

**TRUSTEES EXECUTORS LIMITED**  
Shareholder

**FSF MANAGEMENT COMPANY LIMITED**  
Manager

**FONTERRA CO-OPERATIVE GROUP LIMITED**  
Fonterra

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**SHAREHOLDING DEED**

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DEED dated 23 October 2012

**PARTIES**

**TRUSTEES EXECUTORS LIMITED ("Shareholder")**

**FSF MANAGEMENT COMPANY LIMITED ("Manager")**

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

**INTRODUCTION**

- A. The Manager will be the manager of the unit trust known as the Fonterra Shareholders' Fund, being a unit trust to be established under a Trust Deed (as amended and restated from time to time) ("**Trust Deed**"), in accordance with the Unit Trusts Act 1960.
- B. The Shareholder is the sole shareholder of the Manager.
- C. The parties have agreed to enter into this Deed to record the terms on which the Shareholder will be the sole shareholder of the Manager.

**COVENANTS**

**1. INTERPRETATION**

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

"**Existing Constitution**" means the constitution of the Manager as at the date of this Deed;

"**New Constitution**" means the constitution of the Manager to be adopted by the Shareholder in accordance with clause 3.1(b) of this Deed, in the form attached as Annexure 1 to this Deed, as amended or replaced from time to time;

"**Share**" has the meaning given to that term in clause 2.1 (and includes any further shares which may be issued by the Manager to the Shareholder);

"**Trust Deed**" has the meaning given to that term in paragraph A of the Introduction section of this Deed;

"**Trustee**" means the trustee, from time to time, of the Unit Trust;

"**Unit Holder**" has the meaning given to that term in the Trust Deed; and

"**Unit Trust**" means the unit trust described in paragraph A of the Introduction section of this Deed, after the establishment of that unit trust.

1.2 **Interpretation:** Unless the context otherwise requires, or as specifically provided otherwise, in the interpretation of this Deed:

(a) headings are to be ignored;

(b) references to clauses are to those in this Deed;



- (c) "written" and "in writing" include any means of reproducing words, figures or symbols in a tangible and visible form;
- (d) the singular includes the plural and vice versa;
- (e) "include" or any form of that word is to be construed as if followed by "without limitation";
- (f) a reference to a deed or other document includes that deed or other document as varied or replaced;
- (g) a reference to a person includes an individual, firm, company, corporation or unincorporated body of persons, or any governmental or regulatory authority, in each case whether or not having separate legal personality, and a reference to a company includes a person;
- (h) a reference to a party includes that party's successors and permitted assigns;
- (i) references to all or any part of a statute, rule or regulation ("**statute**") are to New Zealand statutes and include that statute as amended, consolidated, re-enacted or replaced at any time;
- (j) references to monetary amounts are to New Zealand dollars unless otherwise specified;
- (k) references to times and dates are to New Zealand times and dates; and
- (l) references to a month are references to a calendar month.

1.3 **Trust Deed:** Terms used in this Deed and not defined herein but which are defined in the Trust Deed, shall have the meanings given to them in the Trust Deed unless the context otherwise requires.

1.4 **Unit Holder direction:** References in this Deed to the Shareholder acting on any direction of Unit Holders mean any direction given by way of Ordinary Resolution or Extraordinary Resolution, as the case may be, at any meeting of Unit Holders which the Manager has certified to the Shareholder was convened and held in accordance with the Trust Deed.

## 2. SHARES

2.1 **Issue:** The Shareholder acknowledges that it has accepted and consented to the transfer to it, and has agreed to hold upon the terms set out in this Deed, one fully paid ordinary share issued by the Manager, for no consideration ("**Share**"). The Shareholder is the legal and beneficial owner of the Share.

2.2 **Distributions:** It is not intended that there be any profits, gains or benefits which would be received by the Shareholder, or would arise, in respect of the Shareholder holding the Share, however, should any profits, gains or benefits be received by the Shareholder, or arise, in respect of the Shareholder holding the Share (or upon the sale or transfer of the Share), these shall be paid to, or retained by, the Manager to meet the costs of the Manager acting as manager of the Unit Trust. This does not apply to any such profits, gains and benefits payable under this Deed, such as the Shareholder's remuneration or the reimbursement of its expenses or payments to it under indemnities.

2.3 **Functions:** The functions of the Shareholder in respect of the Share shall only be those set out in this Deed and in performing such functions the Shareholder shall exercise the

care, diligence and skill that a prudent person would exercise in performing those functions.

### 3. POWERS IN RESPECT OF THE MANAGER

#### 3.1 Exercise of rights: The Shareholder:

- (a) shall not exercise a right to remove or appoint directors of the Manager except as noted in clause 3.2;
- (b) shall, immediately following execution of this Deed, revoke the Existing Constitution and adopt the New Constitution attached as Annexure 1 to this Deed, and will not thereafter exercise any right to amend the New Constitution without the prior written approval of Fonterra; and
- (c) shall appoint, and remove, as the auditor of the Manager, such person (or partnership of persons) as is the then auditor of Fonterra from time to time, as advised by Fonterra.

#### 3.2 Appointment and removal of directors of the Manager: The parties acknowledge that the New Constitution will provide:

- (a) the following procedure for the appointment and removal of the directors of the Manager:
  - (i) up to three directors of the Manager ("**Elected Directors**") shall be appointed by Unit Holders in accordance with clause 31.8 of the Trust Deed at a meeting of Unit Holders held in accordance with the Trust Deed, provided that, if a director vacancy arises in the Elected Directors in the period between Unit Holders meetings, the remaining Elected Directors (or the remaining Elected Director if there are two vacancies in the Elected Directors) shall be entitled to appoint a director to fill that vacancy until the next meeting of Unit Holders;
  - (ii) Fonterra shall be entitled to appoint up to two directors of the Manager from time to time ("**Appointed Directors**");
  - (iii) the Unit Holders shall be entitled to remove any Elected Director in accordance with clause 31.8 of the Trust Deed at a meeting of Unit Holders held in accordance with the Trust Deed; and
  - (iv) Fonterra, by written notice, may remove any Appointed Director.
- (b) that at the date of the adoption of the New Constitution:
  - (i) John Bruce Shewan, Philippa Jane Dunphy and Kimmitt Rowland Ellis are deemed to have been appointed as the Elected Directors; and
  - (ii) Ralph James Norris and Jim William van der Poel are deemed to have been appointed as the Appointed Directors.

If requested by Fonterra, the Shareholder will pass such shareholder resolutions and take such other actions as may be necessary to give effect to the above.

#### 4. DIRECTIONS BY UNIT HOLDERS

4.1 **Dealings in shares:** The Shareholder acknowledges that Unit Holders, by means of an Extraordinary Resolution (except in respect of the matters referred to in clause 3.1), have the power to direct the Shareholder to exercise its rights (including voting rights) as sole shareholder of the Manager to:

- (a) authorise any amendment to, direct the termination of, and/or the entry into by the Manager of a replacement for, this Deed;
- (b) exercise any voting right attached to the Share; and
- (c) give effect to any other matter on which direction from Unit Holders is sought by the Shareholder or the directors of the Manager,

in each case on such terms and subject to such conditions as are made in, or in accordance with, such direction, provided that:

- (d) the Shareholder will not follow any direction given by Unit Holders (or any Unit Holder), and no direction shall be effective which purports to transfer or require the transfer of the Share, or the issue of any further Shares by the Manager, to or for the benefit of the Trustee or Unit Holders in their capacity as such or any other person, where the holding of such Share or Shares may result in the Manager or the Trustee being ineligible to act as the manager or trustee (as the case may be) of the Unit Trust; and
- (e) Fonterra has given its prior written consent to the exercise of such rights.

4.2 **Transfer of Share:** Subject to clause 3.5 of the New Constitution (requiring the Shareholder to transfer the Share for \$1 upon an Insolvency Event (as defined in the New Constitution)), the Shareholder will not:

- (a) dispose of the Share (whether by sale, transfer or otherwise) or agree to the Manager issuing any further Shares, except with the prior written approval of Fonterra; or
- (b) permit to arise or to remain any security interest or other encumbrance in respect of the Share.

4.3 **Voting rights:** The Shareholder will not exercise its voting rights in respect of the Share except as set out in clause 3.2 or in accordance with a direction from Unit Holders made in accordance with this Deed, and with the prior written consent of Fonterra, other than in respect of procedural or administrative matters, in each case consistent with the intent of this Deed and provided that all the directors of the Manager certify to the Shareholder that in their opinion such exercise is not, and is not likely to become, prejudicial to the interests of Unit Holders or of Fonterra.

4.4 **Outcome of Unit Holder vote:** The Manager will provide the Shareholder with a certificate:

- (a) as to the result of any Unit Holder vote; and
- (b) confirming that the process for the relevant Unit Holder vote was conducted in compliance with the provisions of the Trust Deed,

as a pre-condition to the Shareholder being required to act on any Extraordinary Resolution.

## 5. REMUNERATION AND REIMBURSEMENT OF EXPENSES

5.1 **Right to Remuneration:** The Shareholder shall be paid by Fonterra in respect of its services an annual fee to be agreed in writing from time to time between the Shareholder and Fonterra, plus an hourly charge (approved in advance by Fonterra) based on hours spent by the Shareholder's executives at their then current applicable charge out rates from time to time in:

- (a) performing work of an unusual or onerous nature outside the attendances of the Shareholder as contemplated by this Deed; and
- (b) attending any meetings of Unit Holders,

in each case plus GST, if any. Such fees shall be paid by Fonterra monthly in arrears.

5.2 **Expenses:** The Shareholder shall be entitled to be reimbursed by Fonterra, and Fonterra will reimburse the Shareholder on demand in writing, in respect of the following;

- (a) legal fees and fees of an accountant or other expert, incurred by the Shareholder in connection with advice in respect of the performance of its functions and powers under this Deed and any supplemental deeds;
- (b) all costs, charges and expenses of and incidental to the preparation and execution of this Deed and any documents supplemental to it; and
- (c) subject to clause 5.3, any expense or liability which may be incurred by the Shareholder in bringing or defending any action or suit in respect of the Share in the Manager or its holding thereof or the provisions of this Deed.

5.3 **Shareholder in bringing any action or suit in respect of the Share:** Before the Shareholder commences any action or suit in respect of the Share in the Manager or its holding thereof or the provisions of this Deed ("**Action**") for which it will seek reimbursement pursuant to this Deed, the Shareholder will:

- (a) first obtain an opinion from a barrister or solicitor of the High Court of New Zealand who is a Queen's Counsel or Senior Counsel ("**Counsel**") on the potential for success in respect of the Action. The Shareholder must notify Fonterra of its intention to obtain an opinion, in writing and:
  - (i) the Counsel shall be agreed upon by Fonterra and the Shareholder, or failing agreement, selected by the President of the New Zealand Law Society on the application of either Fonterra or the Shareholder;
  - (ii) the Counsel agreed upon by Fonterra and the Shareholder or selected by the President of the New Zealand Law Society must be independent and suitably qualified;
- (b) once Counsel has been appointed, Fonterra and the Shareholder shall give all information relating to the matter in their respective possession or available to it, to Counsel, who shall advise Fonterra and the Shareholder whether the Shareholder has a good prospect of success in respect of the Action;
- (c) Fonterra shall pay the Counsel's fees;
- (d) if the Counsel's opinion concludes that the Shareholder does not have a good prospect of success in respect of the Action, the Shareholder will not proceed (or continue) with the Action; and

- (e) Fonterra may require that an opinion from Counsel be obtained during the course of any Action, with the provisions of this clause 5.3 applying mutatis mutandis.

## 6. SHAREHOLDER'S RIGHTS, POWERS AND INDEMNITIES

6.1 **Information:** If requested by the Shareholder from time to time, the Manager shall provide the Shareholder with copies of all notices, reports and financial statements issued by the Manager to Unit Holders.

6.2 **Specific powers:** In respect of the terms on which the Shareholder holds the Share:

- (a) the Shareholder shall not be responsible for any loss incurred as a result of any act, deceit, neglect, mistake, or default of the Manager, Fonterra or the Trustee or any agent of the Manager, Fonterra or the Trustee nor shall the Shareholder be responsible to check any information, document, form or list supplied to it by the Manager, Fonterra or the Trustee;
- (b) whenever pursuant to any provision of this Deed any certificate, notice, direction or other communication is to be given by the Unit Holders, the Manager, Fonterra or the Trustee to the Shareholder, the Shareholder may accept as sufficient evidence thereof a document signed on behalf of the Manager, Fonterra or the Trustee by any director, or acceptable officer or responsible employee of the Manager, Fonterra or the Trustee (as applicable) or by any other person or persons appearing to be authorised by the Manager, Fonterra or the Trustee (as applicable);
- (c) except insofar as otherwise expressly provided in this Deed, the Shareholder shall as regards all the powers, authorities and discretions vested in it by this Deed have absolute discretion as to their exercise whether in relation to the manner or as to the mode of or time for their exercise; and
- (d) nothing contained in this Deed shall be deemed to prohibit the Shareholder or any of its Related Companies, shareholders, officers or associates (all in this sub-clause (d) called "**Relevant Persons**") from holding securities in the Unit Trust or from acting in any representative capacity for a holder of securities in the Unit Trust. In particular, and without prejudice to the generality of the foregoing, any Relevant Person may so act on its own account or as executor, administrator, trustee, receiver, or attorney or agent or in any other fiduciary, vicarious or other professional capacity for a holder of securities in the Unit Trust. The acting in any such capacity shall not be deemed a breach of any of the obligations arising out of any fiduciary relationship created by this Deed or imposed or implied by law.

6.3 **Shareholder Liability:** The Shareholder is liable to the Manager and Fonterra for any losses, costs and damages arising out of the Shareholder's breach of this Deed, fraud, wilful misconduct, gross negligence or wilful default but, subject thereto, the Shareholder is not liable to the Manager, Fonterra or to any Unit Holder for any act or omission, and neither is it subject to any liability whatsoever at law or in equity, in connection with the affairs of the Manager or as a result of acting as the holder of the Share under this Deed.

6.4 **Indemnity:** If the Shareholder is held liable to the Manager, Fonterra or any Unit Holder otherwise than is provided for in clause 6.3, for any action taken or omitted in connection with the holding of the Share, then the Shareholder is entitled to be indemnified by Fonterra to the full extent of such liability and the costs of any litigation or other proceedings in which such liability has been determined including legal fees and

disbursements. Fonterra will pay any amount owing under such indemnity on demand in writing.

## 7. SHAREHOLDER CEASING TO ACT

7.1 **Change of shareholder:** The Shareholder may cease to be the holder of the Share at any time, without assigning any reason, upon giving 90 days' notice in writing to the Manager, Fonterra and the Trustee of its intention to do so, provided that:

- (a) a new person ("**New Shareholder**"), acceptable to Fonterra and the Trustee, is found to become the sole shareholder of the Manager;
- (b) the New Shareholder agrees to be bound by this Deed in place of the Shareholder, and the Shareholder is released from all obligations hereunder, by executing a deed approved by the Manager, Fonterra, the Shareholder and the Trustee; and
- (c) after the steps in clauses 7.1(a) and 7.1(b) have occurred, the Share is transferred to the New Shareholder in accordance with law, free from all encumbrances except those arising pursuant to this Deed.

If the holding of the Share by the Shareholder would at any time result in the breach of any statute, rule or regulation, or in the Manager or Trustee being ineligible to act as the manager or trustee (as the case may be) of the Unit Trust, the Shareholder must, if required by Fonterra, cease to be the Shareholder and shall transfer the Share in accordance with this clause 7.1, provided that the 90-day period shall be such shorter period as specified by Fonterra.

7.2 **Entitlement to fees and expenses:** The Shareholder shall be entitled to all fees and expenses under this Deed accrued to the date upon which the Shareholder transfers the Share in accordance with clause 7.1(c).

## 8. GENERAL

8.1 **Amendments:** In addition to any amendment made to this Deed in accordance with clause 4.1(a), the Manager, the Shareholder and Fonterra may at any time agree to any alteration, modification, amendment or addition to this Deed (by means of a deed executed by the Shareholder, the Manager and Fonterra) if, in the opinion of the Manager, the Shareholder and Fonterra, such alteration, modification, amendment or addition:

- (a) is made to correct a manifest error or is of a formal or technical nature;
- (b) is necessary or desirable for the more convenient, economical or advantageous working, management or administration of this Deed or for safeguarding or enhancing the interests of Unit Holders;
- (c) is not, or is not likely to become, materially prejudicial to the interests of Unit Holders;
- (d) is required by or in consequence of or is consistent with an amendment to any applicable statute or regulation or the listing rules of any relevant stock exchange and does not materially adversely affect the interests of Unit Holders; or



- (e) is necessary or desirable to obtain or maintain listing of any securities on any stock exchange.


The Shareholder will be entitled to rely on certificates from the Manager and the Trustee as to compliance with (b) and (c) above.

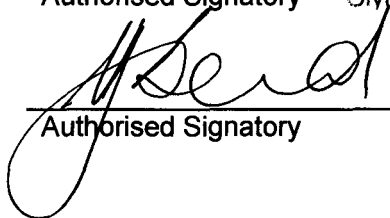
- 8.2 **No assignment:** Subject to clause 7, no party will, directly or indirectly, assign, transfer or otherwise dispose of any rights or interests of that party in, or obligations or liabilities under, this Deed, except with the prior written consent of the other parties, which consent may be given or withheld in the other parties' complete discretion.
- 8.3 **Further assurances:** Each party will from time to time on request by any other party execute and deliver all documents and do all other acts and things, which are necessary or reasonably required to give full force and effect to the provisions of, and arrangements contemplated by, this Deed.
- 8.4 **Severability:** If any part of this Deed is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable such determination will not impair the enforceability of the remaining parts of this Deed, which will remain in full force, and such provision will be deemed to be modified to the extent necessary to render it legal, valid and enforceable.
- 8.5 **Compliance:** Subject to being indemnified to its satisfaction for any liability which may result, the Shareholder covenants, in favour of Unit Holders, that it will comply with each direction given by Unit Holders, as more fully described in, and on the basis set out in, clauses 3 and 4 of this Deed.
- 8.6 **Counterparts:** This Deed may be signed in any number of counterparts, including facsimile or scanned copies, all of which will together constitute one and the same instrument and a binding and enforceable agreement between the parties. Either party may execute this Deed by signing any such counterpart.
- 8.7 **Governing law:** This Deed is governed by, and will be construed in accordance with, the laws of New Zealand.
- 8.8 **Privity:** Clause 7.1 provides benefits for the Trustee which may be enforced by the Trustee pursuant to the Contracts (Privity) Act 1982. This Deed, including clause 7.1, may be amended by the parties without the consent of the Trustee.

**SIGNED AS A DEED**

**SIGNED** on behalf of **TRUSTEES EXECUTORS LIMITED** by its Authorised Signatories:

and witnessed by:

  
\_\_\_\_\_  
Authorised Signatory Clynton Neil Hardy

  
\_\_\_\_\_  
Authorised Signatory Matthew Joseph Band

  
\_\_\_\_\_  
Signature of witness

Shahzad Contractor  
Name of witness  
Corporate Business Manager  
Auckland

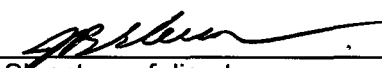
\_\_\_\_\_  
Occupation

\_\_\_\_\_  
City/town of residence

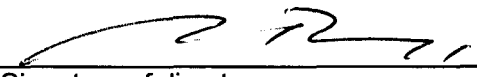


2012/CTN/137/1

**FSF MANAGEMENT COMPANY LIMITED** by:

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

John Shewan  
\_\_\_\_\_  
Name of director

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

PIP DUNPHY  
\_\_\_\_\_  
Name of director

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

DAVID MATTHEWS  
\_\_\_\_\_  
Name of witness

LAWYER  
\_\_\_\_\_  
Occupation

AUCKLAND  
\_\_\_\_\_  
City/town of residence

**ANNEXURE 1**  
**NEW CONSTITUTION**

**CONSTITUTION**

**OF**

**FSF MANAGEMENT COMPANY LIMITED**

**RUSSELL McVEAGH**

**CONSTITUTION**  
**OF**  
**FSF MANAGEMENT COMPANY LIMITED**

**1. DEFINITIONS AND INTERPRETATION**

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

“**Act**” means the Companies Act 1993.

“**Appointed Directors**” means those Directors appointed as directors of the Company in accordance with clause 6.2(b).

“**Board**” has the meaning set out in section 127 of the Act.

“**Company**” means FSF Management Company Limited.

“**Constitution**” means this constitution, as altered from time to time.

“**Director**” means a person appointed as a director of the Company in accordance with this Constitution.

“**Distribution**” has the meaning set out in section 2(1) of the Act.

“**Elected Directors**” means those Directors appointed as directors of the Company in accordance with clause 6.2(a).

“**Eligible Person**” means a trustee company under the Trustee Companies Act 1967 which holds a licence as a trustee (or supervisor) under the Securities Trustees and Statutory Supervisors Act 2011, which trustee company is not the Trustee.

“**Fonterra**” means Fonterra Co-operative Group Limited.

“**Insolvency Event**” means:

- (a) is, becomes, or is deemed to be, insolvent or bankrupt; or
- (b) makes an assignment for the benefit of, or enters into or makes any arrangement or composition with, its creditors generally; or
- (c) goes into receivership or has a receiver, trustee and manager (or either of them) (including a statutory manager) appointed in respect of all or any of its property; or
- (d) any resolution is passed, or any proceeding is commenced, for the dissolution of that party; or
- (e) an analogous event occurs in respect of any holding company of that party in any jurisdiction.

“**Interested**”, in relation to a Director, has the meaning set out in section 139 of the Act and “**Interest**” has a corresponding meaning.

*WB*

**“Manager”** means the company in which is vested the powers and functions of the manager of the Unit Trust.

**“person”** includes an individual, partnership, firm, company, body corporate, corporation, association, organisation, 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).

**“right”** includes any right, authority, discretion, power or remedy.

**“security interest”** means:

- (a) in respect of any personal property, a security interest (as defined in the Personal Property Securities Act 1999 (“PPSA”));
- (b) in respect of any other property or any rights in any other property (in each case to which the PPSA does not apply), any interest which, were the PPSA to apply to that property or those rights, would constitute such a security interest.

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

**“Shareholder”** means the person whose name is entered in the Share Register as the holder for the time being of all the Shares.

**“Shareholding Deed”** means the deed to be dated on or about the date of adoption of this Constitution, made between the Company, Fonterra and the Shareholder recording (amongst other things) the terms on which the share(s) in the Company are held by the Shareholder.

**“Share Register”** means the share register for the Company kept in accordance with the Act.

**“Supply Offer”** has the meaning set out in the Trust Deed.

**“Trust Deed”** means the trust deed establishing the Unit Trust, to be entered into between the Company (as Manager), Fonterra, and The New Zealand Guardian Trust Company Limited (as Trustee).

**“Trustee”** means the trustee from time to time of the Unit Trust.

**“Unit Holder”** has the meaning set out in the Shareholding Deed.

**“Unit Trust”** means the unit trust known as the “Fonterra Shareholders’ Fund”, being the unit trust to be established under the Trust Deed (as amended and restated from time to time).

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

- (a) the singular includes the plural and vice versa;
- (b) words and expressions defined or explained in the Act have the same meaning in this Constitution.

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

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

the provision, word or expression in this Constitution prevails.

- 1.4 **Shareholding Deed:** If there is any conflict between a provision in this Constitution and a provision in the Shareholding Deed, the provision in the Shareholding Deed prevails. This Constitution may only be amended as specified in the Shareholding Deed.

## 2. OBJECTIVE

- 2.1 **Sole objective:** Without limiting the capacity of the Company in accordance with section 16 of the Act, for so long as the Company is the Manager of the Unit Trust:

- (a) the sole objective of the Company shall be the management of the Unit Trust, its assets and the trust fund of the Unit Trust as a passive investment vehicle in accordance with the Trust Deed, and all activities incidental thereto (including the initial Supply Offer); and
- (b) the Company may not carry on any other business not connected to management of the Unit Trust, its assets and the trust fund of the Unit Trust.

## 3. SHARES

- 3.1 **Existing Shares:** At the time of adoption of this Constitution, the Company has one Share on issue, which is held by the Shareholder.

- 3.2 **Sole Shareholder:** All of the Shares must at all times be held by a sole Eligible Person, or any other person approved by Fonterra.

- 3.3 **Restriction on issuing shares:** The Board cannot issue any further Shares without the consent of the Shareholder and Fonterra.

- 3.4 **Transfer of Shares:** No Shares may be transferred without the consent of the Shareholder and Fonterra.

- 3.5 **Insolvency Event:** If an Insolvency Event occurs in respect of the Shareholder or the Shareholder ceases to be an Eligible Person then Fonterra will be entitled to nominate any person (including itself) to whom the Shareholder must transfer the Share, by written notice ("**Transfer Notice**") to the Shareholder. The Transfer Notice must include:

- (a) a form of transfer of the Share duly executed by the nominated transferee of the Share; and
- (b) payment of \$1 being the full and final consideration for the transfer of the Share from the Shareholder to the nominated transferee.

Upon the Shareholder receiving the Transfer Notice, the Shareholder must execute the form of transfer and transfer the Share free of all security interests to the person nominated in the Transfer Notice. Should the Shareholder fail to do so within five working days of receiving the Transfer Notice:

- (c) any Director is hereby authorised on behalf of the Shareholder to execute the form of transfer and provide it to the nominated transferee of the Share;
- (d) the Shareholder will be deemed to have warranted to the nominated transferee of the Share that the Share is transferred free of all security interests;
- (e) the Board is authorised to record the transfer of the Share in the Share Register; and



- (f) the Company is authorised to receive the \$1 consideration and to pay it to the former Shareholder.

#### 4. DISTRIBUTIONS

- 4.1 **Power to authorise:** The Board, if satisfied on reasonable grounds that the Company will immediately after the Distribution satisfy the solvency test, may, subject to the Act, authorise Distributions by the Company at times, and of amounts, and in such form, as it thinks fit and may do everything which is necessary or expedient to give effect to any such Distribution.

#### 5. MEETINGS AND RESOLUTIONS

- 5.1 **Exercise of powers:** A power reserved to shareholders of the Company by the Act, or to the Shareholder by this Constitution, may be exercised either at a meeting or by a resolution in writing signed in accordance with section 122 of the Act and, unless otherwise specified in the Act or this Constitution, may be exercised by ordinary resolution.
- 5.2 **Annual meetings:** The Company shall hold annual meetings in accordance with section 120 of the Act unless, in the case of any annual meeting, everything required to be done at that meeting (by resolution or otherwise) is done by resolution in writing signed in accordance with section 122 of the Act.
- 5.3 **Special meetings:** A special meeting of the Company may be called by the Board at any time, and shall be called by the Board on the written request of the Shareholder.
- 5.4 **Proceedings at meetings:** The provisions of the first schedule to the Act govern proceedings at all meetings of Shareholders of the Company.
- 5.5 **Entitlement to vote:** Subject to any rights or restrictions for the time being attached to any class of Shares, the Shareholder is entitled on any resolution to one vote in respect of each Share.

#### 6. APPOINTMENT AND REMOVAL OF DIRECTORS

- 6.1 **Number of Directors:** The number of Directors shall not at any time be less than three nor greater than five.
- 6.2 **Appointment and removal of Directors:** The Directors shall be appointed and removed in the following manner:
- (a) up to three Directors may be appointed by Unit Holders in accordance with clause 31.8 of the Trust Deed ("**Elected Directors**"), provided that, if a vacancy arises in the Elected Directors in the period between Unit Holders' meetings, the remaining Elected Directors (or the remaining Elected Director, if there is then only one remaining Elected Director) shall be entitled to appoint one or two Director(s) (depending upon the number of vacancies of Elected Directors) to fill that vacancy until the next meeting of Unit Holders (with such appointed Director(s) being deemed to be "Elected Directors"). Unit Holders may remove any Elected Director from office as a Director in accordance with clause 31.8 of the Trust Deed; and
- (b) Fonterra may appoint up to two Directors ("**Appointed Directors**") and may remove and replace any such Appointed Directors by written notice to the Company from time to time.
- 6.3 **First Directors:** As at the date of adoption of this Constitution:

- (a) John Bruce Shewan, Philippa Jane Dunphy and Kimmitt Rowland Ellis are the Elected Directors deemed to have been appointed pursuant to clause 6.2(a); and
- (b) Ralph James Norris and Jim William van der Poel are the Appointed Directors deemed to have been appointed pursuant to clause 6.2(b).

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

- (a) 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
- (b) is removed from office in accordance with clause 6.2; or
- (c) dies, or becomes disqualified from being a Director pursuant to the Act; or
- (d) retires from office in accordance with clause 10.14.

6.5 **Alternate Directors:** A Director may, from time to time, by written notice to the Company appoint any person, who is not already a Director and who is approved by a majority of the other Directors, to be that Director's alternate ("**Alternate Director**"). No Director may appoint a deputy or agent except by way of appointment of an Alternate Director under this clause 6.5.

- (a) Unless otherwise specified by the terms of his or her appointment, an Alternate Director:
  - (i) is entitled, in the absence or unavailability of the Director who appointed him or her (the "**Appointor**"), to exercise the same rights, powers and privileges (other than the power to appoint an Alternate Director) as the Appointor;
  - (ii) when acting as an Alternate Director is subject to the same duties and obligations as the Appointor;
  - (iii) is not entitled to be given notice of a meeting of the Directors unless the Appointor has given written notice to the Company requesting that notice be given to the Alternate Director.
- (b) An Alternate Director is not entitled to any remuneration from the Company in his or her capacity as an Alternate Director but is entitled to be reimbursed by the Company for all expenses incurred in attending meetings of the Directors and in the discharge of his or her duties, to the same extent as if he or she were a Director.
- (c) An Alternate Director ceases to be an Alternate Director:
  - (i) if the Appointor ceases to be a Director, or revokes the appointment by written notice to the Company; or
  - (ii) on the occurrence of any event which would disqualify the Alternate Director if he or she were a Director; or
  - (iii) if a majority of the other Directors resolve to revoke the Alternate Director's appointment.

## 7. REMUNERATION AND OTHER BENEFITS OF DIRECTORS

- 7.1 **Power to authorise:** 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 Fonterra.
- 7.2 **Power to indemnify and effect insurance:** The Company may exercise the powers conferred by section 162 of the Act to indemnify, and to effect insurance for, a director or employee, or former director or employee, of the Company or a related company.

## 8. POWERS OF DIRECTORS

- 8.1 **Management of Company:** Subject to the provisions of clause 2.1 and the provisions of the Shareholding Deed, the business and affairs of the Company shall be managed by, or under the direction or supervision of, the Board, which may exercise all the powers of the Company that are not required, either by the Act or this Constitution, to be exercised by the Shareholder.
- 8.2 **Ratification by Shareholder:** Subject to the provisions of section 177 of the Act (relating to ratification of directors' actions) the Shareholder, or any other person in whom a power is vested by this Constitution or the Act, may ratify the purported exercise of that power by a Director or the Board in the same manner as the power may be exercised. The purported exercise of a power that is ratified under this clause is deemed to be, and always to have been, a proper and valid exercise of that power.
- 8.3 **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.
- 8.4 **Change of name of Company:** The Board shall not authorise a change of name of the Company without the prior written approval of the Shareholder.

## 9. INTERESTS OF DIRECTORS

- 9.1 **Disclosure of Interests:** A Director shall comply with the provisions of section 140 of the Act (relating to disclosure of interest of directors) but failure to comply with that section does not affect the operation of clause 9.2.
- 9.2 **Personal involvement of Directors:** Notwithstanding any rule of law or equity to the contrary, but subject to sections 107(3) and 141 of the Act (relating to avoidance of transactions in which a director is Interested) and section 199(2) of the Act (prohibiting a director from acting as auditor of a company), a Director may:
- (a) contract with the Company in any capacity;
  - (b) be a party to any transaction with the Company;
  - (c) have any direct or indirect personal involvement or Interest in any transaction or arrangement to which the Company is a party or in which it is otherwise directly or indirectly Interested or involved;
  - (d) become a director or other officer of, or otherwise Interested in, any corporation promoted by the Company or in which the Company may be directly or indirectly Interested as a shareholder or otherwise; and
  - (e) retain any remuneration, profit or benefits in relation to any of the foregoing,

and no contract or arrangement of any kind referred to in this clause may be avoided by reason of a Director's Interest.

9.3 **Interested Directors may vote, etc:** Subject to any restrictions which may arise under the Trust Deed, a Director who is Interested in a transaction entered into, or to be entered into, by the Company may:

- (a) vote on any matter relating to the transaction;
- (b) attend a meeting of the Board at which any matter relating to the transaction arises and be included among the Directors present at the meeting for the purposes of a quorum;
- (c) sign a document relating to the transaction on behalf of the Company; and
- (d) do any other thing in his or her capacity as a Director in relation to the transaction, as if the Director were not Interested in the transaction.

## 10. PROCEEDINGS OF BOARD

10.1 **Third schedule to Act not to apply:** The provisions of the third schedule to the Act (relating to proceedings of a board) do not apply to the Company, except to the extent expressly incorporated in this Constitution.

10.2 **Alternative forms of meeting:** A meeting of the Board may be held either:

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

10.3 **Procedure:** Except as provided in this Constitution, the Board may regulate its own procedure.

10.4 **Convening of meeting:** A Director, or an employee of the Company at the request of a Director, may convene a meeting of the Board by giving notice in accordance with clause 10.5.

10.5 **Notice of meeting:** The following provisions apply in relation to meetings of the Board (except where otherwise agreed by all Directors in relation to any particular meeting or meetings):

- (a) Not less than five working days' notice of a meeting shall be given to each Director (other than a Director who has waived that right).
- (b) Notice to a Director of a meeting may be:
  - (i) given to the Director in person by telephone or other oral communication;
  - (ii) delivered to the Director;
  - (iii) posted to the address given by the Director to the Company for such purpose;

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- (iv) sent by facsimile transmission to the facsimile telephone number given by the Director to the Company for such purpose; or
  - (v) sent by electronic means in accordance with any request made by the Director from time to time for such purpose.
- (c) It is not necessary to give notices of meetings to an alternate Director, unless the Shareholder has given written notice to the Company requiring that such notices be given.
- (d) A notice of meeting shall:
- (i) specify the date, time and place of the meeting;
  - (ii) in the case of a meeting by means of audio, or audio and visual, communication, specify the manner in which each Director may participate in the proceedings of the meeting; and
  - (iii) give an indication of the matters to be discussed, in sufficient detail to enable a reasonable Director to appreciate the general import of the matters, unless this is already known to all the Directors.
- (e) A notice of meeting given to a Director pursuant to this clause is deemed to be given:
- (i) in the case of oral communication, at the time of notification;
  - (ii) in the case of delivery, by handing the notice to the Director or by delivery of the notice to the address of the Director;
  - (iii) in the case of posting, three days after it is posted;
  - (iv) 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;
  - (v) in the case of electronic means, at the time of transmission.
- (f) If all reasonable efforts have been made to give notice of a meeting to a Director in accordance with clause 10.5(e) but the Director cannot be contacted, notice of the meeting shall be deemed to have been duly given to that Director.

10.6 **Waiver of notice irregularity:** An irregularity in the giving of notice of a meeting is waived if each of the Directors either attends the meeting without protest as to the irregularity or agrees (whether before, during or after the meeting) to the waiver.

10.7 **Quorum:** A quorum for a meeting of the Board is three Directors. No matter may be considered at a meeting of the Board if a quorum is not present.

10.8 **Chairperson:** The Elected Directors may elect an Elected Director as chairperson of the Board and determine the period for which he or she is to hold office. If no chairperson is elected or if, at a meeting of the Board, the chairperson is not present within 15 minutes after the time appointed for the commencement of the meeting, the Elected Directors present may choose an Elected Director to be chairperson of the meeting.

10.9 **Voting:** Every Director has one vote. In the case of an equality of votes, the chairperson does not have a casting vote. A resolution of the Board is passed if it is agreed to without dissent by all Directors present, or if a majority of the votes cast on it are in favour of the resolution. A Director present at a meeting of the Board is presumed to have agreed to, and

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to have voted in favour of, a resolution of the Board unless he or she expressly dissents from or votes against, or expressly abstains from voting on, the resolution at the meeting.

- 10.10 **Written resolution:** A written resolution, signed or assented to by all the Directors entitled to vote on that resolution is as valid and effective as if passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in similar form, each signed or assented to by one or more Directors. A copy of any such resolution shall be entered in the records.
- 10.11 **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.
- 10.12 **Validity of actions:** The acts of a person as a Director are valid even though the person's appointment was defective or the person is not qualified for appointment.
- 10.13 **Minutes:** The Board shall ensure that minutes are kept of all proceedings at meetings of shareholders of the Company and of the Board. Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.
- 10.14 **Retirement:** At the time of the annual meeting of the Unit Trust in each year:
- (a) one of the Elected Directors shall retire from office as a Director. The order in which the first Elected Directors shall retire from office at the first two annual meetings of the Unit Trust shall be determined by agreement between the Elected Directors or, failing agreement, by lot. At the time of each annual meeting of the Unit Trust thereafter, the Elected Director to retire shall be that person who has been longest in office since he or she was last appointed or deemed appointed as a Director. If two or more Elected Directors have been in office for the same period of time the Elected Director to retire shall be determined by agreement between the Elected Directors or, failing agreement, by lot;
  - (b) an Elected Director appointed during a year to fill a vacancy which arose in the Elected Directors in accordance with clause 6.2(a), shall retire from office as a Director at the next annual meeting of the Unit Trust;
  - (c) an Elected Director retiring from office at an annual meeting of the Unit Trust shall be eligible for reappointment.

## 11. METHOD OF CONTRACTING

- 11.1 **Deeds:** A deed which is to be entered into by the Company may be signed on behalf of the Company, by:
- (a) two or more Directors; or
  - (b) a Director, or any person authorised by the Board, whose signatures must be witnessed; or
  - (c) one or more attorneys appointed by the Company.
- 11.2 **Other written contracts:** An obligation or contract which is required by law to be in writing, and any other written obligation or contract which is to be entered into by the Company, may be signed on behalf of the Company by a person acting under the express or implied authority of the Company.

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11.3 **Other obligations:** Any other obligation or contract may be entered into on behalf of the Company in writing or orally by a person acting under the express or implied authority of the Company.

12. **AUDITOR**

12.1 **Appointment:** Subject to section 196(2) of the Act (permitting waiver of appointment of an auditor by unanimous resolution) and the provisions of the Shareholding Deed, an auditor shall be appointed and the auditor's duties regulated in accordance with the provisions of the Act.

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