

**FONTERRA CO-OPERATIVE GROUP LIMITED**  
Fonterra

**FSF MANAGEMENT COMPANY LIMITED**  
Manager

**THE NEW ZEALAND GUARDIAN TRUST COMPANY LIMITED**  
Supervisor

**FONTERRA FARMER CUSTODIAN LIMITED**  
Fonterra Custodian

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**FONTERRA SHAREHOLDERS' FUND**  
**AUTHORISED FUND CONTRACT**

(as amended and restated)

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**RUSSELL McVEAGH**

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**AGREEMENT** dated 25 October 2012, as amended and restated with effect from 1 November 2016

## **PARTIES**

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

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

**THE NEW ZEALAND GUARDIAN TRUST COMPANY LIMITED ("Supervisor")**

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

## **INTRODUCTION**

- A. The Constitution permits the Fonterra Board to take steps to implement the share trading system known as "Trading Among Farmers" and, for that purpose, to:
- (a) authorise, and facilitate the operation of, an "Authorised Fund"; and
  - (b) specify the terms on which the Authorised Fund may acquire rights or interests in Shares.
- B. Fonterra confirmed, under the SHC Deed Poll, that the primary purpose of establishing an Authorised Fund is to facilitate liquidity in relation to the trading of Shares and the exchange, by Fonterra Shareholders, of Shares for securities issued by the Authorised Fund, and has confirmed under the FFCT Trust Deed that:
- (a) Fonterra will only authorise one Authorised Fund at any given time (except where a transition occurs from a then-operative Authorised Fund to a replacement Authorised Fund);
  - (b) Fonterra Shares in which Economic Rights are acquired by an Authorised Fund are to be held by the Fonterra Custodian; and
  - (c) subject only to clearing and settlement arrangements related to the trading of Shares on the FSM, the only persons who may be registered as the holders of a Fonterra Share are Farmer Shareholders, the Fonterra Custodian and Fonterra itself.
- C. The Supervisor is licensed under the Financial Markets Supervisors Act 2011 and was selected by Fonterra to act as the Supervisor in respect of the unit trust ("**Fund**") formed under the Unit Trusts Act 1960 and continued as a managed investment scheme under the Financial Markets Conduct Act 2013 for the purpose of being authorised as an Authorised Fund.
- D. The Manager is a company which acts as the manager of the Fund. All of the issued shares in the Manager are held by the Independent Shareholder pursuant to the Manager's Shareholding Deed.
- E. The Supervisor, the Manager and Fonterra agreed the form of the Fund Trust Deed under which the Fund is constituted.
- F. The Constitution also provides for Shares (in relation to which rights or interests may from time to time be held for or in relation to an Authorised Fund) to be held by a custodian, and the Fonterra Custodian shall perform that role.

- G. The parties entered into this agreement to provide for the establishment of the Fund, to authorise the Fund to be (and to operate as) an Authorised Fund and to regulate the relationship between Fonterra and the Fund.

## AGREEMENT

### **PART A - INTERPRETATION AND PURPOSE**

#### **1. DEFINITIONS AND INTERPRETATION**

- 1.1 **Definitions:** In this agreement unless the context otherwise requires:

"**AMINZ**" has the meaning given to that term in clause 21.5.

"**Appointed Director**" means a person appointed to the Fonterra Board under clause 12.4 of the Constitution.

"**Arbitration Notice**" has the meaning given to that term in clause 21.5.

"**ASX**" means the Australian Securities Exchange.

"**Authorised Fund**" has the meaning given to that term in the Constitution.

"**Budget**" has the meaning given to that term in clause 13.1.

"**Business Day**" means any day other than a Saturday, Sunday or a statutory public holiday in Auckland, New Zealand.

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

"**Consequential Loss**" has the meaning given to that term in clause 20.2.

"**Constitution**", unless otherwise specified, means the constitution of Fonterra in force from time to time, and references in this agreement to clauses of that Constitution refer to the equivalent clauses following any such amendment or substitution.

"**Custody Trust Deed**" means the trust deed entitled "Custody Trust Deed for the Fonterra Economic Rights Trust" dated 25 October 2012, under which the Fonterra Custodian agrees to hold Economic Rights in Shares on trust for the Fund, as amended from time to time.

"**Deed of Acknowledgement and Variation**" means the deed entitled "Deed of Acknowledgement and Variation" dated 25 October 2012, which relates to the provision of Registry Services in respect of the Fund, as amended from time to time.

"**Deed Poll for Market Participants**" means the deed entitled "Deed Poll in favour of FSM Participants" entered into by Fonterra dated 25 October 2012, as amended from time to time.

"**DIRA**" means the Dairy Industry Restructuring Act 2001.

"**Disclosure Information**" has the meaning given to that term in clause 14.1.

"**Dispute**" has the meaning given to that term in clause 21.1.

"**Dispute Notice**" has the meaning given to that term in clause 21.1.

**"Due Diligence Review"** means a review intended to ensure that matters which should, having regard to applicable Law and market practice, be considered for inclusion in an Offer Document are identified and appropriate materiality assessments made in respect of them.

**"Economic Rights"** has the meaning given to that term in the Custody Trust Deed.

**"Essential Requirements"** has the meaning given to it in clause 2.2.

**"Excluded Costs"** has the meaning given to that term in clause 13.8.

**"Farmer Shareholder"** means, at any time, a person who produces milk or intends to produce milk in New Zealand from dairy cows as a business and who is, at that time, a Fonterra Shareholder.

**"FFCT Trust Deed"** means the deed entitled "Deed of Trust Establishing the Fonterra Farmer Custodian Trust" entered into by Fonterra dated 25 October 2012, as amended from time to time.

**"Financial Year"** means the period which is from time to time adopted as the financial year of Fonterra, initially being the period from and including 1 August in a calendar year up to and including 31 July in the next calendar year. If at any time Fonterra adopts a different period as its financial year, references in this agreement to dates (which are based on an assumed financial year from 1 August to 31 July) shall automatically be updated by the parties to reflect that change.

**"FMCA"** means the Financial Markets Conduct Act 2013.

**"Fonterra Board"** means the board of directors of Fonterra.

**"Fonterra Chair"** has the meaning given to that term in clause 9.2.

**"Fonterra Shareholder"** means:

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

**"Fonterra Shareholders' Market"** or **"FSM"** means any exchange or trading facility selected by Fonterra (from time to time) which provides a facility for the trading of Shares among Permitted Persons.

**"Fonterra Unit"** means the unit that has been issued as such by the Manager, having the rights set out in clause 4.5 of the Fund Trust Deed.

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

**"Fund"** has the meaning given to it in paragraph C of the Introduction to this agreement.

**"Fund Arrangements"** has the meaning given to that term in clause 2.3(b).

**"Fund Chair"** has the meaning given to that term in clause 9.1.

**"Fund Directors"** has the meaning given to that term in clause 9.1.

**"Fund Size Policy"** means the Fund Size Risk Management Policy adopted by the Fonterra Board or such other policy to similar effect as may be adopted from time to time by the Fonterra Board having consulted with the Shareholders' Council as required by the SHC Deed Poll.

**"Fund Trust Deed"** means the trust deed for the Fund entitled "Fonterra Shareholders' Fund Unit Trust Deed" dated 23 October 2012, as amended from time to time.

**"Fundamental Terms"** means:

- (a) in relation to the Manager, the terms contained in clauses 10.2 of this agreement, and the terms contained in clauses 4.8 and 4.9 of the Custody Trust Deed; and
- (b) in relation to Fonterra, the terms contained in clause 12.3 and clause 13.4 of this agreement.

**"GST"** means goods and services tax payable under the Goods and Services Tax Act 1985.

**"Independent Agent Agreement"** means the agreement entitled "Independent Agent Agreement" between Fonterra and the person appointed from time to time to be the "Independent Agent" under the Constitution dated 25 October 2012, as amended or replaced from time to time.

**"Independent Shareholder"** means Trustees Executors Limited or such other entity as is from time to time the holder of all of the issued shares in the capital of the Manager.

**"Information"** has the meaning given to that term in clause 17.2.

**"Intellectual Property"** means all intellectual property rights, including but not limited to the following rights:

- (a) patents, copyright, designs, trade and service marks (including goodwill in those marks), domain names and trade names and any right to have confidential information kept confidential;
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist anywhere in the world (including New Zealand).

**"Law"** means, at any time and from time to time, any principle in common law or equity and any requirement under any legislation, regulation, rule, instrument, code of practice, ordinance or by-law, and includes any Legal Requirement to which Fonterra or the Fund (as applicable) is subject.

**"Legal Requirement"** means, at any time and from time to time, any writ, order, injunction, judgment, mandatory code of conduct or rules of any industry body which Fonterra or the Fund (as applicable) is a member of, or has obligations to, from time to time.

**"Licence Guidelines"** has the meaning set out in clause 15.5.

**"Listing Agreement"** means any agreement entered into between the Manager, on behalf of the Fund, and the operator of the relevant Unit Market, in relation to the quotation of Units on that market.

**"Listing Rules"** means the listing rules in force from time to time and which are applicable to the quotation and trading of Units on the relevant Unit Market.

**"Loss"** means costs, losses, expenses, claims, damages and liabilities.

**"Manager's Board"** means the board of directors of the Manager.

**"Manager's Shareholding Deed"** means the deed entitled "Shareholding Deed" entered into by the Independent Shareholder, the Manager and Fonterra, dated 23 October 2012, as amended from time to time.

**"Market Operator"** means:

- (a) in relation to the FSM, the Operator (as defined in the Constitution) of that market from time to time; and
- (b) in relation to the Unit Market, the operator of that market from time to time,

which in each case (at the date of this agreement) is intended to be NZX.

**"Market Operator Agreement"** means the agreement dated 30 August 2012 between Fonterra and NZX as the Market Operator of the FSM.

**"Notice"** has the meaning given to that term in clause 22.1.

**"NZX"** means NZX Limited and includes its successors and assigns and, as the context permits, includes any duly authorised delegate of NZX.

**"NZX Main Board"** means the main board equity security market operated by NZX.

**"Offer"** means an invitation to subscribe for Units issued by the Fund.

**"Offer Document"** means any document required (under applicable Law) to be issued by the Fund in connection with, or to facilitate, an Offer.

**"Operating Costs"** has the meaning given to that term in clause 13.1.

**"Permitted Person"** means:

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

**"PPSA"** means Personal Property Securities Act 1999.

**"Related Company"** has the meaning given to it in section 2(3) of the Companies Act 1993 on the basis that the term "company" when used in that section means any body corporate (wherever incorporated).

**"Registered Volume Provider"** or **"RVP"** 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 Fund and such other related services as Fonterra may from time to time require.

**"Registrar"** means the provider from time to time of registry services to the Fund, who shall be appointed in accordance with the Fund Trust Deed and being, at the date of this agreement, Computershare Investor Services Limited.

**"Replacement Manager"** has the meaning given to that term in clause 18.1.

**"RVP Agreement"** means an agreement between Fonterra and a person appointed from time to time to be a Registered Volume Provider.

**"RVP Custody Deed"** means the deed entitled "Custody Deed Relating to Fonterra Shares Held for the RVP" between the Fonterra Custodian, the RVP and Fonterra dated 25 October 2012, as amended or replaced from time to time.

**"Securities Laws"** means any Laws governing the making of an Offer, including the FMCA and the Financial Markets Conduct Regulations 2014.

**"security interest"** means:

- (a) in respect of any personal property, a security interest (as defined in the PPSA); and
- (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.

**"Services"** means the services identified in clause 12.3, and any additional services agreed under clause 12.4.

**"Share"** means a co-operative share issued, or to be issued, by Fonterra.

**"SHC Deed Poll"** means a deed poll granted by way of a letter dated 6 August 2012 issued by the Fonterra Chair to the chairman of the Shareholders' Council, as amended from time to time.

**"Shareholders' Council"** has the meaning given to that term in the Constitution.

**"Specified Parties"** has the meaning given to that term in clause 21.4.

**"Term"** means the term of this agreement specified in clause 19.1.

**"Third Party"** means any legal entity, company or person that is not a party to this agreement.

**"Trading Among Farmers"** means the share trading system referred to as such in the Constitution in force at the date of this agreement.

**"Treasury Stock"** means Shares or Units which are held by Fonterra pursuant to the Companies Act, the Co-operative Companies Act 1996, and/or DIRA.

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

**"Unit Holder"** means the person for the time being entered on the Unit Register as the holder for the time being of a Unit and includes persons jointly entered on the Unit Register as the holder of a Unit.

**"Unit Market"** means a registered exchange or trading facility on which Units are from time to time quoted and traded and, if Units are at any time quoted and traded on more



than one such registered exchange or trading facility, means all such markets or facilities collectively.

**"Unit Register"** means the register of Unit Holders maintained by the Registrar in respect of the Fund.

**"Voucher"** means a certificate or other instrument issued to a Fonterra Shareholder in accordance with the Constitution and any policy made from time to time by the Fonterra Board, recording that a Fonterra Shareholder has disposed of Economic Rights to the Fund.

1.2 **References:** In this agreement unless the context otherwise requires, or specifically stated otherwise:

- (a) headings are to be ignored in construing this agreement;
- (b) the singular includes the plural and vice versa;
- (c) one gender includes the other genders;
- (d) references to individuals include companies and other corporations and vice versa;
- (e) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether before or after the date of this agreement);
- (f) reference to any document includes reference to that document (and, where applicable, any of its provisions) as amended, novated, supplemented, or replaced from time to time;
- (g) reference to a party, person or entity includes an individual, partnership, firm, company, body corporate, corporation, association, trust, estate, state, government or any agency thereof, municipal or local authority and any other entity, whether incorporated or not (in each case whether or not having a separate legal personality);
- (h) "written" and "in writing" include any means of reproducing words, figures or symbols in a tangible and visible form;
- (i) references to money are to New Zealand dollars;
- (j) references to times of day or dates are to New Zealand times and dates;
- (k) each schedule or other attachment forms part of this agreement;
- (l) if there is any ambiguity or inconsistency between a provision in this agreement and any other document, this agreement shall prevail;
- (m) a right or power may be exercised from time to time and at any time;
- (n) any word or expression cognate with a definition in this agreement has a meaning corresponding or construed to the definition;
- (o) reference to a Part, section, clause, sub-clause, schedule or a party is a reference to that Part, section, clause, sub-clause, schedule or party in this agreement;

- (p) any covenant or agreement on the part of two or more persons binds those persons jointly and severally;
- (q) reference to anything of a particular nature following upon a general statement does not derogate from or limit the application of the general statement, unless the particular context requires such derogation or limitation;
- (r) "including" and similar words do not imply any limitation; and
- (s) reference to "month" or "monthly" means calendar month or calendar monthly.

### 1.3 **Fund and Supervisor:**

- (a) References in this agreement to the "**Fund**" being granted, or exercising, rights, or performing obligations, refer (unless otherwise stated) to the grant of rights to, exercise of rights by, or performance of obligations by, the Manager (or any agent or representative of the Manager, which can include Fonterra) in its capacity as manager of the Fund.
- (b) For clarity, the Supervisor's obligations under this agreement are limited to those that the Supervisor has expressly agreed to perform under this agreement. The Supervisor will have no responsibility for the performance of any other obligations, undertakings or agreements under this agreement or for supervising the performance by any other party or parties to this agreement of any of its or their obligations, undertakings or agreements under this agreement.

## 2. **INTENTION AND PURPOSE**

2.1 **Intention:** The parties acknowledge that the intention of the arrangements outlined in this agreement is to:

- (a) provide a structure for implementation of Trading Among Farmers in so far as it contemplates the establishment and continued operation of an Authorised Fund, having regard to the Essential Requirements in clause 2.2; and
- (b) ensure compliance with the provisions of the Constitution, the FFCT Trust Deed, the Custody Trust Deed, and the SHC Deed Poll which govern the establishment and operation of an Authorised Fund; and
- (c) for that purpose, cause the Fund to be constituted, and provide for entry into the arrangements which will govern the operation of the Fund.

2.2 **Essential Requirements:** The Constitution, the FFCT Trust Deed, the Custody Trust Deed, and the SHC Deed Poll specify the following "**Essential Requirements**" of Trading Among Farmers:

- (a) The Fonterra Board may authorise an Authorised Fund to acquire, hold or dispose of rights or interests in Shares. Pursuant to the FFCT Trust Deed the Fonterra Board has committed that there will only be one Authorised Fund (except where the transition arrangements in the FFCT Trust Deed apply).
- (b) The Fonterra Board may permit an Authorised Fund to enter into arrangements (and the Fonterra Board may approve the terms of any such arrangements) with Fonterra Shareholders for the acquisition of rights or interests in Shares by the Authorised Fund subject however to the restrictions specified in the SHC Deed Poll.

- (c) The Fonterra Board may require that the Shares in which rights or interests are acquired by an Authorised Fund are held by a custodian, and Fonterra has committed (pursuant to the FFCT Trust Deed) that the only entity which may hold Shares in which Economic Rights are acquired for the purposes of the Fund will be the Fonterra Custodian.
- (d) The Fonterra Board may specify limits on the extent to which Fonterra Shareholders may dispose of rights or interests in Shares to or for the benefit of an Authorised Fund, and may adjust and re-determine these limits from time to time. Pursuant to the SHC Deed Poll Fonterra has committed to a board policy which will have the effect that no Fonterra Shareholder will be permitted to dispose of Economic Rights in Shares to a level which is greater than 33% of the minimum number of Shares required to be held by that Shareholder under the Constitution, and has undertaken that this board policy will not be altered except in accordance with the procedure set out in the SHC Deed Poll.
- (e) The Fonterra Board may set an overall limit on the number (expressed as a percentage of the total number of Shares then on issue) of Shares in which rights or interests may be held for or in relation to an Authorised Fund. Although the Constitution specifies a limit in this regard of 25% of the total number of Shares on issue (excluding Treasury Stock), Fonterra has confirmed as a matter of board policy (stated in the SHC Deed Poll) that this limit will be applied as if it referred to a limit of 20% of the total number of Shares on issue (excluding Treasury Stock), and has undertaken that this board policy will not be altered except in accordance with the procedure set out in the SHC Deed Poll.
- (f) Neither the trustee nor the manager of any Authorised Fund may hold any Shares itself and neither the trustee nor the manager of any Authorised Fund may exercise, control, or exert influence over, any voting rights attached to any Shares (but it is acknowledged that nothing in this paragraph (f) prevents the Supervisor performing duties assumed in other capacities and in the ordinary course of its business as a trustee).

2.3 **Structure:** In accordance with the authority granted to it in the Constitution, and having regard to the Essential Requirements outlined in clause 2.2, the Fonterra Board has:

- (a) determined that it will facilitate and approve the establishment of the Fund, permitted the Fund to operate under the name "Fonterra Shareholders' Fund", and authorised Economic Rights to be acquired by the Fund subject always to compliance with the Essential Requirements;
- (b) approved the arrangements which are to constitute the "**Fund Arrangements**" and caused the technical design of Trading Among Farmers to be undertaken in a manner that will give effect to those arrangements; and
- (c) adopted the Fund Size Policy.

2.4 **Purpose:** The parties' purpose in entering into this agreement is to implement the overall structure described in clauses 2.1, 2.2 and 2.3 and to provide for the detailed arrangements required to implement that structure. Each party will, to the extent such matters are within its power, take all steps reasonably necessary to give effect to that purpose.

2.5 **Status of provisions:** While clauses 2.1 to 2.3 inclusive are not intended to create legally binding obligations they are, together with clause 2.4, intended to provide a context for interpretation of the arrangements set out in this agreement. In the event of any dispute or disagreement between the parties, any expert, arbitrator or court, to

whom recourse is had by a party for the purpose of interpreting or enforcing this agreement, shall have regard to the matters described in clauses 2.1 to 2.4 inclusive, and shall construe this agreement in such manner as will best give effect to, and reflect, the purpose described in clause 2.4.

## ***PART B - ESTABLISHMENT OF THE FUND***

### **3. PURPOSE OF THE PART**

3.1 **Purpose:** This Part B contains arrangements between Fonterra and the Manager in relation to the establishment and authorisation of the Fund, entry into the Custody Trust Deed, the processes under which Economic Rights will be acquired by the Supervisor (for the Fund), and the framework for management of the initial Offer of Units by the Fund.

### **4. ESTABLISHMENT**

4.1 **Key documents:** The following parties each confirm that they have, prior to the date of this agreement entered into and executed, or will immediately following entry into and execution of this agreement enter into and execute, the following agreements and deeds:

- (a) for Fonterra:
  - (i) the Fund Trust Deed;
  - (ii) the FFCT Trust Deed;
  - (iii) the Custody Trust Deed;
  - (iv) the RVP Agreement;
  - (v) the Independent Agent Agreement;
  - (vi) the Deed of Acknowledgement and Variation;
  - (vii) the RVP Custody Deed; and
  - (viii) the SHC Deed Poll;
- (b) for the Manager:
  - (i) the Fund Trust Deed;
  - (ii) the Custody Trust Deed;
  - (iii) the Listing Agreement; and
  - (iv) the Deed of Acknowledgement and Variation,
- (c) for the Supervisor:
  - (i) the Fund Trust Deed; and
  - (ii) the Custody Trust Deed,
- (d) for the Fonterra Custodian:

- (i) the FFCT Trust Deed;
- (ii) the Custody Trust Deed;
- (iii) the RVP Custody Deed; and
- (iv) the Deed Poll for Market Participants.

4.2 **Issue of Fonterra Unit:** The Manager has issued the Fonterra Unit to the trustees of the Fonterra Farmer Custodian Trust, as the joint holders of the Fonterra Unit.

4.3 **FSM Rules:** Fonterra confirms that at all times while Shares are quoted and traded on the FSM it will comply with the FSM Rules, including in particular rule 3.3.5.

## 5. APPOINTMENT, AUTHORISATION, AND PURPOSE

5.1 **Appointment:** Subject to completion of the steps described in clause 4.1, Fonterra:

- (a) appoints and authorises the Fund to be an Authorised Fund; and
- (b) licenses the Fund to operate, and the Manager covenants that the Fund will operate, under the name "Fonterra Shareholders' Fund",

in each case on the terms set out in this agreement.

5.2 **Authority to acquire Economic Rights:** In its capacity as an Authorised Fund, the Manager and the Supervisor are hereby authorised by Fonterra to acquire, hold, and dispose of, Economic Rights but only:

- (a) for the purpose specified in the SHC Deed Poll; and
- (b) on the terms, and subject to the conditions, described in this agreement and in the Fund Trust Deed, it being acknowledged that such terms are intended to reflect and comply with the restrictions contained in the Constitution, the Custody Trust Deed and the SHC Deed Poll.

By executing this agreement, Fonterra confirms for the benefit of the Supervisor and the Manager that the terms of the Fund Trust Deed do reflect and comply with the restrictions contained in, and any applicable requirements of, the Constitution, the Custody Trust Deed and the SHC Deed Poll.

5.3 **Purpose of the Fund:** The purpose of the Fund (and the role of the Manager on its behalf) is to be a passive vehicle for managing, and passing through to Unit Holders, the Economic Rights derived from the Fonterra Shares which are from time to time held for the Fund under the Custody Trust Deed. The Fund is not intended to be an active participant in this process. The Fund will, to the maximum extent permitted by law, delegate to, and rely on, Fonterra to discharge for it all of the duties and obligations it would otherwise assume or perform. As a result, and without limiting the generality of the foregoing, the Fund must not (unless otherwise provided for in this agreement, or required to give effect to its obligations at Law, or agreed in writing by Fonterra):

- (a) employ or engage any employees, contractors, or other personnel to provide services for the Fund;
- (b) acquire or lease any premises or facilities;
- (c) acquire or lease any equipment or other physical assets; or

- (d) otherwise acquire any assets or assume any obligations or liabilities, except to the extent expressly contemplated by the documents referred to in clause 4.1.

## 6. CUSTODY TRUST ARRANGEMENTS

### 6.1 **Custody Arrangements:** The parties acknowledge that the Custody Trust Deed:

- (a) provides that neither the Manager nor the Supervisor may at any time:
  - (i) call for, demand or seek, directly or indirectly, by any means, the transfer of any part of the trust property held by the Fonterra Custodian pursuant to the Custody Trust Deed (including but not limited to legal title to any Shares forming part of such trust property) to itself; or
  - (ii) otherwise interfere in, or take any step or do anything which affects, the holding of the trust property held pursuant to the Custody Trust Deed,

but nothing in this clause affects the operation of clauses 15.1 or 9.3 of the Fund Trust Deed; and

- (b) has been approved by Fonterra and may not be amended or terminated without Fonterra's prior written approval (which approval may be granted or withheld on the terms specified in the Custody Trust Deed).

### 6.2 **Re-vesting of Shares:** Fonterra and the Supervisor each agree that if, at any time, the Fonterra Custodian retires, the Custody Trust Deed is terminated, or for any other reason the Fonterra Custodian ceases to perform its role as trustee under the Custody Trust Deed:

- (a) Fonterra shall be entitled to cause a replacement custodian to be appointed to perform the role of Fonterra Custodian, in which case the parties shall each co-operate in good faith and take all steps within their respective power to cause the replacement custodian to assume all of the rights and obligations of the Fonterra Custodian under the Custody Trust Deed and under this agreement;
- (b) Fonterra shall ensure that the governance arrangements and ownership structure of the replacement custodian are equivalent to the governance arrangements and ownership structure of the Fonterra Custodian;
- (c) if Fonterra is, for any reason, unable to procure the outcomes described in paragraphs (a) and (b), the parties shall co-operate in good faith with a view to agreeing upon an alternative resolution of that issue but in no circumstances shall the Shares in which Economic Rights are held by the Fonterra Custodian for or in relation to the Fund, or the Economic Rights in those Shares, be transferred, disposed of, or conveyed on any basis (whether legally or beneficially) to or for the benefit of any person other than a transferee (which may include a replacement custodian or replacement Fund (respectively)) which has been approved in writing by Fonterra; and
- (d) following any such transfer the retiring or ceasing custodian shall have no further right or interest of any kind in the relevant Shares.

## 7. FUND ARRANGEMENTS

7.1 **Context:** As outlined in clause 2.2(b), the Fonterra Board is permitted by the Constitution to approve the terms of any arrangements to be entered into between Fonterra Shareholders and an Authorised Fund.

7.2 **Fund arrangements:** For that purpose, as stated in clause 2.3(b), the Fonterra Board has approved the Fund Arrangements, which, among other things:

- (a) prescribe the detailed mechanics by which a Fonterra Shareholder may dispose of Economic Rights to the Fund;
- (b) record the basis on which Vouchers will be issued to Fonterra Shareholders who dispose of Economic Rights to the Fund;
- (c) specify the basis on which a Permitted Person may request redemption of a Unit and transfer of a Share in respect of any such Unit; and
- (d) are intended to facilitate management of the size of the Fund having regard to the Fund Size Policy and to provide the basis on which the Manager and the Fund will co-operate with Fonterra to give effect to the Fund Size Policy,

and Fonterra will separately notify the Manager and the Supervisor as to the initial Fund Arrangements which are to apply. To avoid doubt:

- (e) nothing in the description of those arrangements in this clause 7.2 limits the scope or construction of any Fund Arrangements which may be specified under this clause 7; and
- (f) the Fund Arrangements are intended to be descriptive of and to give effect to the arrangements which are to apply and, in the event of any inconsistency between the Fund Arrangements and the terms of the agreements and trust deeds identified in clause 4.1, the terms of those agreements and trust deeds will prevail.

7.3 **Modifications:** The Manager and the Supervisor acknowledge that, subject always to the Constitution, the SHC Deed Poll, the Custody Trust Deed and the Fund Trust Deed, the Fonterra Board is entitled to modify or re-determine the Fund Arrangements at any time. Fonterra agrees to consult with the Manager and the Supervisor and provide reasonable notice in advance of any modification to, or substitution of, those arrangements and assist the Manager and the Supervisor to make any change to their systems and procedures which may be required as a result of the modification or re-determination of such arrangements. Any such modified or substituted arrangements shall, until further modified or substituted in accordance with this clause 7.3, constitute the then-operative Fund Arrangements.

7.4 **Record:** Each modified or substituted version of the Fund Arrangements issued by Fonterra from time to time in accordance with clause 7.3 shall be retained by each party as a record of the then operative Fund Arrangements.

## ***PART C - OPERATION OF THE FUND***

### **8. PURPOSE OF PART**

8.1 **Overview:** This Part C contains arrangements which are intended to govern the ongoing relationship between Fonterra and the Fund after the initial Offer, and the core governance arrangements between Fonterra and the Fund, which include:

- (a) arrangements with respect to the nomination of Appointed Directors;
- (b) rules affecting the exercise of voting rights attached to Shares in which the Fund may from time to time hold Economic Rights;
- (c) arrangements with respect to Offers of securities by the Fund;
- (d) arrangements for provision of services by Fonterra to the Fund;
- (e) the disclosure protocol which is intended to operate between Fonterra and the Fund;
- (f) intellectual property arrangements; and
- (g) other operational arrangements concerning the Fund.

## 9. NOMINATION OF APPOINTED DIRECTORS

9.1 **Manager's Board:** Fonterra and the Manager acknowledge that, pursuant to the Manager's Shareholding Deed, the arrangements that will govern the appointment of directors of the Manager include the following:

- (a) the Manager's Board will be comprised of:
  - (i) up to three directors elected by Unit Holders in accordance with clause 31.8 of the Fund Trust Deed and clause 3.2 of the Manager's Shareholding Deed (it being acknowledged that, in accordance with the Manager's Shareholding Deed, the persons who will initially perform this role have been appointed by Fonterra); and
  - (ii) up to two directors nominated by Fonterra,

and the persons elected or appointed to the Manager's Board under this clause are referred to in this agreement as the "**Fund Directors**";
- (b) the Fund Directors elected under paragraph (a)(i) will nominate one of their number (being a person elected under paragraph (a)(i)) to be the chairperson of the Manager's Board ("**Fund Chair**").

9.2 **Appointed Directors - Fonterra Board:** Fonterra wishes to provide a forum for the Fund Directors to have input into decisions taken by the Fonterra Board as to the appointment of Appointed Directors and, to give effect to that arrangement:

- (a) if (and whenever) a vacancy arises (or is anticipated by the chairperson of the Fonterra Board ("**Fonterra Chair**")) in relation to the position of an Appointed Director on the Fonterra Board, the Fonterra Chair shall cause a shortlist of suitable candidates for appointment to that role to be prepared and the Fonterra Chair (or his or her delegate) shall consult with the Fund Chair in relation to the appointment of the relevant Appointed Director, it being the objective of Fonterra and the Manager that the appointment of each such person as an Appointed Director will be supported by a majority of the Fund Directors referred to in clause 9.1(a)(i);
- (b) Fonterra and the Manager acknowledge that each person appointed as an Appointed Director must be an "Independent Director" (as defined in the FSM Rules);



- (c) following each consultation process described in paragraph (a) the Fonterra Chair shall advise the Fund Chair who the Fonterra Board has appointed to the relevant Appointed Director role, and will subsequently advise whether the appointment of the relevant Appointed Director was ratified in accordance with the Constitution at the next annual meeting of Fonterra Shareholders; and
- (d) Fonterra will confirm (by way of an announcement to the FSM and the Unit Market) whether each such appointment was supported by a majority of the Fund Directors referred to in clause 9.1(a)(i).

9.3 **Appointed Directors at the launch date:** For the purpose of clause 9.2, the appointments of each of the four persons who hold office as Appointed Directors at 29 November 2012, being the date specified in the Order in Council made by the Governor-General under section 109B of DIRA as the date from which the subpart 5 provisions specified in section 109A of that Act do not apply, being Messrs David Jackson, John Waller, Ralph Waters and Sir Ralph Norris are deemed to have been made in accordance with the process described in clause 9.2 and the process in clause 9.2 shall not apply in respect of the continuation in office of any of those Appointed Directors as at 29 November 2012.

## 10. VOTING - FONTERRA SHARES

10.1 **Fund will not seek to exercise voting rights:** The Manager, the Supervisor and the Fonterra Custodian each acknowledge that the Constitution regulates the voting rights of Fonterra Shareholders and that the intent of those provisions is that:

- (a) voting rights in Fonterra may only be exercised by Farmer Shareholders; and
- (b) no such voting right shall be exercised by the Fonterra Custodian, the Manager, the Supervisor, or any other person in relation to Shares which are at any time held by the Fonterra Custodian for the purposes of the Fund, except as set out in clause 10.3.

The Fonterra Custodian, the Manager and the Supervisor each acknowledge that these provisions are of fundamental importance to Fonterra and reflect the desire of Fonterra Shareholders to ensure that control and ownership of Fonterra is retained by Farmer Shareholders.

10.2 **Mechanics:** The Manager, the Supervisor and the Fonterra Custodian each agree that they will not at any time directly or indirectly:

- (a) cast any voting rights attached to or arising from the Shares the subject of the Economic Rights and held by the Fonterra Custodian, including, appointing or procuring the Fonterra Custodian to appoint, any proxy or representative to cast any vote attached to such Shares, and acknowledge that any purported or attempted exercise of any such vote shall be of no effect;
- (b) requisition or join in requisitioning any meeting of Fonterra Shareholders;
- (c) propose or join with any other party in proposing any matter for discussion or resolution at any meeting of Fonterra Shareholders;
- (d) attend or speak at any meeting of Fonterra Shareholders, unless invited to do so by Fonterra; or
- (e) purport or represent to any Third Party, including any Fonterra Shareholder, RVP, or Unit Holder, that it is entitled to do any of the matters specified in paragraphs (a) to (d).

10.3 **Statutory rights:** Nothing in clauses 10.1 or 10.2 prevents:

- (a) the Manager from instructing the Fonterra Custodian how to exercise any voting right arising under sections 116 and 117 of the Companies Act 1993 (and clause 24.2 of the Constitution) to the extent that the Fonterra Custodian acquires any voting right in the circumstances referred to in those provisions (in relation to Shares in which Economic Rights have been acquired by the Fund); or
- (b) the Fonterra Custodian exercising any voting right in the circumstances referred to in paragraph (a),

and the Fonterra Custodian and the Manager each confirm that the Manager's entitlement to instruct the Fonterra Custodian how to exercise any voting right referred to in this clause 10.3 is a contractual entitlement conferred by this agreement and does not constitute part of the Economic Rights or other property of the trust declared pursuant to the Custody Trust Deed.

10.4 **Invalidity of other voting directions:** Any request, direction, or instruction received by the Fonterra Custodian, the Manager, or the Supervisor from any person in respect of the exercise of any voting right in relation to any Fonterra Shares must, except to the extent otherwise provided in clause 10.3, be ignored and not given effect to by any of such parties, and the Fonterra Custodian, the Manager, and the Supervisor shall not be liable on any basis in respect of any failure or refusal by it to give effect to any such request, direction or instruction.

## 11. DISTRIBUTIONS AND SECURITIES OFFERINGS

11.1 **Distributions:** On each occasion that Fonterra declares or pays any dividend or makes any other Distribution, Fonterra and the Manager shall co-operate to ensure that record dates and other mechanics are aligned to enable the relevant entitlement to be passed through to the appropriate Unit Holders.

11.2 **Offers:** On each occasion that Fonterra makes an offer of securities to Fonterra Shareholders and, in order to pass through to Unit Holders an equivalent right it is necessary for the Fund to make a corresponding Offer of Units to Unit Holders and for an Offer Document (or other disclosure material) to be prepared and registered or issued in relation to either or both of those Offers, the following arrangements shall apply:

- (a) Fonterra will collate and provide all information required in relation to Fonterra and will arrange the preparation of all Offer Documents and other disclosure material relevant to that Offer;
- (b) the Manager will collate and provide all information required in relation to the Manager and the Fund for this purpose;
- (c) Fonterra will co-ordinate, and Fonterra and the Manager (and their respective directors) shall each be entitled to participate in, and be able to rely on, any Due Diligence Review undertaken in relation to such Offer; and
- (d) Fonterra and the Manager shall generally co-operate and use all reasonable endeavours to give effect to each such process.

11.3 **Continuing offers of Units:** If, or to the extent that, the Manager is required, in any period following 29 November 2012, to register or maintain any continuously operative Offer Document in respect of the continuing offer of Units by the Fund, clause 11.2 shall

apply as if references to an "Offer" were to the offer made under each such Offer Document.

## 12. PROVISION OF SERVICES BY FONTERRA TO THE FUND

12.1 **Arrangement:** Fonterra and the Manager acknowledge and agree that, having regard to the purpose of the Fund as outlined in clause 5.3:

- (a) the Fund will, to the maximum practicable and lawful extent, utilise and share infrastructure, support functions, and services provided by Fonterra, and:
  - (i) such infrastructure, support, and services will not (unless otherwise agreed in writing by Fonterra) be sourced from any person other than Fonterra, or otherwise duplicated by the Fund;
  - (ii) if, and whenever, the Fund requires additional services, or access to infrastructure and support which is not specifically contemplated in this agreement, the Fund will approach Fonterra and the parties will co-operate with a view to Fonterra providing that service, or access to that infrastructure or support; and
  - (iii) Fonterra and the Manager will co-operate and work together to identify and implement, to the maximum practicable and lawful extent, all available steps to contain and reduce the operating costs of the Fund, and to seek efficiencies and avoid duplication of resource and/or unnecessary costs in the operation of the Fund; and
- (b) the arrangements outlined in clause 5.3 and clause 12.1(a) are intended to assist in managing the overall operating costs of Trading Among Farmers, and Fonterra has agreed to the arrangements in this clause 12 and in clause 13 on the basis of those arrangements.

12.2 **Registry access:** The Manager agrees that at all times during the Term it will use the same Registrar as provides share registry services to Fonterra, and Fonterra and the Manager shall co-operate to ensure that:

- (a) at all times, the Manager has electronic access to Fonterra's share register for the purpose of performing its role as the Manager, and to assist the Manager in complying with its obligations under this agreement; and
- (b) Fonterra has electronic access to the Fund's Unit register.

12.3 **Scope of services:** Having regard to clause 12.1, Fonterra will arrange or procure for the Fund, and (where applicable) provide to the Fund, and (to the maximum extent permitted by the FMCA) the Manager will utilise, the following (which, in the case of the matters set out in paragraphs (a) to (j) below, shall be provided to (or passed on to) the Manager or the Fund at no cost, and, in the case of the costs, expenses, and fees set out in paragraphs (k) to (r) below shall be funded through the Budgets provided for in clause 13):

- (a) the services of the Supervisor;
- (b) the services of the Independent Shareholder;
- (c) the services of the Registrar in connection with maintenance of the Unit Register for the Fund;

- (d) access to Fonterra's web-portals, to the extent such access is appropriate for the purpose of facilitating communications by the Manager (for the purposes of this agreement) with Unit Holders;
- (e) access to Fonterra's investor relations capability, and access (to the extent reasonably necessary or appropriate in connection with the Fund's activities) to Fonterra management and directors. In particular Fonterra will, if requested by the Fund Chair to do so (and provided Fonterra does not consider, on reasonable grounds, such attendance to be unlawful or otherwise inappropriate), cause the Fonterra Chair and the Chief Executive of Fonterra (or their respective delegates from the Fonterra Board and Fonterra's senior management team, as applicable) to attend (either in person or via electronic link) any annual or special meeting of Unit Holders;
- (f) accounting support, to assist the Manager in preparing financial statements for the Fund;
- (g) assistance in preparing any Offer Documents contemplated by clause 11;
- (h) monitoring services in connection with, and assistance in enforcing, any limits on holdings of Units by Unit Holders and their "Associates" (as that term is defined in the Fund Trust Deed);
- (i) assistance with design, printing and distribution of reports, notices and other material to Unit Holders; and
- (j) such other services and support as Fonterra can lawfully and practicably provide to the Manager to assist it to comply with its obligations under the Fund Trust Deed, the Custody Trust Deed, the Listing Agreement, and (through the Deed of Acknowledgement and Variation) the Registry Services Agreement referred to in that deed and in relation to statutory compliance functions of the Manager,

and, in addition, (and in the case of the Supervisor and the Manager, to the maximum extent permitted by the FMCA) Fonterra shall pay:

- (k) the costs and expenses payable to the Supervisor;
- (l) the costs and expenses payable to the Independent Shareholder;
- (m) the listing fee payable under the Listing Agreement;
- (n) any reasonable fees and expenses payable by the Manager to its directors;
- (o) the costs of preparing any Offer Documents under clause 11;
- (p) the costs of preparing and having audited the half year and full year accounts and reports to Unit Holders in respect of the Fund and the Manager;
- (q) the costs of holding an annual meeting or special meeting of Unit Holders; and
- (r) all reasonable legal (but without limiting clause 13.5), accounting, tax and other professional fees associated with the Fund.

12.4 **Other services:** In addition to the services referred to in clause 12.3, Fonterra shall provide or arrange, on behalf of the Manager, the Fund, or the Supervisor (as the case may be), and the Manager shall source from or through Fonterra, such other services as the Manager may from time to time reasonably require and as are agreed between the

Manager and Fonterra from time to time (subject in each case to any restrictions imposed by the FMCA).

12.5 **Standard of performance:** In providing the Services, Fonterra shall:

- (a) provide all personnel, processes, and resources required to provide the Services;
- (b) use appropriately skilled, qualified and experienced personnel;
- (c) keep the Manager advised of the progress of the Services and changes or possible changes to the scope or timing of the Services;
- (d) minimise any disruption to the Fund's operations; and
- (e) comply with all relevant Laws and its obligations under all relevant documents identified in clause 4.1 and maintain all licences, approvals and permits required in order for it to provide the Services.

12.6 **Reports:** Fonterra shall from time to time report to the Manager in such form as may be reasonably required in order to enable the Manager to monitor the provision of the Services.

12.7 **Co-operation:** The parties shall co-operate and give effect to the arrangements in this clause 12 throughout the Term.

### 13. OPERATING COSTS OF THE FUND

13.1 **Submission:** Not less than 20 Business Days before the beginning of each Financial Year, Fonterra shall prepare and provide to the Manager an annual operating budget ("**Budget**") in respect of:

- (a) the costs relating to the Services referred to in clauses 12.3(k) to 12.3(r) inclusive; and
- (b) to the extent that any additional Services are agreed (under clause 12.4) and are procured from third party providers, the costs associated with those Services,

(the costs referred to in paragraphs (a) and (b) being together referred to as the "**Operating Costs**") in relation to the Fund for the next Financial Year.

13.2 **Implementation of Budget:** Each Budget provided by Fonterra under clause 13.1 shall take effect as from the start of the relevant Financial Year. The Manager shall be entitled to review each such Budget and raise any issues in relation to it, which Fonterra will consider and discuss with the Manager, and Fonterra and the Manager shall co-operate with a view to agreeing any reasonable adjustment which may be appropriate in relation to the Budget following those discussions.

13.3 **Appointment of Fonterra as agent:** The Manager, to the maximum extent practicable and permitted by Law, appoints Fonterra as its agent to procure the Services referred to in clause 13.1 and to pay on behalf of the Manager the costs outlined in each Budget. In relation to any invoice issued in respect of any of the Operating Costs, the following process will apply:

- (a) the Manager shall promptly submit such invoices to Fonterra for payment (unless Fonterra has already received the relevant invoice as agent for the Manager);
- (b) each such invoice shall, once confirmed by Fonterra, and subject to paragraph (c) below, be paid by Fonterra to the account of the Manager, in accordance with the contracted terms;
- (c) in consideration of Fonterra providing funding to the Manager in accordance with this clause, the Manager agrees that it will use the funding provided to it by Fonterra to make payment of the particular costs (specified in the Budget and claimed by it in the relevant invoice) as and when such costs are due for payment, and will not use any funds provided to it by Fonterra for any other purpose; and
- (d) in order to facilitate the payment of costs by or on behalf of the Manager, the Manager may provide Fonterra with a revocable direction to make payment of invoiced costs on behalf of the Manager directly to the issuer of the relevant invoice.

13.4 **Unbudgeted costs:** If, during any Financial Year, the Fund incurs costs or expenses which have not been anticipated in the then operative Budget, or expects to incur such costs or expenses, Fonterra and the Manager shall co-operate with a view to agreeing a reasonable additional allowance for such costs and adjusting the Budget to provide for those costs or expenses.

13.5 **Actions against Fonterra or the Fonterra Custodian:** To the extent permitted by the FMCA, Fonterra also agrees that it will pay the reasonable costs of any advice which the Manager may from time to time reasonably require as to whether Fonterra and/or the Fonterra Custodian have complied with their respective obligations under this agreement, the Fund Trust Deed, and/or the Custody Trust Deed, and of any action that the Manager may bring in respect of an alleged breach by Fonterra or the Fonterra Custodian of their obligations under those documents, provided that:

- (a) the Fund Chair has first formally raised the relevant issue with the Fonterra Chair and has advised that the Manager intends to seek an opinion from a barrister or solicitor of the High Court of New Zealand who holds the rank of Queen's Counsel or Senior Counsel ("**Counsel**") on the question whether the Fund has a cause of action against Fonterra or the Fonterra Custodian;
- (b) following any such advice the Fonterra Chair and the Fund Chair have discussed the issue in good faith with a view to determining whether they can agree on an alternative means of dealing with the issue;
- (c) if the Fonterra Chair and the Fund Chair have not, within a reasonable time, agreed on an alternative means of dealing with the issue, the Manager shall obtain an opinion from Counsel on the relevant issue; and
- (d) Counsel shall be requested to advise whether the Fund has a cause of action against Fonterra or the Fonterra Custodian (as applicable) in respect of the particular matter on which Counsel's advice is sought,

and for that purpose:

- (e) Counsel shall be agreed upon by Fonterra and the Manager, or failing agreement, appointed by the President of the New Zealand Law Society;

- (f) Counsel agreed upon by Fonterra and the Manager or appointed by the President of the New Zealand Law Society must be independent and suitably qualified;
- (g) once Counsel has been appointed, Counsel shall, after considering:
  - (i) any representations made by Fonterra or the Manager;
  - (ii) any information made available to him or her by Fonterra or the Manager; and
  - (iii) any other relevant matters,
 advise Fonterra and the Manager whether in his or her view the Fund has a cause of action against Fonterra or the Fonterra Custodian;
- (h) a copy of Counsel's opinion shall be given to the Manager, and a statement as to the outcome of the process shall be given by Counsel to Fonterra and/or the Fonterra Custodian (as the case may be);
- (i) any confidential communications between Counsel and any other person for the purposes of establishing whether the Fund has a cause of action against Fonterra or the Fonterra Custodian shall be protected by absolute privilege,

and Fonterra shall, subject to clause 13.6, pay Counsel's fees for any opinion sought under this clause.

**13.6 Consequences of Counsel's advice:** If:

- (a) clauses 13.5(c) to 13.5(h) inclusive are complied with and Counsel concludes that the Fund has a cause of action against Fonterra or the Fonterra Custodian in respect of the particular matter then, in relation to any further advice which the Manager may elect to seek as to whether Fonterra or the Fonterra Custodian has complied with its obligations under this agreement, the Fund Trust Deed, or the Custody Trust Deed, and in relation to any action that the Manager may bring in respect of any such alleged breach, the Manager shall:
  - (i) obtain estimates of the costs prior to them being incurred, and submit such estimates to Fonterra for its approval (such approval not to be unreasonably withheld); and
  - (ii) report to Fonterra each month with a reconciliation of costs incurred in relation to any such advice or action against the estimated costs referred to in paragraph (i) above; or
- (b) Counsel's opinion under clause 13.5 is that the Fund does not have a cause of action against Fonterra or the Fonterra Custodian (as applicable) in respect of the particular matter on which Counsel's advice is sought then, as between the Manager and any Unit Holder, the Manager shall not be obliged to make any claim, bring any action, or commence any proceeding, against Fonterra or the Fonterra Custodian (as the case may be) in respect of that matter.

**13.7 Unfounded allegations:** If at any time the Manager has sought opinions from Counsel under clause 13.5 which, on two successive occasions, have concluded that the Fund does not have a cause of action against Fonterra or the Fonterra Custodian (as applicable), Counsel's costs in relation to the next opinion which the Manager requests from Counsel under that clause shall be for the account of the Fund, and the Manager

shall seek a direction from Unit Holders (by way of an Extraordinary Resolution under the Fund Trust Deed) prior to incurring that cost.

13.8 **Excluded costs:** Fonterra shall not be liable to pay any costs ("**Excluded Costs**") incurred by the Fund of the following nature:

- (a) all Loss suffered by the Manager as a result of any material breach by the Manager of, or material non-compliance by the Manager with, the terms of this agreement, the Custody Trust Deed, the Fund Trust Deed or any other agreement or obligation binding on the Manager or the Fund (including but not limited to the Deed of Acknowledgement and Variation and the Listing Agreement), except to the extent that such Loss is caused or contributed to by a breach by Fonterra of its obligations under any of the agreements or arrangements referred to in this clause;
- (b) all Loss incurred by the Manager in taking any corrective action pursuant to clause 15.6; and
- (c) all costs and other Losses associated with, or incurred in connection with, any advice which the Manager may from time to time require in connection with any claim or proceeding which the Manager is considering bringing, or is bringing, against Fonterra, Fonterra's directors, employees or representatives, or any other person, on any basis other than as specifically contemplated in clause 13.6.

13.9 **GST:** Any amount payable by Fonterra to the Manager under clauses 13.4 or 13.6 shall be paid to the Manager plus GST (if any) chargeable on the relevant amount.

13.10 **Attribution:** The Manager will only make a direction under clause 4.1(c) of the Fund Trust Deed in accordance with instructions in writing, if any, given by Fonterra from time to time.

## 14. DISCLOSURE PROTOCOL AND TRADING HALTS

14.1 **Disclosure on the FSM and the Unit Market:** Fonterra and the Manager shall cooperate with each other, and take all steps reasonably required, to ensure that information ("**Disclosure Information**") to be disclosed by either of them under the FSM Rules or the Listing Rules (as the case may be) is disclosed simultaneously to both the FSM and the Unit Market. To give effect to this:

- (a) The Market Operator has agreed, in the Market Operator Agreement, that all information provided by Fonterra to the Market Operator for release under section 9 of the FSM Rules will be simultaneously released by the Market Operator under the "FCG" code relating to Fonterra and under the "FSF" code relating to the Fund.
- (b) The Market Operator has agreed, in the Market Operator Agreement, that all information provided by the Manager to the Market Operator for release under section 10 of the Listing Rules will be simultaneously released by NZX under the "FCG" code relating to Fonterra and under the "FSF" code relating to the Fund.
- (c) The Market Operator has also agreed, in the Market Operator Agreement, that the process described in paragraphs (a) and (b) is intended to be automatic, and that neither the Manager (in relation to information provided by Fonterra) nor Fonterra (in relation to information provided by the Manager) will be



required to take any further step or provide any additional confirmation to give effect to this arrangement.

- (d) The arrangements described in paragraphs (a) and (b) are for the benefit of the Manager for the time being and may be enforced by such Manager pursuant to the Contracts (Privity) Act 1982, notwithstanding that it is not a party to the Market Operator Agreement. Fonterra agrees that it will not agree to any modification or termination of those arrangements without the prior written agreement of the Manager to such change.
- (e) Notwithstanding the arrangements in paragraphs (a) to (d) above, Fonterra and the Manager may from time to time agree on protocols to apply to the disclosure by each of them of information which is not, in respect of the relevant party, "material information" within the meaning of the FSM Rules or the Listing Rules (as the case may be) and may seek arrangements with NZX to give effect to those protocols.
- (f) Fonterra and the Manager shall co-operate, and each shall take any other steps as are within their respective power, to give effect to the arrangements described in this clause 14.1.

14.2 **Trading halts:** The Manager appoints Fonterra as its agent and representative for the purpose of requesting any halt on the trading of Units in the Unit Market if, and whenever, Fonterra requests a trading halt in respect of Shares trading in the FSM, to the intent that any trading halt implemented by the Market Operator in the FSM shall be simultaneously implemented by the Market Operator in the Unit Market. Each of Fonterra and the Manager agree to co-operate in good faith and do all things necessary or desirable to give effect to this arrangement.

## 15. INTELLECTUAL PROPERTY AND LICENCE GRANT

15.1 **Scope:** Each party agrees that it has, and will have, no licence or other right to use the other party's Intellectual Property, except as set out in this agreement.

15.2 **Rights retained:** Fonterra retains all Intellectual Property in all data, documentation and other materials provided by it to the Manager in connection with this agreement.

15.3 **Grant of licence:** Fonterra grants to the Manager a non-exclusive, revocable, non-transferable licence to use Fonterra's Intellectual Property (including, for the avoidance of doubt, Fonterra's name, brand and logos) during the Term, solely for the purpose of, and to the extent strictly necessary for, the fulfilment of the Manager's obligations under this agreement.

15.4 **Warranty:** Fonterra warrants to the Manager that the use by the Manager of Fonterra's Intellectual Property in accordance with this agreement will not infringe the Intellectual Property of any Third Party.

15.5 **Guidelines:** The Manager shall comply with all guidelines issued by Fonterra from time to time in relation to the use of its Intellectual Property ("**Licence Guidelines**"). The Licence Guidelines that apply at the date of this agreement are attached as Schedule 1. Fonterra may at any time amend or substitute those guidelines by notice in writing to the Manager, and the Manager shall take such steps as are necessary to comply with any such amended or substituted guidelines applicable from time to time.

15.6 **Compliance:** If the Manager fails to comply with the then-applicable Licence Guidelines, Fonterra may, without limiting any of its other rights and remedies:

- (a) require the Manager to take such corrective action, at the Manager's cost, as Fonterra may (in its sole discretion) require;
- (b) require the Manager to modify its systems, procedures and practices to ensure that such non-compliance will not re-occur; and/or
- (c) suspend the Manager's right to use such brands, logos or other elements of Fonterra's Intellectual Property as Fonterra may specify, until such time as Fonterra is reasonably satisfied that the Manager has taken steps to ensure that the Manager can, and will, comply with the relevant requirement.

## 16. GENERAL OBLIGATIONS

16.1 **General obligations:** Fonterra, the Manager and the Supervisor shall each, to the extent applicable to their respective roles and obligations under this agreement:

- (a) comply with all Laws (including, without limitation, all Securities Laws) relevant to it;
- (b) hold, comply with the terms of, and keep in force, all licences, permits, authorisations and consents necessary for performance of its obligations under this agreement and under the Fund Trust Deed;
- (c) comply with all obligations imposed on it under the Custody Trust Deed and the Fund Trust Deed;
- (d) in the case of the Manager only, comply with and maintain the Listing Agreement, take all actions necessary to facilitate and maintain quotation of the Units on each Unit Market, and comply at all times with the Listing Rules; and
- (e) in the case of the Manager and Fonterra, perform its duties in an efficient and businesslike manner.

## 17. CONFIDENTIALITY

17.1 **Disclosure in Offer Documents:** The parties acknowledge that this agreement (or a detailed summary of it) is likely to be required to be disclosed, or registered, to facilitate the Offer of Units in the Fund, and each party consents to such disclosure to the extent it is required.

17.2 **Confidentiality Obligation:** Subject to clauses 17.1 and 17.3, each party shall keep confidential, and make no disclosure of, information obtained from the other party under this agreement ("**Information**").

17.3 **Exceptions:** Information may be disclosed by a party if:

- (a) disclosure is required by Law, or necessary to comply with the listing rules of any recognised stock exchange including the Listing Rules; or
- (b) disclosure is necessary to obtain the benefits of, and fulfil obligations under, this agreement; or
- (c) that Information already is, or becomes, public knowledge other than as a result of a breach of clause 17.2 by that party; or

(d) disclosure is made to a lawyer or accountant for that party.

17.4 **Prior notification and consultation:** If either party is required or permitted by clause 17.3(a) to make a disclosure or announcement, it shall, before doing so:

- (a) give to the other party the maximum notice reasonably practicable in the circumstances, specifying the requirement under which it is required or permitted to disclose Information, and the precise Information which it is required or permitted to disclose;
- (b) comply with all reasonable directions by the other party to contest or resist any requirement to disclose Information; and
- (c) consult in good faith with the other party with a view to agreeing upon the form and timing of the disclosure or announcement.

## 18. CHANGE OF MANAGER

18.1 **Retirement of Manager and appointment of a replacement Manager:** The Manager may retire as the manager of the Fund and a replacement manager ("**Replacement Manager**") may be appointed in each case in accordance with the process described in the Fund Trust Deed and on each occasion that this process applies the parties shall enter in to, and cause the Replacement Manager to enter in to, a deed of accession in the form attached as Schedule 2.

18.2 **Effect of replacement:** Following the effective date of retirement of the Manager and the appointment of a Replacement Manager under clause 18.1:

- (a) the Replacement Manager shall be entitled to receive all amounts payable to the Manager under the then-current Approved Budget which relate to any period following the date on which it accedes to this agreement;
- (b) the retiring Manager shall provide to the Replacement Manager and, if necessary, Fonterra, all reasonable co-operation, assistance and advice in relation to the matters set out in this agreement to ensure an orderly transition between the retiring Manager and the Replacement Manager; and
- (c) all references in this agreement to the "Manager" shall thereafter be construed as references to the Replacement Manager.

## **PART D - GENERAL PROVISIONS**

### 19. TERM AND TERMINATION

19.1 **Term:** This agreement shall commence from the date it is executed and continue for the duration of the Fund ("**Term**") unless earlier terminated in accordance with the terms of this agreement.

19.2 **Termination rights:** This agreement may be terminated in the circumstances, and with the consequences, specified in clauses 19.2 to 19.9 inclusive.

19.3 **Breach by the Manager:** Without limiting any other right or remedy of Fonterra, if at any time:

- (a) the Manager breaches, or threatens that the Manager will breach, or will take an action or do anything which, if taken or done would breach, any material term of this agreement, Fonterra shall be entitled (by notice in writing to the

Manager and the Supervisor, and without any further action being required) to act pursuant to clause 38.2 of the Fund Trust Deed to take over and perform, as the agent of the Manager and with such powers, authorities and discretions as are held by the Manager, such of the functions of the Manager pursuant to the Fund Trust Deed as Fonterra elects, and the Manager agrees not to:

- (i) undertake any functions which Fonterra so elects to undertake; or
  - (ii) interfere in or object to the performance of those obligations by Fonterra under this clause;
- (b) the Manager has been instructed or required, by Extraordinary Resolution (as that term is defined in the Fund Trust Deed), to take an action which would breach a Fundamental Term, or the Manager threatens, announces or states, or if Fonterra otherwise reasonably anticipates, that the Manager will take such action, and:
- (i) a notice in writing has been given by Fonterra to the Manager (copied to the Supervisor) specifying the relevant breach or requiring the relevant action not to be taken or done (as the case may be); and either
    - (aa) the breach has not been remedied to Fonterra's reasonable satisfaction within a period of 20 Business Days of a notice given under paragraph (i); or
    - (bb) the Manager has indicated, or if Fonterra otherwise reasonably anticipates, that the Manager will proceed to take the relevant action or do the relevant thing despite the notice given by Fonterra under paragraph (i),

and, in addition:

- (ii) Fonterra has given notice in writing to the Supervisor and the Manager which:
  - (aa) requests that the Manager immediately gives notice to the Supervisor (copied to Fonterra) that it is retiring from office as Manager of the Fund;
  - (bb) advises that unless the Manager retires within 20 Business Days (or, where an action is proposed by the Manager but has not yet occurred, such shorter notice period as Fonterra may specify to pre-empt the relevant action being taken by the Manager), Fonterra intends to terminate this agreement;
  - (cc) instructs the Supervisor to remove the Manager and appoint a replacement Manager with effect from the date that the Manager retires; and
  - (dd) confirms that if, within the relevant notice period, the Manager retires and the Supervisor appoints a temporary Manager pursuant to clause 27.6 of the Fund Trust Deed, Fonterra will not seek to terminate this agreement as a result of the breach or anticipated breach referred to in this clause; and

- (iii) the Manager has not given a notice in accordance with paragraph (aa) in which it retires with effect prior to expiry of the notice period referred to in paragraph (bb), or has not prior to that date been removed by the Supervisor in accordance with the Fund Trust Deed, and in either case a temporary Manager has not been appointed,

then in any such case Fonterra may, on expiry of the notice period referred to in paragraph (bb), give to the Supervisor a further notice in writing terminating this agreement with effect from such date, and with such notice period (if any), as Fonterra may specify.

- (c) In any case where paragraph (b) applies Fonterra may, by notice in writing to the Manager, elect (at its sole discretion) to require the Manager:
  - (i) to transfer to Fonterra or to such person as Fonterra may nominate all of the Economic Rights which are held by the Fonterra Custodian for the Fund; or
  - (ii) to instruct the Fonterra Custodian to transfer to Fonterra or to such person as Fonterra may nominate all of the Shares in respect of which Economic Rights are held,

and the consideration for the transfer of such Economic Rights or Shares shall be the payment to the Supervisor of an amount determined in accordance with paragraph 1 of Schedule 3.

**19.4 Breach of the Authorised Fund Contract by Fonterra:** Without limiting any other right or remedy of the Manager, if at any time:

- (a) Fonterra breaches, or threatens that Fonterra will breach, or will take an action or do anything which, if taken or done would breach, a Fundamental Term and:
  - (i) a notice in writing has been given by the Manager to Fonterra (copied to the Supervisor) specifying the relevant breach and requiring it to be remedied or requiring the relevant action not to be taken or done (as the case may be); and either
    - (aa) the breach has not been remedied to the Manager's reasonable satisfaction within a period of 20 Business Days of a notice given under paragraph (i); or
    - (bb) Fonterra has indicated, or if the Manager otherwise reasonably anticipates, that Fonterra will proceed to take the relevant action or do the relevant thing despite the notice given by the Manager under paragraph (i),

and, in addition:

- (ii) further notices in writing have been given by the Manager addressed specifically to each of the Fonterra Chair and the Chief Executive Officer of Fonterra, which:
  - (aa) provide copies of the notice given under paragraph (a)(i);
  - (bb) confirm that the matter has not been remedied or that the circumstances are still anticipated (as outlined in paragraphs (ii) or (iii), as the case may be); and

(cc) provide one final opportunity for Fonterra to remedy the matter or confirm that it will not take the relevant action (as the case may be); and

(iii) Fonterra has not remedied the matter to the Manager's reasonable satisfaction or confirmed in writing that the relevant action will not be taken, in either case within a further period of 10 Business Days of the further notice given under this clause,

then in any such case the Manager may, on expiry of the notice period referred to in paragraph (v), give to Fonterra a further notice in writing (copied to the Supervisor) terminating this agreement with effect from the date on which a transaction is completed under paragraph (b) below, or such earlier date as Fonterra may specify.

(b) In any case where paragraph (a) applies the Manager may, by notice in writing to Fonterra, require Fonterra to acquire, or procure that some other person acquires, all of:

(i) the Economic Rights which are held by the Fonterra Custodian for the Fund; or

(ii) the Shares in respect of which Economic Rights are held by the Fonterra Custodian for the Fund,

in which case:

(iii) Fonterra must, within 12 months of receipt of the notice:

(aa) elect which of these transactions it will give effect to or procure; and

(bb) cause the relevant transaction in (b)(i) or (b)(ii) to be completed; and

(iv) the consideration for the transfer of such Economic Rights or Shares shall be the payment to the Supervisor of an amount determined in accordance with paragraph 2 of Schedule 3.

19.5 **Termination by resolution of Unit Holders:** If Unit Holders pass an Extraordinary Resolution (as that term is defined in the Fund Trust Deed) pursuant to paragraph 11(b)(vi) of Schedule 1 of the Fund Trust Deed:

(a) the Manager must co-operate with Fonterra; and

(b) Fonterra must act efficiently and use reasonable efforts,

in each case with a view to facilitating a person nominated by Fonterra acquiring all of:

(c) the Economic Rights which are held by the Fonterra Custodian for the Fund; or

(d) the Shares in respect of which Economic Rights are held by the Fonterra Custodian for the Fund,

(the election as to which of (c) or (d) is to apply to be made by Fonterra in its sole discretion) and the Manager acknowledges that:

- (e) any acquirer of such Economic Rights or Shares must be a party acceptable to Fonterra, in Fonterra's sole discretion;
- (f) in the case of an acquisition of Economic Rights, Fonterra shall be entitled to require any such acquirer to assume the obligations under, and to comply with, the Custody Trust Deed and this agreement (subject to such changes to those arrangements as Fonterra may specify);
- (g) if such an acquirer has not been found and/or has not entered into arrangements acceptable to the Manager and Fonterra to acquire the Economic Rights or the Shares (as the case may be) within 120 Business Days after the passing of the Extraordinary Resolution referred to in this clause, Fonterra will be entitled, but will be under no obligation, to give notice in writing to the Manager electing to acquire (at its election) the Economic Rights or the relevant Shares;
- (h) if Fonterra gives a notice under paragraph (g), the consideration payable to the Supervisor for the acquisition of such Economic Rights or Shares will be an amount determined in accordance with paragraph 3 of Schedule 3.

**19.6 Continuation and settlement procedure:** Where:

- (a) Fonterra has given notice under any either clause 19.3 or clause 19.5 (causing the Manager to dispose of Economic Rights or Shares to Fonterra or to a person nominated by Fonterra); or
- (b) the Manager has given notice to Fonterra under clause 19.4 requiring Fonterra to acquire (or to procure that some other person acquires) such Economic Rights or Shares,

the following arrangements shall apply:

- (c) the Manager must, if requested to do so by Fonterra, cause the Fund to continue to operate in accordance with the Fund Trust Deed until the relevant transaction has been completed;
- (d) the Economic Rights or Shares (as the case may be) must be transferred by the Supervisor to Fonterra or the relevant acquirer free of all security interests and together with all rights and other benefits arising from the time that any notice requiring the disposal of such Rights or Shares was given under this clause 19; and
- (e) the relevant transaction must be completed on a date specified by Fonterra, and in specifying such date Fonterra shall have regard to (and give effect to) the requirements of the relevant clause.

**19.7 Interrelationship of termination provisions:** If a party gives notice validly commencing one of the termination processes described in clauses 19.3, 19.4 or 19.5 (as the case may be), that process shall operate to the exclusion of any other termination process described in another of those provisions which may become exercisable by that party or any other party, unless or until the notice commencing the relevant process is withdrawn or the relevant process is otherwise stayed or found to be incapable of exercise.

- 19.8 **No other right to terminate:** No party is entitled to terminate or cancel this agreement, except as expressly provided in this agreement, and section 7 of the Contractual Remedies Act 1979 shall have effect subject to this clause.
- 19.9 **Effect of termination:** If this agreement is terminated, on the date on which such termination takes effect:
- (a) the authorisation for the Fund to operate as the "Fonterra Shareholders' Fund" shall terminate on a date specified by Fonterra;
  - (b) the licence granted pursuant to clauses 5.1 and 15 shall expire;
  - (c) the Manager shall cease to use (and must return to Fonterra) all Fonterra Intellectual Property and Confidential Information of Fonterra; and
  - (d) all invoices properly submitted by the Manager under clause 13 in respect of the period up to the date of termination shall be paid by Fonterra but Fonterra shall not, for the avoidance of doubt, be required to pay any termination fee to the Manager or any other party,
- and termination will not affect:
- (e) the liability of any party for any breach of this agreement which has occurred prior to such termination; or
  - (f) any other rights and remedies available to a party under this agreement or at Law.
- 19.10 **Survival following expiry or termination:** If this agreement expires or is terminated, the provisions of clauses 2, 6.2, 7, 10, 13, 17, 19.3(c), 19.4(b), 19.5, 19.6, 19.7, 19.8, 19.9, 19.10, 20, 21, 22, and any other provision which by its nature operates or is intended to survive termination or expiry of this agreement will continue in force in accordance with their terms.

## 20. LIABILITY AND FORCE MAJEURE

- 20.1 **Liability for direct loss:** To the extent permitted by the FMCA, if any party ("**Defaulting Party**") breaches or fails to perform a term of this agreement the Defaulting Party shall be liable for the Loss actually suffered by each other party (each a "**Non-Defaulting Party**") as a direct result of, or directly arising out of, that breach and in all cases the Loss claimable by a Non-Defaulting Party shall exclude:
- (a) any Loss attributable to the acts or omissions of any party other than the Defaulting Party (or such other party's employees or agents);
  - (b) any Loss caused or contributed by another party's failure to comply with clause 20.6; and
  - (c) any Consequential Loss (whether or not the likelihood of such Consequential Loss was known or ought to have been known by the Defaulting Party).
- 20.2 **Consequential Loss:** For the purposes of clause 20.1, "**Consequential Loss**" means any indirect or consequential Loss (including loss of revenue or profit, loss of business opportunity or goodwill and any claims for indirect, special or punitive damages) in each case arising out of or resulting from a breach or non-performance by a party of its obligations under this agreement.



- 20.3 **Force Majeure:** Notwithstanding clause 20.1, Fonterra shall not be liable for any failure or delay in complying with any obligation imposed on it under clause 12 if:
- (a) the failure or delay arises directly or indirectly from a cause reasonably unforeseeable or beyond Fonterra's reasonable control and not from the fault or insolvency, or an intentional act or omission, of Fonterra, its employees or agents;
  - (b) Fonterra, on becoming aware of the cause, notifies the Manager in writing, as soon as reasonably practicable, of the nature and expected duration of, and the obligation affected by, the cause; and
  - (c) Fonterra uses its reasonable endeavours to:
    - (i) mitigate the effects of the cause on its obligations under those provisions; and
    - (ii) perform its obligations under those provisions despite the cause,
- but nothing in this clause shall excuse any party from any obligation to make a payment when due under this agreement.
- 20.4 **Exclusion of warranties conditions, etc:** To the fullest extent permissible at Law:
- (a) all representations, terms, warranties, guarantees, or conditions whether implied by statute, common law, custom of the trade or otherwise, including, but not limited to, implied warranties, guarantees or conditions of merchantability and/or fitness for a particular purpose, are excluded; and
  - (b) no party shall have any liability to any other party under this agreement other than for a breach of an express term of this agreement.
- 20.5 **No representations:** Each party acknowledges that it does not rely on any representation or statement made by or on behalf of any other party in entering into this agreement, other than the express provisions of this agreement and the agreements and documents listed in clause 4.1.
- 20.6 **Mitigation:** Should a party have any claim under this agreement then that party must take all reasonable steps to avoid or mitigate any loss or liability in respect of which recovery is sought.
- 20.7 **Remedies:** Each party acknowledges that:
- (a) in the event of any alleged breach of this agreement by a Defaulting Party, damages may not be an adequate remedy and a Non-Defaulting Party shall be entitled to seek equitable relief (including an injunction) in addition to damages. In any proceeding brought by a Non-Defaulting Party seeking equitable relief for a breach of this agreement, a Defaulting Party shall not claim that the breach is one which may not or ought not to be the subject of equitable relief; and
  - (b) nothing in this clause 20 limits the right of a party to enforce this agreement by seeking an order for specific performance.
- 20.8 **Limitation for the Supervisor:** The Supervisor, in taking or omitting any action for or in connection with this agreement is, and shall be deemed to be, acting for and on behalf of the Fund and not in its own capacity. The Supervisor shall not be under any personal liability, nor shall resort be had to its private property, for the satisfaction of any

obligation or claim arising out of or in connection with any contract or any other agreement or deed or other obligation of the Fund.

- 20.9 **Survival:** This clause 20 (insofar as it relates to liability of a party for any breach of this agreement prior to termination) will survive termination or expiry of this agreement.

## 21. DISPUTE RESOLUTION

- 21.1 **Disputes:** Before commencing any proceedings in respect of any dispute, difference or claim arising out of or in connection with this agreement, or the subject matter of this agreement, including any dispute as to its existence or validity ("**Dispute**"), a party must give the other parties notice in writing ("**Dispute Notice**") of the dispute setting out reasonable particulars of the relevant matter.

- 21.2 **Obligations to continue:** If a Dispute arises between the parties each party must continue to perform its obligations under this agreement.

- 21.3 **Dispute process:** Following receipt of a Dispute Notice, a senior representative of each of the parties will meet for the purpose of endeavouring to resolve the Dispute on mutually acceptable terms.

- 21.4 **Fonterra and the Manager:** If the affected parties in relation to any such Dispute include one of Fonterra or the Manager, and the Dispute has not been resolved within a period of 20 Business Days from the date of the relevant Dispute Notice, Fonterra and/or the Manager ("**Specified Parties**") may, by notice in writing to the other of them, require the Dispute to be resolved in accordance with clause 21.5.

- 21.5 **Arbitration:** Arbitration may be commenced by a Specified Party giving notice to the other Specified Party stating the subject matter and details of the Dispute and requiring the Dispute to be referred to arbitration ("**Arbitration Notice**"). The arbitrator will be appointed by the Specified Parties by agreement or, failing agreement within five Business Days after, and exclusive of, the date of the Arbitration Notice, the appointment will be made, upon request of a Specified Party, by the president or vice president (or his or her nominee) for the time being of the Arbitrators' and Mediators' Institute of New Zealand Inc ("**AMINZ**"). The place of arbitration will be Auckland.

- 21.6 **Costs:** Except for the Manager, the Specified Parties will bear their own costs (including legal costs) and an equal share of the costs of the award in relation to the arbitration, unless the arbitrator determines that a Specified Party shall bear some proportion of, or all of, the costs of the other Specified Party because of impropriety, lack of cooperation or unreasonable conduct by that Specified Party.

- 21.7 **Injunctive relief:** Nothing in this clause 21 will preclude any party from taking immediate steps to seek urgent equitable relief before a New Zealand court.

- 21.8 **Exceptions:** The provisions of this clause 21 do not apply in relation to, or limit, any other provision of this agreement which contains a specific process for resolution of disputes or differences.

## 22. NOTICES

- 22.1 **Notice:** Every notice or other communication ("**Notice**") for the purposes of this agreement shall:

- (a) be in writing; and

(b) be delivered in accordance with clause 22.3.

22.2 **Method of service:** A Notice may be given by:

- (a) delivery to the physical address of the relevant party; or
- (b) posting it by pre-paid post to the postal address of the relevant party; or
- (c) sending it by facsimile transmission to the facsimile number of the relevant party, so long as clause 22.4 is complied with; or
- (d) sending it by email to the email address of the relevant party, so long as clause 22.4 is complied with.

22.3 **Time of receipt:** A Notice given in the manner:

- (a) specified in clause 22.2(a) is deemed received at the time of delivery;
- (b) specified in clause 22.2(b) is deemed received three Business Days after (but exclusive of) the date of posting;
- (c) specified in clause 22.2(c) or clause 22.2(d) is deemed (subject to clause 22.4(d)) received:
  - (i) if sent between the hours of 9am and 5pm (local time) on a local working day, at the time of transmission; or
  - (ii) if sub-clause (i) does not apply, at 9am (local time) on the local working day most immediately after the time of sending.

For this purpose "local time" is the time in the place of receipt of the Notice, and a "local working day" is a normal working day in that place.

22.4 **Facsimile and email notice:** If receipt is disputed, a Notice given:

- (a) by facsimile, is not deemed received unless the party giving Notice produces a facsimile transmission report of the device from which the transmission was made which evidences full transmission, free of errors, to the facsimile number of the party given Notice;
- (b) by email, is not deemed received unless the party giving Notice produces evidence that the email was sent to the email address of the party given Notice without any notification of non-receipt.

22.5 **Addresses:** For the purposes of this clause the address details of each party are:

- (a) the details set out below; or
- (b) such other details as any party may notify to the others by Notice given in accordance with this clause.

**Fonterra:**

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

Email address: taf.ops@fonterra.com  
 Attention: The General Counsel

**Manager:**

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

**Fonterra 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

**Supervisor:**

Physical address: Level 14, 191 Queen Street, Auckland 1010, New Zealand  
 Postal address: PO Box 274, Shortland Street, Auckland, New Zealand  
 Facsimile number: +64 9 969 3732  
 Email address: ct-auckland@nzgt.co.nz  
 Attention: Relationship Manager - Corporate Trusts

**23. GENERAL**

**23.1 Amendments:** No:

- (a) amendment to this agreement;
- (b) agreement between the parties for the purpose of, or referred to in, this agreement;
- (c) consent or approval for the purposes of, or referred to in, this agreement,

is effective unless it is in writing and signed (if sub-clauses (a) or (b) apply) by all the parties or (if subclause (c) applies) the party required to give the consent or approval.

**23.2 Entire agreement:** This agreement, when read with the other agreements and trust deeds referred to in it, contains the entire agreement between the parties relating to the subject matter of this agreement and supersedes and cancels any previous agreement, understanding or arrangement whether written or oral.

**23.3 No reliance:** Each party:

- (a) acknowledges that it has made its own independent enquiry and investigations in relation to the subject matter of this agreement and has entered into this agreement solely in reliance on its own judgement, and is not relying on any statement or representation (written or oral) made by or on behalf of any party, or any director, employee, representative or advisor of any party except to the

- extent that such a statement or representation is expressly recorded in this agreement; and
- (b) agrees that (to the extent permitted by Law) all implied representations or warranties of the other parties are excluded.
- 23.4 **Further assurance:** Each party shall make all applications, execute all documents and do or procure all other acts and things necessary to implement and to carry out its obligations under, and the intention of, this agreement.
- 23.5 **Assignment:** No party shall directly or indirectly assign, transfer, mortgage, charge, pledge or otherwise dispose of any of its rights or interests in, or any of its obligations or liabilities under or in connection with this agreement without:
- (a) the agreement in writing of all other parties and execution of a formal deed of novation with all other parties to this agreement; and
- (b) in the case of the Manager, compliance with the provisions of clause 27 of the Fund Trust Deed.
- 23.6 **Sub-contracting:** None of the Manager, the Supervisor, nor the Fonterra Custodian shall be entitled to sub-contract to any Third Party performance of any or all of its obligations under this agreement without the prior written consent of Fonterra (which may be given or withheld at its sole discretion), but this clause does not limit clause 19.3 of this agreement or clause 36.2 of the Fund Trust Deed.
- 23.7 **Remedies:** Each party acknowledges that, in the event of any alleged breach of this agreement by any party, damages may not be an adequate remedy and any other party shall be entitled to seek equitable relief (including an injunction) in addition to damages. In any proceeding seeking equitable relief for a breach of this agreement, no party shall claim that the breach is one which may not or ought not to be the subject of equitable relief.
- 23.8 **No partnership, joint venture:** Nothing in this agreement shall create or evidence any partnership, joint venture, agency, trust or employer/employee relationship between the parties, and a party may not make, or allow to be made, any representation that any such relationship exists between the parties. A party shall not have authority to act for, or to incur any obligation on behalf of, the other party, except as expressly provided for in this agreement.
- 23.9 **Rights and powers cumulative:** The rights, powers and remedies provided in this agreement are cumulative with, and are not exclusive of, any rights, powers or remedies at Law or in equity unless specifically stated otherwise.
- 23.10 **Severance:** If any provision of this agreement is, or becomes unenforceable, illegal or invalid for any reason it shall be deemed to be severed from this agreement without affecting the validity of the remainder of this agreement and shall not affect the enforceability, legality, validity or application of any other provision of this agreement.
- 23.11 **No merger:** The provisions of this agreement, and anything done under, or in connection with this agreement, shall not operate as a merger of any of the rights, powers or remedies of any party under, or in connection with, this agreement or at Law, and those rights, powers and remedies shall survive and continue in full force and effect to the extent that they are unfulfilled.
- 23.12 **Costs:** Except as expressly stated otherwise in this agreement, each party shall pay its own costs and expenses in respect of entry into, negotiation and performance of this agreement.

23.13 **Waiver:** No failure or forbearance by a party to exercise, or delay in exercising, (in whole or in part) any right, power or remedy under, or in connection with, this agreement shall operate as a waiver of that right, power or remedy. A waiver of any breach of any provision of this agreement shall not be effective unless that waiver is in writing and is signed by the party against whom that waiver is claimed. A waiver of any breach shall not be, or be deemed to be, a waiver of any other or subsequent breach.

23.14 **Counterparts:** This agreement is deemed to be signed by a party if that party has signed or attached that party's signatures to any of the following formats of this agreement:

- (a) an original; or
- (b) a facsimile copy; or
- (c) a photocopy; or
- (d) a PDF or email image copy;

and if each party has signed or attached that party's signatures to any such format and delivered it in any such format to all of the other parties, the executed formats shall together constitute a binding agreement between the parties.

23.15 **Governing law:** This agreement is governed and interpreted in accordance with the laws of New Zealand. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of this agreement.

**SCHEDULE 1: LICENCE GUIDELINES**  
(Clause 15)

1. **Extent of Intellectual Property:** For the purposes of clause 15.3, and to give effect to that clause, Fonterra grants the Manager the right to use:
  - (a) the Fonterra trade marks notified to the Manager by Fonterra from time to time (the "**Trade Marks**"); and
  - (b) the name "Fonterra",
 (collectively the "**Licensed IP**"), on the terms set out in this agreement and this schedule.
  
2. **Use of Trade Marks:** The Manager shall use the Trade Marks only in the form stipulated from time to time by Fonterra and shall observe any reasonable directions given by Fonterra from time to time as to colours, style, form, size and other visual aspects of representations of the Trade Marks.
  
3. **Restriction:** The Manager shall use the Licensed IP only for the purposes authorised in this agreement and strictly in accordance with the guidelines set out in this schedule and, in particular, shall not use the Licensed IP in any way which would tend to allow that Intellectual Property (or any part thereof) to become generic, lose its distinctiveness, become liable to mislead the public, or be materially detrimental to or inconsistent with the good name, goodwill, reputation and image of Fonterra. For the avoidance of doubt, the Manager shall not use the Licensed IP on, or in relation to, any goods or services other than in connection with the Fund.
  
4. **Acknowledgment:** Whenever the Trade Marks are used by the Manager such use must be accompanied by an asterisk (\*) symbol immediately following such Trade Mark and a footnote reference which reads:
 

\*Trade Mark used under licence from Fonterra Co-Operative Group Limited
  
5. **No other marks:** Subject to paragraph 6 of this schedule, the Manager shall not use the Licensed IP accompanied by other trade marks (whether registered or not) or words describing any other Intellectual Property unless the Licensed IP is sufficiently distinguished from the surrounding and adjacent text and Fonterra is clearly identified as the proprietor of the Licensed IP.
  
6. **Exception:** Notwithstanding paragraph 5 of this schedule, the Manager may use the term "Fonterra", without distinguishing that term from the surrounding and adjacent text, only where such use is as a result of the use of the phrase "Fonterra Shareholders' Fund".
  
7. **No rights:** The Manager shall not, by virtue of this agreement or otherwise:
  - (a) obtain or claim any right, title or interest in or to the Licensed IP except the rights of use as are specifically set out in this agreement, and hereby acknowledges and agrees that the benefit of all such use shall at all times enure to Fonterra;
  - (b) file any application for any mark, or obtain or attempt to obtain ownership of any brand name, trade name, logo or mark, in any jurisdiction, which refers to or is similar to the Licensed IP or any part of it, or any mark, design or logo intended to identify Fonterra or any products or services provided by Fonterra;

- (c) dispute (or assist any Third Party to dispute) the validity of the Licensed IP or its ownership by Fonterra;
  - (d) permit the Licensed IP to be used by any Third Party, without the prior written consent of Fonterra; or
  - (e) do, cause or permit anything which will or may damage, endanger or invalidate the Trade Marks or the title of Fonterra to the Trade Marks and shall not allow others to do so.
8. **Prohibition:** The Manager shall not at any time before or after the Term of this agreement adopt or use any trade mark, logo, symbol, device or other Intellectual Property which incorporates or is deceptively similar to, or is a simulation or imitation of, the Licensed IP, or unfairly competes with the Licensed IP.
9. **No branding:** The Manager shall not at any time before or after the Term of this agreement use the Licensed IP as part of any corporate, business or trading name or style of the Manager, without the prior written consent of Fonterra.
10. **Goodwill:** All goodwill arising from the use by the Manager of the Licensed IP shall accrue exclusively to Fonterra.
11. **Notification of infringement:** The Manager and Fonterra shall promptly notify each other of any unauthorised use or application of any of the Licensed IP (or any trade mark similar to the Trade Marks, or any trade name similar to the name "Fonterra").
12. **Control of proceedings:** Fonterra shall be entitled, at its option, to have full control over all proceedings relating to the Licensed IP and shall, in its sole discretion, decide what action to take in respect of any infringement or any other claim or counterclaim brought or threatened in respect of the registration or use of the Licensed IP.
13. **Co-operation by Manager:** The Manager will give full co-operation to Fonterra (including, without limitation, the provision of documentation) in any action, claim or proceedings brought or threatened in respect of the Licensed IP.
14. **Registered User:** The Manager shall not record itself as a registered user of the Trade Marks or any other Intellectual Property in New Zealand, or take any similar steps in any other jurisdiction, without the prior written consent of Fonterra.



**SCHEDULE 2: FORM OF ACCESSION DEED**  
(Clause 18.1)

**DEED** dated [●]

**PARTIES** [●] ("Manager")  
[●] ("Replacement Manager")

**IN FAVOUR OF** Fonterra Co-operative Group Limited ("**Fonterra**") [●] ("**Fonterra Custodian**") and [●] ("**Supervisor**")

**INTRODUCTION**

- A. The Manager, Fonterra, the Fonterra Custodian and the Supervisor are the parties to an agreement dated [●] ("**Agreement**") relating to the management of the Fonterra Shareholders' Fund (the "**FSF**").
- B. The Manager [wishes to resign] as manager under the Agreement and the Replacement Manager wishes to accede to the terms of the Agreement as the replacement manager of the FSF.
- C. Under the Agreement, the parties are required to execute this deed.

**OPERATIVE PROVISIONS**

- 1. With effect from the date of this deed:
  - (a) The Manager ceases to be a party to the Agreement.
  - (b) The Replacement Manager becomes a party to the Agreement as if it had been named as a party to the Agreement and had executed it and shall be deemed to be named as Manager under the Agreement.
- 2. The Manager is not released from any liability to Fonterra [or ●] under the Agreement existing as at [the date of this deed].
- 3. For the purposes of section 14 of the Property Law Act 2007, the Replacement Manager acknowledges that this deed is, and for all purposes and at all times shall be construed as being, supplemental to the Agreement.
- 4. This deed shall be governed by, and construed in accordance with, the laws of New Zealand, and the parties hereby submit to the non-exclusive jurisdiction of the courts of New Zealand.

**SIGNED AS A DEED**

**SCHEDULE 3: TERMINATION RIGHTS AND CONSEQUENCES**  
(Clause 19)

**CALCULATIONS:**

**1. Breach of this agreement by the Manager:**

$$A = ((VWAPS + VWAPU)/2) \times B \times 0.85$$

**2. Breach of this agreement by Fonterra:**

The purchase price (A) will be a sum equal to D.

$$D = ((VWAPS + VWAPU)/2) \times B \times 1.15$$

**3. Unit Holders elected to wind up the Fund by Extraordinary Resolution:**

$$A = ((VWAPS + VWAPU)/2) \times B$$

**FOR THE ABOVE PURPOSES:**

**A** is the purchase price to be paid

**B** is the number of Shares or Economic Rights to be acquired

**VWAPS** is, subject to the adjustment below, the simple average of the daily volume weighted average sale prices of Shares sold on the FSM for each Trading Day during the Relevant Period but does not include any transaction defined in the NZX Participant Rules as an "International Crossing", a "Special Crossing", a "Special Portfolio Crossing", or otherwise as an "Off Market Trade", or any trade pursuant to the exercise of options over Shares.

**VWAPU** is, subject to the adjustment below, the simple average of the daily volume weighted average sale prices of Units sold on the NZX Main Board for each Trading Day during the Relevant Period but does not include any transaction defined in the NZX Participant Rules as an "International Crossing", a "Special Crossing", a "Special Portfolio Crossing", or otherwise as an "Off Market Trade", or any trade pursuant to the exercise of options over Units.

**Trading Day** means the hours the FSM and NZX Main Board are open for Trading on any day as determined from time to time by the market operator of those markets in accordance with the NZX Participant Rules.

**Relevant Period** means:

- (a) for the purposes of clause 19.3 (breach of the Authorised Fund Contract by the Manager), the six month period expiring on the day immediately prior to the day Fonterra gave its notice to the Manager pursuant to clause 19.3(b)(i);
- (b) for the purposes of clause 19.4 (breach of the Authorised Fund Contract by Fonterra), the six month period expiring on the day immediately prior to the day the Manager gave its notice to Fonterra pursuant to clause 19.4(a)(i);
- (c) for the purposes of clause 19.5 (Unit Holders have elected to wind up the Fund by Extraordinary Resolution), the six month period expiring on the day immediately prior to the day any public disclosure advising of the expectation or intent to propose or seek a vote to wind up or otherwise terminate the Trust;

**NZX Participant Rules** means the participant rules applying to the FSM and the NZX Main Board.

For the purposes of determining the daily volume weighted average sale prices of Shares and Units, where on any Trading Day during the Relevant Period:

(a) the Shares or Units have been quoted cum dividend or cum any other distribution or entitlement and the Shares or Units will be acquired after the date those Shares or Units no longer carry that dividend, distribution or entitlement, then the relevant sale price shall be calculated as follows:

(i) in the case of Shares and in the case of a dividend or any other distribution, the VWAPS will be calculated as:  $(Z \times Y) + (X \times W)$

Where:

**Z** is the VWAPS for the Trading Days during the Relevant Period the Shares were quoted cum dividend or cum any other distribution less the amount of that dividend/distribution

**Y** is the number of Trading Days during the Relevant Period the Shares were quoted cum dividend or cum any other distribution, divided by the total number of Trading Days in the Relevant Period

**X** is the VWAPS for the Trading Days during the Relevant Period the Shares were quoted ex the relevant dividend or ex the relevant other distribution

**W** is the number of Trading Days during the Relevant Period the Shares were quoted ex the relevant dividend or ex the relevant other distribution, divided by the total number of Trading Days in the Relevant Period;

(ii) in the case of Units and in the case of a dividend or any other distribution, the VWAPU will be calculated as:  $(V \times U) + (S \times T)$

Where:

**V** is the VWAPU for the Trading Days during the Relevant Period the Units were quoted cum dividend or cum any other distribution less the amount of that dividend/distribution

**U** is the number of Trading Days during the Relevant Period the Units were quoted cum dividend or cum any other distribution, divided by the total number of Trading Days in the Relevant Period

**S** is the VWAPU for the Trading Days during the Relevant Period the Units were quoted ex the relevant dividend or ex the relevant other distribution

**T** is the number of Trading Days during the Relevant Period the Units were quoted ex the relevant dividend or ex the relevant other distribution, divided by the total number of Trading Days in the Relevant Period;

(iii) in the case of an entitlement which is traded on NZX Main Board or FSM on any Trading Day during the Relevant Period the cum entitlement VWAPS and VWAPU will be reduced by the volume weighted average sale price of all such entitlements sold on the NZX Main Board or FSM during the Relevant Period on the Trading Days on which those entitlements were traded; or

- (iv) in the case of an entitlement which is not traded on the NZX Main Board or the FSM on any Trading Day during the Relevant Period, the value of the entitlement as reasonably determined by Fonterra and the Manager;
- (b) where the Shares or Units are reconstructed, consolidated, divided or reclassified into a lesser or greater number of securities during the Relevant Period, the volume weighted average sale price shall be adjusted by Fonterra and the Manager as they reasonably consider appropriate to take into account such change.

In the event of any dispute between Fonterra and the Manager as to the value under clause (a) or the adjustment under clause (b), or otherwise as to the calculation of the purchase price, this dispute will be resolved in accordance with clause 21 of this agreement.