

SUPPLEMENTAL TRUST DEED (NO. 11)

Dated *09 February* 2010

Fonterra Co-operative Group Limited

The New Zealand Guardian Trust Company Limited

MAYNE WETHERELL
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PARTIES

FONTERRA CO-OPERATIVE GROUP LIMITED (Issuer)

THE NEW ZEALAND GUARDIAN TRUST COMPANY LIMITED (Trustee)

INTRODUCTION

This Deed is a supplemental trust deed entered into pursuant to clause 2.4 of the Master Trust Deed dated 18 November 2002 between the Issuer and the Trustee (**Master Trust Deed**), constituting and setting out the terms and conditions of the Series described in this Supplemental Deed.

COVENANTS

1. INTERPRETATION

1.1 **Master Trust Deed:** The terms of the Master Trust Deed (including the definitions, the rules of construction and the miscellaneous provisions of clauses 1.1, 1.2 and 1.4 respectively of the Master Trust Deed) shall apply in this Deed and to the Bonds constituted by this Deed except to the extent modified in this Deed. To that extent, or in the event of any conflict between the provisions of this Deed and those of the Master Trust Deed, the provisions of this Deed shall prevail over those of the Master Trust Deed.

1.2 **Additional or modified defined terms:** In this Deed, unless the context otherwise requires:

Agency Agreement means the agency agreement dated 8 April 2004 under which the Registrar is appointed as registrar, calculation agent and paying agent for the Bonds.

Guarantee means, in relation to any Indebtedness of any person, any obligation of another person to pay such Indebtedness including, without limitation:

- (a) any obligation to purchase any such Indebtedness;
- (b) any obligation to lend money, to purchase or subscribe for shares or other securities or to purchase assets or services in order to provide funds for the payment of such Indebtedness;
- (c) any indemnity against the consequences of a default in the payment of such Indebtedness; or
- (d) any other agreement to be responsible for such Indebtedness.

Indebtedness means any indebtedness of any person for money borrowed or raised including, without limitation, any indebtedness for or in respect of:

- (a) amounts raised by acceptance under any acceptance credit facility;
- (b) amounts raised under any note purchase facility;
- (c) the amount of any liability in respect of leases or hire purchase contracts which would, in accordance with applicable law and generally accepted accounting principles, be treated as finance or capital leases;

- (d) the amount of any liability in respect of any purchase price for assets or services the payment of which is deferred for a period in excess of 60 days; or
- (e) amounts raised under any other transaction including, without limitation, any forward sale or purchase agreement, having the commercial effect of a borrowing.

Information Memorandum means, in relation to this Series, the Simplified Disclosure Prospectus.

Interest Payment Date means, in relation to a Bond, 4 March and 4 September, or such other dates as determined by the Issuer and recorded as such in the Register in respect of the Bonds, in each year up to and including the Maturity Date.

Interest Rate has the meaning given to that term in the Simplified Disclosure Prospectus.

Interest Rate Set Date means 17 February 2010 or such other date as determined by the Issuer.

Issue Date means 4 March 2010 or such other date as determined by the Issuer and recorded as such in the Register in respect of the Bonds.

Joint Lead Managers has the meaning given to that term in the Simplified Disclosure Prospectus.

Margin has the meaning given to that term in the Simplified Disclosure Prospectus.

Maturity Date means 4 March 2016 or such other date as determined by the Issuer and recorded as such in the Register in respect of the Bonds.

Minimum Principal Amount means \$5,000.

NZDX means the New Zealand Debt Exchange, a market operated by NZX.

NZX means NZX Limited.

NZX Rules means the listing rules of NZX.

Principal Amount means \$1.00 per Bond.

Principal Subsidiary means, at any time, on the basis of the then most recent audited Consolidated Financial Statements at that time and the then most recent audited or, if not available, unaudited Financial Statements (consolidated, if applicable) of the relevant Subsidiary:

- (a) any Subsidiary of the Issuer whose total assets (consolidated, if applicable) represent at least 10 percent of the Total Assets of the Group;
- (b) any Subsidiary of the Issuer whose total net sales (consolidated, if applicable) represent at least 10 percent of the total net sales of the Group; or
- (c) any other Subsidiary of the Issuer (receiving Subsidiary) to which is transferred either:
 - (i) all or substantially all of the assets of another Subsidiary which immediately prior to the transfer was a Principal Subsidiary (disposing Subsidiary); or

- (ii) sufficient assets of the Issuer or another Subsidiary for the receiving Subsidiary to have been a Principal Subsidiary had the transfer occurred on or before the date of the then most recent audited Consolidated Financial Statements,

provided that:

- (d) in the case of paragraph (c) above, the receiving Subsidiary shall forthwith, upon the transfer, become a Principal Subsidiary and, with effect from the date of publication of the immediately succeeding Consolidated Financial Statements, paragraphs (a) and (b) above shall determine whether the disposing Subsidiary and the receiving Subsidiary are Principal Subsidiaries or not; and
- (e) a certificate signed by two directors of the Issuer certifying that in their opinion a Subsidiary is or is not or was or was not on a specified date a Principal Subsidiary shall, in the absence of a manifest error, be conclusive and binding on the parties.

Record Date means, in relation to any applicable interest payment, 5.00 pm on the day which is 10 calendar days prior to the due date for payment (or, if that day is not a Business Day, the immediately preceding Business Day).

Registrar means Computershare Investor Services Limited.

Relevant Indebtedness means any Indebtedness which is in the form of or represented by any bond, note, debenture, debenture stock, loan stock, certificate, or other instrument which is, or is capable of being, listed, quoted or traded on any stock exchange or in any securities market, including, without limitation, any over-the-counter market, whether or not initially distributed by means of a private placement.

Security Interest means any mortgage, charge, pledge, lien or other security interest including, without limitation, anything analogous to any of the foregoing under the laws of any jurisdiction.

Simplified Disclosure Prospectus means the registered simplified disclosure prospectus for the Bonds.

Six-Year Swap Rate has the meaning given to that term in the Simplified Disclosure Prospectus.

Transaction Documents means this Deed, the Master Trust Deed and the Agency Agreement.

1.3 **Modification of other terms in Master Trust Deed:** In this Deed:

- (a) the term **Bond** has the meaning given to the term **Note** in the Master Trust Deed and references to **Notes** in the Master Trust Deed shall be deemed to be references to **Bonds**; and
- (b) the terms **Holder** and **Register** have the meanings given in the Master Trust Deed but, in this Deed, refer only to the Holders of Bonds, and to the Register in relation to this Series.

2. **FORM OF BONDS**

- 2.1 **Series amount:** The aggregate Principal Amount of Bonds for this Series that may be issued is \$150,000,000 (with the ability to accept up to a further \$100,000,000 in oversubscriptions).

2.2 **Type of Bonds:** The Bonds to be issued are Fixed Rate Notes.

2.3 **Retail Notes:**

- (a) The Bonds are Retail Notes. The Bonds may only be offered for sale or sold in New Zealand in conformity with all applicable laws and regulations in New Zealand. No Bonds may be offered for sale or sold in any other country or jurisdiction except in conformity with all applicable laws and regulations of that country or jurisdiction. The Simplified Disclosure Prospectus may not be published, delivered or distributed in or from any country or jurisdiction except under circumstances which will result in compliance with all applicable laws and regulations in that country or jurisdiction.
- (b) By its subscription for a purchase of the Bonds, each Holder agrees to indemnify the Issuer, each Joint Lead Manager and the Trustee and their respective directors, officers and employees for any expense, loss or liability sustained or incurred by the Issuer, that Joint Lead Manager, or the Trustee, as the case may be, as a result of the breach by that Holder of the restrictions contained in clause 2.3(a).
- (c) If the Issuer intends to offer the Bonds for sale to the public in any jurisdiction other than New Zealand, it will notify the Trustee at least 10 Business Days in advance of making such offer.

2.4 **Status of Bonds:** The Bonds are Unsubordinated Notes.

2.5 **Minimum subscription:** The initial minimum subscription amount for the Bonds is \$5,000 and thereafter in integral multiples of \$1,000.

2.6 **Not Guaranteed:** The Bonds are not guaranteed by any person.

3. INTEREST PAYMENT AND TRANSFER

3.1 **Interest Payment Dates:** Interest on the Bonds shall be paid from (and including) the Issue Date semi-annually in arrears in two equal payments on each Interest Payment Date determined as follows:

$$\text{Interest Payment} = \frac{\text{Principal Amount of Bond} \times \text{Interest Rate}}{2}$$

3.2 **No interest on subscription moneys:** The Issuer will not pay interest on any subscription moneys paid to it by any Holder for the period from the date on which those subscription moneys were received to the Issue Date.

3.3 **Interest at early repayment:** If the Bonds are declared due and payable prior to their Maturity Date pursuant to clause 13.1 of the Master Trust Deed, interest will be payable on each Bond at the Interest Rate on the Principal Amount of that Bond from the most recent Interest Payment Date to and excluding the date of repayment on the basis of the number of days elapsed and a 365-day year.

3.4 **Transfer:** A Holder may only transfer Bonds in multiples of \$1,000. However, no transfer may be effected if such transfer would result in the transferor or the transferee holding or continuing to hold Bonds with an aggregate Principal Amount of less than the Minimum Principal Amount.

- 3.5 **Form of transfer:** A Holder may transfer any Bond held by it by:
- (a) a written instrument of transfer in any commonly used form that complies with the standard form and procedures of the Registrar;
 - (b) means of the FASTER system operated by NZX; or
 - (c) any other method of transfer of marketable securities that is not contrary to any law and that may be operated in accordance with any listing rules of NZX and that is approved by the Issuer.

4. **CONDITIONS PRECEDENT**

- 4.1 **Conditions precedent:** The Issuer is not entitled to issue any Bonds until the Trustee has confirmed in writing that it has received the following in form and substance satisfactory to it:
- (a) a duly executed original of this Deed;
 - (b) a copy of the Simplified Disclosure Prospectus;
 - (c) evidence that this Deed and the Simplified Disclosure Prospectus have been registered with the Companies Office under the Securities Act; and
 - (d) a legal opinion from the solicitors to the Issuer confirming that the Simplified Disclosure Prospectus complies with the Securities Act, the Securities Regulations and the Fair Trading Act 1986.

5. **REPRESENTATIONS AND UNDERTAKINGS**

- 5.1 **Representations and warranties:** Pursuant to clause 11.2 of the Master Trust Deed, the Issuer represents and warrants to the Holders that no Event of Default has occurred and is continuing.
- 5.2 **Undertakings:** Pursuant to clause 12.1(c) of the Master Trust Deed, the Issuer undertakes to the Holders and the Trustee that, for so long as the Bonds are outstanding, it will:
- (a) **Comply with laws:** punctually comply with all laws (including all laws relating to the environment and the payment of taxes) binding upon it the non-compliance with which is likely to materially adversely affect the general interests of Holders; and
 - (b) **Quotation:** use all reasonable endeavours to ensure that the Bonds are, upon their issue, quoted on the NZDX and that such quotation is maintained.
- 5.3 **Negative Pledge:** So long as any Bond remains outstanding, the Issuer undertakes to the Holders that it shall not, and shall procure that none of its Principal Subsidiaries will, create or permit to subsist any Security Interest upon the whole or any part of its present or future undertaking, assets or revenues (including uncalled capital) to secure any Relevant Indebtedness or Guarantee of Relevant Indebtedness without:
- (a) at the same time or prior thereto securing the Bonds equally and rateably therewith to the satisfaction of the Holders; or
 - (b) providing such other security for the Bonds as may be approved by an Extraordinary Resolution of the Holders.

5.4 Reports:

(a) The parties agree that the report to be delivered pursuant to clause 12.2(c) of the Master Trust Deed:

(i) will contain a new paragraph 3(d) as follows:

the Principal Subsidiaries of the Issuer are:

[insert names of Principal Subsidiaries]

	Total Assets	Net sales
Group	<i>[insert Total Assets of the Group]</i>	<i>[insert net sales of the Group]</i>
<i>[insert name of Principal Subsidiary]</i>	<i>[insert Total Assets of the Principal Subsidiary]</i>	<i>[insert net sales of the Principal Subsidiary]</i>

and the provisions of schedule 3 of the Master Trust Deed are deemed to be amended accordingly; and

(ii) may be signed by a Director and by the chief executive or the chief financial officer of the Issuer and the provisions of clause 12.2(c) of the Master Trust Deed and schedule 3 of the Master Trust Deed are deemed to be amended accordingly.

(b) The parties agree that in addition to the reports to be provided pursuant to clause 12.2 of the Master Trust Deed, the Issuer will deliver to the Trustee, within 5 Business Days after each Interest Payment Date, a certificate signed by two Authorised Officers stating whether all interest due was paid on the Interest Payment Date and, if not:

(i) whether Default Interest has accrued on the unpaid interest from the relevant Interest Payment Date at the default rate of 2% in accordance with clause 7.7 of the Master Trust Deed; and

(ii) the date on which the Issuer expects to pay the relevant interest and Default Interest to Holders of Bonds;

(c) The parties agree that the report to be provided by the Auditors, pursuant to clause 12.3 of the Master Trust Deed may be provided in the form contemplated by that clause or in such other form agreed between the Issuer, the Trustee and the Auditors from time to time.

6. MISCELLANEOUS

6.1 **Counterparts:** This Deed may be signed in any number of counterparts, all of which together constitute one and the same instrument, and any of the parties may execute this Deed by signing any such counterpart.

6.2 **Governing law:** This Deed shall be governed by and construed in accordance with New Zealand law.

6.3 **Contracts Privity:** The parties acknowledge and declare that clause 2.3(b) constitutes promises which are intended to confer benefits enforceable by the Joint Lead Managers pursuant to section 4 of the Contracts (Privity) Act 1982.

SIGNATURES

FONTERRA CO-OPERATIVE GROUP LIMITED by its authorised signatory in the presence of:

Jonathan P. Mason

Signature of authorised signatory

A. Williams

Signature of witness

Jonathan Mason

Name of authorised signatory

Funding & Network Manager

Occupation

Auckland.

City/town of residence

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

Signature of authorised signatory

Signature of authorised signatory

Name of authorised signatory

Name of authorised signatory

Signature of witness

Occupation

City/town of residence

SIGNATURES

FONTERRA CO-OPERATIVE GROUP LIMITED by its authorised signatory in the presence of:

Signature of authorised signatory

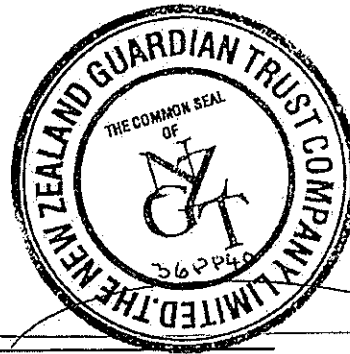
Signature of witness

Name of authorised signatory

Occupation

City/town of residence

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



[Handwritten signature]

Signature of authorised signatory

Signature of authorised signatory

Joanne Sue Reynolds

BRYAN DAVID CONNOR

Name of authorised signatory

Name of authorised signatory

[Handwritten signature]

Signature of witness

Dorothy-Ann Moerdyk
14 William Fraser Crescent

Occupation **Kohimarama, Auckland 1071**
Administrator

City/town of residence