this Trust, and to hold legal title to all Acquired Shares during the term of this Trust. The Custodian accepts that appointment and agrees to hold and deal with the Acquired Shares in accordance with this Deed.
- 2.2 **Legal title to be held by the Custodian:** Acting in its capacity as a Registered Volume Provider, the RVP:
  - (a) acknowledges, and agrees that, it shall not at any time hold legal title to any Fonterra Shares; and
  - (b) shall ensure that legal title to all Acquired Shares shall at all times be held by the Custodian in accordance with the terms of this Deed.

## 3. CUSTODIAN'S UNDERTAKINGS

- 3.1 **Initial settlement:** Fonterra, as the settlor of this Trust, agrees to pay to the Custodian the sum of \$10.00 as the initial settlement upon the Trust.
- 3.2 **Declaration of trust:** Fonterra, as the settlor of the Trust, declares, and the Custodian declares and acknowledges that the Custodian shall stand possessed of the Trust Property, in the period up to the day before the Vesting Day, upon trust for the RVP and, on the Vesting Day, such of the Trust Property as the Custodian continues to hold on the Vesting Day upon trust for Fonterra (as Final Beneficiary).
- 3.3 **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.
- 3.4 **Proper directions:** The Custodian shall transfer, dispose of, or otherwise deal with the Acquired Shares only upon receiving directions from:
  - (a) the RVP under clauses 3.7, 4.1, or 4.2; or
  - (b) Fonterra under clause 10.3.
- 3.5 **Custodian RVP Account:** The Custodian shall establish, and maintain at all times during the term of this Deed, the Custodian RVP Account to record the holding of Acquired Shares separately from other Fonterra Shares or other property which the Custodian holds from time to time for other persons or on its own account.
- 3.6 **Distributions and similar benefits derived from Economic Rights:** The Custodian acknowledges that on each occasion on which it receives, in respect of a Fonterra Share that is (at that time) an Acquired Share, any Economic Right, it will:
  - (a) account to the RVP 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 or other security issued by Fonterra which is Convertible into 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 RVP but shall instead be retained by the Custodian in the Custodian RVP Account and shall form part of the Trust Property.

**3.7 Custodian to act on directions of the RVP:** Subject to clause 3.6, the Custodian agrees to act on any direction in writing issued by the RVP 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 (or securities Convertible into Fonterra Shares), then the Custodian will, subject always to clause 3.6(b), follow any direction received from the RVP as to whether the Right is to be taken up or disposed of (or taken up in part and disposed of in part). 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 follow any direction received from the RVP in relation to the disposition of the Right (if it is able to be disposed of) and (if applicable) account to the RVP for any net 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 direction received from the RVP in relation to the disposition of that Right (if it is able to be disposed of) and (if applicable) account to the RVP for any net payment received in connection with the disposal of such Right; and
- (c) if Fonterra or a third party who is entitled to do so makes an offer to acquire Fonterra Shares, the Custodian will follow any direction received from the RVP as to whether such offer is to be accepted or declined in relation to Acquired Shares (in whole or in part) then held by it. If such offer is accepted, the Custodian shall account to the RVP for any payment received in connection with such acceptance,

provided that any such direction must be given in accordance with the terms of this Deed. If any direction is received from the RVP in accordance with paragraphs (a) to (c) above which requires the Custodian to make any payment of money, the Custodian need not follow such instruction unless and until the RVP provides (in immediately available cleared funds) all funds required by the Custodian to meet any resulting payment obligation.

**3.8 No control or influence by Custodian:** Without limiting any other restriction in this clause 3:

- (a) the Custodian irrevocably covenants that it will not; and
- (b) the RVP acknowledges that it may not, and irrevocably covenants that it will not, directly or indirectly, at any time request, instruct, or require 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 the RVP acknowledges that any purported or attempted exercise of any such vote shall be of no effect;
  - (d) requisition or join in requisitioning any meeting of Fonterra Shareholders;
  - (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.
- 3.9 **Directions by the Manager of the Authorised Fund:** Nothing in clause 3.8 prevents or is intended to prevent the Manager of the Authorised Fund giving directions to the Custodian in accordance with the terms of the Custody Trust Deed, including instructing the Custodian how to exercise any voting right arising under sections 116 and 117 of the Companies Act where Fonterra's Constitution permits a vote. The Custodian and the RVP each acknowledge that where any voting right arises in relation to Fonterra under sections 116 and 117 of the Companies Act and Fonterra's Constitution, the RVP shall have no right to give any direction or instruction to the Custodian.
- 3.10 **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 3.9, be ignored and not given effect to by the Custodian, and the Custodian shall not be liable on any basis to the RVP in respect of any failure or refusal by it to give effect to any such request, direction or instruction.
- 3.11 **RVP to indemnify the Custodian:** The RVP irrevocably indemnifies the Custodian, and agrees to pay to the Custodian on demand, the full amount of all costs, losses, debts, liabilities, obligations or expenses suffered or incurred by the Custodian as a result of:
- (a) the Custodian acting in accordance with any request, direction or instruction of the RVP given under this Deed; and/or
  - (b) any breach by the RVP of the restrictions contained in clauses 3.8 to 3.10 inclusive.
- 3.12 **Confirmations by the RVP:** The RVP and the Custodian each agree and acknowledge that the Custodian:
- (a) will be entitled to rely upon any written request, direction or instruction received by it from the RVP where, on its face, such request, direction or instruction appears to have been given in accordance with the provisions of this Deed;
  - (b) is not obliged to verify any facts stated in any request, direction or instruction received by it from the RVP, 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 RVP 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) that such direction or instruction has not been properly given or is not in accordance with this Deed,

and the fact and existence of the indemnity given by the RVP in clause 3.11 shall not affect or detract from the right of the Custodian to refuse to follow any such request, direction or instruction.

3.13 **Sub-custodians:** The Custodian shall not, without the prior written consent of Fonterra and the RVP (which may be withheld at the sole discretion of either Fonterra or the RVP), 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.

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

#### 4. DIRECTIONS IN RELATION TO THE ACQUIRED SHARES

4.1 **Proper directions from the RVP:** The RVP will from time to time direct the Custodian to:

- (a) transfer Acquired Shares from the Custodian RVP Account to the Custodian FSF Account, upon the Economic Rights in such Acquired Shares being acquired by the Trustee for the purposes of clause 7.1 of Fonterra's Constitution;
- (b) transfer Acquired Shares from the Custodian RVP Account to a Permitted Person, upon the RVP selling such Acquired Shares on the FSM; or
- (c) transfer all of the Acquired Shares to a replacement custodian or a person nominated by Fonterra in accordance with clause 21 of the RVP Agreement,

and the Custodian will immediately on receipt of such direction effect such a transfer provided always that the RVP shall not make any direction or take any action that is in breach of Fonterra's Constitution, the RVP Agreement (including in relation to the restrictions on the amount of rights or interests in Fonterra Shares which the RVP may hold at any time in proportion to the total number of Fonterra Shares on issue by

Fonterra), the FSM Rules, the NZX Participant Rules or any other applicable legal requirement.

- 4.2 **Transfer into the Custodian RVP Account:** The RVP agrees that the Custodian may transfer Acquired Shares from the Custodian FSF Account to the Custodian RVP Account, upon the RVP redeeming Units (in accordance with the Unit Trust Deed) and becoming entitled to rights or interests in Fonterra Shares in exchange.
- 4.3 **No call on Acquired Shares:** The RVP shall not, at any time, call for or attempt to call for or in any way assist, the transfer of legal title in any Acquired Shares or the vesting of any rights or interests in any Acquired Shares, to itself or any other person who is not a Permitted Person.
- 4.4 **No transfer of Shares except to Permitted Persons:** Notwithstanding anything in this Deed, the Custodian shall not take any action, or omit to take any action, which will or may have the effect of transferring, or otherwise vesting, legal title, or any rights or interests, in any of the Acquired Shares, to the RVP or any other person who is not a Permitted Person.
- 4.5 **Proper directions from Fonterra:** Fonterra may only direct the Custodian to transfer Acquired Shares in accordance with clause 10.3.

## 5. OPERATION OF THE TRUST

### 5.1 Holding of interests in other entities: Nothing in this Deed prohibits:

- (a) the Custodian from holding or dealing in securities issued by Fonterra, the FSF or any other entity for its own account or for any other person. No such holding, acting 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.

### 5.2 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 5.1(b));
- (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 the RVP; or
- (c) any rule of law or equity to the contrary.

### 5.3 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. DISTRIBUTION OF TAXABLE INCOME

- 6.1 **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 RVP (as beneficiary of the Trust) in accordance with the terms of this Deed.
- 6.2 **Disposal of Fonterra Shares:** Where the Custodian transfers a Fonterra Share on the direction of the RVP under clause 4.1:
- (a) the Custodian must have previously resolved that such transfer is a disposition of property subject to the Trust for the benefit, and at the direction, of the RVP; and
  - (b) the Custodian distributes the relevant Fonterra Share for the benefit of the RVP, and in satisfaction of the obligations of the RVP under the relevant transaction referred to in clause 4.1, by direct transfer.

## 7. GENERAL DUTIES AND RESPONSIBILITIES

- 7.1 **Duties and responsibilities of the Custodian:** The Custodian shall at all times:

- (a) comply with all laws relating to the provision of the custodial services under this Deed;
- (b) not create or permit to exist any security interest over any Acquired Shares;
- (c) hold any physical or electronic documents of title to the Acquired Shares for the RVP, and retain any records relating to the Trust Property required by law and make those records promptly available to the RVP upon request; and
- (d) upon receiving reasonable notice from the RVP, permit the RVP to inspect the systems and records maintained by the Custodian to hold or deal with the Acquired Shares, including the Custodian RVP Account.

- 7.2 **Responsibility of Fonterra:** Fonterra acknowledges and agrees that:

- (a) the Custodian will perform its role under this Deed utilising arrangements ("**Arrangements**") which have been designed by Fonterra to give effect to Trading Among Farmers;
- (b) the Arrangements have been tested by Fonterra's auditor; and
- (c) the Arrangements will be implemented and will be operative during the term of this Deed but may be amended by Fonterra as it determines is necessary for the proper function of Trading Among Farmers, but not in a manner which will affect that Custodian's performance of its obligations pursuant to this Deed.

## 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 RVP any fees or amounts in respect of its performance of the role described in this Deed, except as expressly provided in this Deed.

## 9. LIABILITY AND INDEMNITY OF CUSTODIAN

- 9.1 **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 under this Deed 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 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 section 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.
- 9.2 **Indemnification:** Subject to clause 9.4, 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 the RVP from and against any and all such debts, liabilities and obligations and associated costs, losses and expenses incurred by it.
- 9.3 **Beneficiary income tax:** The RVP shall 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 the RVP as beneficiary of the Trust.
- 9.4 **Exceptions:** Nothing in this clause 9 shall apply in respect of 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.

## 10. TERMINATION

- 10.1 **Termination of RVP Agreement:** This Deed shall terminate when the RVP ceases to be a Registered Volume Provider and the Custodian has dealt with all Acquired Shares as directed by the RVP or Fonterra.
- 10.2 **Replacement of Custodian:** Upon receiving notice from Fonterra that the Custodian will be replaced (for any reason), the RVP must procure the transfer of the Acquired Shares to the replacement custodian on the effective date of appointment of the replacement custodian and enter into a custody deed with the replacement custodian and Fonterra on substantially the same terms (as concerns the RVP and the Custodian) as this Deed, which shall take effect from the effective date of such appointment.
- 10.3 **RVP failure:** In the event that the RVP fails to comply with Fonterra's directions in accordance with clause 10.2, Fonterra shall be entitled to direct the transfer of the Acquired Shares to the replacement custodian and the Custodian shall be entitled to act in accordance with such direction.

## 11. PERPETUITY PERIOD

11.1 **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.

## 12. GENERAL

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

12.2 **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:	9 Princes Street, Auckland, 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

### **RVP:**

Physical address:	Level 36, Vero Centre, 46 Shortland Street, Auckland, New Zealand
Postal address:	PO Box 1196, Auckland 1140, New Zealand
Facsimile number:	+64 9 358 7535
Email address:	craig.lindberg@craigsip.com
Attention:	Craig Lindberg

### **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

- (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.

12.3 **No assignment:** No party may assign or novate or attempt to assign or novate its rights or obligations under this Deed.

12.4 **Variation:** No variation, waiver or amendment of this Deed will be effective unless in writing, consented to, and signed by all of the parties. Fonterra may, in its sole discretion, withhold its consent to any proposed variations, waivers or amendments of this Deed.

12.5 **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 FARMER CUSTODIAN  
LIMITED** by:


  
\_\_\_\_\_  
Signature of director

KEVIN JOHN TURNBULL  
\_\_\_\_\_  
Name of director

  
\_\_\_\_\_  
Signature of director

MALCOLM GUT BAILEY  
\_\_\_\_\_  
Name of director

**CRAIGS INVESTMENT PARTNERS  
LIMITED** by:

  
\_\_\_\_\_  
Signature of director

N.K. SCOTT  
\_\_\_\_\_  
Name of director

  
\_\_\_\_\_  
Signature of director

W.I. SIEMENS  
\_\_\_\_\_  
Name of director

**FONTERRA CO-OPERATIVE GROUP LIMITED** by:

and witnessed by:

*[Handwritten Signature]*  
Signature of director / authorised person

Henry van der Heyden  
Name of director / authorised person

*[Handwritten Signature]*  
Signature of witness

Craeme Origley  
Name of witness

Lawyer  
Occupation

Auckland  
City/town of residence