



1 November 2016

Fonterra Shareholders' Fund transition to the Financial Markets Conduct Act 2013

FSF Management Company Limited has elected for the Fonterra Shareholders' Fund to fully transition to the Financial Markets Conduct Act 2013 (FMCA) in relation to its units, with effect from 1 November 2016.

The Fonterra Shareholders' Fund Trust Deed has been amended and restated to comply with the FMCA, and a Statement of Investment Policies and Objectives has been adopted. Copies of these documents are available by visiting <http://www2.fonterra.com/our-financials/shares-and-units> under "TAF Key Contracts and Deeds".

Mike Cronin

Company Secretary - Fonterra Shareholders' Fund

FSF Management Company Ltd (Australian Registered Business Number 190 539 935, incorporated in New Zealand) is the Manager of the Fonterra Shareholders' Fund

-ENDS-

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FSF MANAGEMENT COMPANY LIMITED
Manager

THE NEW ZEALAND GUARDIAN TRUST COMPANY LIMITED
Supervisor

FONTERRA CO-OPERATIVE GROUP LIMITED
Fonterra

FONTERRA SHAREHOLDERS' FUND TRUST DEED

(as amended and restated)

CONTENTS

1.	DEFINITIONS AND INTERPRETATION	2
2.	COMPLIANCE WITH AND INCORPORATION OF CERTAIN LISTING RULES.....	9
3.	CONSTITUTION OF THE TRUST FUND	11
4.	UNITS	11
5.	ACQUISITION OF ECONOMIC RIGHTS	13
6.	MAXIMUM HOLDING.....	14
7.	ISSUE OF UNITS	17
8.	ISSUE PRICE	17
9.	REDEMPTION OF UNITS.....	18
10.	RESTRICTIONS ON FINANCIAL ASSISTANCE	19
11.	ALTERATION OF RIGHTS OF UNIT HOLDERS.....	19
12.	FORFEITURE AND LIEN	19
13.	INVESTMENTS	21
14.	DISTRIBUTIONS	23
15.	RIGHTS, BENEFITS AND ENTITLEMENTS ARISING FROM SHARES	24
16.	REGISTERS	26
17.	CERTIFICATES, SUBDIVISION, CONSOLIDATION	28
18.	PAYMENT	28
19.	TRANSFER AND TRANSMISSION OF UNITS.....	29
20.	RESTRICTIONS ON ACQUISITIONS	31
21.	ENFORCEMENT OF ACQUISITION RESTRICTIONS	33
22.	COMPULSORY ACQUISITION PROVISIONS.....	35
23.	HOLDING BY BARE TRUSTEE.....	37
24.	REMUNERATION OF SUPERVISOR.....	38
25.	REMOVAL AND RETIREMENT OF Supervisor	38
26.	REMUNERATION OF MANAGER.....	39
27.	REMOVAL AND RETIREMENT OF MANAGER	39
28.	BORROWING AND SECURITY.....	41
29.	ACCOUNTS.....	42
30.	AUDITOR.....	43
31.	MEETINGS OF UNIT HOLDERS.....	43
32.	NOTICES	45
33.	AMENDMENTS TO DEED	46
34.	SUPERVISOR'S AND MANAGER'S LIABILITIES AND INDEMNITIES	47
35.	SUPERVISOR'S POWERS AND COVENANTS	51
36.	MANAGER'S POWERS, DUTIES AND COVENANTS.....	51
37.	TAXATION.....	52
38.	TERMINATION	56

39.	GOVERNING LAW	58
40.	LIMITATION OF LIABILITY	58
41.	TAXATION LIABILITY	59
SCHEDULE 1 : MEETINGS OF UNIT HOLDERS.....		60

DEED made 23 October 2012, as amended and restated with effect from 1 November 2016

PARTIES

FSF MANAGEMENT COMPANY LIMITED ("Manager")

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

FONTERRA CO-OPERATIVE GROUP LIMITED ("Fonterra")

INTRODUCTION

- A. Fonterra's Constitution provides for an "authorised fund" and that its primary purpose is to facilitate:
- (a) liquidity in relation to the trading of Shares; and
 - (b) the ability of Fonterra Shareholders to exchange some or all of their rights or interests in Shares for securities issued by an "authorised fund", and vice versa,
- subject always to the rights, powers and limitations contained in Fonterra's Constitution.
- B. The Manager established an "authorised fund" for the purpose referred to in Introduction A whereby persons may acquire interests in Shares on 23 October 2012. To that end:
- (a) the Authorised Investments are Cash and Economic Rights and all Distributions and Benefits which arise from such Economic Rights and from such investments;
 - (b) subject to paragraph (c) the Trust is a passive investment vehicle which does not actively trade in Shares or Economic Rights, nor undertake any other trading activity; and
 - (c) if a Permitted Person (or a person on the Permitted Person's behalf, including through a settlement system):
 - (i) transfers or issues a Share to the Custodian with the Custodian to hold, or holding, such Share in accordance with the Custody Trust Deed on behalf of the Supervisor for the benefit of the Trust, then, subject to the terms of this Deed, the Manager must issue one Unit to the Transferor in consideration for each such Share so transferred or issued; and
 - (ii) wishes to redeem a Unit then, subject to the terms of this Deed, the Manager must redeem that Unit and contemporaneously direct the Custodian to transfer to that person one Share for the Unit redeemed.
- C. The Supervisor has agreed to act as trustee of the Trust for the benefit of Unit Holders on the terms and conditions set out in this Deed.
- D. Fonterra, the Manager and the Supervisor have agreed to record the terms and conditions under which the Trust is constituted and administered in this Deed.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

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

"Acquisition Notice" has the meaning given to it in clause 22.1.

"Affected Units" means any Unit which is determined to be treated as such pursuant to clause 6.5 or clause 6.6.

"Assets" means, in relation to the Trust, all the real or personal property, rights and assets of the Trust.

"Associate" has the meaning given to it in clause 1.5.

"ASX" means ASX Limited (ABN 98 008 624 691) or the financial market operated by ASX Limited, as the context requires.

"ASX Listing Rules" means the listing rules of ASX and any other rules of ASX which are applicable while the Trust is admitted to the Official List of ASX, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX.

"ASX Settlement" means ASX Settlement Pty Ltd (ABN 49 008 504 532).

"ASX Settlement Operating Rules" means operating rules of ASX Settlement or of any relevant organisation which is an alternative or successor to, or replacement of, ASX Settlement or of any applicable CS facility licensee.

"Attributed PIE Income" has the same meaning as in section YA 1 of the Tax Act.

"Attributed PIE Loss" has the same meaning as in section YA 1 of the Tax Act.

"Attribution Period" has the same meaning as in section YA 1 of the Tax Act.

"Auditor" means the qualified auditor of the Trust Fund from time to time appointed pursuant to clause 30.

"Authorised Fund Contract" means the agreement between the Manager, the Supervisor, the Custodian and Fonterra dated 25 October 2012 entitled "Fonterra Shareholders' Fund Authorised Fund Contract", as amended and restated effective on and from the date that the Trust becomes a "registered scheme" under the FMCA.

"Authorised Investments" means:

- (a) Economic Rights;
- (b) Distributions;
- (c) Benefits;
- (d) Cash; and
- (e) any investment, asset, right, interest, estate or property of any nature whatsoever arising directly or indirectly from any of the items set out in paragraphs (a) to (d) above but not including Shares.

"Benefits" means:

- (a) any benefits, entitlements and rights which arise from the Economic Rights or from Distributions; and
- (b) benefits, entitlements and rights which arise from the items referred to in paragraph (a) and the items referred to in this paragraph (b),

excluding Shares, Economic Rights and Distributions.

"Calculation Period" has the same meaning as in section YA 1 of the Tax Act.

"Cash" includes, where payment is referred to as being made in cash, payment by cheque or electronic transfer.

"CHES Holding" has the same meaning as in the ASX Settlement Operating Rules.

"Claim" includes any liability, chose in action, action, suit, proceeding, claim, demand, cost, charge and expense of any nature, however and whenever arising.

"Companies Act" means the Companies Act 1993.

"Corporations Act" means the Corporations Act 2001 (Cth) and the Corporations Regulations.

"CS facility licensee" means a person who holds a licence under the Corporations Act that authorises the person to operate a clearing and settlement facility.

"Custodian" means the trustee of the Fonterra Economic Rights Trust constituted by the Custody Trust Deed (and includes any person nominated to hold Shares on behalf of such trustee).

"Custody Trust Deed" means the trust deed entitled "Custody Trust Deed for the Fonterra Economic Rights Trust" settled by Fonterra dated 25 October 2012.

"Deed" means this trust deed.

"Distribution" has the meaning ascribed to that term in section 2(1) of the Companies Act as it applies to Shares.

"Economic Rights" has the meaning given to it in the Custody Trust Deed.

"Extraordinary Resolution" means a resolution passed at a meeting duly convened and held in accordance with the provisions contained in Schedule 1 and carried by a majority of not less than three-fourths of the persons voting at such meeting upon a show of hands or, if a poll is duly demanded, by a majority consisting of not less than three-fourths of the votes given on such poll.

"Financial Reporting Legislation" means the Financial Reporting Act 2013, the FMCA and any regulations made under those enactments.

"Financial Year" means the period which is from time to time adopted as the financial year of Fonterra provided that the first financial year will be the period commencing on the date of this Deed and ending on the same day as the end of Fonterra's financial year next following the date of this Deed.

"FMCA" means the Financial Markets Conduct Act 2013 and (unless the context requires otherwise) includes any regulations made under that enactment, including the Financial Markets Conduct Regulations 2014.

"FMCA Resolution" means a resolution approved by Unit Holders holding Units with a combined value of not less than 75% of the value of Units held by those persons who are entitled to vote and who vote on the question.

"Fonterra" means Fonterra Co-operative Group Limited.

"Fonterra Custodian" means any person who Fonterra has advised the Manager has been engaged by Fonterra to hold or deal with any Shares or rights or interests in Shares and is a "Custodian" for the purposes of Fonterra's Constitution (as that term is defined in Fonterra's Constitution), which person may be the Custodian.

"Fonterra Farmer Custodian Trust" means the trust created by deed between Fonterra, the Custodian and the three initial trustees of that trust and constituted by trust deed dated 25 October 2012.

"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 Fonterra's 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 having the rights set out in clause 4.5 for so long as it has such rights in accordance with clause 4.5(g).

"Fonterra Unit Holder" means the person recorded in the Register as holder of the Fonterra Unit, being initially the trustees from time to time of the Fonterra Farmer Custodian Trust and thereafter any transferee in accordance with clause 4.5(b)(i) or consented to by Fonterra in accordance with clause 4.5(b)(ii).

"Fonterra's Constitution" means the constitution of Fonterra in effect from time to time.

"Foreign Investment PIE" has the same meaning as in section YA 1 of the Tax Act.

"Holding Adjustment" has the same meaning as in the ASX Settlement Operating Rules.

"Interest Group", in relation to any action or proposal affecting rights attached to Units, means a group of holders of Units:

- (a) whose affected rights are identical; and
- (b) whose rights are affected by the action or proposal in the same way;

and who comprise holders of Units of one or more Classes, except where action is taken in relation to some holders of Units in a Class and not others, or a proposal expressly distinguishes between some holders of Units in a Class and other holders of Units in that Class, in which case the holders of Units in that Class may fall into two or more interest groups.

"Investment" means any investment, asset, right, interest, estate or property of any nature then forming part of the Assets of the Trust including all Economic Rights but excluding, for clarity, any ability to exercise or direct the exercise of any right to vote attached to any Share the subject of an Economic Right except as provided for in clause 15.3.

"Investor Class" has the same meaning as in section YA 1 of the Tax Act.

"Investor's Percentage" has the same meaning as in section HM 50(4)(c) of the Tax Act.

"Issuer Sponsored Holding" has the meaning given to that term in the ASX Settlement Operating Rules.

"Listing Rules" means the NZX Main Board Listing Rules in force from time to time.

"Manager" means the person appointed as manager of the Trust in accordance with this Deed from time to time, being at the date of this Deed, FSF Management Company Limited.

"Minimum Number" means a Minimum Holding of Units as defined in, and determined in accordance with, the Listing Rules.

"Month" means a calendar month.

"Net Income" has the meaning given to it in section HM 35 of the Tax Act.

"Net Loss" has the meaning given to it in section HM 35 of the Tax Act.

"Notified Foreign Investor" has the same meaning as in section YA 1 of the Tax Act.

"Notified Investor Rate" has the same meaning as in section YA 1 of the Tax Act.

"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.

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

"Office" means the registered office from time to time of the Manager.

"Official List" means the official list of entities that ASX has admitted and not removed.

"Ordinary Resolution" means a resolution that is approved by a simple majority of the votes of those Unit Holders entitled to vote and voting on the resolution in question.

"Percentage" has the same meaning as in section HM 36(3)(a) of the Tax Act.

"Permitted Person" means:

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

"person" includes an individual, trust, partnership, firm, association, company, government or government agency or department, municipal or local authority and any body of persons or entity (whether incorporated or unincorporated and whether or not having a separate legal personality).

"Personal Representative" means:

- (a) in relation to a deceased individual Unit Holder, the executor, administrator or trustee of the estate of that Unit Holder;
- (b) in relation to a bankrupt individual Unit Holder, the assignee in bankruptcy of that Unit Holder;
- (c) in relation to any other individual Unit Holder, a person appointed or deemed to have been appointed to administer property under the Protection of Personal and Property Rights Act 1988, a manager appointed or deemed to have been appointed thereunder, and a donee of an enduring power of attorney complying with that Act; and
- (d) includes any equivalent or analogous person under the laws of any relevant jurisdiction.

"Portfolio Investment Entity" or **"PIE"** means a portfolio investment entity as defined in Section YA 1 of the Tax Act.

"Proxy" means an entity that is a proxy in accordance with section HM 33 of the Tax Act.

"Register" means a register referred to in clause 16.1.

"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 Trust and such other related services as Fonterra may from time to time require.

"Registrar" means the person appointed pursuant to clause 16.2.

"Relevant Person" has the meaning given to it in clause 34.3(f).

"Ruling" means any decision or determination by NZX as to the meaning or interpretation or application of Listing Rules and includes any ruling, waiver or revocation of a waiver given pursuant to Listing Rules 1.9, 1.10 or 1.11.

"Security Interest" means a security interest (as defined in the Personal Property Securities Act 1999) provided however that where Economic Rights are to be disposed of by the Manager, any security interest arising solely by the Custodian holding Shares in accordance with the Custody Trust Deed will be ignored.

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

"Shareholding Deed" means the deed entered into between the shareholder of the Manager, the Manager and Fonterra dated on or about the date of this Deed.

"Statement" means a statement issued by the Registrar specifying the number of Units held by a Unit Holder and containing any other matters required by the Listing Rules and the FMCA.

"Supervisor" means the trustee and supervisor for the time being of the Trust, being initially The New Zealand Guardian Trust Company Limited.

"Supplementary Dividend" has the meaning given to it in section YA 1 of the Tax Act.

"TAA" means the Tax Administration Act 1994.

"Tax" or **"Taxes"** includes any tax, levy, charge, deduction, withholding or duty of any nature (including goods and services tax, stamp or transaction duties) imposed at any time (and whether or not in New Zealand):

- (a) payable now or at any time in the future; or
- (b) required to be remitted to, or imposed, levied, collected, withheld or assessed by, any revenue or similar authority,

and includes any interest, expense, fine, penalty or any other charge in relation to such amounts.

"Tax Act" means the Income Tax Act 2007.

"Taxable Income" is calculated in accordance with section HM 35 of the Tax Act.

"Tax Liability" is calculated in accordance with section HM 47 of the Tax Act.

"Tax Loss" is calculated in accordance with section HM 35 of the Tax Act.

"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.

"Transferor" means the Permitted Person (or person on the Permitted Person's behalf, including through a settlement system) who transfers or issues a Share to the Custodian to be held in accordance with the Custody Trust Deed.

"Trust" means the trust constituted by this Deed known as the "Fonterra Shareholders' Fund".

"Trust Fund" means the trust fund described in clause 3.3.

"Unit" means an undivided part or share in the beneficial interest in the Trust Fund.

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

"Valuer" means an independent qualified valuer appointed by the Manager from a panel of valuers approved by the Supervisor.

"Voting Rights" means a currently exercisable right to cast a vote at a meeting of the Unit Holders, not being a right to vote that is exercisable only in one or more of the following circumstances:

- (a) during a period in which a payment or distribution (or part of a payment or distribution) in respect of the Unit that confers the voting right is in arrears or some other default exists;
- (b) on a proposal that affects rights attached to the Unit;

- (c) on a proposal to wind up the Trust; and
- (d) in respect of a special, immaterial, or remote matter that is inconsequential to control of the Trust.

"Voucher" means the certificate or instrument referred to in clause 3.4 of Fonterra's Constitution provided to a Fonterra Shareholder in accordance with clause 5.3.

"Withdrawal Notice" has the meaning given to it in clause 9.1.

"Working Day" has the meaning given to that term in section 2(1) of the Companies Act but includes any day which is not a "Working Day" in accordance with section 2(1) of the Companies Act but is a Trading Day.

1.2 Interpretation: In this Deed, unless the context otherwise requires:

- (a) Words importing the singular number include the plural, and vice versa, and the masculine gender includes the feminine or neuter genders and vice versa.
- (b) Reference to a statute or regulation (including any section or clause thereof) includes all amendments to that statute or regulation, whether by subsequent statute or otherwise, and a statute or regulation passed in substitution for the statute or regulation referred to or incorporating any of its provisions. Where reference is to a section which is in bill form and not enacted at the time this deed is made, reference to that section will have application when the relevant legislation has been enacted.
- (c) References to an agreement or deed includes that agreement or deed as amended, supplemented, replaced, assigned or novated from time to time.
- (d) Headings have been inserted in this Deed for guidance only and shall not be deemed to form any part of the context.
- (e) Where under or pursuant to this Deed or anything done under this Deed the day on or by which any act, matter or thing is to be done is not a Working Day, such act, matter or thing shall be done on the following Working Day.
- (f) A reference to this Deed includes any schedule to this Deed and any supplemental deed.
- (g) "including" and similar words do not imply any limitation.
- (h) References to clauses, sub-clauses, paragraphs and schedules are to clauses, sub-clauses, paragraphs of and schedules to this Deed.

1.3 Construction: In the construction of this Deed, notwithstanding any provision of this Deed, Units are not to be treated as liabilities for any purpose under this Deed.

1.4 Meaning of "Interest": In this Deed a person has an Interest in a Unit if that person has a Relevant Interest in that Unit, with the term "Relevant Interest" having the meaning set out in sections 235, 236, 237 and 238 of the FMCA on the basis that references to "product" or "financial product" is a reference to "Unit".

1.5 Meaning of "Associate": In clauses 4.5(c) and 6.1, a person is an "Associate" of another person if:

- (a) they are acting jointly or in concert; or

(b) they are both, directly or indirectly, under the control of the same person.

1.6 **Definitions in the Listing Rules:** Words and expressions in this Deed which commence with initial capital letters and are not defined in this Deed but are defined in the Listing Rules have the respective meanings given to them by the Listing Rules.

1.7 **Authorised Fund Contract & Custody Trust Deed:** The Trust is established pursuant to the Authorised Fund Contract and the Custody Trust Deed. In giving effect to the powers and obligations of the Manager, Fonterra and the Supervisor under this Deed, the Manager, Fonterra and the Supervisor are bound to comply with their respective obligations under, and are subject to certain limitations and restrictions imposed by, the Authorised Fund Contract and the Custody Trust Deed. Accordingly, the powers and obligations of the Manager, Fonterra and the Supervisor under this Deed and with respect to the Trust generally must be given effect and construed subject to, and are limited by, such obligations, limitations and restrictions and each Unit Holder is deemed to acknowledge that each of the Manager, Fonterra and the Supervisor is subject to such obligations, limitations and restrictions.

1.8 **Acts of Fonterra:** If:

- (a) Fonterra is prohibited by law to undertake or otherwise do any act, matter or thing, including determining anything, for or in connection with the affairs of the Trust or the Trust Fund (each, a "**Prohibited Event**"), which by this Deed Fonterra is permitted to undertake or otherwise do, then Fonterra will not undertake or otherwise do that Prohibited Event and such Prohibited Event will be undertaken or otherwise done by or on behalf of the Manager unless this Deed or the law prescribes to the contrary; and
- (b) this Deed provides that both Fonterra and the Manager shall or may undertake or otherwise do any act, matter or thing, including determining anything, for or in connection with the affairs of the Trust or the Trust Fund then, unless the relevant item is one that both are to undertake or otherwise do, or unless otherwise agreed between Fonterra and the Manager and subject to clause 1.8(a), Fonterra will undertake or otherwise do that act, matter or thing, including making the determination and the Manager will not undertake or otherwise do that act, matter or thing.

2. COMPLIANCE WITH AND INCORPORATION OF CERTAIN LISTING RULES

2.1 **Compliance:** For so long as any Units are Listed:

- (a) the Manager in its capacity as manager of the Trust and the Supervisor in its capacity as trustee and supervisor of the Trust, shall comply with the Listing Rules subject to:
 - (i) the requirements of the FMCA and any other applicable legislative or regulatory requirements; and
 - (ii) the terms of any Ruling given from time to time by NZX;
- (b) there shall be deemed to be incorporated into this Deed the provisions set out in Appendix 6 of the Listing Rules (as they may be modified by any Ruling relevant to the Trust) and those provisions shall have the same effect as though they were set out in this Deed; and

- (c) a provision of this Deed shall be of no effect to the extent it is inconsistent with any applicable Listing Rule modified by any Ruling relevant to the Trust, and in those circumstances the applicable Listing Rule shall prevail.

2.2 **Validity:** Failure to comply with any of the Listing Rules, or failure to comply with a clause of this Deed corresponding with a provision of the Listing Rules, shall not affect the validity or enforceability of any transaction, contract, action or other matter whatsoever (including the proceedings of, or voting at, any meeting) done or entered into by, or affecting, the Manager, the Supervisor or the Trust provided that:

- (a) a party to a transaction or contract who knew of the failure to comply with the Listing Rules or a clause of this Deed corresponding with a provision of the Listing Rules, as the case may be, is not entitled to enforce that transaction or contract; and
- (b) this provision shall not affect the rights of any Unit Holder against the Manager arising from failure to comply with the Listing Rules or a clause of this Deed corresponding with a provision of the Listing Rules.

2.3 **Rulings:** Subject to clause 4.5, if NZX has given a Ruling in relation to the Trust authorising any act or omission which, in the absence of that Ruling, would be in contravention of the Listing Rules or this Deed (including any provision incorporated in accordance with clause 2.1(b)), that act or omission is deemed to be authorised by the Listing Rules and by this Deed notwithstanding such contravention or inconsistency.

2.4 **References:** A reference in this Deed to a specific Listing Rule includes that Listing Rule as it may be amended from time to time and any Listing Rule which may be substituted for that Listing Rule.

2.5 **ASX Listing Rules:** Subject to clause 2.6, while the Trust is admitted to the Official List of ASX:

- (a) notwithstanding anything contained in this Deed (other than clause 2.6), if the ASX Listing Rules prohibit an act being done, the act must not be done;
- (b) nothing in this Deed prevents an act being done that the ASX Listing Rules require to be done;
- (c) if the ASX Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
- (d) if the ASX Listing Rules require this Deed to contain a provision and it does not contain such a provision, this Deed is deemed to contain that provision;
- (e) if the ASX Listing Rules require this Deed not to contain a provision and it contains such a provision, this Deed is deemed not to contain that provision; and
- (f) if any provision of this Deed is or becomes inconsistent with the ASX Listing Rules, this Deed is deemed not to contain that provision to the extent of the inconsistency.

2.6 **Inconsistency between Listing Rules and ASX Listing Rules:** For so long as any Units are listed on NZX Main Board and while the Trust is admitted to the Official List of ASX:

- (a) this Deed is not required to be consistent with the ASX Listing Rules to the extent that the ASX Listing Rules are inconsistent with the Listing Rules (as modified by any Ruling relevant to the Trust); and

- (b) to the extent that the Listing Rules (as modified by any Ruling relevant to the Trust) are inconsistent with the ASX Listing Rules in a way that affects or is relevant to the operation of a provision of this Deed, the Listing Rules (as modified by any Ruling relevant to the Trust) prevail to the extent of the inconsistency,

and in each case, to the extent required to give effect to anything in this clause 2.6, the requirements of clause 2.5 do not apply.

3. CONSTITUTION OF THE TRUST FUND

- 3.1 **Supervisor:** The Supervisor is hereby appointed as the trustee and supervisor of the Trust, and agrees to act as trustee for the Unit Holders and to hold the Trust Fund in trust for the Unit Holders, upon and subject to the terms and conditions contained or implied in this Deed.
- 3.2 **Manager:** The Manager is hereby appointed as the manager of the Trust, and agrees to act as manager of the Trust, upon and subject to the terms and conditions contained or implied in this Deed.
- 3.3 **Trust Fund:** The Trust Fund shall consist of all the Assets for the time being held by or on behalf of the Supervisor upon the trust in clause 3.1.
- 3.4 **Name of Trust:** The Trust is known, as at the date of this Deed, as the "Fonterra Shareholders' Fund". The name of the Trust may be changed to such other name as the Supervisor and the Manager may from time to time agree.
- 3.5 **Nominee:** The Supervisor is entitled in accordance with section 156 of the FMCA to nominate a person in which shall be vested any of the Assets. The Supervisor shall, without prejudice to its liability under section 156(5) of the FMCA, cause any such nominated person to comply with the covenants and obligations on the part of the Supervisor expressed or implied in this Deed to the extent that the same are applicable to such nominated person as a consequence of any of the Assets being vested in it.
- 3.6 **Contrary intention:** The Authorised Investments of the Trust shall constitute a contrary intention for the purposes of sections 2(5), 2(5A) and 13D of the Trustee Act 1956.

4. UNITS

4.1 Units:

- (a) The beneficial interest in the Trust Fund shall be divided into Units. Subject to:
- (i) clause 4.1(c); and
 - (ii) the rights attaching to unpaid or partly paid Units and other Units with special or restricted rights,
- each Unit shall confer an equal interest in the Trust Fund.
- (b) No Unit shall confer any interest in any particular part of the Trust Fund, and, subject to clauses 7.5, 9.1 and 15.1(h), no Unit Holder shall be entitled to require the transfer to that Unit Holder of any of the Assets.
- (c) Unless the Manager directs otherwise, Units shall not confer any interest in interest income of the Trust. Units shall not confer any interest in monies paid

to the Supervisor or the Manager to meet their fees or to reimburse either of those parties for (or any advance payment in respect of) any expenses, liabilities, losses and costs incurred by them respectively in or about acting as Supervisor or Manager (as the case may be) under this Deed. In all cases, all interest income and such monies will be applied by the Manager to meet the fees and expenses, liabilities, losses and costs incurred by the Manager or the Supervisor in or about acting as Manager or Supervisor (as the case may be).

4.2 **No interference by Unit Holder:** Subject to the rights of the Unit Holders created by this Deed or by law, no Unit Holder shall be entitled to:

- (a) interfere with or question the exercise or non-exercise by the Manager, Fonterra or the Supervisor of any of the trusts, powers, authorities or discretions conferred upon them or any of them by this Deed or in respect of the Trust Fund or any part or parts thereof; or
- (b) by virtue of holding Units, attend meetings whether of shareholders or otherwise or vote or take part in or consent to any action concerning any property or corporation in which the Trust holds an interest.

4.3 **Benefit and binding effect:** Except where expressly provided to the contrary in this Deed or where the context does not so permit, all the benefits and provisions (including those benefits and provisions which are expressed to enure for the benefit of and bind Unit Holders of any Class or Classes) contained in this Deed enure for the benefit of and bind each Unit Holder of the relevant Class or Classes.

4.4 **Quotation:** The Manager shall apply to NZX for quotation of the Units of any Class.

4.5 **Fonterra Unit:** The following rights and limitations shall attach to the Fonterra Unit:

- (a) the Fonterra Unit may be held only by, and shall be registered in the name of, the Fonterra Unit Holder;
- (b) upon any transfer of the Fonterra Unit, other than from (i) a retiring trustee of the Fonterra Farmer Custodian Trust to a new trustee in accordance with the trust deed constituting the Fonterra Farmer Custodian Trust, or (ii) with the prior written consent of Fonterra, the Fonterra Unit shall thereupon convert to a Unit with the same rights and limitations as, and rank equally with, all other Units, there shall cease to be a Fonterra Unit, and all references to the Fonterra Unit and the Fonterra Unit Holder in this Deed shall cease to have any application;
- (c) notwithstanding any provision of this Deed to the contrary, no provision of this Deed may be amended, removed or altered in effect, without the prior written consent of the Fonterra Unit Holder, if such amendment, removal or alteration would change:
 - (i) the governance structure of the board of directors of the Manager including:
 - (aa) the number of members of the board of directors elected by Unit Holders, the manner of their election and their subsequent appointment; and
 - (bb) the number of members of the board of directors appointed by Fonterra and the manner of their appointment;
 - (ii) the scope and role of the Trust Fund; or

- (iii) the obligation of the Trust to facilitate the exchange of a Share for a Unit or a Unit for a Share; or
 - (iv) the limit of 15% on the number of Units that can be held by any person and their Associates (other than Fonterra); or
 - (v) the terms of the Fonterra Unit;
 - (d) notwithstanding any provision of this Deed to the contrary, except with the prior written consent of the Fonterra Unit Holder, no act, or omission to act, that contravenes or fails to comply with clause 4.5(c) shall be valid or effective, whether or not the act or omission is that of the Manager, Supervisor or Unit Holders and whether or not the act or omission has been approved by an Extraordinary Resolution or an FMCA Resolution;
 - (e) for the avoidance of doubt, each of the matters referred to in clause 4.5(c) is deemed to be an action which affects the rights attached to the Fonterra Unit and accordingly is not effective without the approval of the Fonterra Unit Holder;
 - (f) the Fonterra Unit Holder shall be entitled to receive notice of and to attend any meeting of Unit Holders or any meeting of any Class of Unit Holders, and to speak on any matter relating to rights attaching to the Fonterra Unit;
 - (g) should an Acquisition Notice be given pursuant to clause 22.1 specifying that the Majority Holder intends to acquire all Affected Securities held by the Remaining Holders, the Fonterra Unit shall thereupon convert into a Unit with the same rights and limitations as, and rank equally with, all other Units, there shall cease to be a Fonterra Unit, and all references to the Fonterra Unit and the Fonterra Unit Holder in this Deed shall cease to have any application; and
 - (h) the Fonterra Unit will otherwise have the same rights as any other Unit issued by the Trust.
- 4.6 **No Unit with comparable rights:** Notwithstanding any provision of this Deed to the contrary, no Unit or any other security may be issued by the Trust, or subsequently altered, so that it:
- (a) has the same rights as those attached to the Fonterra Unit; or
 - (b) ranks equally with the Fonterra Unit for the purposes of any provision of this Deed which requires that the consent of the Fonterra Unit Holder be obtained.
- 4.7 **Separate Interest Group:** Notwithstanding any other provision of this Deed, the Fonterra Unit Holder shall, for the purposes of this Deed, in relation to any of the matters referred to in clause 4.5(c), constitute a separate Interest Group.
- 4.8 **Fonterra Unit Holder Consent:** Notwithstanding any other provision of this Deed, the rights attached to the Fonterra Unit under clause 4.5 shall not be altered without the consent in writing of the Fonterra Unit Holder.
- 5. ACQUISITION OF ECONOMIC RIGHTS**
- 5.1 **Acquisition:** Upon the Fonterra Custodian advising the Manager that it holds new Economic Rights, the Manager shall either:
- (a) issue one Unit in respect of each such new Economic Rights; or

- (b) pay such Cash sum in respect of each such new Economic Rights as is received by the Manager for the issue of Units for Cash (with one Unit being issued in respect of each such new Economic Right),

to the relevant Transferor. Cash may only be paid to the Transferor if the Transferor has agreed to accept Cash prior to the transfer of the relevant Shares to the Fonterra Custodian.

5.2 Compliance with all requirements: The Manager and Fonterra shall each ensure that the Trust is always able to issue Units in compliance with this Deed, the Listing Rules and all applicable laws including the requirements of the FMCA, so as to comply with clause 5.1.

5.3 Vouchers: Upon a Fonterra Shareholder (or a person on a Fonterra Shareholder's behalf, including through a settlement system, but excluding the RVP or the Fonterra Custodian on the RVP's behalf) transferring a Share to the Fonterra Custodian in respect of which the Fonterra Custodian advises the Manager that it holds the Economic Rights in accordance with clause 5.1, and subject to the issue of the Voucher being in accordance with the policy set by Fonterra in respect of Vouchers pursuant to clause 3.4(a) of Fonterra's Constitution and advised to the Manager from time to time, the Manager or Fonterra will send, or direct the Registrar or other person appointed by the Manager to send, a Voucher to that Fonterra Shareholder. The Manager or Fonterra will record, or procure the recording, of such sending of each Voucher in a register kept for that purpose. Vouchers will be removed from the Register when a Voucher is cancelled by Fonterra and notification of such cancellation is received by the Manager (or any party maintaining the register of Vouchers on the Manager's behalf). Vouchers may not be transferred except in accordance with any policy set by Fonterra and advised to the Manager from time to time. The Supervisor has no obligations in relation to Vouchers, including no obligations in relation to their issue, compliance with the policy set by Fonterra in respect of Vouchers pursuant to clause 3.4(a) of Fonterra's Constitution, recording their issue, or cancellation, or compliance with any policy set by Fonterra in relation to the transfer of Vouchers.

6. MAXIMUM HOLDING

6.1 Limitation on Ownership: No person (together with their Associates), other than Fonterra, may hold or have an Interest in more than 15% of the lesser of:

- (a) the total number of Units on issue for the time being; or
- (b) the total Voting Rights for the time being.

6.2 Declaration Required on Request: Fonterra may at any time or times, by notice in writing, require the registered holder of any Units to lodge with Fonterra within 5 Working Days of the date on which the notice is given to the holder, a statutory declaration (or other disclosure required by Fonterra) stating:

- (a) whether or not any other person has an Interest in any Unit registered in the name of that holder; and
- (b) if so, in respect of each such person, the name and address of that person, the number of Units concerned and the nature of that Interest.

6.3 Protection of Trust: The provisions of clauses 6.4 to 6.14 inclusive shall apply if Fonterra determines, after consultation with the Manager, either that a person has not complied with clause 6.1 or that it is necessary to establish whether any person has failed to comply with clause 6.1.

- 6.4 **Registered Holders to Lodge Statutory Declaration:** After a determination referred to in clause 6.3, if Fonterra considers it necessary or desirable to do so it may, by notice in writing, require the registered holder or holders of any Units to lodge with Fonterra within 5 Working Days of the date on which the notice is given to the holder, a statutory declaration (or other disclosure required by Fonterra) giving such information as Fonterra may reasonably require for the purposes of determining whether to exercise its powers under this clause 6.
- 6.5 **Units Treated as Affected Units:** Where the registered holder of any Units does not comply with clause 6.2 or 6.4, or Fonterra in its discretion considers that any declaration or disclosure required by clause 6.2 or 6.4 or other information reveals that any person holds or has an Interest in any Units in contravention of clause 6.1, or Fonterra does not believe that any declaration or disclosure (even if honestly made or given) is accurate, Fonterra may determine that all or any of the Units registered in the name of the registered holder of Units referred to in this clause, or any other Unit Holder who holds Units in which Fonterra considers a person has an Interest in contravention of clause 6.1, shall be treated as Affected Units, and immediately after making any such determination shall give a notice to that effect to the relevant Unit Holder, with a copy to the Manager and the Supervisor.
- 6.6 **Notice of Affected Units to Registered Holder:** Within seven days of receiving the notice from Fonterra referred to in clause 6.5, the holder may make representations to Fonterra as to why any such Units should not be treated as Affected Units. If any representation is received by Fonterra and, after taking into consideration any such representation, Fonterra in its discretion determines that such Units shall continue to be treated as Affected Units, it shall immediately give notice to that effect to the registered holder of the Units, with a copy to the Manager and the Supervisor.
- 6.7 **Determination as to Voting or Sale:** At the time when, or at any time after, Fonterra determines under clause 6.5 or 6.6 that any Units are to be treated as Affected Units and before that determination is withdrawn, Fonterra may determine either or both of the following:
- (a) that clause 6.8 applies to the Units during such period (which may be unlimited) as Fonterra determines; and
 - (b) that clause 6.9 applies to the Units,
- and Fonterra shall immediately give notice of the determination to the registered holder of the Units (such notice may be combined with any notice given under clause 6.5 or 6.6 and may also include content so as to comply with Rule 5.12.2 of the ASX Settlement Operating Rules) with a copy to the Manager and the Supervisor.
- 6.8 **Holders of Affected Units Cannot vote:** A registered holder of Affected Units to whom a notice under clause 6.7 stating that this clause 6.8 applies to those Units has been delivered shall not (unless the notice is withdrawn) be entitled to vote in respect of those Units at any meeting of Unit Holders or at any meeting of the holders of Units in an Interest Group. This voting restriction shall be without prejudice to the right of any such registered holder to attend any meeting referred to in this clause 6.8.
- 6.9 **Disposal of Affected Units:** A registered holder of Affected Units to whom a notice under clause 6.7 stating that this clause 6.9 applies to those Units has been delivered shall, within three Months (or such longer period as Fonterra may determine) of the date of that notice, ensure that either the Affected Units or its Interest therein is or are disposed of so that the Affected Units are not Affected Units and if, after three Months (or such longer period as aforesaid), Fonterra is not satisfied that a suitable disposal has been made, Fonterra may arrange for the sale of the Affected Units on behalf of the registered holder at the best price reasonably obtainable at the relevant time, based

upon advice obtained by it for the purpose, so that they are no longer capable of being treated as Affected Units. For this purpose, the registered holder shall be deemed to have irrevocably appointed, and does hereby appoint, Fonterra as its agent and its attorney, in each case with full authority to act on its behalf in relation to the sale of the Affected Units and to sign all documents relating to such sale and transfer of the Affected Units and the Manager may register a transfer of the Affected Units so sold, whether or not the transfer has been properly completed and whether or not it is accompanied by the certificates (if any) for the Affected Units. For the purposes of the sale and of Rule 5.12 of the ASX Settlement Operating Rules where Fonterra has given a notice that complies with Rule 5.12.2 of the ASX Settlement Operating Rules, Fonterra may, after the expiration of the time specified in the notice, initiate a Holding Adjustment to move all Units held by the registered holder of the Affected Units from that CHESS Holding to an Issuer Sponsored Holding or a certificated holding and effect a transfer to give effect to the sale of the relevant number of Units held by the registered holder. The person to whom such Units are transferred shall not be bound to see to the application of the purchase money, nor shall his, her or its title to the Units be affected by any irregularity or invalidity in the proceedings relating to the sale of those Units. The net proceeds of sale shall be held on trust by the Supervisor for and paid (together with interest at such rate as the Manager deems appropriate) to the former registered holder on surrender of the certificate (if any) for the Affected Units or as soon as practicable if no certificate for the Affected Units has been issued.

- 6.10 **Identifying Affected Units:** In deciding which Units are to be treated as Affected Units for the purposes of clause 6.5 or clause 6.6, Fonterra shall have regard to such criteria as it may, in its discretion, consider appropriate and equitable.
- 6.11 **Withdrawal or Amendment of Determination:** If the Manager considers that any determination made under clause 6.5, 6.6 or 6.7 should be withdrawn or amended, it may do so with the prior written consent of Fonterra, and shall give notice of the withdrawal or amendment to the registered holder of the Units concerned and a copy to the Supervisor.
- 6.12 **Absence of Notice Does Not Invalidate:** Fonterra shall not be obliged to give any notice required under this clause 6 to be given to any person if it does not know either the identity or address of the person. The absence of such a notice in such circumstances, and any accidental error in, or failure to give, any notice to any person to whom notice is required to be given under this clause 6, shall not prevent the implementation of or invalidate any procedure under this clause 6.
- 6.13 **Decisions Final, Conclusive and Binding:** Any resolution or determination of, or decision or declaration or exercise of any discretion or power by, Fonterra under or pursuant to this clause 6, or by the chairman of any meeting under paragraph 6.8 of Schedule 1, shall be final and conclusive; and any disposal or transfer made, or other things done pursuant to this clause 6, shall be conclusive and binding on all persons concerned and shall not be open to challenge, whether as to its validity or otherwise on any ground whatsoever.
- 6.14 **Certificate Conclusive:** A certificate signed by Fonterra that a power of sale under this clause 6 has arisen and is exercisable by Fonterra, or that a Unit has been duly transferred under this clause 6 on the date stated therein, shall be conclusive evidence of the facts stated therein.
- 6.15 **Fonterra Unit:** Nothing in this clause 6 applies to the Fonterra Unit.
- 6.16 **Interest held by the Manager:** When determining the total number of Interests in Units held or controlled by the Manager, there shall be excluded any Interests arising solely as a result of any powers or rights or control conferred on the Manager by this Deed solely when acting in the capacity of Manager.

7. ISSUE OF UNITS

- 7.1 **Issue of new Units:** Subject to the terms of this Deed and any applicable provisions of the Listing Rules, the Manager may make offers, invite subscriptions or applications for Units, may issue rights or options to subscribe for Units, and may issue Units of any Class, upon and subject to the terms and conditions contained in this Deed and otherwise in such manner and upon such terms and conditions as the Manager shall from time to time determine.
- 7.2 **Statutory compliance:** The Manager shall, in making offers and in issuing Units in terms of clause 7.1, comply with all applicable laws, including the relevant provisions of the FMCA, the Listing Rules, the rules relating to Portfolio Investment Entities in the Tax Act and the TAA and, where relevant, the laws of any other jurisdiction.
- 7.3 **Underwritten offers:** Any proposed issue of Units may in the Manager's discretion be underwritten. The Manager shall have power to:
- (a) appoint such persons as the Manager believes are appropriate, including underwriters, organising brokers and brokers in respect of any issue of Units and enter into agreements to give effect to such appointments on such terms and conditions as the Manager may determine; and
 - (b) pay out of the Trust Fund such management fees, underwriting fees, brokerage or other similar fees as the Manager may agree with any such underwriters, organising brokers, brokers or others.
- 7.4 **Redeemable Units:** Without limiting clause 9, the Manager may issue Units which are redeemable.
- 7.5 **HM 48 Adjustment:** The Supervisor or the Manager may, at any time, cancel or redeem Units for no consideration, or such consideration that the Supervisor or the Manager determines in its absolute discretion, to comply with section HM 48 of the Tax Act or otherwise satisfy any Tax Liability of the Trust relating to the relevant Unit Holder. Should the Supervisor or the Manager cancel or redeem any Units pursuant to this clause 7.5, the Manager shall direct the Fonterra Custodian to contemporaneously sell a corresponding number of Economic Rights. The proceeds from the disposal of the Economic Rights will be used to meet the Tax Liability of the Trust relating to the relevant Unit Holder where Units have been cancelled, and any balance after meeting that Tax Liability will be paid to the relevant Unit Holder.
- 7.6 **Manager may refuse application:** Subject to clauses 5.1 and 13.3, the Manager may in its absolute discretion accept or refuse an application for Units in whole or in part without reason, and may limit the size of the Trust in its discretion.
- 7.7 **Portfolio Investment Entity:** Without limiting clause 7.6 or clause 7.8, the Manager may refuse any application for Units in a Trust where to do otherwise would cause, or threaten to cause, the Trust to become ineligible to be a PIE or a Foreign Investment PIE.
- 7.8 **Maximum number:** There is no maximum number of Units which may be issued provided that at no time shall the number of Units on issue exceed or be less than the number of Economic Rights which comprise Investments.

8. ISSUE PRICE

- 8.1 **Issue Price:** The price at which issues of Units may be made shall be determined by the Manager in accordance with the Authorised Fund Contract provided that:

- (a) in respect of the first issue after the establishment of the Trust, the issue price shall be determined in the manner set out in the Authorised Fund Contract and the registered prospectus relating to the issue; and
- (b) in respect of issues made to Permitted Persons (or a person on the Permitted Person's behalf, including through a settlement system), the issue price may be satisfied by the transfer or issue to the Custodian of one fully paid Share where the Custodian holds the Economic Rights arising from the Share so transferred or issued to it for the Supervisor pursuant to the Custody Trust Deed.

8.2 Subscription moneys: All subscription moneys received by the Manager upon an issue of Units shall become subject to the trusts created by this Deed upon receipt by the Manager. The Manager shall in accordance with section 87 of the FMCA (and regulation 49 of the Financial Markets Conduct Regulations 2014) pay all moneys so received into a separate bank account or accounts that is, or are, the property of the Supervisor (or a nominee of the Supervisor) promptly (and in any event within seven days) following receipt thereof. If the Manager decides to reject any application for Units (in whole or in part), it shall forthwith return, or direct the Supervisor to return, the subscription moneys (or the relevant portion thereof) to the applicant without any interest thereon.

8.3 Issue to a Fonterra Shareholder: Where a Unit is issued to or on behalf of a Fonterra Shareholder, including through a settlement system, with the issue price satisfied by the transfer by or on behalf of that Fonterra Shareholder to the Fonterra Custodian of Shares, then such Units must not be retained by or on behalf of that Fonterra Shareholder but must be used to settle a sale contract previously entered into on the NZX Main Board or the ASX in relation to the sale of Units. To the maximum extent permitted by the FMCA, the Supervisor has no obligations in relation to monitoring or enforcement of compliance with this clause.

9. REDEMPTION OF UNITS

9.1 Withdrawal Notice: Subject to clause 9.2, if any Unit Holder wishes some or all of his, her or its Units to be redeemed, that Unit Holder shall give notice in writing or in such other manner as may be prescribed by the Manager from time to time ("**Withdrawal Notice**") to the Manager or a person nominated by the Manager (which may be Fonterra) to that effect. Such Withdrawal Notice shall specify the number of Units in respect of which the Unit Holder desires to effect redemption and, except in the case of Fonterra or the RVP, may not be revoked by the Unit Holder by whom it has been given. Except in the case of Fonterra or the RVP unless this is specifically set out in the Withdrawal Notice, if a Withdrawal Notice is given in respect of all Units held by a Unit Holder, it shall be deemed to apply also to all additional Units (if any) that may be issued to or acquired by the Unit Holder prior to the date of the redemption.

9.2 Restrictions on redemption:

- (a) No Withdrawal Notice may be given by, or on behalf of, a Unit Holder unless such Unit Holder is:
 - (i) a Fonterra Shareholder;
 - (ii) a Registered Volume Provider; or
 - (iii) Fonterra.

- (b) The Manager may refuse to redeem Units where to do so would cause, or threaten to cause, the Trust to become ineligible to be a PIE or a Foreign Investment PIE.
- (c) The Manager may refuse to redeem Units where to do so would result in any limit or threshold from time to time applicable under Fonterra's Constitution, this Deed (except clause 6.1) or any relevant legislation being exceeded or otherwise not complied with.

9.3 **Redemption:** Subject to clauses 9.1 and 9.2, the Manager shall procure that within one Working Day of receipt of a Withdrawal Notice, or within such other period as the Manager determines, the number of Units specified in that Withdrawal Notice are redeemed by the Supervisor and shall direct that the Fonterra Custodian transfer to the holder of those Units (or to the Fonterra Custodian if the Withdrawal Notice was given by a Registered Volume Provider pursuant to clause 9.2(a)(ii)) one Share for each Unit so redeemed.

9.4 **No other right of redemption:** Except as set out in clauses 7.5, 9.1 and 15.1(h), there is no right to otherwise redeem any Units nor may Units be redeemed for Cash or any other consideration. For the avoidance of doubt, the Fonterra Unit may not in any circumstances be redeemed without the consent of the Fonterra Unit Holder.

9.5 **Nature of obligation:** For the avoidance of doubt, and without limiting the generality of clause 34.1, it is declared that the obligations of the Manager and the Supervisor pursuant to clause 9.3 are not personal obligations of the Manager or the Supervisor, but is an obligation of the nature referred to in clause 34.1.

9.6 **Cancellation of Units:** Units redeemed pursuant to the foregoing provisions shall cease to exist, and shall be deemed to be cancelled, from the date on which the redemption is recorded in the Register by, or on behalf of, the Manager, but this does not restrict the creation and issue of new Units.

10. RESTRICTIONS ON FINANCIAL ASSISTANCE

10.1 **Compliance with Listing Rules:** The Manager and Fonterra shall not cause the Trust to give financial assistance for the purpose of, or in connection with, the purchase of Units issued, or to be issued, by the Trust unless the giving of that assistance complies with any applicable Listing Rules.

11. ALTERATION OF RIGHTS OF UNIT HOLDERS

11.1 **Comply with Listing Rules:** The Manager and Fonterra shall, before taking action affecting the rights attached to any Unit, comply with the provisions of all applicable Listing Rules.

11.2 **Issue of further Units:** Subject to clause 4.6 and for the purposes of clause 11.1, the issue of further Units which rank equally with, or in priority to, any existing Units, whether as to voting rights, distributions, the payment of interest or otherwise, is deemed not to be an action affecting the rights attaching to those existing Units.

12. FORFEITURE AND LIEN

12.1 **Default:** If a Unit Holder (other than the Fonterra Unit Holder in respect of the Fonterra Unit) fails to pay any call or instalment of a call on the due date for payment, the Manager may, at any time during such time as any part of the call or instalment remains

unpaid, serve a notice on the Unit Holder requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued and all expenses that may have been incurred by the Manager, the Supervisor or the Trust by reason of such non-payment.

- 12.2 **Notification:** The notice shall name a further day (not earlier than 10 Working Days from the date of service of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the Units in respect of which the call was made will be liable to be forfeited.
- 12.3 **Forfeiture:** If the requirements of any such notice are not complied with, any Unit in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Manager to that effect. Such forfeiture shall include all distributions declared in respect of the forfeited Units and not actually paid before the forfeiture.
- 12.4 **Notice of forfeiture:** When any Unit has been so forfeited, notice of the resolution shall be given to the Unit Holder in whose name the Unit stood immediately prior to the forfeiture or to the Personal Representatives of that Unit Holder. An entry of the forfeiture, with the date thereof, shall be made in the Register.
- 12.5 **Sale:** A forfeited Unit may be sold or otherwise disposed of on such terms and in such manner as the Manager thinks fit. At any time before a sale or disposition the forfeiture may be cancelled on such terms as the Manager thinks fit.
- 12.6 **Remain liable for payment:** A person whose Units have been forfeited shall cease to be a Unit Holder in respect of the forfeited Units, but shall, notwithstanding such forfeiture, remain liable to pay all money which, at the date of forfeiture, was payable by such person in respect of the Units. Such liability shall cease if and when the Manager or the Trust receives payment in full of all such money.
- 12.7 **Lien:** The Supervisor shall have a first and paramount lien upon every Unit registered in the name of any Unit Holder (whether solely or jointly with others but other than the Fonterra Unit Holder in respect of the Fonterra Unit) and upon the proceeds of sale for any unpaid calls or instalments owing in respect of such Unit, any interest payable on such amounts, and for such amounts (if any) as the Supervisor or the Manager may be called upon to pay under any statute or legislative enactment in respect of Units of a deceased or other Unit Holder, whether the period for the payment, fulfilment or discharge shall have actually arrived or not. Such lien shall extend to all Distributions from time to time declared in respect of the relevant Unit. Unless otherwise determined by the Manager, the registration of a transfer of Units shall operate as a waiver of the Supervisor's lien, if any, on such Units.
- 12.8 **Sale of Units subject to a lien:** The Supervisor may (at the direction of the Manager) sell, in such manner as it thinks fit, any Units on which it has a lien. No sale shall be made unless a sum in respect of which the lien exists is presently payable, nor until the expiration of 10 Working Days after notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given by the Manager to the Unit Holder, or any Personal Representative.
- 12.9 **Proceeds of sale:** The net proceeds of the sale of any forfeited Unit which is sold within 12 Months of the date of forfeiture, or of Units sold for the purpose of enforcing a lien, shall be applied by the Manager in or towards satisfaction of any unpaid calls, instalments, interest, and expenses. The residue, if any, shall be paid by the Manager to the former Unit Holder, or any Personal Representative.

- 12.10 **Certificate:** A certificate signed by the Manager that the power of sale has arisen and is exercisable by the Manager or the Supervisor (as the case may be) under this Deed, or that a Unit has been duly forfeited, shall be conclusive evidence of those matters.
- 12.11 **Procedure to transfer:** For giving effect to any such sale after forfeiture, or for enforcing a lien, the Manager or the Supervisor may authorise any person to transfer any Unit sold to the purchaser. The purchaser shall be registered as the Unit Holder in respect of the Units comprised in any such transfer, and the purchaser shall not be bound to see to the application of the purchase money, nor shall the purchaser's title to the Units be affected by any irregularity or invalidity in the sale.

13. INVESTMENTS

- 13.1 **Manager's power of investment:** Subject to the provisions of this Deed, the Manager shall have absolute and uncontrolled discretion as to the investment and expenditure of any sums forming part of the Trust Fund and as to the purchase, sale, transfer, exchange or alteration of any Investments from time to time. The Manager alone shall be entitled from time to time to cause to be effected any transactions which it may consider to be in the interests of Unit Holders. The Supervisor shall from time to time (to the extent of the Trust Fund held by it) effect and pay for such Investments or purchases, sales, transfers, exchanges or alterations of Investments as may properly be directed in writing by the Manager, and shall do all things necessary on its part to give effect to any such direction.
- 13.2 **Authorised Investments:** The Trust Fund shall be invested only in Authorised Investments.
- 13.3 **Continuous ability to acquire Economic Rights:** Notwithstanding clause 13.1, the Manager and the Supervisor must not take or omit to take any action which would prevent the ability to continually acquire Economic Rights as referred to in clause 5.1 and the Manager must enter into arrangements with the Fonterra Custodian for the Fonterra Custodian to continuously offer to purchase Shares during the periods the FSM is open for trading (subject always to complying with the limits and thresholds from time to time applicable under Fonterra's Constitution, this Deed and any relevant legislation) with the Fonterra Custodian holding Economic Rights in respect of each such Share acquired on trust for the Supervisor in accordance with the terms of the Custody Trust Deed.
- 13.4 **Registration of Investments:** Any Investments shall, as soon as reasonably practicable after receipt of the necessary documents by the Supervisor, be registered (if registrable in nature) in the name of the Supervisor (or any nominee appointed under clause 3.5) and be held in safe custody by the Supervisor (or any nominee appointed under clause 3.5), or by some person selected by the Supervisor in accordance with clause 34.3(g), and shall remain so registered and held until the same shall be sold or disposed of pursuant to the provisions of this Deed. Economic Rights are not registrable and will be held by the Custodian pursuant to the Custody Trust Deed.
- 13.5 **Passive Investment:** As is set out in Introduction B.(b), the Trust is to be a passive investment vehicle which must not actively trade in Shares or Economic Rights, nor undertake any other trading activity, but this does not limit any of the rights and obligations set out in this Deed, in particular clauses 5.1, 9 and 13.3.
- 13.6 **No interference with the trust property held under the Custody Trust Deed:** Neither the Manager nor the Supervisor will, at any time:
- (a) call for, demand or seek, directly or indirectly, by any means, the transfer of any part of the trust property held 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 any other person who is not a Permitted Person;

- (b) do anything or take any step which has the purpose or effect of transferring, or otherwise vesting, legal title, or any rights or interests, in any Shares forming part of the trust property held pursuant to the Custody Trust Deed, to the Supervisor or any other person who is not a Permitted Person; or
- (c) otherwise interfere in, or take any step or do anything which affects, the holding of the trust property held pursuant to the Custody Trust Deed,

but nothing in this clause affects the operation of clauses 9.3 or 15.1.

13.7 Restrictions: Neither the Manager nor the Supervisor will:

- (a) except in the case that any of the exceptions in the Custody Trust Deed apply, obtain a judgment for the payment of money or damages by the Custodian in its personal capacity;
- (b) issue any demand under section 289 of the Companies Act (or any analogous provision under any law) against the Custodian;
- (c) apply for the liquidation or dissolution of the Custodian;
- (d) levy or enforce any distress or other execution to, or on, or against any asset of, or held by, the Custodian;
- (e) apply for the appointment by a Court of a receiver or manager to any of the assets of, or held by, the Custodian from time to time;
- (f) exercise or seek to exercise any set off or counterclaim against the Custodian in the performance of its duties under the Custody Trust Deed;
- (g) appoint, or agree to the appointment of, any administrator (or person having a similar function) to, or in respect of, the Custodian;
- (h) take any step which would lead to a recommendation being made supporting the appointment of a statutory manager in respect of the Custodian; or
- (i) propose or approve any proposal for a compromise under Part XV of the Companies Act (or any analogous provision under any other legislation having substantially similar effect) in respect of the Custodian, or take any proceedings for any of the above,

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

13.8 Supervisor to consider interests of Unit Holders: Notwithstanding clause 13.1, the Supervisor shall not act on the direction of the Manager to acquire or dispose of any Investment of the Trust if, in the opinion of the Supervisor, conveyed in writing to the Manager, the proposed acquisition or disposition is manifestly not in the interests of Unit Holders or is in breach of this Deed, any rule of law or any enactment. The Supervisor shall not be liable to the Unit Holders, Fonterra or the Manager for so refusing to act on any direction.

13.9 Basis for valuation: If under this Deed or the FMCA a valuation of the Trust Fund is required, the value of each Asset shall be determined as follows:

- (a) in the case of Cash, its face value;
- (b) in the case of Economic Rights where there has been a sale of Units on the NZX Main Board in the five Trading Days ending on the date of the valuation, based on the volume weighted average sale price of the Units quoted on the NZX Main Board at the time of valuation based on all price-setting trades of Units which take place through the NZX Main Board on the five Trading Days ending on the date of the valuation; or
- (c) otherwise, the amount agreed upon between the Manager and the Supervisor as the estimated market value after taking account of the most recent material sales, valuation, and other information that the Manager and the Supervisor consider to be appropriate or, failing such agreement, the fair market value determined by a Valuer.

13.10 Record-keeping and reconciliation: The Manager:

- (a) acknowledges that the Supervisor has delegated to it the record-keeping obligations in respect of any part of the Trust Fund which is not otherwise subject to a custody/custodial services agreement between the Supervisor and any third party; and
- (b) undertakes to the Supervisor that it will, in respect of the part of the Trust Fund to which the delegation in (a) above applies:
 - (i) keep, or ensure that there are kept, records that meet the requirements of section 158(1) and (2) of the FMCA and in a manner that meets the requirements of section 158(3) of the FMCA;
 - (ii) provide the information (to the extent it has that information, or has access to it from a third party) that the custodian needs to provide confirmations under section 159(1) of the FMCA;
 - (iii) take adequate steps, or ensure that adequate steps are taken, to enable the Supervisor (or any wholly owned subsidiary of the Supervisor) to meet its obligations under regulation 86 of the Financial Markets Conduct Regulations 2014; and
 - (iv) cooperate with the Supervisor (or any wholly owned subsidiary of the Supervisor) in relation to all assurance engagements undertaken under regulation 87 of the Financial Markets Conduct Regulations 2014.

14. DISTRIBUTIONS

- 14.1 Unclaimed money:** If any distribution or any other payment of money to any Unit Holder or former Unit Holder at that Unit Holder's address shown in the Register or in accordance with that Unit Holder's payment instructions is returned or otherwise unclaimed, the distribution or money payable shall be retained by the Supervisor and held for such Unit Holder without liability to invest the same or pay interest on any such money payable. Any distribution or amount payable remaining unclaimed for six years or longer shall be dealt with by the Manager and the Supervisor in accordance with the Unclaimed Money Act 1971.

15. RIGHTS, BENEFITS AND ENTITLEMENTS ARISING FROM SHARES

15.1 **Provision of benefits to unit holders:** In respect of Economic Rights and Distributions and other Benefits which arise from Economic Rights held as Assets:

- (a) upon receipt of a Cash dividend or other Cash Benefits (other than a Supplementary Dividend) paid by Fonterra, this will be distributed to Unit Holders who were recorded in the Register at the same time and on the same record date as applied by Fonterra to determine the entitlement to the cash dividend or other cash Benefits. The amount to be paid or transferred to each such Unit Holder in respect of each Unit held by that Unit Holder as at that time, will be equal to the amount Fonterra paid or transferred per Share adjusted to take into account any Tax Liability of the Trust relating to the Unit Holder or any adjustments in accordance with section HM 48 of the Tax Act, and less any non-resident withholding tax deducted in respect of the Unit Holder in accordance with subpart RF of the Tax Act pursuant to section HM 44B of the Tax Act and less any sum authorised in accordance with an Extraordinary Resolution pursuant to paragraph 11.1(b)(viii) of Schedule 1;
- (b) upon receipt of any Supplementary Dividend paid by Fonterra, this will be distributed to the Unit Holders that entitled Fonterra to apply section LP 2 of the Tax Act and receive a tax credit for the Supplementary Dividend;
- (c) upon receipt of any imputation credits attached to a dividend paid by Fonterra, the amount of imputation credits attributable to each Unit Holder will be determined in accordance with section HM 50 of the Tax Act;
- (d) upon the Fonterra Custodian receiving any Shares issued by Fonterra as a bonus issue in respect of Shares the subject of Economic Rights (which will then in turn be the subject of Economic Rights), the Manager will issue bonus Units to Unit Holders who were recorded in the Register at the same time and on the same record date as was applied by Fonterra to determine the entitlement to the bonus issue of the Shares. The number of Units to be issued to each such Unit Holder in respect of each Unit held by that Unit Holder as at that time, will be the same number as Fonterra issued per Share as its bonus issue;
- (e) if Fonterra gives holders of Shares, including Shares held by the Fonterra Custodian the subject of Economic Rights, the Right to acquire further Shares, then the Manager will give to Unit Holders who were recorded in the Register at the same time and on the same record date as applied by Fonterra to determine the entitlement to the Right, the Right to acquire further Units so that all directions (and appropriate subscription proceeds) are received in sufficient time for the Manager to instruct the Fonterra Custodian how to deal with the Rights received from Fonterra in respect of the Shares the subject of Economic Rights and to meet any payment obligations in respect of the Fonterra Rights. Upon the issue of Shares to the Fonterra Custodian pursuant to the exercise of the Fonterra Rights by the Fonterra Custodian and such Shares being the subject of Economic Rights, the corresponding number of Units will be issued to persons who exercised the Rights issued by the Trust;
- (f) if Fonterra gives holders of Shares, including Shares held by the Fonterra Custodian the subject of Economic Rights, the Right to acquire securities other than Shares (and other than a security Convertible to a Share) then the Manager will give to Unit Holders who were recorded on the Register at the same time and on the same record date as applied by Fonterra to determine the entitlement to that Right, the Right to acquire those securities to be issued by Fonterra;

- (g) if Fonterra gives holders of Shares, including Shares held by the Fonterra Custodian the subject of Economic Rights, the Right to acquire a security Convertible to a Share, then the Manager will direct the Fonterra Custodian to dispose of such Right at the best price reasonably obtainable at the relevant time, based on advice obtained by the Manager for that purpose, and, upon receipt of the sale proceeds from the Fonterra Custodian, this will be distributed to Unit Holders who were recorded on the Register at the same time and on the same day as was applied by Fonterra to determine the entitlement to the Right; and
- (h) if Fonterra or a third party makes an offer to acquire Shares held by the Fonterra Custodian which are the subject of Economic Rights, the Manager will seek a direction from each Unit Holder whether or not to accept such offer (being for the Manager to direct the Fonterra Custodian to accept the offer and for the Manager to redeem one Unit for each Share which are the subject of Economic Rights transferred pursuant to that offer). Should any such offer be accepted by Unit Holders, the amount to be paid to the relevant Unit Holders who duly elected to accept the offer (in proportion to the number of Units each such Unit Holder elected be redeemed) will be the consideration received adjusted to take into account any Tax Liability of the Trust relating to the Unit Holder, any non-resident withholding tax deducted in accordance with section HM 44B of the Tax Act or any adjustments in accordance with section HM 48 of the Tax Act and, contemporaneously with the transfer of the Shares pursuant to the offer, Units held by those Unit Holders who duly accepted the offer will be redeemed for that consideration. None of the Manager, the Supervisor or Fonterra has any liability to a Unit Holder if the Manager is unable to seek a direction from each Unit Holder whether or not to accept the offer. If no direction is received from a Unit Holder, then the Manager will not accept the offer for the number of Shares equal to the number of Units held by the Unit Holder who does not give the direction.

15.2 **Voting in relation to Shares:** The Manager, Supervisor and each Unit Holder is not entitled to, and will not, request or require the Fonterra Custodian to:

- (a) subject to clause 15.3, cast any votes attached to or arising from the Shares the subject of the Economic Rights and held by the Fonterra Custodian, including, directly or indirectly, 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; or
- (b) requisition or join in requisitioning any meeting of shareholders of Fonterra; or
- (c) propose or join with any other party in proposing any matter for discussion or resolution at any meeting of shareholders of Fonterra; or
- (d) attend or speak at any meeting of shareholders of Fonterra (unless invited to do so by Fonterra);

and Unit Holders are deemed to acknowledge that neither the Manager nor the Supervisor is entitled to exercise such powers. Any request, direction or instruction received by the Manager or the Supervisor from any person in respect of the exercise of any voting right in relation to any Shares must, except as set out in clause 15.3, be ignored and not given effect to and the Manager and the Supervisor shall not be liable on any basis in respect of any failure or refusal by either of them to give effect to any such request, direction or instruction.

15.3 **Interest Group:** Where any Shares the subject of Economic Rights are the subject of an interest group and are entitled to be voted (or entitle the Fonterra Custodian to a vote) at a meeting of that interest group, in accordance with Fonterra's Constitution, the Manager will be entitled to instruct the Fonterra Custodian how to vote in that situation (in accordance with a contractual right granted to the Manager by the Fonterra Custodian, as the right to instruct the Fonterra Custodian how to vote in that situation is not property of the Trust).

15.4 **Deductions from income:** No deductions from the income of the Trust shall be made by the Manager or the Supervisor except to the extent permitted by this Deed, by law, or approved by Unit Holders including pursuant to paragraph 11.1(b)(viii) of Schedule 1.

16. REGISTERS

16.1 **Manager to maintain register:** The Manager shall keep and maintain, and Fonterra shall assist the Manager to maintain, or cause to be kept and maintained, an up to date Register of Unit Holders in New Zealand and shall comply with all of the provisions of the FMCA and the Listing Rules in respect of that register.

16.2 **Manager may appoint Registrar:** The Manager may, from time to time, appoint a Registrar acceptable to the Supervisor to keep and maintain the Register on the Manager's behalf upon such terms and conditions as the Manager thinks fit, and shall have the power to remove such Registrar at any time.

16.3 **Contents of Register:** There shall be entered in the Register:

- (a) the names and addresses of the Unit Holders;
- (b) the Inland Revenue tax number and Notified Investor Rate of each Unit Holder or whether the Unit Holder is a Notified Foreign Investor (as applicable);
- (c) the number of Units held by each Unit Holder;
- (d) the date on which the name of every person was entered in the Register as a Unit Holder;
- (e) the date on which any person ceased to be a Unit Holder;
- (f) such details as the Manager considers are necessary or desirable for the Trust to comply with, and to enable the Manager to administer the Trust in accordance with, all relevant PIE and Foreign Investment PIE requirements under the Tax Act; and
- (g) such other information as may be required by, or is necessary or desirable for the purposes of, the FMCA and other applicable laws.

16.4 **Registration of joint holders:** Joint holders of Units shall be jointly and severally liable in respect of all payments required to be made in respect of the relevant Units. All joint holders will be required to provide their Inland Revenue tax number, Notified Investor Rate or election to be a Notified Foreign Investor and any other information required by the Tax Act to the Manager for registration. On the death of any joint holder, the survivor or survivors will be the only persons recognised by the Manager and the Supervisor as having title to the Unit, but the Manager and the Supervisor may require such evidence of death as they may deem fit. Only the person whose name stands first in the Register as one of the joint holders of any Unit shall be entitled to delivery of any notice, cheque or other communication from the Manager or the Supervisor, and any notice, cheque or other communication given to any such person shall be deemed to have

been given to all the joint holders of Units. The joint holder whose name stands first in the Register will be the joint holder with the highest Notified Investor Rate, however, with the consent of all joint holders of the relevant Units, the Manager may amend the name of the person standing first in the Register.

- 16.5 **Audit of Register:** The Manager shall cause the Register to be audited in accordance with the FMCA (and also at the request of the Supervisor), including, for the avoidance of doubt, through a collective audit under regulation 110 of the Financial Markets Conduct Regulations 2014.
- 16.6 **Notification of change of details:** Any change of name or address of any Unit Holder shall be notified by such Unit Holder in writing to the Manager who shall alter, or cause to be altered, the Register accordingly.
- 16.7 **Inspection of Register:** The Manager, the Supervisor, the Auditor, Fonterra and any representative of them, and any Unit Holder, shall be entitled to inspect the Register free of charge at any time during normal working hours.
- 16.8 **Status of Register:** Each of the Manager, Fonterra and the Supervisor shall be entitled:
- (a) to rely absolutely on the Register as being correct;
 - (b) (but not required) for all purposes to treat a person whom it believes to be the person entered on the Register as the holder of any Units as the legal and beneficial owner of those Units; and
 - (c) (but not required) to effect transfers, redemptions or other dealings of any nature with Units on the basis of the information recorded in the Register relating to those Units.
- 16.9 **Evidence required by Manager/Supervisor/Fonterra:** Notwithstanding clause 16.8, each of the Manager, Fonterra and the Supervisor shall be entitled, at its absolute discretion, before giving effect to any transfer, redemption or other dealing with any Units to require the production to the Manager, Fonterra or the Supervisor of evidence satisfactory to it in its discretion that the person seeking to effect such dealing is the person named in the Register as the holder of the Units in question.
- 16.10 **Other interests in Units:** Except as required by law or this Deed, neither the Manager, Fonterra nor the Supervisor shall be bound to see to the performance of any trust (express, implied or constructive) or of any charge, pledge, or equity to which any of the Units or any interest therein are or may be subject, or to recognise any person as having any interest in any Unit, except for the person recorded in the Register as the Unit Holder, and no notice of any trust, charge, pledge or equity shall be entered upon the Register.
- 16.11 **Splitting of Interests:** The Manager:
- (a) may in its discretion, if so requested by a Unit Holder or a transferee of Units; and
 - (b) shall, if so requested by a Unit Holder who produces satisfactory evidence that Units held by that Unit Holder are held as a bare trustee or nominee and two or more other persons are separate beneficial owners of parcels of those Units or have other separate Interests in parcels of those Units,

arrange to register the Units held by that Unit Holder or transferee in two or more separately identifiable parcels. Each of the Manager, Fonterra and the Supervisor may

thereafter, so long as it considers convenient or appropriate, communicate with that Unit Holder, make distributions and otherwise act, as if the separate registered parcels were each held by different Unit Holders.

17. CERTIFICATES, SUBDIVISION, CONSOLIDATION

17.1 **No certificates:** Subject to compliance with any requirements of the Listing Rules and law, the issue of certificates by the Trust is not required, and no Unit Holder shall be entitled to a certificate.

17.2 **Issuing of statements:** A Statement shall be issued by the Registrar when required by the FMCA and, subject to the Listing Rules, upon request by the Unit Holder and upon payment of any fee prescribed from time to time by the Manager or by law.

17.3 **Evidence of security:** Except as may be required by law, a Statement shall not be a document of title nor negotiable, nor shall it be prima facie evidence of a Unit Holder's interest in the Trust Fund.

17.4 **No obligation to issue in respect of certain units:** The Registrar shall not be obliged to issue a Statement in connection with Units redeemed or transferred before the date of issue of the Statement.

17.5 **Statement may form part of other document:** Without limitation, a Statement may be issued with, or form part of, any other document including a form of transfer or a notice of distribution.

17.6 **Consolidation and subdivision of units:** The Manager shall, contemporaneously with such an action by Fonterra at any time, by notice in writing to the Unit Holders and the Supervisor, cause all of the Units in existence at the Fonterra record date of the relevant action to be consolidated or subdivided so that, following such consolidation or subdivision, the number of Shares the subject of Economic Rights is equal to the number of Units on issue. Each such notice shall:

- (a) specify the date on which such consolidation or subdivision is to take place (being the same date as the consolidation or subdivision by Fonterra is to take place); and
- (b) specify the ratio which the number of Units in existence after the consolidation or subdivision will bear to the number of Units in existence before the consolidation or subdivision.

17.7 **Cancellation of Statements:** Subject to the Listing Rules, the Manager may make such arrangements as it deems appropriate following a consolidation or subdivision for the cancellation of existing Statements and the issue of new Statements.

18. PAYMENT

18.1 **Payment:** A Unit Holder may elect to have any moneys payable to that Unit Holder pursuant to this Deed made by:

- (a) post; or
- (b) payment to a nominated account with a bank.

18.2 **Unit Holder's instructions:** Payment shall be effected when, in compliance with the Unit Holder's instructions, the Supervisor or the Manager on behalf of the Supervisor:

- (a) posts a cheque to the address of the Unit Holder shown in the Register; or
- (b) deposits the payment:
 - (i) with the Manager's bank; or
 - (ii) with a branch of the nominated bank (the choice being the Manager's),
 for transmission to the nominated account.

In the absence of an election, the Manager shall effect payment by posting a cheque to the address of the Unit Holder shown in the Register.

19. TRANSFER AND TRANSMISSION OF UNITS

19.1 **Right to transfer:** Subject to such of the restrictions of this Deed as may be applicable and subject to clause 19.3, any Unit Holder may transfer all or any of the Units held by that Unit Holder:

- (a) by an "**authorised transaction**" (as that term is defined in section 372(3) of the FMCA) or a "**licensed market transaction**" (as that term is defined in section 373(3) of the FMCA) by an instrument of transfer complying with the provisions of the FMCA;
- (b) under a system of transfer approved under section 376 of the FMCA or pursuant to a "**designated settlement system**" within the meaning set out in section 156M of the Reserve Bank of New Zealand Act 1989, which is applicable to the Trust;
- (c) under any other transfer system which operates in relation to the trading of securities on any stock exchange either inside or outside New Zealand on which Units are listed and which is applicable to the Trust; or
- (d) under an instrument of transfer in such form and execution satisfactory to the Registrar, and in compliance with any applicable law and any other reasonable requirements the Supervisor or the Manager may from time to time prescribe.

19.2 **Method of transfer:** A Unit which is disposed of in a transaction which complies with the requirements of a system of transfer authorised under clause 19.1(b) or clause 19.1(c) may be transferred in accordance with the requirements of that system. Where an instrument of transfer executed by a transferor outside New Zealand would have complied with the provisions of the FMCA if it had been executed in New Zealand, it may nevertheless be registered by the Manager if it is executed in a manner acceptable to the Manager or the Registrar.

19.3 **Settlement System:** The Manager and Fonterra shall arrange for the inclusion of Units in the settlement system adopted by NZX and by ASX. On being satisfied that the provisions of this clause 19.3 and all statutory provisions have been complied with, and subject to clauses 16.9 and 19.4, the Manager or Fonterra will register, or cause to be registered, any transfer of Units in the Register.

- 19.4 **Manager may decline to register:** Without limiting clause 20.3, the Manager may decline to register any transfer if:
- (a) the Manager or the Supervisor has a lien on any or all of the Units the subject of the transfer; or
 - (b) the instrument of transfer is not accompanied by such evidence as the Manager or the Supervisor may reasonably require to show the right of the transferor to make the transfer; or
 - (c) registration of the transfer would result in the Trust becoming ineligible as a Portfolio Investment Entity or Foreign Investment PIE, or would operate to threaten any such eligibility; or
 - (d) the registration of the transfer would result in a breach of clause 6.1(a) (or increase any Relevant Interest in breach of clause 6.1(a)).
- 19.5 **When transfer effective:** The transferor of a Unit shall be deemed to remain the holder of the Unit until the name of the transferee is entered in the Register in respect thereof.
- 19.6 **Notice concerning Minimum Holding:** Fonterra or the Manager may at any time give notice to any Unit Holder holding less than the Minimum Number of Units that such Unit Holder's holding is less than the Minimum Number and that the provisions of clause 19.7 shall apply (and such notice may also include content so as to comply with Rule 5.12.2 of the ASX Settlement Operating Rules).
- 19.7 **Sale if hold less than a Minimum Holding:** A Unit Holder upon whom notice has been served under clause 19.6 shall ensure that within three Months (or such longer period as the Manager may determine) after receiving the notice, the relevant Units are disposed of or further Units are acquired to bring the relevant holding to the Minimum Number. If, after such period, Fonterra and the Manager are not satisfied that suitable arrangements have been made for the disposition or acquisition of further Units, the Manager may arrange for the sale of the relevant Units on behalf of the Unit Holder, through the NZX Main Board, at the best price reasonably obtainable at the relevant time. For this purpose, the Unit Holder shall be deemed to have irrevocably appointed and authorised the Manager to act on behalf of such Unit Holder in relation to the sale of the relevant Units, and to sign all documents relating to such sale and transfer as may be required to give effect to it. For the purposes of the sale and of Rule 5.12 of the ASX Settlement Operating Rules, where the Manager has given a notice that complies with Rule 5.12.2 of the ASX Settlement Operating Rules, the Manager may, after the expiration of the time specified in the notice, initiate a Holding Adjustment to move the relevant Units from that CHESS Holding to an Issuer Sponsored Holding or to take any other action the Manager considers necessary or desirable to effect the sale. The person to whom such Units are transferred shall not be bound to see the application of the purchase money, nor shall his, her or its title to the Units be affected by any irregularity or invalidity in the proceedings relating to the sale of those Units. The net proceeds of sale shall be held on trust by the Supervisor for, and paid (together with interest at such rate as the Manager deems appropriate) to, the Unit Holder on receipt of payment relating to the relevant Units.
- 19.8 **Manager may return instruments of transfer:** All instruments of transfer which have been registered may be retained by the Manager. If the Manager, pursuant to the powers contained in this Deed, refuses to register a transfer, the Manager shall promptly send to the transferor and proposed transferee notice of the refusal and shall return the transfer instrument to the transferee together with such documents of title which may have been left with the transfer.
- 19.9 **Transmission on death of Unit Holder:** If a Unit Holder dies, the survivor, if the deceased was a joint Unit Holder, or the executors or administrators of the deceased

Unit Holder, shall be the only persons recognised by the Manager, Fonterra or the Supervisor as having any title to or interest in the Units of the deceased Unit Holder, but nothing in this clause 19.9 shall release the estate of a deceased joint Unit Holder from any liability in respect of any Unit or constitute a release of any lien which the Manager or the Supervisor may have in respect of any Unit.

19.10 **Claimants to prove entitlement:** Any person becoming entitled to any Units in consequence of the death or bankruptcy of any Unit Holder may, upon producing such evidence as the Manager shall consider sufficient to establish that person's entitlement to such Units, be registered as the Unit Holder of such Units or, subject to the provisions as to transfer contained in this clause 19, may transfer such Units.

19.11 **Rights of Personal Representatives:** A Personal Representative of a Unit Holder:

- (a) is entitled to exercise all rights (including without limitation the rights to receive distributions, to attend meetings and to vote), and is subject to all limitations, attached to the Units held by that Unit Holder; and
- (b) is entitled to be registered as holder of those Units, but such registration shall not operate as a release of any rights (including any lien) to which the Manager or the Supervisor was entitled prior to registration of the Personal Representative pursuant to this paragraph (b).

Where a Unit is subject to the control of two or more persons as Personal Representatives, they shall be deemed to be joint holders of the Unit.

20. RESTRICTIONS ON ACQUISITIONS

20.1 **Rulings binding:** If NZX gives any Ruling in respect of the matters dealt with by clauses 20, 21, 22 or 23, or any matter dealt with by section 4 of the Listing Rules, that Ruling is binding on the Manager, Fonterra, the Supervisor and all Unit Holders, and shall take effect as if that Ruling were itself incorporated in this Deed.

20.2 **Takeovers Code:** If a takeovers code is in force under the Takeovers Act 1993 that is applicable to the Trust then subject to:

- (a) any applicable provisions of that code;
- (b) the Manager first obtaining the approval of NZX and complying with any condition of that approval; and
- (c) such conditions as NZX may from time to time impose,

the whole of clauses 20, 21, 22 and 23, or such part or parts thereof as may be determined by NZX, shall cease to apply and shall be deemed to be cancelled with effect from the date upon which that code becomes applicable to the Trust, except that they shall nevertheless continue to apply in respect of any prior non-compliance.

20.3 **Restricted Transfer:** No Restricted Transfer of Units may take place if any Transferee under the Transfer in question is an Insider unless:

- (a) a notice has been given to the Manager and to NZX in a manner complying with Listing Rule 10.2.3 for release to the market, not later than the time specified in clause 20.4, containing the particulars specified in Listing Rule 4.5.2;

- (b) a notice of any change in, or addition to, the particulars notified under sub-clause (a) is given not later than the time specified in clause 20.5; and
 - (c) any Restricted Transfer status report, if required by clause 20.9, has been given in accordance with clause 20.9.
- 20.4 **Notice of Restricted Transfer:** A notice under clause 20.3(a) shall be given at least 15 Business Days before the Transfer.
- 20.5 **Notice of change in notice of Restricted Transfer:** A notice under clause 20.3(b) shall be given at least two Business Days before the change takes effect, in the case of a change to price or amount of consideration, and at least 15 Business Days before the change takes effect, in the case of a change to any other particulars specified in Listing Rule 4.5.2, including without limitation the nature of the consideration.
- 20.6 **Contents of notice:** If:
 - (a) a notice is given under clause 20.3, the Manager shall give notice, as soon as can be achieved, and before the expiry of the notice period referred to in clause 20.4, containing the particulars required by Listing Rule 4.5.6; and
 - (b) a notice is given under clause 20.3, or the Manager becomes aware that a Restricted Transfer proposal is more likely than not in the immediate future, the Manager shall comply (so far as is applicable) with Listing Rule 4.5.7.
- 20.7 **Appraisal Report:** The Manager shall (unless the requirements of Listing Rule 4.5.9 are met) forthwith upon a notice being given under clause 20.3(a) in respect of that Restricted Transfer (or clause 20.3(b) where the change relates to a change in the nature of the consideration offered), commission an Appraisal Report which complies with Listing Rule 4.5.8, and deal with that Appraisal Report in accordance with the requirements of that Listing Rule.
- 20.8 **Compliance with Listing Rules:** The Manager shall comply with the provisions of Listing Rules 4.4.5 and 4.4.6. Meetings for the purposes of Listing Rules 4.4.2 and/or 4.4.3 may be called under, and in accordance with, clause 27.
- 20.9 **Restricted Transfer status report:** If a Restricted Transfer is not completed within three months of the notice required to be given under clause 20.3(a), or of any status report previously given under this clause 20.9, then, before continuing with the Restricted Transfer, additional market information on the status of the Restricted Transfer shall be provided to the Manager and NZX in a manner complying with Listing Rule 10.2.3 for release to the market, including:
 - (a) advice as to when the Restricted Transfer is intended to be completed; and
 - (b) details of the Transfer(s) that comprise the Restricted Transfer which have not been completed.
- 20.10 **Manager's obligations:** On receipt of the information provided under clause 20.9, the Manager shall promptly advise NZX:
 - (a) of any change in circumstances (and the implications of the change) which would affect the continuing relevance and currency of any Appraisal Report or of the response initially provided under clause 20.6; and
 - (b) that the Manager is complying with Listing Rule 10.1.

20.11 **No derogation from clause 6.1:** Nothing in clauses 20 to 23 (both inclusive) affects clause 6.1, with only Fonterra able to hold or have an Interest in more than 15% of the lesser of:

- (a) the total number of Units on issue for the time being; or
- (b) the total Voting Rights for the time being.

21. ENFORCEMENT OF ACQUISITION RESTRICTIONS

21.1 **Acquisition in breach of restrictions:** If a person acquires a Relevant Interest in breach of clause 20 (not being a breach committed only by the Manager acting in its capacity as such or by Fonterra exercising any power of disposal under clause 6):

- (a) no Vote may be cast in respect of the Defaulter's Units on a poll (and any Vote cast shall be disregarded) while the Default is unremedied;
- (b) the Defaulter's Units may be sold by the Manager in accordance with clause 21.2 but this power may not be exercised:
 - (i) until one month after the Manager has given notice to the Defaulter (and if the Defaulter is not the registered holder of the Defaulter's Units, to the registered holder) of its intention to exercise this power; and
 - (ii) if, during that month the Defaulter has remedied the Default (if capable of being remedied), or has transferred the Defaulter's Relevant Interest in the Defaulter's Units to a person who is not a Defaulter.

21.2 **Exercise of power of sale:** If the power of sale specified in cause 21.1(b) becomes exercisable and is exercised:

- (a) the Manager shall arrange for the sale of the Defaulter's Units through NZX or in some other manner approved by NZX;
- (b) each holder of Defaulter's Units is deemed to have authorised the Manager to act on behalf of that holder in relation to the sale of the relevant Units, and to sign all documents relating to such sale which may be required to give effect thereto;
- (c) the net proceeds of sale shall be accounted for to the holder of the relevant Defaulter's Units and shall be held on trust by the Supervisor for, and paid (after deduction of amounts referred to in sub-clause (d)) to, holders of the relevant Units upon entry of the transfer relating to the relevant Units in the Register; and
- (d) the Manager may deduct from the proceeds of sale any costs of sale and any costs to the Manager of determining whether a person is a Defaulter and exercising powers permitted by this clause 21, and any amounts which the Manager may choose to pay to members of any Affected Group acting pursuant to clause 21.4, in reimbursement of expenses incurred by those members.

21.3 **Power of sale and transfer of title not to be questioned:** No purchaser or other person dealing with the Manager shall be concerned to enquire whether the power of sale specified in clause 21.1(b) has become properly exercisable, or as to the propriety

or regularity of a sale made in purported exercise of that power, or as to the application of the proceeds of sale received by the Manager. The receipt of the Manager is a good discharge to the purchaser for the purchase price, and no question may be raised as to the title of the purchaser to Units sold in purported exercise of the power of sale specified in clause 21.1(b).

- 21.4 **Resolution of Affected Group directing sale:** The Manager shall, if so directed by a resolution of an Affected Group (passed by a simple majority of Votes), exercise the power referred to in clause 21.1(b), if that power has become exercisable. The holders of 5% or more of the Units of an Affected Group may, by notice to the Manager, require the Manager to convene a meeting of the Affected Group for the purpose of considering such a resolution.
- 21.5 **Manager not to be held liable:** To the maximum extent permitted by the FMCA, neither the Manager nor any director or employee of the Manager, (nor the Supervisor or any director or employee of the Supervisor) shall be under any liability whatsoever to any Defaulter, any holder of Defaulter's Units, or any person whom the Manager believes to be a Defaulter or holder of Defaulter's Units, for or in connection with the exercise or purported exercise by the Manager of the powers specified in this clause 21.
- 21.6 **Remedy for breach of restrictions on acquisitions:** The sole remedy of a Unit Holder or any other person in respect of a breach or alleged breach of clause 20 shall be to exercise, or require the Manager to exercise, the powers referred to in clause 21.1. Without limiting the preceding sentence, no person is entitled to seek any injunction or other remedy to prevent a transaction alleged to be in breach of clause 20. Nothing in this clause affects the remedies of a Unit Holder against the Manager in respect of a breach of clauses 20, 21 or 22 by the Manager.
- 21.7 **Determination as to Defaulter's Units:** The Manager shall use reasonable endeavours to ascertain for the purposes of clause 21.1(a) whether any Units are Defaulter's Units and accordingly whether a holder of those Units is entitled to Vote. If any Unit Holder, or NZX, alleges that any Units are Defaulter's Units, the Manager shall properly consider and investigate that allegation. The ruling of the chairperson of any meeting as to whether any person is or is not entitled to Vote at that meeting pursuant to clause 21.1(a) shall, for the purposes of proceedings at that meeting, be conclusive, and the proceedings of, or any resolution passed at, any meeting shall not be impugned by reason of a breach of clause 21.1(a), but this provision shall not prejudice any action which any person may have against any Unit Holder by reason of that holder having cast a Vote at any meeting in breach of clause 21.1(a).
- 21.8 **Rulings:** NZX (an "**Arbiter**") may, for the purposes of making a Ruling as to whether any person is a Defaulter, give notice to any person who the Arbiter believes may be a Defaulter. The notice shall:
- (a) set out in general terms the grounds on which the Arbiter believes that person to be a Defaulter; and
 - (b) require that person, within a reasonable time specified in the notice, to produce evidence to rebut the Arbiter's belief that that person is a Defaulter.

If the person to whom the notice is given fails within the time specified in the notice to provide to the Arbiter evidence reasonably satisfactory to the Arbiter that that person is not a Defaulter, then the Arbiter shall be entitled to assume without further evidence that that person is a Defaulter, and to make a Ruling to that effect.

22. COMPULSORY ACQUISITION PROVISIONS

- 22.1 **Acquisition Notice:** If a person or a group of Associated Persons acquires beneficial ownership of 90% or more of a Class of Quoted Units, that person or group of persons (the "**Majority Holder**") shall, within 20 Business Days after that circumstance arises, give notice (an "**Acquisition Notice**") to all other holders (the "**Remaining Holders**") of Units of that Class ("**Affected Securities**") and at the same time to the Manager and NZX.
- 22.2 **Contents of Acquisition Notice:** The Acquisition Notice shall specify:
- (a) that the Majority Holder has beneficial ownership of 90% or more of the Affected Securities;
 - (b) either:
 - (i) that the Majority Holder intends to acquire all Affected Securities held by the Remaining Holders; or
 - (ii) that any Remaining Holder may require the Majority Holder to acquire the Affected Securities held by that Remaining Holder by giving notice to that effect to the Majority Holder within one month after the date of the Acquisition Notice; and
 - (c) the consideration which the Majority Holder is prepared to provide for Affected Securities.
- 22.3 **Entitlements and obligations of Majority Holder:** Upon giving an Acquisition Notice, the Majority Holder shall be entitled and bound:
- (a) if the Acquisition Notice contains the statement in clause 22.2(b)(i), to acquire all Affected Securities held by the Remaining Holders; or
 - (b) if the Acquisition Notice contains the statement in clause 22.2(b)(ii), to acquire all Affected Securities held by Remaining Holders in respect of which the holder, within one month after the date of the Acquisition Notice, gives notice requiring the Majority Holder to acquire.
- 22.4 **Consideration for Affected Securities:** The consideration to be provided for Affected Securities which the Majority Holder is entitled and bound to acquire shall be determined as follows:
- (a) The Acquisition Notice shall specify the consideration which the Majority Holder is prepared to provide. The Majority Holder shall, before giving the Acquisition Notice, provide to the Manager, the Supervisor and NZX a report from an independent, appropriately qualified person who has been previously approved by NZX ("**Expert**") confirming that, for the purposes of this clause 22, that consideration is fair to the Remaining Holders, using the same criteria set out in clause 22.4(c)(v).
 - (b) If, within 10 Business Days after the date of the Acquisition Notice, the Manager receives written objections to the consideration specified in the Acquisition Notice from the holders of 10% or more of the Affected Securities held by the Remaining Holders, then the Manager shall forthwith notify the Majority Holder and NZX of that fact and the consideration shall then be determined in accordance with clauses 22.4(c) and 22.4(d). If such objections are not received, the consideration shall be as specified in the Acquisition Notice.

- (c) If objections of the nature referred to in clause 22.4(b) are received by the Manager, the consideration shall be fixed by a person who shall:
 - (i) be appointed by the Disinterested Directors (as defined in Listing Rule 4.5.9), if any, and otherwise by all the directors of the Manager after consultation with the Supervisor and after approval by NZX;
 - (ii) be a different person from the person referred to in clause 22.4(a);
 - (iii) be directed to provide a decision within 20 Business Days after being appointed;
 - (iv) act as an expert and not as an arbitrator; and
 - (v) be directed to determine the consideration on the basis that it is fair to the Remaining Holders and is the pro-rated value of the Affected Securities based on the value of the Trust as a whole and the rights and obligations attached to those Affected Securities without taking into account any strategic or hold out value of the Affected Securities or any other factors relating to the Remaining Holders, the Majority Holder, their respective holdings of Units or the relative extent of those holdings.
- (d) If the consideration determined by the person appointed in accordance with clause 22.4(c) ("**Second Expert**"):
 - (i) is less than, or the same as, the consideration specified in the Acquisition Notice, the fee and expenses of the Second Expert shall be borne by the Remaining Holders who made the objections referred to in clause 22.4(b) and the Majority Holder shall deduct that amount from the consideration payable by the Majority Holder to the objectors, in proportion to their holdings (and may, if the consideration is not cash, deduct and sell sufficient of that consideration to produce sufficient cash); or
 - (ii) is more than the consideration specified in the Acquisition Notice, the fee and expenses of the Second Expert shall be borne by the Majority Holder.

22.5 **Payment of consideration:** The Majority Holder shall pay or provide the consideration to each Remaining Holder within 12 Business Days after the Majority Holder becomes bound to acquire the Affected Securities of that Remaining Holder, or if the consideration is required to be determined in terms of clause 22.4(c), within two Business Days after it has been so determined.

22.6 **Payment of consideration where holder cannot be located:** If any holder of Affected Securities which are to be acquired cannot be located by the Majority Holder, the Majority Holder shall pay or provide the consideration due to that holder to the Supervisor. The Supervisor shall hold that consideration upon trust for that holder for a period of five years from the date of its receipt by the Supervisor. If that consideration is not claimed by that holder within that period, it may be forfeited by the Supervisor for the benefit of the Trust. The Supervisor shall nevertheless, at any time after such forfeiture, annul the forfeiture and pay or provide the consideration to a claimant who produces satisfactory evidence of entitlement.

22.7 **Transfer and registration of Affected Securities:** Upon payment or provision by the Majority Holder of the consideration for Affected Securities in accordance with clauses 22.5 and 22.6, the Manager shall forthwith execute on behalf of all the holders of those

Affected Securities transfers of those Affected Securities in favour of the Majority Holder or its nominee, and shall cause the name of the Majority Holder or its nominee to be entered in the Register in respect of those Affected Securities. If the Manager fails to execute any such transfer, the Majority Holder may do so.

22.8 **Failure to issue notice or acquire Securities:** If a Majority Holder fails to give an Acquisition Notice when required to do so by this clause 22, or, after having become bound to acquire the Affected Securities of Remaining Holders in accordance with the provisions of this clause 22, fails to do so, then the provisions of clauses 21.1 to 21.5 and 21.7 shall apply with the following modifications:

- (a) the Affected Securities held by the Majority Holder shall be deemed to be Defaulter's Securities;
- (b) the failure to comply with this clause 22 shall be deemed to be a Default; and
- (c) the Remaining Holders shall be deemed to be an Affected Group.

23. HOLDING BY BARE TRUSTEE

23.1 **Interest held for Beneficial Owners:** For all purposes of clauses 20, 21 and 22 and notwithstanding anything in those clauses:

- (a) the Transfer of Units, or of any interest in Units, to a bare trustee shall be deemed to be a Transfer to the person or persons for whom that bare trustee holds those Units or that interest as trustee ("**Beneficial Owners**");
- (b) Units, or any interest in Units, held by a bare trustee shall be deemed to be held by the Beneficial Owners; and
- (c) a trustee may be a bare trustee notwithstanding that the trustee is entitled as a trustee to be remunerated out of the income or property of the relevant trust.

23.2 **Effect of holding as bare trustee:** Without limiting clause 23.1:

- (a) a bare trustee and a Beneficial Owner shall not, by reason solely of their relationship as bare trustee and Beneficial Owner, be Associated Persons;
- (b) a bare trustee of Units shall not, solely by reason of its position as bare trustee for the Beneficial Owner, have a Relevant Interest in those Units; and
- (c) a Beneficial Owner of Units shall not have a Relevant Interest in the Units of another Beneficial Owner solely because the same bare trustee acts as trustee for both of those Beneficial Owners.

23.3 **Defaulter's Units held by bare trustee:** In the event of a Default, if any Units held by a person as a bare trustee on behalf of different Beneficial Owners include any Defaulter's Units:

- (a) the bare trustee shall, on request by the Manager, Fonterra or NZX, provide to the Manager, Fonterra and NZX details of the Beneficial Owners of those Defaulter's Units; and
- (b) the Manager may at any time, and shall upon request by the bare trustee or any Beneficial Owner, take appropriate steps to ensure that those Defaulter's Units are separately designated in the Register recording those Units.

24. REMUNERATION OF SUPERVISOR

- 24.1 **Remuneration of Supervisor:** The Supervisor shall be paid by Fonterra, by way of remuneration for its service as Supervisor, the fees agreed from time to time between Fonterra and the Supervisor.
- 24.2 **GST:** The Supervisor is entitled to receive from Fonterra, in addition to the fees referred to in clause 24.1, any goods and services tax or duty or similar tax or duty payable in respect of such fees.

25. REMOVAL AND RETIREMENT OF SUPERVISOR

- 25.1 **Removal of Supervisor from office:** The Supervisor shall cease to hold office as supervisor if the Supervisor is removed pursuant to the FMCA.
- 25.2 **Retirement of Supervisor:** The Supervisor may retire at any time without assigning any reason provided that it has given not less than 90 days' notice in writing to the Manager of its intention so to do and either:
- (a) all functions and duties of the position have been performed; or
 - (b) the Manager has appointed a new Supervisor who holds a licence under the Financial Markets Supervisors Act 2011 that covers Units in the Trust and the new Supervisor has accepted such appointment and all of the Assets of the Trust Fund have been transferred from the Supervisor (if the Supervisor holds any such Assets) to the new Supervisor; or
 - (c) the High Court consents.
- 25.3 **Appointment of new Supervisor:** The power of appointing a new Supervisor (in place of a Supervisor which has retired pursuant to clause 25.2 or been removed from office pursuant to clause 25.1) shall be vested in the Manager. No person shall be appointed as a new Supervisor unless:
- (a) qualified to act as such pursuant to the Financial Markets Supervisors Act 2011 in respect of interests that covers Units in the Trust;
 - (b) such person has been approved by Fonterra; and
 - (c) all of the Assets of the Trust Fund have been transferred from the Supervisor (if the Supervisor holds any such Assets) to the new Supervisor.

If the Manager fails or refuses to appoint a new Supervisor, Fonterra will have the right to appoint the new Supervisor.

- 25.4 **Transition:** Following the resignation or termination of the appointment of the Supervisor pursuant to this clause 25, the Supervisor will ensure that for a period of 90 days after the appointment of the new Supervisor the prior Supervisor will assist its successor in the transition to Supervisor to the extent reasonably required. The retiring Supervisor will be entitled to charge Fonterra fees, and recover such costs and expenses from Fonterra as it may reasonably incur, in relation to providing such assistance. The Supervisor shall also be entitled to all fees from Fonterra accrued to the date upon which it ceases to hold office.

26. REMUNERATION OF MANAGER

- 26.1 **Remuneration of Manager:** The Manager shall not be entitled, in respect of its services, to any fees.

27. REMOVAL AND RETIREMENT OF MANAGER

- 27.1 **Characteristics of a Manager:** No person may be appointed as the Manager (including as a temporary Manager pursuant to clause 27.6) unless:

- (a) that person has entered into, and remains a party to, a deed agreeing to be bound by the terms of the Authorised Fund Contract applicable to the party described therein as "the Manager";
- (b) its shareholder (or shareholders) has entered into, and remains a party to, a deed agreeing to be bound by the terms of the Shareholding Deed (with the Shareholding Deed amended so that it applies to the person to be appointed as the Manager);
- (c) that person's appointment has been approved by Fonterra by written notice to the Supervisor; and
- (d) the person's constitution provides for its board of directors to consist of five directors, three to be elected by Unit Holders in accordance with clause 31.8 and two to be appointed and removed by Fonterra by notice.

- 27.2 **Removal of Manager from office:** The Manager shall cease to hold office as Manager of the Trust if:

- (a) the Manager is removed from that office by the High Court pursuant to section 209 of the FMCA on the application of the Supervisor, any Unit Holder, or the Financial Markets Authority; or
- (b) the Manager is removed by written direction of the Supervisor after the Supervisor certifies in writing pursuant to section 185(1)(a) of the FMCA that it is in the best interests of Unit Holders that the Manager should cease to hold office; or
- (c) the Unit Holders pass an FMCA Resolution directing that the Manager should cease to hold office; or
- (d) the Manager is removed from office by the Supervisor on any of the grounds specified in clause 27.3; or
- (e) the Manager ceases to be qualified to be appointed the Manager in accordance with clause 27.1.

- 27.3 **Entitlement to remove the Manager:** The Supervisor shall be entitled to remove the Manager if:

- (a) the Manager is materially in breach of its obligations under this Deed; or
- (b) the Manager fails to carry out its duties to the satisfaction of the Supervisor; or
- (c) the Manager is wound up, liquidated or subject to statutory management (except for the purposes of an amalgamation or reconstruction while solvent) or a

receiver, receiver and manager or administrator is appointed in respect of the Manager; or

- (d) the Manager breaches the Authorised Fund Contract and Fonterra gives a notice to the Supervisor requiring the Supervisor to remove the Manager from office as Manager; or
- (e) the shareholder of the Manager breaches the deed referred to in clause 27.1(b) and Fonterra gives a notice to the Supervisor requiring the Supervisor to remove the Manager from office as Manager.

27.4 **Effect of Manager ceasing to hold office:** Subject to clause 27.8 and 27.9 (to the extent permitted by the FMCA), if the Manager ceases to hold office, the Manager shall immediately desist from all activities related to the Trust. For the avoidance of doubt, for the purposes of section 185(4) of the FMCA, the Supervisor agrees to the Manager acting as required by clauses 27.8 and 27.9.

27.5 **Retirement of Manager:** The Manager may retire as manager of the Trust at any time without assigning any reason upon giving six Months' notice in writing to the Supervisor of its intention to do so (or such lesser period as the Supervisor may agree to). No such retirement shall take effect until a new Manager has been appointed and has executed the deed referred to in clause 27.8(a), agreed to accede to the Authorised Fund Contract pursuant to clause 27.8(b) and its shareholder(s) has entered into the agreement referred to in clause 27.8(c).

27.6 **Temporary Manager:** The Supervisor shall have power in accordance with section 186 of the FMCA to appoint a company qualified pursuant to clause 27.1 and sections 127(1)(c) and (e) of the FMCA, as a temporary Manager of the Trust in place of a Manager which has retired pursuant to clause 27.5 or been removed from office pursuant to clause 27.2 or 27.3.

27.7 **Appointment of new Manager:** The Supervisor shall, upon a vacancy in the office of the Manager occurring, summon a meeting of Unit Holders and shall take such steps as that meeting or any subsequent meeting of Unit Holders may require to secure the appointment as Manager of the Trust of the temporary manager appointed pursuant to clause 27.6, or some other company qualified pursuant to clause 27.1 and sections 127(1)(c) and (e) of the FMCA, and in each case approved by the Supervisor.

27.8 **Execution of deed by new Manager:** Any temporary Manager appointed pursuant to clause 27.6 and any new Manager appointed pursuant to clause 27.7, shall, upon such appointment:

- (a) execute a deed in such form as the Supervisor may require whereby the new Manager undertakes to the Supervisor, Fonterra and Unit Holders to be bound by all covenants on the part of the Manager from the date of such appointment; and
- (b) execute a deed agreeing to be bound by the Authorised Fund Contract in place of the previous Manager; and
- (c) procure that its shareholder enters into an agreement (in a manner acceptable to the Supervisor) for the purposes of clause 27.1(b).

From such date that both deeds and the agreement are so executed by all parties thereto, the then current Manager shall be absolved and released from all covenants under this Deed (except in respect of any prior breach) and the new Manager shall thereafter exercise all the powers, and enjoy and exercise all the rights, and shall be

subject to all the duties and obligations, of the Manager in all respects as if such new Manager had been originally named as a party to this Deed.

- 27.9 **Transition:** Following the resignation or termination of the appointment of the Manager pursuant to this clause 27 the Manager will ensure that for a period of 90 days after the appointment of the new Manager the prior Manager will assist its successor in the transition to Manager.

28. BORROWING AND SECURITY

- 28.1 **Borrowing:** The Supervisor shall have no power to borrow in respect of the Trust and the Manager may not direct the Supervisor to borrow in respect of the Trust.
- 28.2 **Security:** Neither the Supervisor nor the Manager shall have any power to grant any security to any person over any part or parts of the Trust Fund (including any Assets).

29. ACCOUNTS

- 29.1 **Records:** The Manager shall keep or cause to be kept true and proper accounts of all sums of money received and expended by or on behalf of the Trust and the matters in respect of which such receipt and expenditure takes place, and of the issue and cancellation of Units, and of all other matters for which accounts should properly be kept. The Supervisor shall provide to the Manager from time to time any information held by the Supervisor and requested by the Manager as being necessary for this purpose.
- 29.2 **Accounts:** The Manager shall cause to be prepared annual accounts in respect of the Trust for each Financial Year in accordance with the Financial Reporting Legislation and any other applicable law.
- 29.3 **Audit of accounts:** The annual accounts prepared in accordance with clause 29.2 shall be audited by the Auditor who shall report to the Manager and the Supervisor:
- (a) in respect of the state of affairs of the Trust as at the end of the period to which the accounts relate and of the results of the Trust for such period, the Auditor shall refer to its audit opinion issued in respect of the annual accounts for such period and confirm that the Auditor has no matters to report to the Supervisor, or otherwise give particulars of any such matters;
 - (b) in the performance of their duties as auditors of the annual financial statements of the Fund, whether in examining such accounts, and the records and books of account, the Auditor has obtained any knowledge of any material breach or default in the fulfilment of the terms, covenants, provisions or conditions of this Deed by the Supervisor, Fonterra or the Manager and, if so, particulars of each such default;
- or such other information as agreed between the Auditor, the Manager and the Supervisor from time to time.
- 29.4 **Information required for audit:** In carrying out that person's duties the Auditor shall be entitled to require from the Manager and the Supervisor such information, explanations, documents, certificates and accounts as the Auditor may consider necessary, and the Manager or the Supervisor (as the case may be) shall forthwith provide the same to the Auditor.
- 29.5 **Accounts and Auditor's report to be provided to Unit Holders:** The Manager shall (if, and to the extent, required by the FMCA) forward to each person referred to in the next sentence a copy of the semi-annual and annual accounts of the Trust Fund for that Financial Year, together, in the case of the annual accounts, with the Auditor's report thereon. Such accounts and report shall be sent to the Supervisor and each person who is a Unit Holder on a date determined by the Manager after the date such accounts are signed.
- 29.6 **Filing:** The Manager shall in accordance with section 461H of the FMCA cause to be filed with the Registrar of Financial Service Providers the statements and documents required to be filed pursuant to that section.
- 29.7 **Portfolio Investment Entity:** The Manager shall, within the time prescribed by and otherwise in accordance with the TAA:
- (a) provide all information and issue all notices required to be provided or issued by a Portfolio Investment Entity to a Unit Holder; and

- (b) cause to be filed with the Commissioner (as defined in the TAA) all returns, statements and other documents required to be filed by a Portfolio Investment Entity.

30. AUDITOR

- 30.1 **Auditor:** Subject to clause 30.5, notwithstanding the subsequent provisions of this clause 30, the auditor of the Trust shall be the same auditor as is the auditor of Fonterra unless that auditor declines to be the auditor of the Trust or Fonterra agrees or requires that the Trust have an auditor different from the auditor of Fonterra.
- 30.2 **Appointment of Auditor:** Should the auditor of Fonterra decline to be the auditor of the Trust or Fonterra agrees or requires that the Trust have an auditor different from the auditor of Fonterra, then the Manager and Fonterra shall, after consultation with the Supervisor, appoint the auditor of the Trust.
- 30.3 **Auditor:** An Auditor may also be auditor of the Manager, Fonterra or the Supervisor. An Auditor shall not be an officer or servant (or the partner of any officer or servant) of the Manager, Fonterra or of the Supervisor.
- 30.4 **Auditor's remuneration:** The remuneration of the Auditor shall be fixed by the Manager.
- 30.5 **Removal or retirement of Auditor:** The Auditor may at any time be removed from office by the Manager with the approval of Fonterra and the Supervisor, or by the Supervisor. An Auditor may retire upon the expiration of not less than 90 days' notice in writing to the Supervisor, Fonterra and the Manager.
- 30.6 **New Auditor:** Any vacancy in the office of an auditor occurring under clause 30.5 shall be filled in accordance with clause 30.2.
- 30.7 **Compliance with FMCA auditor requirements:** The Manager must comply with the requirements in the FMCA relating to the appointment of the Auditor and the Auditor's obligation to report to the Supervisor.

31. MEETINGS OF UNIT HOLDERS

- 31.1 **Request for meeting:** The Manager shall summon a meeting of the Unit Holders upon the request in writing of the Supervisor or of a Unit Holder or Unit Holders holding not less than five percent of the value of the Units at the date of such request.
- 31.2 **Manager may convene meeting:** The Manager:
 - (a) shall convene an annual meeting of Unit Holders to be held not less than six Months after the end of each Financial Year and not later than 15 Months after the previous annual meeting;
 - (b) may at any time of its own volition convene a meeting of the Unit Holders;
 - (c) shall convene any meeting requested pursuant to clause 31.1 for a date falling no later than 60 Working Days from the date of receipt of the request, provided that if the annual meeting to be held under sub-clause (a) will be held within 90 Working Days of the date of receipt of the request, then the meeting may be deferred by the Manager so as to be held on the same day as that annual meeting or any date prior to it; and

- (d) shall include, in or with any notice convening a meeting, a statement from either or both of the Manager and the Supervisor if either wishes to do so.
- 31.3 **Attendance:** Unit Holders of all Classes are entitled to attend meetings of Unit Holders and to receive copies of all notices, reports and financial statements issued generally to Unit Holders entitled to vote at meetings of Unit Holders but are not entitled to vote at any such meeting unless the terms of the relevant Units so provide.
- 31.4 **Meeting procedure:** All meetings of Unit Holders shall be convened and held in accordance with the provisions set out in Schedule 1, and (to the extent permitted by the FMCA) the provisions of Schedule 11 to the Financial Markets Conduct Regulations 2014 are hereby expressly excluded.
- 31.5 **Resolution directing Supervisor:** The Unit Holders shall, by means of a FMCA Resolution passed at a meeting of Unit Holders, have the power to give such directions to the Supervisor as they think proper concerning the Trust, being directions that are consistent with the provisions of this Deed and the FMCA and any direction given by the Financial Markets Authority under the Financial Markets Supervisors Act 2011.
- 31.6 **Supervisor acting under direction:** Where any direction is given to the Supervisor pursuant to clause 31.5 in respect of any matter, the Supervisor may comply with the direction, and shall not be liable to any Unit Holder or the Manager for anything done or omitted by it by reason of its following the direction. The Supervisor may also at its discretion in accordance with section 210 of the FMCA apply to the High Court for directions in respect of the matter and the directions and orders so given shall be final. Notwithstanding the foregoing, to the maximum extent permitted by law, the Supervisor is not required to act on any direction given unless it is first satisfied that all costs, losses and expenses which it may incur in so acting will be paid to the Supervisor.
- 31.7 **Interest group meeting:** A meeting of the Unit Holders in an Interest Group may be called by the Manager or the Supervisor at any time, and shall be called on the written request of a holder or holders of Units holding together not less than 5% of the value of the Units of the relevant Interest Group. All the provisions of this Deed relating to meetings of Unit Holders apply, with all necessary modifications, to a meeting of an Interest Group except that:
- (a) the necessary quorum is two or more Unit Holders in the group present in person or by proxy, attorney or authorised representative, or, if there is only one Unit Holder in the group, that Unit Holder present in person or by proxy, attorney or authorised representative;
 - (b) if the Manager so elects, one meeting may be held of Unit Holders constituting more than one group, so long as voting at that meeting is by way of a poll, and proper arrangements are made to distinguish between the votes of members of each group; and
 - (c) any Unit Holder in the group, present in person or by proxy, attorney or authorised representative, may demand a poll.
- 31.8 **Independent directors:** The Unit Holders will have the ability to appoint three directors to the board of the Manager ("**Elected Directors**") in accordance with the following provisions:
- (a) at the time of the annual meeting of the Trust in each year one of the Elected Directors shall retire from office. At the time of each annual meeting of the Trust thereafter, the Elected Director to retire shall be that person who has been longest in office since he or she was last appointed or deemed appointed. If two or more Elected Directors have been in office for the same period of time

the Elected Director to retire shall be determined by agreement between the Elected Directors or, failing agreement, by lot;

- (b) a retiring Elected Director is eligible for reappointment;
- (c) Unit Holders and the Manager shall each have the right to nominate persons for appointment as Elected Directors at the annual meetings of the Trust. A Unit Holder or the Manager may give written notice to the board of the Manager of a person or persons that they would like to nominate to be appointed as an Elected Director ("**Nomination Notice**"). This procedure is not required of a Director retiring by rotation and seeking reappointment;
- (d) the Manager will give notice of the period for nominations in accordance with the Listing Rules;
- (e) if a nominee agrees to stand for election, that nominee shall provide brief biographical details of his or her experience and the nominee must be an "Independent Director" for the purposes of the Listing Rules;
- (f) a Nomination Notice and biographical details must be received by the board of the Manager not less than two months before the date of the annual meeting (or such later time as the Manager, in its discretion accepts), accompanied by a consent in writing of that person to the nomination;
- (g) notice of every valid nomination received by the board of the Manager from a Unit Holder or the Manager before the closing date for nominations, and of any retiring Elected Director seeking reappointment, shall be sent to all persons entitled to attend the annual meeting of the Trust together with, or as part of, the notice of the annual meeting of the Trust;
- (h) the Unit Holders shall vote on the nominees and any retiring Elected Director seeking reappointment and the candidate receiving the most votes of Unit Holders at the annual meeting of the Trust will be elected as one of the Elected Directors of the Manager or, if there is more than one vacancy, the candidates with the most votes will be so elected. If there is only one candidate for election, including if that candidate is a retiring Elected Director seeking reappointment, the candidate will be elected or re-elected (as the case may be) if they receive more votes in favour of their appointment than opposed to their appointment; and
- (i) the Unit Holders may remove any Elected Directors appointed by Unit Holders by an Ordinary Resolution.

32. NOTICES

32.1 **Requirements for notices:** Any notice to be given to any Unit Holder shall be in writing and may be given either personally or by sending it by post to the address of the Unit Holder shown in the Register or by sending it to the email address designated by the Unit Holder for the purpose of receiving those notices by electronic means. A notice may be given to the joint holders of a Unit by giving the notice to the joint holder first named in a Register in respect of the Unit. Where a notice is sent:

- (a) by post, service of the notice shall be deemed to be effected by properly addressing, pre-paying and posting a letter containing the notice, and to have been effected on the Working Day following the day of posting; and

- (b) by email during a Working Day between 8.30am and 5.30pm, it will be deemed to have been served upon completion of an error-free transmission from the sender's information system. Where a notice is sent other than between 8.30am and 5.30pm on a Working Day by an error-free transmission from the sender's information system it will be deemed to have been served at 8.30am on the next Working Day.
- 32.2 **Notice to deceased Unit Holder:** Any notice delivered at or posted to the registered address or sent by email to the email address designated by the Unit Holder, notwithstanding that such Unit Holder be then deceased and whether or not the Supervisor or the Manager or Fonterra have notice of that Unit Holder's death, be deemed to have been duly served and such service shall be deemed a sufficient service on the executors and administrators of the deceased Unit Holder and all persons (if any) registered as joint holders with that deceased Unit Holder in respect of the Units concerned.
- 32.3 **Where no New Zealand address:** If any Unit Holder has no registered address within New Zealand and has not supplied to the Manager an address within New Zealand or designated an email address for the giving of notices, but has supplied an address outside New Zealand, then any notice to be given to such Unit Holder shall be posted to such Unit Holder at such address and shall be deemed to have been received by such Unit Holder 24 hours after the time of posting.
- 32.4 **Where no address for service supplied:** If any Unit Holder has no registered address and has not supplied to the Manager an address for the giving of notices, or if any two notices posted to a Unit Holder are returned to the Manager on consecutive occasions, then, notwithstanding anything contained elsewhere in this Deed, until the Unit Holder shall give notice in writing to the Manager of some other address, the address of the Unit Holder for all purposes of this Deed shall be deemed to be the Office.
- 32.5 **Period of notice:** Subject to the FMCA, where a given number of days' notice or notice extending over any other period is required to be given, either the day of service or the day upon which the notice will expire (but not both) shall be reckoned in the number of days or other period.
- 32.6 **Transferees bound by notices sent to the transferor:** Every person who, by operation of law, transfer, or by any other means whatsoever, shall become entitled to any Units, shall be bound by every notice which, prior to his or her or its name and address being entered in the Register in respect of such Units, shall have been duly given to the person from whom he, she or it derives his, her or its title to such Units.
- 32.7 **Requirements for notices to Manager or Supervisor:** Any notice, communication or information required by this Deed to be given to the Supervisor by the Manager, or to the Manager by the Supervisor, shall be in writing and be signed by a duly authorised officer of the party giving the notice.
- 32.8 **Electronic distribution:** If and when permitted by law and the Listing Rules, information referred to in clauses 29.5 and 31.3 is not required to be sent to a Unit Holder, provided the information is made available to Unit Holders electronically in the manner prescribed by law or the Listing Rules, and subject to such other conditions as may be prescribed by law or Listing Rules.
- 33. AMENDMENTS TO DEED**
- 33.1 **Amendments:** Subject to clause 4.5, the Supervisor, Fonterra and the Manager may at any time make any amendment to, or replacement of, this Deed (by means of a deed executed by the Supervisor, Fonterra and the Manager) if:

- (a) the Supervisor is satisfied that the amendment or replacement does not have a material adverse effect on Unit Holders; or
- (b) the amendment or replacement is approved by an FMCA Resolution of Unit Holders (or contingent upon such approval),

and the Supervisor certifies to that effect and certifies, or obtains a certificate from a lawyer, that the governing document, as amended or replaced, will comply with sections 135 to 137 of the FMCA on the basis set out in the certificate.

34. SUPERVISOR'S AND MANAGER'S LIABILITIES AND INDEMNITIES

- 34.1 Supervisor and Manager acting on behalf of Trust Fund:** The Supervisor and the Manager, in incurring any debts, liabilities or obligations, or in taking or omitting any other action for or in connection with the affairs of the Trust or the Trust Fund, are each, and shall each be deemed to be, acting for and on behalf of the Trust and not in their own respective capacities. Neither the Supervisor nor the Manager shall be under any personal liability, nor shall resort be had to their private property, for the satisfaction of any obligation or claim arising out of or in connection with any contract or other obligation of the Trust, and the Trust Fund only shall be liable or subject to levy or execution.
- 34.2 Liability for breach of trust or default:** The Supervisor, Fonterra and the Manager shall each be liable to the Trust Fund for any loss arising out of wilful default or wilful breach of trust but subject thereto none of Fonterra or (to the maximum extent permitted by the FMCA) the Supervisor or the Manager shall be liable to the Trust or to any Unit Holder for any act or omission or be subject to any liability whatsoever at law or in equity in connection with the affairs of the Trust or as a result of acting as Supervisor or Manager (as the case may be) under this Deed or, in the case of Fonterra, undertaking, or not undertaking, any matter under this Deed.
- 34.3 Specific powers and indemnities:** Without prejudice to the generality of clause 34.1 (and, in the case of the Supervisor and the Manager, to the maximum extent permitted by the FMCA):
- (a) the Supervisor shall not be responsible for any loss incurred as a result of any act, deceit, neglect, mistake or default of the Manager, Fonterra or any agent of the Manager or Fonterra nor shall the Supervisor be responsible to check any information, document, form or list supplied to it by the Manager or Fonterra;
 - (b) the Manager shall not be responsible for any loss incurred as a result of any act, deceit, neglect, mistake or default of the Supervisor, Fonterra or any agent of the Supervisor or Fonterra nor shall the Manager be responsible to check any information, document, form or list supplied to it by the Supervisor or Fonterra;
 - (c) the Supervisor, Fonterra and the Manager may each act upon the opinion or advice of, or upon statements of or information obtained from, any valuer, solicitor, barrister, banker, accountant, stockbroker or other person believed by the Supervisor, Fonterra or the Manager to be expert in relation to the matters on which that person is consulted and none of the Supervisor, Fonterra or the Manager shall be liable for anything done or suffered by it in good faith in reliance upon such opinion, advice, statements or information;
 - (d) whenever any certificate, notice, direction or other communication is to be given by the Manager or Fonterra to the Supervisor, the Supervisor may accept as sufficient evidence thereof a document signed on behalf of the Manager or

Fonterra by any director, officer or responsible employee of the Manager or Fonterra, or by any other person or persons appearing to be authorised by the Manager or Fonterra and the Supervisor shall not be bound to enquire as to validity of, or authority for, such action or document and shall not be liable for anything done or suffered by it in good faith in reliance upon such certificate, notice, direction or communication;

- (e) except as otherwise expressly provided in this Deed, the Manager, Fonterra and the Supervisor shall, as regard all the trusts, powers, authorities and discretions vested in each of them by this Deed, have absolute and uncontrolled discretion as to their exercise whether in relation to the manner or as to the mode of or time for their exercise;
- (f) the Supervisor, Fonterra, the Manager or any of their Related Companies, shareholders, officers or associates (each in this sub-clause (f) called "**Relevant Persons**") may hold Units (and, subject to the FMCA, exercise all rights as a Unit Holder) and act in any representative or other capacity for a Unit Holder. In particular, and without prejudice to the generality of the foregoing, any Relevant Person may so act on its own account or as executor, administrator, trustee, receiver, or attorney or agent or in any other fiduciary, vicarious or other professional capacity for a Unit Holder. The acting in any such capacity shall not be deemed a breach of any of the obligations arising out of any fiduciary relationship created by this Deed or imposed or implied by law and no Relevant Person shall be liable to account to any Unit Holder for so acting or any payments received in connection with so acting;
- (g) the Supervisor shall be at liberty to deposit all documents evidencing any Investments, or evidencing title to any Investments, with any person considered by the Supervisor to be of good repute, and the Supervisor shall not be responsible for any loss incurred by the Trust Fund as a result of any such documents being held by any such person;
- (h) none of the Supervisor, Fonterra or the Manager shall incur any liability to anyone in respect of any failure to perform or do any act or thing which, by reason of any provisions of any present or future law, Listing Rule or ordinance, rule, regulation or by-law made pursuant thereto or of any decree, order or judgment of any competent court, the Supervisor, Fonterra or the Manager shall be hindered, prevented or forbidden from so doing or performing;
- (i) none of the Supervisor, Fonterra or the Manager shall be liable to account to any Unit Holder or otherwise for any payments made by the Supervisor, Fonterra or the Manager in good faith to any fiscal authority for Taxes in respect of the Trust or in respect of Unit Holders or upon any certificates or with respect to any transaction under this Deed notwithstanding that any such payment need not have been made;
- (j) except in respect of any fraud or wilful default on the part of the Supervisor, Fonterra or the Manager, in no event shall the Supervisor, Fonterra or the Manager, as the case may be, be bound to make any payment to Unit Holders except out of funds held by it for that purpose under the provisions of this Deed;
- (k) the Supervisor shall be entitled to rely on the Manager and Fonterra as to the validity of any signature on any transfer, form of application or other instrument so long as the Supervisor has no reason to believe that such signature is not genuine; and

- (l) the Supervisor, Fonterra and the Manager shall not be liable to each other or any Unit Holder by reason of having accepted as valid or not having rejected any certificate purporting to be such and subsequently found to be forged or not authentic.
- 34.4 **No exemption from liability:** No provision of clauses 34.1 to 34.3 shall have the effect of exempting the Supervisor or Manager or any director or officer of the Supervisor or Manager from, or indemnifying any such person against, any liability for breach of trust where the requisite degree of care and diligence has not been shown, having regard to the provisions of the FMCA and this Deed and the powers, authorities and discretions conferred hereby.
- 34.5 **Proper and efficient manner:** The Manager shall use its best endeavours to ensure that the Trust is carried on in a proper and efficient manner.
- 34.6 **Provision of books and information:** The Manager and Fonterra shall (as the case may be):
- (a) make available upon demand to the Supervisor for inspection the whole of the Manager's books and papers, and all books and papers of the Manager and Fonterra relating to the Trust;
 - (b) give to the Supervisor such information as the Supervisor requires with respect to all matters relating to the Trust or to any business of the Manager, or to any property of the Manager (whether acquired before or after the date of this Deed) or otherwise relating to the affairs of the Manager or the Trust; and
 - (c) notify the Supervisor as soon as practicable after a document has been filed on the offer register or the scheme register (as those terms are defined in the Financial Markets Conduct Regulations 2014) in respect of the Trust.
- 34.7 **Certificates to the Supervisor:** The Manager and Fonterra each covenants with the Supervisor that it will within one Month after the end of each financial quarter of the Trust and within three Months after the end of each Financial Year, or within such further time as the Supervisor may in writing permit, provide to the Supervisor a certificate signed by the chairman of the Manager (or in their absence, another director) and by a duly authorised officer of Fonterra, in such form and with such qualifications (if any) as the Supervisor may in its discretion approve, stating to the best of their knowledge and belief after having made all due enquiry, whether or not since the date as at which the last such certificate was given, or, in the case of the first such certificate, since the date of this Deed:
- (a) any matters have in their opinion occurred to affect adversely the interests of Unit Holders, and if so giving particulars thereof;
 - (b) all amounts due and payable to the Unit Holders (whether by way of redemption or otherwise) have been paid;
 - (c) the Register has been duly maintained in accordance with the Deed and the requirements of the FMCA;
 - (d) the Manager and Fonterra have duly observed and performed their obligations under this Deed, all relevant legislation and (if applicable), any offer documents for the Trust prepared for the purposes of the FMCA or Securities Act 1978 ("**offer documents**");
 - (e) no material contingent liabilities have been incurred by the Trust Fund (or, where material contingent liabilities have been incurred by the Trust Fund,

details thereof) and no contingent liability has matured or is likely to mature within the succeeding 12 Months which will materially affect the Trust Fund;

- (f) the Assets of the Trust Fund at all times have been invested in accordance with the representations contained in the offer documents and in accordance with this Deed;
- (g) the number of Units on issue as at 5.00 pm on the date to which the certificate relates;
- (h) all moneys intended for the Trust Fund have been applied appropriately;
- (i) all Assets are held by the Supervisor or its nominee;
- (j) all fees have been calculated in accordance with the provisions of the Deed;
- (k) proper accounting standards and internal control procedures have been maintained and there have not been any significant departures from such standards and procedures (or, where such standards and/or procedures have not been maintained or where there have been such departures, particulars relating to those departures or non-maintenance of such standards and/or procedures);
- (l) the Manager has taken all reasonable steps to comply fully with the Tax Act and the TAA during the period and that the Trust's Tax Liability or liability under Subpart RF of the Tax Act has been paid by the due date;
- (m) the Trust has met the PIE eligibility requirements (applicable to the Trust) for the period, and that reasonable measures were in place to monitor and manage any potential breaches of the PIE eligibility criteria;
- (n) the Manager has taken all reasonable steps to allocate income, expenses, losses, tax credits and rebates to Unit Holders, calculate Tax Liability or liability under Subpart RF of the Tax Act, and adjust Unit Holders' interests in accordance with the Tax Act;
- (o) the Manager has not breached any "issuer obligation" (as defined in the FMCA) or the Listing Rules;
- (p) there has been no breach of the Authorised Fund Contract or the Custody Trust Deed;
- (q) the current offer documents (if any) do not contain any statement that is false, misleading or deceptive or which is likely to mislead or deceive, and otherwise comply with the FMCA; and
- (r) the Manager has ensured that all filings on the offer register and the scheme register (as those terms are defined in the Financial Markets Conduct Regulations 2014) in respect of the Trust required under the FMCA have been made.

34.8 **Maintain the Listing:** Subject to any Extraordinary Resolution to the contrary passed at a meeting of Unit Holders duly convened and held, the Manager shall use its best endeavours to maintain the quotation of the Units on the NZX Main Board.

34.9 **Offering Documents:** The Manager and Fonterra will each be responsible to ensure that all offer documents relating to the issue of Units comply with all relevant legislation and

will, prior to release, provide a copy of each such offer document to the Supervisor for review.

35. SUPERVISOR'S POWERS AND COVENANTS

- 35.1 **Supervisor's powers:** The Supervisor shall have the power to settle and complete all transactions in respect of the Trust. Subject to the provisions in this Deed and the FMCA and the powers, rights and discretions given to the Manager by the FMCA and this Deed, the Supervisor shall have all powers, authorities, and discretions which it could exercise if it were the absolute and beneficial owner of the Trust Fund and all the powers, authorities, and discretions necessary to enable it to carry out the purposes of the Trust or otherwise to perform and comply with the obligations and duties under this Deed.
- 35.2 **Limited Investment Policy:** The Supervisor acknowledges and relies upon the intention of this Deed that the only transactions intended to be entered into on behalf of the Trust are as set out in the Introduction to this Deed and in this Deed and the Supervisor is directed to act in accordance with this intention. Accordingly the wider powers of investment under section 13A of the Trustee Act 1956 and any provisions of law which impose obligations on the Supervisor in respect of the diversification of investments shall not apply to this Deed or the Trust and to the extent that any provisions in this Deed expressly or impliedly impose any obligation on the Supervisor in respect of such investments the Supervisor is not, and will not be, required to exercise any care, diligence and skill that a prudent person might otherwise exercise in monitoring the performance of the Authorised Investments.
- 35.3 **Waivers and applications to Court:** The Supervisor may whenever it thinks expedient in the interests of Unit Holders exercise any of the following powers:
- (a) to waive at any time, and on any terms or conditions, any breach or anticipated breach of the covenants or obligations binding on the Manager or Fonterra under this Deed where such waiver will not, in the opinion of the Supervisor, be prejudicial to the interests of the Unit Holders; and
 - (b) to apply to the court for directions in relation to any questions, or assent to and approve of, or oppose, any application to the court made by or at the instance of the Manager, Fonterra or any Unit Holder.
- 35.4 **Legal proceedings by Supervisor:** The Supervisor may bring legal proceedings:
- (a) to obtain or recover any money that is payable to the Supervisor or any Investments that are to be vested in the Supervisor in accordance with the provisions of this Deed;
 - (b) for damages against any person arising out of any loss suffered by any Unit Holder or Unit Holders which the Supervisor or the Manager considers is recoverable; or
 - (c) to secure compliance with the provisions of this Deed and the terms of any offering document relating to the Trust.

36. MANAGER'S POWERS, DUTIES AND COVENANTS

- 36.1 **Manager to manage Trust:** The Trust shall be managed by the Manager with full and complete power of management including, subject to the terms of this Deed and the FMCA, the power to take all steps which the Manager considers necessary or desirable

in relation to the Trust (with full power to delegate to its officers and employees and to Fonterra and its officers and employees, or any of them all acts, matters and things whether or not requiring or involving the Manager's judgment or discretion) and the Manager and Fonterra each hereby agrees to carry out and perform the duties and obligations on its part herein contained. Nothing herein contained shall be construed to prevent the Manager, Fonterra and the Supervisor in conjunction or the Manager, Fonterra or the Supervisor separately from establishing or acting as manager or trustee for trusts whether of a nature similar to or different from the trusts of this Deed.

36.2 Appointment of attorney or agent: Without in any way affecting the generality of the foregoing, the Manager may in carrying out and performing the duties and obligations on its part which are herein contained:

- (a) by power of attorney appoint any person in any part of the world to be attorney or agent of the Manager for such purposes and with such powers, authorities and discretions (not exceeding those vested in the Manager) as it thinks fit with power for the attorney or agent to sub-delegate any such powers, authorities or discretions; and
- (b) appoint any person in any part of the world to be an agent, sub-manager, administration manager or investment manager in respect of the Trust or the Investments or any part thereof, and confer upon and delegate to such person all or any of the powers, authorities or discretions of the Manager under this Deed or in respect of the Trust (including power for such person to sub-delegate). Any such appointment shall be upon such terms as the Manager may in its discretion determine, and the Manager may enter into agreements or deeds on such terms as it determines recording the terms of any such appointment. For the purpose of this clause, if Fonterra may act as the agent of the Manager in accordance with the Authorised Fund Contract, Fonterra is hereby deemed to be appointed the agent of the Manager and may act in that capacity without anything further being required to effect the appointment.

The Manager shall at all times remain liable for the exercise or performance of the powers or duties conferred or imposed on the Manager by the FMCA or by this Deed (but not to the extent that Fonterra exercises such powers in its own right and not as agent for the Manager) and the Manager shall at all times remain liable and responsible for the acts and omissions of any person appointed pursuant to this clause 36.2. The Manager will notify the Supervisor and Fonterra of any agent or attorney appointed by the Manager pursuant to this clause, other than the appointment of Fonterra as described above.

36.3 FMCA: Should the Manager be able at any time to request the Financial Markets Authority (or its successor) to direct that the registration of the Trust be cancelled under any legislation, the Manager will not do so except in accordance with an Extraordinary Resolution passed in accordance with paragraph 11.1 of Schedule 1 and after approval of the Fonterra Unit Holder in accordance with clause 4.5(c)(ii).

37. TAXATION

37.1 PIE powers: The Manager and Fonterra have the following powers and discretions:

- (a) to elect, and do all things necessary to elect, for the Trust:
 - (i) to be a PIE, including a Foreign Investment PIE, for tax purposes;

- (ii) to calculate and pay its Tax Liability in relation to any amount in accordance with the Subpart RF of the Tax Act pursuant to section HM 44B of the Tax Act; and
 - (iii) to make voluntary payments of tax in accordance with section HM 45 of the Tax Act;
- (b) to notify Fonterra, in accordance with section HM 55FB of the Tax Act, of the Unit Holders that are non-resident and meet the requirements of section LP 2(1)(a) of the Tax Act;
- (c) to determine, on such basis as the Manager thinks appropriate in its complete discretion, Classes of Unit Holders applying the definition of Investor Class in section YA 1 of the Tax Act;
- (d) to determine the Attribution Period and the Calculation Period for the Trust in accordance with sections HM 34 and YA 1 of the Tax Act;
- (e) to determine, on such bases as the Manager thinks appropriate in its complete discretion, the assessable income (for tax purposes) of the Trust for an Attribution Period and to allocate (in such manner and on such basis as the Manager considers appropriate in its complete discretion) such income to each Investor Class for that Attribution Period, for the purposes of section HM 35 of the Tax Act (as modified by section HM 35C);
- (f) to determine, on such basis as the Manager thinks appropriate in its complete discretion, the deductions incurred in deriving the assessable income allocated to a Investor Class for an Attribution Period, for the purposes of section HM 35 of the Tax Act (as modified by section HM 35C);
- (g) to determine, on such basis as the Manager thinks appropriate in its complete discretion, the Net Income or the Net Loss, as the case may be, for each Investor Class for an Attribution Period for the purposes of section HM 35 of the Tax Act (as modified by section HM 35C);
- (h) to determine, on such basis as the Manager thinks appropriate in its complete discretion, the Taxable Income or the Tax Loss, as the case may be, for each Investor Class for an Attribution Period, for the purposes of section HM 35 of the Tax Act (as modified by section HM 35C) ;
- (i) to determine each Unit Holder's Investor's Percentage and Percentage for any period, based on what that Unit Holder's proportionate interest in any distribution by the Trust to Unit Holders would be in that period, if such a distribution were to be made;
- (j) to determine, on such basis as the Manager thinks appropriate in its complete discretion, the Trust's Tax Liability or tax credit, as the case may be, for the applicable Calculation Period, for the purposes of section HM 47 of the Tax Act or the Trust's liability in relation to any amount in accordance with Subpart RF of the Tax Act pursuant to section HM 44B of the Tax Act;
- (k) to elect (taking into account such factors as the Manager considers relevant in its complete discretion) whether the Trust determines its Tax Liability pursuant to sections HM 42, HM 43 or HM 44 of the Tax Act, and to make any elections required to give effect to such determination, provided that the Manager will not elect to use section HM 44 if it would jeopardise the Trust's election to be a Foreign Investment PIE;

- (l) to retain any amount to which a Unit Holder otherwise would be entitled if that amount is required to be paid to the Commissioner of Inland Revenue pursuant to section HM 43(4) of the Tax Act;
- (m) to determine, on such basis as the Manager considers appropriate in its complete discretion, the amounts of any tax credits under section LS 1 of the Tax Act available to the Trust by virtue of sections HM 47(5) or HM 55 of the Tax Act;
- (n) to determine, on such basis as the Manager considers appropriate in its complete discretion, the amount of any tax credit referred to in paragraph (m) that is attributable to a Unit Holder and to make available to the Unit Holder the benefit of that tax credit in such manner as the Manager considers appropriate in its complete discretion;
- (o) to determine, on such basis as the Manager considers appropriate in its complete discretion, the amount of any credits against income tax payable by the Trust that are available to the Trust by virtue of sections HM 49 to HM 55 of the Tax Act;
- (p) to determine, on such basis as the Manager considers appropriate in its complete discretion, the amount of any tax credit referred to in section HM 50(1) of the Tax Act that is available to be allocated to an Attribution Period and allocating (in such manner and on such basis as the Manager considers appropriate in its complete discretion), such tax credit to that Attribution Period in accordance with section HM 50 of the Tax Act;
- (q) to determine, on such basis as the Manager considers appropriate in its complete discretion, the amount of Tax paid or payable by the Trust that is attributable to a Unit Holder and to reduce the amount of any distribution otherwise payable to the Unit Holder by the amount of such Tax;
- (r) to make any other elections or exercise any options as to the method of calculation, allocation, attribution or payment of tax as it thinks fit having regard to the interests of Unit Holders generally and the requirements of the Tax Act, including whether to pay non-resident withholding tax in accordance with subpart RF of the Tax Act pursuant to section HM 44B or make voluntary payments of tax in accordance with section HM 45;
- (s) to carry out any other tax calculations, allocations or attributions required by the Tax Act;
- (t) to adjust a Unit Holder's Unit holding by cancelling or issuing Units as the Manager considers necessary or desirable in its complete discretion, whether in accordance with section HM 48 of the Tax Act or otherwise to the extent permitted by law, at any time (including immediately prior to the repurchase, redemption or switch of the Unit Holder's Units), having regard to the effect of:
 - (i) the Unit Holder's Notified Investor Rate; and
 - (ii) the Unit Holder's Attributed PIE Income, Attributed PIE Loss and allocated tax credits as adjusted for any expenses and any other amount required by the Tax Act from time to time which the Manager determines it is appropriate to charge on a Unit Holder specific basis,

on the Trust's Tax Liability and the amount of any tax credit under sections HM 49 to HM 55 of the Tax Act;

- (u) to elect to offset tax liabilities and refunds in respect of more than one Unit Holder and make such adjustments as the Manager thinks fit in its complete discretion to the extent permitted by the Tax Act;
- (v) to allocate the costs associated with being a PIE between Unit Holders on such basis as the Manager thinks appropriate (to the extent practical) in its complete discretion;
- (w) to take all steps as the Manager considers necessary or desirable to ensure the Trust is eligible or continues to be eligible as a PIE (or a Foreign Investment PIE), or otherwise to comply with the requirements of the Tax Act relating to PIEs (and Foreign Investment PIEs), including (in the Manager's complete discretion):
 - (i) rejecting applications for or transfers of Units;
 - (ii) treating Units issued or transferred to a Unit Holder as void (ab initio or from such other date as the Manager may decide in its complete discretion) and to the extent that the parties cannot legally achieve this outcome, then the Unit Holder acknowledges that any Units issued or transferred which exceed the investor interest size requirement prescribed in section HM 15(1) of the Tax Act, shall be deemed to be held by that Unit Holder on trust for the Manager and the Manager shall, subject to clause 6, have full powers of direction in relation to those Units including when, how and to whom they shall be disposed of;
- (x) to require that before accepting an application that the applicant provides their IRD Number, Notified Investor Rate or notification that they wish to be treated as a Notified Foreign Investor (as applicable) and any other information required by the Tax Act, and that at any time a Unit Holder must confirm such details on request from the Manager;
- (y) to disclose any information, including issuing any statements and providing any information to Unit Holders as required by the Tax Act or the TAA and in respect of their tax position in relation to the Trust, and providing any information (including personal information) to the Inland Revenue Department or any other person where the Manager considers it reasonably necessary or desirable to do so in order to administer the Trust's taxation obligations; and
- (z) to take all steps and do all things as the Manager thinks necessary or desirable in its complete discretion to transition the Trust to and from being a PIE (or a Foreign Investment PIE) or to administer the Trust as a PIE (or a Foreign Investment PIE).

37.2 **Proxy:** The Manager shall have the power to enter into any contractual or administrative arrangements with a Proxy for the purposes of ensuring that:

- (a) the Proxy meets its responsibilities under section HM 33(3) of the Tax Act; and
- (b) the application of the PIE tax regime to the Unit Holders is managed efficiently, on a timely basis and so as to generate accurate outcomes for the Unit Holders with respect to the allocation of income, losses, tax credits and rebates to Unit Holders and the payment of tax on behalf of Unit Holders; and
- (c) the Manager can require the Proxy to take such steps as are necessary to ensure that a Trust continues to be eligible to be a PIE.

37.3 **Role of Proxy:** Notwithstanding anything else contained in this Deed:

- (a) the Proxy must comply, in respect of the Trust, with the obligations imposed on a Proxy under section HM 33 of the Tax Act;
- (b) to the extent permitted by law none of the Trust, the Manager or the Supervisor shall have any obligation or liability of any nature:
 - (i) for any Tax Liability or other tax in respect of income allocated to the Proxy; or
 - (ii) for any matter for which the Proxy is responsible under paragraph (a) above; and
- (c) neither the Manager nor the Supervisor shall have any liability or obligation to Unit Holders or the Proxy in connection with the Proxy's failure to comply with, or any action or inaction of the Proxy in respect of, its obligations under paragraph (a) above.

37.4 **Provision of Information:** The Manager may request any Unit Holder to provide information to the Manager to enable the Manager to determine whether the Trust continues to meet the PIE eligibility requirements and, in particular, the Manager may request any Unit Holder to:

- (a) provide details of Units held by any person associated with Subpart YB of the Tax Act (including any person whom Units are held by a Proxy) where the person holds 5% or more of the Units in the Trust; and
- (b) confirm that the Unit Holder either is or is eligible to be a PIE.

If the Manager requests a Unit Holder to provide information to the Manager pursuant to this clause, the Unit Holder shall supply such information within 30 days of the request.

38. TERMINATION

38.1 **Period of the Trust:** The Trust commences on the date of this Deed and will continue until whichever of the following dates occurs first (the "**Date of Termination**"):

- (a) the date falling eighty years from the date of this Deed (the period so specified being the perpetuity period for the purposes of section 6 of the Perpetuities Act 1964) or, if the Perpetuities Act 1964 is amended, such later date as may be permitted by the Perpetuities Act 1964. If section 6 of the Perpetuities Act 1964 is repealed and not substituted with a perpetuity period, this clause 38.1(a) will cease to apply as from the date of repeal; or
- (b) all Economic Rights or Shares the subject of Economic Rights are disposed of in accordance with clauses 38.2, 38.3 or 38.4.

38.2 **Breach of the Authorised Fund Contract by Manager:** Should Fonterra have terminated the Authorised Fund Contract pursuant to clause 19.3(b) of the Authorised Fund Contract and have given a notice in writing to the Manager pursuant to clause 19.3(c) of the Authorised Fund Contract electing (at its sole discretion) to require the Manager:

- (a) to transfer to Fonterra or to such person as Fonterra may nominate all of the Economic Rights which are at that time held by the Fonterra Custodian for the Supervisor; or

- (b) 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,

then clause 38.5 will apply and the consideration for the transfer of such rights or Shares shall be the payment to the Supervisor of an amount determined in accordance with clause 19.3 of the Authorised Fund Contract.

38.3 Breach of the Authorised Fund Contract by Fonterra: Should the Manager have terminated the Authorised Fund Contract pursuant to clause 19.4(a) of the Authorised Fund Contract and have given a notice in writing to Fonterra pursuant to clause 19.4(b) of the Authorised Fund Contract for Fonterra to acquire, or procure that some other person acquires, all of:

- (a) the Economic Rights which are at that time held by the Fonterra Custodian for the Supervisor; or
- (b) the Shares in respect of which Economic Rights are held by the Fonterra Custodian for the Supervisor,

then, upon Fonterra advising the Manager and the Supervisor of the proposed completion of such acquisition in accordance with clause 19.4(b) of the Authorised Fund Contract, clause 38.5 will apply and the consideration for the transfer of such Economic Rights or Share shall be the payment by Fonterra (or a person procured by Fonterra) to the Supervisor of an amount determined in accordance with clause 19.4 of the Authorised Fund Contract.

38.4 Termination by resolution of Unit Holders: If Unit Holders pass an Extraordinary Resolution pursuant to paragraph 11(b)(vii) of Schedule 1:

- (a) and clause 19.5 of the Authorised Fund Contract applies and if Fonterra gives a notice to the Manager pursuant to clause 19.5(g) of the Authorised Fund Contract that it wishes to acquire the Economic Rights which are at that time held by the Fonterra Custodian for the Supervisor or the Shares in respect of which Economic Rights are held by the Fonterra Custodian for the Supervisor, then clause 38.5 shall apply and the consideration payable to the Supervisor for the acquisition of such Economic Rights or Shares will be an amount determined in accordance with clause 19.5 of the Authorised Fund Contract; and
- (b) no person (including any Unit Holder, the Supervisor or the Manager or their successors or assigns) may seek any order for the winding up of the Trust (or other similar remedy or order) on the grounds that the Extraordinary Resolution pursuant to paragraph 11(b)(vii) of Schedule 1 has been passed, it being acknowledged that this Trust will continue notwithstanding such a resolution has been passed, with the consequences of that resolution being solely as set out in clause 38.4(a). For the avoidance of doubt, this clause 38.4(b) applies notwithstanding the consequences which may arise for Fonterra under the Dairy Industry Restructuring Act 2001 as a result of such a resolution having been passed.

38.5 Continuation and settlement procedure: Where this clause applies as specified in clauses 38.2, 38.3 or 38.4 then:

- (a) the Trust will continue in accordance with this Trust Deed until the disposal of the Shares in respect of which Economic Rights are held by the Fonterra Custodian for the Supervisor or the Economic Rights which are at that time held by the Fonterra Custodian for the Supervisor (as the case may be) takes

place. Thereafter, notwithstanding any other provision of this Deed, the obligations of the Manager and the Supervisor under clauses 5 and 9 will cease and obligations of the Manager under clauses 38.6, 38.7, 38.8, 38.9 and 38.10 shall apply;

- (b) the Economic Rights or the Shares the subject of the Economic Rights (as the case may be) will be transferred free of all Security Interests and together with all rights and other benefits arising from the time Fonterra gave its notice requiring the disposal; and
- (c) the sale and purchase will occur as provided for in the Authorised Fund Contract.

38.6 Realisation of Investments: Immediately after the date Fonterra purchases, or a nominee purchases, the Economic Rights or the Shares the subject of the Economic Rights (as the case may be) in accordance with clause 38.2, 38.3 or 38.4, or the Date of Termination arises under clause 38.1(a), the Supervisor must sell and realise the remaining Assets as soon as reasonably practicable.

38.7 Retentions by Supervisor: The Supervisor is entitled to retain out of the proceeds of realisation of the Assets such amount that the Supervisor considers necessary or appropriate to meet all claims and liabilities (including for this purpose contingent liabilities) in connection with the Trust Fund or arising out of the liquidation of the Trust including the fees of any agents, solicitors, bankers, accountants, auditors or other persons (including the Manager) whom the Supervisor may employ in connection with the winding up of the Trust.

38.8 Application of Realisation: Subject to the retention of any moneys as provided in clause 38.7, the net proceeds of realisation of Assets shall be applied by the Supervisor as follows:

- (a) first, in payment or retention of all costs, charges, expenses and liabilities incurred and payments made by or on behalf of the Supervisor or the Manager and payable from the Trust Fund; and
- (b) secondly, in payment to the Unit Holders pro rata to the number of Units held by them or as otherwise specified in the terms of issue of any Unit.

38.9 Interim Distributions: If in the opinion of the Supervisor it is expedient to do so, the Supervisor may make interim payments or distributions on account of the moneys to be distributed in accordance with clause 38.8.

38.10 Receipts: Each distribution can be made only against delivery to the Supervisor of such form of receipt and discharge as may be required by the Supervisor.

39. GOVERNING LAW

39.1 New Zealand law: This Deed shall be governed by and construed in accordance with the law of New Zealand.

40. LIMITATION OF LIABILITY

40.1 Limitation of liability of Unit Holders: Notwithstanding anything contained in this Deed or any rule of law, subject to clause 41, no Unit Holder shall be or become personally liable in respect of any debt or liability of the Trust Fund, and:

- (a) no Unit Holder shall in any circumstances be liable to indemnify the Supervisor or the Manager in respect of any debt or liability incurred in respect of the Trust Fund;
- (b) nothing in this Deed or in the relationship between the Unit Holders shall be deemed to create a partnership amongst Unit Holders; and
- (c) neither the Supervisor nor the Manager shall be or act as agent for the Unit Holders, and neither shall have power to incur liabilities on behalf of any Unit Holder or pledge the credit of any Unit Holder.

41. TAXATION LIABILITY

41.1 Interpretation: In this clause:

"Relevant Tax Person" means a past or present Unit Holder and that Unit Holder's personal representatives or successors.

"Taxation Amount" means, in relation to a Relevant Tax Person:

- (a) any Tax payable by or on account of that person or in respect of that person's Units, including the Tax Liability of the Trust to the extent it is attributable to that person, to the extent that such Tax has not already been the subject of an adjustment, including in accordance with section HM 48 of the Tax Act (whether the payment of such Tax is required by law, or at the election of the Trust); and
- (b) any withholding tax or similar amounts required to be (including, for the avoidance of doubt, where an election has been made in accordance with section HM 44B) withheld or deducted by the Manager or the Supervisor in respect of a Relevant Tax Person, for or on account of Tax.

41.2 Deduction of tax: The Supervisor or Manager may deduct or require to be deducted from any amount otherwise payable to or to be applied in respect of a Relevant Tax Person an amount equal to the Taxation Amount of that Relevant Tax Person where such amount is payable or anticipated to become payable by the Supervisor or the Manager or from the Trust Fund.

41.3 Application of amounts deducted: Amounts deducted under clause 41.2 shall be applied in:

- (a) payment of the Taxation Amount to the person or authority entitled thereto; or
- (b) reimbursement of the Supervisor or the Manager for any corresponding amount paid from their own funds; and

any balance shall be refunded to the Relevant Tax Person.

41.4 Indemnification: To the maximum extent permitted by the FMCA, each Relevant Tax Person shall indemnify the Supervisor and the Manager in respect of any Taxation Amount paid or payable by the Manager or the Supervisor in respect of a Relevant Tax Person.

41.5 Interest: Any Taxation Amounts paid on behalf of or otherwise in relation to a Relevant Tax Person may, at the discretion of the Manager, carry interest calculated on a daily basis at a rate determined by the Manager and such interest shall be paid on demand by the Relevant Tax Person to the Supervisor or the Manager as the case requires.

SCHEDULE 1 : MEETINGS OF UNIT HOLDERS

1. MEETINGS

- 1.1 **Location:** A meeting of the Unit Holders shall be held at such time and in such place in New Zealand as the Manager determines and, if the Manager so determines, participation in the meeting may include participation by means of audio, audio and visual, or electronic communication.
- 1.2 **Right to speak:** Any director, officer or solicitor of the Supervisor, and any other person authorised in that behalf by the Supervisor, and any director, officer or solicitor of the Manager, and any other person authorised in that behalf by the Manager, may attend any meeting and all such persons shall have the right to speak at the meeting.
- 1.3 **Regulation of procedure:** Subject to the provisions of the FMCA, and except as otherwise provided in this Deed, the Manager may regulate the procedure at meetings of Unit Holders.

2. NOTICE OF MEETINGS

2.1 Written notice:

- (a) Notice of every meeting shall be given in the manner provided in this Deed to every Unit Holder entitled to receive notice of the meeting on a date determined by the Manager.
- (b) A copy of the notice and any other communication related to the meeting to be sent to Unit Holders shall be sent to the Supervisor, the Manager and the Auditor.
- (c) Subject to clause 2.3(c), the notice must be sent at least 14 days before the meeting.
- (d) The accidental omission to give notice to, or the non-receipt of notice by, any person entitled thereto shall not invalidate proceedings at any meeting.

2.2 Contents of notice: A notice of meeting shall state the time and place of the meeting, and:

- (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a Unit Holder to form a reasoned judgment in relation to it;
- (b) the text of any Extraordinary Resolution or FMCA Resolution to be submitted to the meeting; and
- (c) that a Unit Holder entitled to attend and vote at the meeting is entitled to appoint a proxy to attend and vote instead of the Unit Holder and that a proxy need not be a Unit Holder.

2.3 FMCA Resolution to be proposed: If an FMCA Resolution is to be submitted at the meeting, then:

- (a) a draft of the proposed notice of meeting (including any explanatory memorandum under clause 2.5) must be given to the Supervisor at least 10 working days before the notice of meeting is given in accordance with this Deed (or a lesser period where that lesser period is approved by the Supervisor);

- (b) the notice of the meeting must be accompanied by a document containing the Supervisor's comments on the proposed FMCA Resolution (but only if the Supervisor has provided those comments in writing to the Manager at least 5 working days before the notice of meeting is given in accordance with this Deed, or any lesser period approved by the Manager); and
- (c) the notice of meeting must be sent at least 15 working days before the meeting.

2.4 **Waiver of irregularity:**

- (a) An irregularity in a notice of a meeting is waived if:
 - (i) all the Unit Holders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Unit Holders agree to the waiver; or
 - (ii) the Supervisor indicates at the meeting that the Supervisor is satisfied that the irregularity has not resulted in and is unlikely to result in any material prejudice to the Unit Holders.
- (b) The accidental omission to give notice of meeting to, or the failure to receive notice of a meeting by, a Unit Holder does not invalidate the proceedings at that meeting.

2.5 **Notice of meeting to approve related party benefit:** If an FMCA Resolution is to be submitted to the meeting, for the purposes of section 173(3)(b) or 173(4)(c) of the FMCA, to approve a transaction or series of transactions that provides for a related party benefit to be given, the notice of the meeting must contain an explanatory memorandum that sets out the following:

- (a) if the monetary value of the related party benefit can be quantified, the nature and monetary value of that benefit;
- (b) if the monetary value of the related party benefit cannot be quantified, the nature and extent of that benefit;
- (c) the related party or parties to whom the related party benefit is proposed to be given; and
- (d) all other information that is known to the Manager that Unit Holders would reasonably require to decide whether it is in the Unit Holders' best interest to pass the proposed resolution.

3. **QUORUM**

3.1 **Quorum:**

- (a) No business shall be transacted at any meeting unless the requisite quorum is present at the commencement of business.
- (b) The quorum for meetings at which no FMCA Resolution is to be submitted shall be not less than five Unit Holders present in person or by proxy or by attorney or by authorised representative. A Unit Holder (or proxy, attorney or authorised representative) participating by means of audio, audio and visual, or electronic communication, is present at the meeting and forms part of the quorum provided that the Unit Holder, proxy, attorney or authorised representative complies with any conditions imposed by the Manager in relation to the identity

of the Unit Holder, proxy, attorney or authorised representative and that person's approval or authentication (including electronic authentication) of the information communicated by electronic means. The Chairman's decision as to compliance or non-compliance with any condition will be final.

- (c) If within half an hour from the time appointed for a meeting a quorum is not present, the meeting, if convened upon the request of Unit Holders, shall be dissolved. In any other case it shall stand adjourned to such day and time not being less than five Working Days thereafter, and to such place, as may be appointed by the chairman of the meeting ("**Chairman**"). At such adjourned meeting the Unit Holders present in person or by proxy or by attorney or by authorised representative and entitled to vote, whatever the number of Units held by them, shall be a quorum.
- (d) As concerns meetings at which an FMCA Resolution is to be proposed, the provisions of clause 5 of Schedule 11 to the Financial Markets Conduct Regulations 2014 are to apply, and the provisions in clauses 3.1(a) to 3.1(c) in this Schedule are not to apply.

4. CHAIRMAN

4.1 **Chairman:** The chairman of the board of directors of the Manager shall preside as Chairman at every meeting of Unit Holders or Class or Interest Group unless:

- (a) there is no chairman of the board of directors of the Manager or they are not available, in which event the Chairman will be any other director of the Manager determined by the Manager; or
- (b) the Supervisor advises the Manager that, in respect of any particular meeting, the Supervisor has determined that it is appropriate that some other person nominated by the Supervisor be the Chairman of that meeting, in which event the person so nominated will be the Chairman.

5. ADJOURNMENT OF MEETINGS

5.1 **Adjournment:**

- (a) The Chairman may with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place.
- (b) No business shall be transacted at any adjourned meeting except business which might have been lawfully transacted at the meeting from which the adjournment took place.
- (c) Notice of any adjourned meeting, if it is adjourned for less than 20 Working Days, is not required to be given. In any other case notice shall be given in the same manner as of an original meeting.

5.2 **Adjournment or dissolution of disorderly meeting:** If a meeting becomes so unruly, disorderly or inordinately protracted that in the opinion of the Chairman the business of the meeting cannot be conducted in a proper and orderly manner, the Chairman, notwithstanding any provision to the contrary contained in this Deed and without the consent of the meeting, may, in his or her sole and absolute discretion and without giving any reason therefor, either adjourn or dissolve the meeting.

5.3 **Completion of unfinished business if meeting dissolved:** If a meeting is dissolved by the Chairman pursuant to paragraph 5.2 of this schedule, the Chairman may direct

that any other item of uncompleted business, which in his or her opinion requires to be voted upon, be put to the vote by a poll without further discussion, in accordance with paragraph 10.1 of this schedule.

6. VOTING RIGHTS

- 6.1 **Persons entitled to vote:** The only persons entitled to vote in person or by proxy or by attorney or by authorised representative shall be the Unit Holders registered in the Register at a date determined by the Manager not more than two Working Days before the date of the meeting (or if an adjourned meeting, at the date the first meeting was first due to be held). A Unit Holder may exercise the right to vote either in person, by proxy, by attorney or by authorised representative.
- 6.2 **Number of votes:** Subject to paragraphs 6.6 to 6.8 (both inclusive) of this schedule, and to any rights or restrictions for the time being attached to any Unit:
- (a) where voting is by show of hands or by voice (or any other method permitted by the Chairman of the meeting where a Unit Holder (or proxy, attorney or authorised representative) is participating by means of audio, audio and visual, or electronic communication) every Unit Holder present (whether present in person or by proxy, attorney or authorised representative and irrespective of number of Unit Holders they may represent as proxy, attorney or authorised representative) has one vote; and
 - (b) on a poll every Unit Holder present in person or by proxy, attorney or authorised representative has, in respect of each Unit held by that Unit Holder, one vote.
- 6.3 **Vote of protected persons:** A Unit Holder who is of unsound mind, or in respect of whom an order has been made by any court having appropriate jurisdiction, may vote in respect of any Units held by that Unit Holder, by his or her committee, manager or other person of a similar nature appointed by that court, voting in person or by proxy or attorney.
- 6.4 **Chairman's casting vote:** The Chairman of a meeting of Unit Holders is not entitled to a casting vote.
- 6.5 **Joint Unit Holders:** Where two or more persons are registered as joint Unit Holders, the vote of the person named first in the Register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.
- 6.6 **No vote when amount owing on Unit or on part Units:** A Unit Holder is not entitled to vote at any meeting of Unit Holders in respect of any Unit if any amount is due and payable on that Unit by the Unit Holder to the Trust.
- 6.7 **Listing Rules:** For so long as any Units are quoted on the NZX Main Board, no Unit Holder shall be entitled to vote in favour of any resolution in respect of which such person is prohibited from voting by the Listing Rules.
- 6.8 **Clause 6 prevails:** Nothing in this schedule permits a person to vote in respect of Affected Units as set out in clause 6.8 of this deed.
- 6.9 **Manager and associated persons:** The Manager and its associated persons (as that term is defined in section 12(1) of the FMCA) may not vote on a resolution of Unit Holders where prohibited from doing so under section 163 of the FMCA.

7. PROXIES

- 7.1 **Right to appoint:** A Unit Holder may appoint a proxy to vote on behalf of the Unit Holder at a meeting of Unit Holders. A Unit Holder may appoint more than one proxy,

provided that not more than one proxy is appointed to exercise the rights attached to a particular Unit held by the Unit Holder. The proxy is entitled to attend and be heard at the meeting, and to demand or join in demanding a poll, as if the proxy were the Unit Holder.

- 7.2 **Notice of appointment:** A proxy shall be appointed by written notice signed by or, in the case of an electronic notice, sent by the appointing Unit Holder, and the notice shall state whether the appointment is for a particular meeting or for a specified term. Subject to any applicable Listing Rules, an instrument of proxy shall be in such form as the Manager shall stipulate from time to time.
- 7.3 **Proxy form to be sent with notice of meeting:** The Manager shall send a form of notice of appointment of proxy to every Unit Holder entitled to attend and vote at a meeting, with the notice convening the meeting.
- 7.4 **Proxy form must not name proxy:** The Manager shall not issue any form of notice of appointment with a proxy named in it, either by name or by reference to an office which that proxy holds, but the Manager may indicate in a footnote that certain persons or officers are willing to act as a proxy if a Unit Holder desires to appoint them or any of them.
- 7.5 **Receipt of proxy form:** No appointment of a proxy is effective in relation to a meeting unless a copy of the notice of appointment is received by the Manager at the Office, or at such address as is specified for that purpose in the notice convening the meeting, not later than 48 hours before the start of the meeting.
- 7.6 **Validity of proxy vote:** A vote given in accordance with the terms of a notice of appointment of a proxy is valid notwithstanding the previous death or mental disorder of the principal, or the revocation of the appointment or of the authority under which the notice of appointment was executed, or the transfer of the Unit in respect of which the proxy is appointed, if no written notification of such death, mental disorder, revocation, or transfer is received by the Manager at the Office before the commencement of the meeting or adjourned meeting for which the proxy is appointed.
- 7.7 **Manager may waive requirements:** The Manager may waive any of the requirements of paragraphs 7.2 and 7.5 of this schedule.

8. POWER OF ATTORNEY

- 8.1 **Power of Attorney:** Any Unit Holder may by power of attorney appoint an attorney (who need not be a Unit Holder) to vote and act on that Unit Holder's behalf at any meeting and such power of attorney or proof thereof to the satisfaction of the Manager shall, (unless such power of attorney or such proof has previously been produced to the Manager) not later than 48 hours before the time of holding the meeting at which the attorney proposes to vote, be produced for inspection at such place as the Manager may in the notice convening the meeting direct, or (if no such place is appointed) then at the Office. Such attorney if so empowered may appoint a proxy for the Unit Holder granting the power of attorney.

9. REPRESENTATIVE OF COMPANY

9.1 **Representative:**

- (a) A person authorised pursuant to a resolution of the directors or other governing body of a corporation which is a Unit Holder to act for it as its representative at any meeting shall be entitled to exercise the same powers on behalf of that corporation as that corporation could exercise if it were an individual Unit

Holder. A person so authorised is in this schedule referred to as an **"authorised representative"**.

- (b) An authorised representative shall be required to produce for inspection, at such place as the Manager may in the notice convening the meeting direct, or (if no such place is appointed) then at the Office, evidence of the authorised representative's appointment at any time not later than 48 hours before the time appointed for the holding of the meeting at which the authorised representative proposes to vote.

10. PROCEDURE

10.1 Voting procedure:

- (a) A resolution put to the vote of a meeting shall be decided on a show of hands (or any other method permitted by the Chairman of the meeting where a Unit Holder (or proxy, attorney or authorised representative) is participating by means of audio, audio and visual, or electronic communication) unless a poll is (before or on the declaration of the result of the show of hands) demanded by:
 - (i) the Chairman; or
 - (ii) the Supervisor or any representative of the Supervisor; or
 - (iii) a Unit Holder or Unit Holders representing not less than 10% of the total Voting Rights of all Unit Holders having the right to vote at the meeting.

Unless a poll is so demanded, a declaration by the Chairman that a resolution has been carried or carried unanimously or by a particular majority or lost, shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

- (b) If a poll is duly demanded it shall be taken in such manner as the Chairman may direct, and the result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- (c) A poll demanded on the election of a Chairman or on a question of adjournment shall be taken forthwith. Any other poll shall be taken either immediately or at such time (not being more than 10 Working Days from the date of the meeting) and place as the Chairman may direct. The result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded. No notice need be given of a poll not taken immediately.
- (d) The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.
- (e) On a poll, votes may be given either personally or by proxy or by attorney or by authorised representative. On a poll, a person entitled to more than one vote need not use all that person's votes or cast all the votes that person uses in the same way.

11. RESOLUTIONS

11.1 Resolutions:

- (a) When a particular majority is not required by this Deed or by law, any matter arising at any meeting of Unit Holders shall be determined by Ordinary Resolution.
- (b) Subject to clause 4.5 of this Deed and paragraph 12.1 of this schedule, a meeting of Unit Holders shall have the following powers exercisable by Extraordinary Resolution:
 - (i) power to sanction the exchange of Units for, or the conversion of Units into, shares, stock, debentures, debenture stock or other obligations or securities of any company, trust, fund or scheme, or other person, formed or to be formed;
 - (ii) power to sanction any alteration, release, modification, waiver, variation or compromise or any arrangement in respect of the rights of the Unit Holders howsoever such rights shall arise;
 - (iii) power to give any sanction, assent, release or waiver of any breach or default by the Manager, Fonterra or the Supervisor under any of the provisions of this Deed;
 - (iv) subject to the FMCA, power to discharge, release or exonerate the Manager, Fonterra or the Supervisor from all liability in respect of any act or omission for which the Manager, Fonterra or the Supervisor has or may become responsible under this Deed;
 - (v) power to give directions to the Supervisor as to the appointment of a new Manager in accordance with clause 27.7 who fulfils the criteria specified in clause 27.1;
 - (vi) subject to clause 38.4, power to terminate the Trust; and
 - (vii) power to sanction any proposal by the Manager to:
 - (aa) investigate whether the Manager or the Supervisor or the Fonterra Custodian has the right to exercise or enforce rights or any Claim; and / or
 - (bb) exercise or enforce the rights or Claim referred to in paragraph 11.1(b)(viii)(aa) of this schedule; and
 - (cc) fund the matters referred to in paragraphs 11.1(b)(viii)(aa) and / or (bb) of this schedule, including by deducting the costs from any distributions payable to Unit Holders.
- (c) Subject to clause 4.5 of this Deed and paragraph 12.1 of this schedule, in addition to the other rights set out in this Deed, a meeting of Unit Holders shall have the power, exercisable by FMCA Resolution, to assent to any alteration or modification of, or variation or addition to, the provisions contained in this Deed or other agreement or deed, or the conditions attaching to the Units, and to authorise the Manager and Supervisor to concur in and execute any supplemental trust deed or other document embodying any such alteration, modification, variation or addition.

12. EXTRAORDINARY RESOLUTION BINDS ALL UNIT HOLDERS

12.1 **Binding:** An Extraordinary Resolution passed exercising a power set out in paragraph 11.1(b) of this schedule, and an FMCA Resolution exercising the power set out in paragraph 11.1(c) of this schedule, at a meeting duly convened and held in accordance with these provisions shall be binding upon all Unit Holders whether present or not present at the meeting and each of those Unit Holders and the Supervisor and the Manager shall be bound to give effect thereto accordingly and the passing of any such resolution shall as between the Manager, the Supervisor and those Unit Holders be conclusive evidence that the circumstances justify the passing thereof, the intention being that it shall rest with the meeting to determine without appeal whether or not the circumstances justify the passing of such resolution provided that:

- (a) a resolution which affects the rights or powers granted to Fonterra pursuant to this Deed shall not be of effect unless Fonterra so agrees; and
- (b) no variation may be made to clauses 4.5, 4.6, 4.7 or 4.8 of this Deed unless the Fonterra Unit Holder so agrees.

13. MINUTES TO BE KEPT

13.1 **Minutes:** Minutes of all resolutions and proceedings at every meeting shall be made by the Manager or if the Manager shall not be present at any meeting by some person appointed by the Chairman of such meeting, and duly entered in books from time to time provided for that purpose by the Manager and any such minutes as aforesaid if purporting to be signed by the Chairman of the meeting at which such resolutions were passed or proceedings had or by the Chairman of the next succeeding meeting of Unit Holders shall be prima facie evidence of the matters therein stated and until the contrary is proved every such meeting in respect of the proceedings of which minutes have been made shall be deemed to have been duly held and convened and all resolutions duly passed.

14. UNIT HOLDER PROPOSALS

- 14.1
- (a) A Unit Holder may give written notice to the Manager of a matter the Unit Holder proposes to raise for discussion or resolution at the next meeting of Unit Holders convened under clause 31 of this Deed and at which the Unit Holder is entitled to vote.
 - (b) If the written notice given under sub-paragraph (a) is received by the Manager more than 25 Working Days before the last day on which notice of the relevant meeting of Unit Holders is required to be given by the Manager, the Manager must, at the expense of the Trust, give notice of the Unit Holder proposal and the text of any proposed resolution to all Unit Holders entitled to receive notice of the meeting.
 - (c) If the written notice given under sub-paragraph (a) is received by the Manager not less than 10 Working Days and not more than 25 Working Days before the last day on which notice of the relevant meeting of Unit Holders is required to be given by the Manager, the Manager must, at the expense of the Unit Holder, give notice of the Unit Holder proposal and the text of any proposed resolution to all Unit Holders entitled to receive notice of the meeting.
 - (d) If the written notice given under sub-paragraph (a) is received by the Manager less than 10 Working Days before the last day on which notice of the relevant meeting of Unit Holders is required to be given by the Manager, the Manager need only give notice of the Unit Holder proposal and the text of any proposed resolution to all Unit Holders entitled to receive notice of the meeting if it

considers that it is practicable to do so, and in that case, it shall do so, but at the expense of the Unit Holder.

- (e) If the proposal includes a resolution, or the Manager intends that Unit Holders may vote on the proposal by proxy, the Manager must give the proposing Unit Holder the right to include in or with the notice given by the Manager a statement (which together with the text of the resolution does not exceed 1,000 words) prepared by the proposing Unit Holder in support of the proposal, together with the name and address of the proposing Unit Holder. The Manager may include a response from any of the Manager, Fonterra and the Supervisor.
- (f) The Manager is not required to include in or with a notice given by the Manager:
 - (i) any part of a statement prepared by a Unit Holder that the Manager and the Supervisor consider to be defamatory (within the meaning of the Defamation Act 1992), frivolous, or vexatious; or
 - (ii) any part of a proposal or resolution prepared by a Unit Holder that the Manager and the Supervisor consider to be defamatory (within the meaning of the Defamation Act 1992).
- (g) Where the costs of giving notice of the Unit Holder proposal and the text of any proposed resolution are required to be met by the proposing Unit Holder:
 - (i) the proposing Unit Holder must, as a precondition to the Manager's obligations under this paragraph 14, on receiving written notice from the Manager to do so, deposit with the Supervisor such amount as the Manager (with the prior approval of the Supervisor) considers to be a reasonable pre-estimate of the costs which may be incurred by the Manager or the Supervisor in relation to giving notice of the Unit Holder proposal and the text of any proposed resolution; and
 - (ii) the Manager shall, promptly following the meeting, provide the Unit Holder with a statement of the actual costs incurred by the Manager or the Supervisor in relation to giving notice of the Unit Holder proposal and the text of any proposed resolution and the requesting Unit Holder shall promptly pay all such costs. The amount deposited pursuant to this sub-paragraph (g) shall be set off against the actual costs incurred, but without prejudice to the liability of the Unit Holder for any deficit after such set-off. If the amount deposited exceeds the actual costs incurred, then any such surplus shall be promptly refunded to the original payer(s). In the absence of a manifest error, any statement from the Manager (which has been approved by the Supervisor) setting out the actual costs incurred shall be conclusive evidence as to the relevant costs.

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

FONTERRA SHAREHOLDERS' FUND
AUTHORISED FUND CONTRACT

(as amended and restated)

RUSSELL McVEAGH

CONTENTS

PART A - INTERPRETATION AND PURPOSE	3
1. DEFINITIONS AND INTERPRETATION	3
2. INTENTION AND PURPOSE	9
PART B - ESTABLISHMENT OF THE FUND	11
3. PURPOSE OF THE PART	11
4. ESTABLISHMENT	11
5. APPOINTMENT, AUTHORISATION, AND PURPOSE	12
6. CUSTODY TRUST ARRANGEMENTS	13
7. FUND ARRANGEMENTS	14
PART C - OPERATION OF THE FUND	14
8. PURPOSE OF PART	14
9. NOMINATION OF APPOINTED DIRECTORS	15
10. VOTING - FONTERRA SHARES	16
11. DISTRIBUTIONS AND SECURITIES OFFERINGS	17
12. PROVISION OF SERVICES BY FONTERRA TO THE FUND	18
13. OPERATING COSTS OF THE FUND	20
14. DISCLOSURE PROTOCOL AND TRADING HALTS	23
15. INTELLECTUAL PROPERTY AND LICENCE GRANT	24
16. GENERAL OBLIGATIONS	25
17. CONFIDENTIALITY	25
18. CHANGE OF MANAGER	26
PART D - GENERAL PROVISIONS	26
19. TERM AND TERMINATION	26
20. LIABILITY AND FORCE MAJEURE	31
21. DISPUTE RESOLUTION	33
22. NOTICES	33
23. GENERAL	35
SCHEDULE 1: LICENCE GUIDELINES	38
SCHEDULE 2: FORM OF ACCESSION DEED	40
SCHEDULE 3: TERMINATION RIGHTS AND CONSEQUENCES	41

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 on-going 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.

FONTERRA SHAREHOLDERS' FUND

STATEMENT OF INVESTMENT POLICY AND OBJECTIVES

Adopted with effect from 1 November 2016

Overview

1. This Statement of Investment Policy and Objectives ("**SIPO**") sets out the investment policy and objectives of the Fonterra Shareholders' Fund (the "**Fund**"), as required by section 164 of the Financial Markets Conduct Act 2013 ("**FMCA**").

Nature of the Fund

2. The Fund is a unitised investment trust established to be the "Authorised Fund" under Fonterra's constitution. It is a "managed investment scheme" under the FMCA and its governing document is the Fonterra Shareholders' Fund Trust Deed (the "**Trust Deed**") dated 23 October 2012, as amended from time to time. The Fund has a life of 80 years. Units in the Fund ("**Units**"), which are "managed investment products" under the FMCA, are quoted on the NZX Main Board and the Australian Securities Exchange.
3. The purpose of the Fund is to enable members of the public to invest in the economic performance of Fonterra Co-operative Group Limited. The Fund also supports liquidity in the Fonterra Shareholders' Market, which is a private market operated by the NZX that allows farmer shareholders to trade shares in Fonterra Co-operative Group Limited ("**Shares**") among themselves.
4. The Manager of the Fund is FSF Management Company Limited ("**Manager**"), which is licensed under Part 6 of the FMCA. The Manager plays a relatively contained role in relation to the Fund, as described below.
5. Underlying the Fund are Shares held by Fonterra Farmer Custodian Limited ("**Custodian**"). The Custodian has declared a trust in respect of the "Economic Rights" of the Shares it holds from time to time under the Fund arrangements in favour of the Supervisor of the Fund. (The "**Economic Rights**" in a Share include, for example, the right to receive dividends paid on the Share.) For each such Share held by the Custodian, the Manager of the Fund is required to issue a Unit in the Fund. In this way, the Fund is designed to have the effect that each Unit on issue in the Fund will represent the Economic Rights derived from a single Share.
6. The wider investment community is given the opportunity to invest in Units. The Fund structure has been designed with the intention that Shares and Units should trade at very similar prices. The Fund arrangements allow the effective "exchange" of Units for Shares and vice versa (by persons entitled to hold Shares - such persons may redeem Units and receive the corresponding number of Shares from the Custodian).
7. As the Fund is designed to track the performance of Shares, there is no investment discretion, and as such no investment strategy, investment philosophy or performance measures. Instead the Fund is a passive investment vehicle (ie, it will not actively solicit Economic Rights or the redemption of Units except for the initial offer made in the course of establishment of the Fund).

Nature or type of investments

8. The Fund is a passive investment vehicle which is not permitted to actively trade in Shares. The key concept underpinning the Fund is a 1:1 correspondence between Shares and Units, as described above.

9. Under the Trust Deed, the investments that may be made under the Fund are limited to "Authorised Investments" (being Economic Rights, cash and other benefits paid by Fonterra in respect of Shares held by the Custodian). The Fund does not actively seek to make any "Authorised Investments" - this is initiated by persons transferring Shares to the Custodian under the Fund arrangements, or by Fonterra paying a dividend or other benefit in respect of Shares held by the Custodian. The value of those Economic Rights and the amount of any benefit paid in respect of the Units is therefore dependent on the economic performance of Fonterra Co-operative Group Limited, its Shares and distributions paid in respect of them.
10. The issue of a Unit when a Share is transferred to the Custodian under the Fund arrangements, and the transfer of a Share to a redeeming Unit holder, are automated through a computer system created and maintained by Computershare. The Manager does not have any discretion or ability to intervene in this automated process. Also, dividends and other cash benefits paid in respect of Shares held for the Fund are paid directly to Unit holders by Fonterra on behalf of the Manager, meaning the benefit does not pass through the Manager's hands.

Limitations on proportions of types of asset

11. There is no limit on the proportion of different "Authorised Investments". In practice, the only investment of the Fund is the Economic Rights in Shares, as dividends and other distributions are paid directly by Fonterra to Unit holders.

Methodology for developing/amending and measuring performance

12. As the Manager has minimal discretion in connection with the Fund arrangements under the Trust Deed, there is no "investment strategy" as such, and this SIPO will not be reviewed regularly or periodically. The investment objectives of the Fund are met by ensuring the relationship between Shares and Units described above is maintained, and (as this is automated) there is no need for formal measurement of economic performance of the Fund relative to any investment objectives. The Supervisor's ability to alter the investment objectives or strategy of the Fund is similarly constrained by the Fund arrangements.
13. To the extent that there is a change to the Trust Deed, the nature of the Fund or the role of the Manager, this document will be reviewed by the Manager and the Supervisor as and when such change occurs.