

Shareholders' Agreement

relating to

an incorporated public-private joint venture to reduce biogenic methane and nitrous oxide emissions

The Crown (represented by the Ministry for Primary Industries)

and

ANZCO Foods Limited

and

Fonterra Co-operative Group Limited

and

Rabobank New Zealand Limited

and

Ravensdown Limited

and

Silver Fern Farms Limited

and

Synlait Milk Limited

and

Centre for Climate Action Joint Venture Limited

Date 19 December 2022

Released under the Official Information Act 1982

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This **Agreement** is made on

19 December 2022

- between** (1) **The Crown (represented by the Ministry for Primary Industries)**
- and** (2) **ANZCO Foods Limited**
- and** (3) **Fonterra Co-operative Group Limited**
- and** (4) **Rabobank New Zealand Limited**
- and** (5) **Ravensdown Limited**
- and** (6) **Silver Fern Farms Limited**
- and** (7) **Synlait Milk Limited**
- and** (8) **Centre for Climate Action Joint Venture Limited**

Introduction

- A. There is broad consensus across industry, government, Māori, and the research community that a step change in investment and activity is needed to deliver biogenic methane and nitrous oxide emissions reduction tools and practices to support meeting New Zealand's 2030 and 2050 greenhouse gas targets while remaining internationally competitive.
- B. To facilitate the step change, the Budget 2022 Climate Emergency Response Fund has allocated \$338 million to support the Agriculture research and development actions identified in the 2022 Emissions Reduction Plan, including the establishment of a Centre for Climate Action on Agricultural Emissions (**Centre**) to drive the development of mitigations.
- C. It is proposed that the Centre will consist of a new incorporated public-private joint venture company (**Company**) focused on product development and commercialisation of a portfolio of mitigations which would be the principal vehicle for private sector investment, and an enhanced New Zealand Agricultural Greenhouse Gas Research Centre (**NZAGRC**) that will provide the foundation to support both the Company and wider biogenic methane and nitrous oxide emissions reduction efforts. Completing the Centre will involve oversight and connecting functions to support partnership, and strategic alignment across the Centre's core components and the biogenic methane and nitrous oxide emissions system more broadly.
- D. Several companies have been working with officials from the Ministry for Primary Industries, the Ministry of Business, Innovation and Employment, and the Department of the Prime Minister and Cabinet to investigate how the Crown and the companies can work together to substantially increase investment into research to mitigate greenhouse gas emissions from agriculture (biogenic methane and nitrous oxide) via the new Company. The companies involved are: Fonterra, Rabobank, Ravensdown, Silver Fern Farms, ANZCO and Synlait (**Private Sector Parties**).
- E. The Private Sector Parties are all members of the Sustainable Business Council and the Climate Leaders Coalition, and as such make meaningful and increasing commitments to reduce their greenhouse gas emissions and those of other companies they work with. It is critical that these emissions are reduced: first and foremost, to reduce the impact on the climate; but also to protect and enhance New Zealand's reputation as a producer and supplier of premium food and fibre products to the world so that we do not squander our very significant current and potential advantage.

- F. The Private Sector Parties see a concerted, structured research initiative, via the Company, as a way to make a much greater impact on New Zealand's greenhouse gas emissions from agriculture, which make up 48% of New Zealand's emissions profile.
- G. Accordingly, the Private Sector Parties are supportive of partnering with the Crown in the Company to focus investment on co-ordinated potential solutions that can materially benefit the New Zealand food and fibre sector in the medium to long term. Initial (and in some cases substantial) research has been undertaken on a range of potential solutions (such as feed additives, genetics, and vaccines), but the Private Sector Parties and the Crown want to rapidly accelerate the development phase of such solutions. This will require a significant and sustained increase in focus, capital, capability, and research and development (R&D) funding.
- H. The overall outcome of the Company is intended to be that all New Zealand farmers and land stewards, including Māori agribusiness, iwi, and hāpu interests, have access to affordable and proven tools and technologies to reduce agricultural greenhouse gas emissions.

It is agreed

1. Introduction

1.1 Definitions

In this Agreement, unless the context otherwise requires:

Accession Deed means a deed in substantially the form of deed set out in Schedule 3 or in any other form required by the Board;

Additional Shares means those Shares forming all or part of a Shareholder's Share Entitlement (as defined in clause 19.1(a)) which that Shareholder does not offer to purchase under clause 19.4(b)(i), but which another Shareholder may offer to purchase in addition to that other Shareholder's Share Entitlement;

Agreement means this Agreement, including any schedules or annexures to it;

Agreement Date means the date of this Agreement;

Auditor means an auditor approved by the Office of the Auditor-General, appointed from time to time to the office of auditor of the Company;

Auditor-General's Auditing Standards means the standards of the Auditor-General available at <https://oag.parliament.nz/about-us/what-we-do/about-auditing/setting-auditing-standards>;

Background IP means Intellectual Property which is owned by, or licensed to, a party at the date of this Agreement or developed outside of the Company (including Intellectual Property acquired by a party or licensed to a party other than from the Company following the Agreement Date), whether or not it is used in, or contributed for use in connection with, the Company;

Board means the board of Directors of the Company and includes a validly constituted committee of that board of Directors;

Business means undertaking targeted investments and actions to accelerate the development, commercialisation, and / or deployment of effective and affordable solutions that will be used by New Zealand farmers and others to significantly reduce biogenic methane and nitrous oxide emissions, as varied from time to time in accordance with this Agreement;

Business Plan means the business plan and budget for the Company referred to in clause 11.1 together with any updated business plan and budget from time to time approved in accordance with this Agreement;

Centre is defined in paragraph B of the Introduction;

Change of Control Event means, where a Shareholder is a company, any one or more of the following events occurs in relation to it (whether by any one transaction or by a series of related transactions completed after the date on which that Shareholder acquired the legal or beneficial interest in any Share):

- (a) the transfer of the legal or beneficial ownership of, or of any interest in, any shares in the Shareholder, or any holding company of the Shareholder, which:
 - (i) alters the beneficial ownership of 50 per cent or more of the number of shares in the capital of the Shareholder or such holding company; or
 - (ii) alters the beneficial ownership of shares in the Shareholder or such holding company carrying 50 per cent or more of the voting rights at any general meeting of the Shareholder or such holding company respectively; or
 - (iii) alters the beneficial ownership of shares in the Shareholder or such holding company allowing the holder of those shares to appoint a director or directors having (in aggregate) 50 per cent or more of the voting rights at any directors' meeting of the Shareholder or such holding company respectively; or
 - (iv) alters the beneficial ownership of shares in the Shareholder or such holding company carrying an entitlement to receive 50 per cent or more of any dividend or distribution declared by the Shareholder or such holding company or such holding company; or
- (b) the happening of any other event whereby there is a change in the effective control of the Shareholder or any holding company of the Shareholder, directly or indirectly;

Chief Executive Officer means the chief executive officer of the Company from time to time;

Commerce Act means the Commerce Act 1986;

Companies Act means the Companies Act 1993;

Company is defined in paragraph C of the Introduction;

Completion means completion of the establishment of the Company in accordance with clause 5.2;

Completion Date is defined in clause 5.1;

Confidential Information means:

- (a) all commercial, financial, legal, technical or other information, material, correspondence, memoranda, advice, opinions, or know-how concerning:
 - (i) the Business; or
 - (ii) the business and affairs of a Shareholder (or a Related Party of that Shareholder),

made available at any time (whether in written or electronic form or orally) by the Company or any party including information relating to secret processes, technical know-how, discoveries, inventions, ideas, research, engineering methods, techniques, practices, systems, formulae, drawings, trade secrets, special purpose computer programmes, marketing or other information which by its nature would reasonably be expected to be confidential subsisting in or relating to the Business or belonging to the Company or any Shareholder (or a Related Party of that Shareholder);

- (b) notes, summaries, compilations, conclusions, calculations, computer records (including data, copies, models, reproductions and recordings) or other material in whatever form made or derived in whole or in part by a party from, or from inspection or evaluation of, any information of the type of the referred to in paragraph (a);
- (c) the fact of, nature or contents of any meetings, discussions, negotiations or agreements between the parties and their respective advisers in relation to the Business, the Company or this Agreement;
- (d) the fact of or reasons for any termination of discussions or negotiations between the parties and their respective advisers in relation to the Business, the Company or this Agreement;
- (e) the existence and contents of this Agreement;

Contribution means a contribution by a Shareholder under this Agreement;

Constitution means the constitution of the Company in the form set out in Schedule 1 (as subsequently amended or replaced from time to time after the Completion Date);

Default Event means the happening of any of the following events:

- (a) a failure by a Shareholder to pay the Contribution amount by the due date set out in clause 4, provided that such Shareholder has failed to pay within 30 days of receiving notice of such failure from the Company;
- (b) a Shareholder commits a material or substantial breach of any provision of this Agreement and that breach is incapable of remedy or, if capable of remedy, is not remedied within 30 days after the Company or any other Shareholder gives notice requiring remedy of that breach; or
- (c) a material misrepresentation by a Shareholder in relation to this Agreement or in relation to any documents provided pursuant to this Agreement.

Defaulting Shareholder is defined in clause 20.1;

Director means a director of the Company;

Fair Value means the amount:

- (a) agreed by the relevant parties as the fair value of the relevant Shares under clause 20.3; or
- (b) determined by the valuer as the fair value under clause 21,

as is applicable;

Financial Year means for the first year, the period from the Completion Date and ending 30 June 2023, and thereafter the period ending 30 June in each year;

Immediately Available Funds means real-time electronic direct bank transfer of cleared and immediately available funds, unless another manner of payment is agreed by the parties;

Improvements means all Intellectual Property rights created by the Company or a Shareholder (as applicable), and which:

- (a) incorporate intellectual property rights derived from, or are improvements, modifications, developments, additions or amendments to; and
- (b) are not separable from,

Background IP, but excludes Background IP;

Independent Chair means the person appointed as chair of the Board under clause 8.3;

Intellectual Property or **IP** means all intellectual property rights existing anywhere in the world under statute, common law or equity including patents, designs, copyright, plant variety rights, trade marks, and any rights of a similar nature whether registered or unregistered (and including applications, and the right to apply, for any of the foregoing), trade secrets, and rights in confidential information, but excluding Mātauranga Māori;

Lock-up Period means the period starting on Completion and ending on 30 June 2026;

NZAGRC is defined in paragraph C of the Introduction;

Ordinary Shareholders' Resolution means a resolution of the Shareholders which is approved by Shareholders present and voting (who are not disqualified from voting on that resolution) who between them hold more than one half of the total number of voting rights held by all of the Shareholders who are not disqualified from voting on that resolution and who are present and voting on that resolution;

Permitted Transfer means any of the transfers permitted under clause 18.3;

Priority means where there is limited initial supply of any Technology it will be made available to Shareholders (and through them the stakeholders of Shareholders) until it is available to all farmers consistent with the Purpose and objectives of the Company;

Private Sector Parties is defined in paragraph D of the Introduction, and also includes any other Shareholder that is not the Crown or a Crown Entity;

Public Authority means:

- (a) any government in any jurisdiction whether national, federal, state, regional, territorial or local; and
- (b) any minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government or any state-owned enterprise;

Qualified Buyer means a person who, in the reasonable opinion of the Board (for the purposes of clause 17.3) or the Recipients (for the purposes of clause 19.9) or after a Change of Control Event (for the purposes of clause 20.1(a)), as the case may be:

- (a) is in a sound financial position, and has sufficient financial resources to perform its obligations as a Shareholder of the Company;

- (b) will not procure or endeavour to procure that the Company materially departs from its then current Strategic Plan (including the maintenance of sustainable stable returns from the Business or Business Plan);
- (c) is controlled or owned by persons meeting the good character and other criteria prescribed in section 18 of the Overseas Investment Act 2005; and
- (d) is a member of, or an investor in or lender or service provider or supplier to, members of, New Zealand's food and fibre sector;

Related Company has the meaning given to it in section 2(3) of the Companies Act provided that, for the purposes of this Agreement, a reference to "company" in that section refers to any body corporate notwithstanding its jurisdiction of incorporation;

Related Party means, in relation to a particular person, any of the following persons:

- (a) a Related Company of that person;
- (b) any person which controls that first person, is controlled by that first person, or is controlled by the same person which controls that first person; and
- (c) where the first person is an individual:
 - (i) the spouse of that first person or any person with whom that first person is living in a relationship in the nature of marriage;
 - (ii) any parent, child or grandchild of that first person;
 - (iii) any trust established exclusively or principally for the benefit of that first person and/or for the benefit of one or more of the persons specified in paragraphs (c)(i) or (ii) of this definition; or
 - (iv) a company in which all of the shares are held by or on behalf of that first person and/or by or on behalf of any of the persons specified in paragraphs (c)(i), (ii) or (iii) of this definition;

Related Party Proposal means a proposal for the Company to:

- (a) enter into or vary any agreement, arrangement or understanding with a Shareholder or a Related Party of a Shareholder; or
- (b) exercise, enforce, waive rights in relation to, or not comply with, any such agreement, arrangement or understanding;

Relevant Proportion means, in relation to a Shareholder, a fraction (expressed as a percentage), the numerator of which is the total number of Shares beneficially owned by the Shareholder and the denominator of which is either:

- (a) when used in relation to all of the Shareholders, the total number of all of the issued Shares; or
- (b) where the reference requires something to be apportioned between a number of Shareholders, the total number of Shares (including the Shares held by the relevant Shareholder) held by those Shareholders; or
- (c) when used in relation to a class of Shareholders, the total number of Shares held by all of the holders of the specified class of Shares;

Reserved Matter means a matter specified in Schedule 2 and includes any other matter expressed in this Agreement as requiring a Special Shareholders' Resolution or as otherwise specified in Schedule 2;

R&D is defined in paragraph G of the Introduction;

R&D Plan means the Biological Emissions Reduction Science Accelerator research and development plan and any subsequent strategic plan developed by the Centre;

Sale Notice has the meaning given in clause 19.4;

Sale Price has the meaning given in clause 19.1(b) or the Fair Value, as the case may be;

Sale Shares is defined in clause 19.1(a);

Securities has the meaning set out in section 6(1) of the Financial Markets Conduct Act 2013;

Share means any ordinary share in the Company;

Shareholders means the respective holders of the Shares;

Special Shareholders' Resolution means a resolution of the Shareholders approved by a majority of 85 per cent of the votes of those Shareholders entitled to vote and voting on the resolution;

Strategic Plan means the strategic plan for the Company which is referred to in clause 11.3 together with any updated strategic plan from time to time approved in accordance with this Agreement;

Technology means any solutions developed using IP, that may be commercialised and/or deployed by the Company in pursuit of achieving the Purpose; and

Third Party has the meaning given in clause 19.9.

1.2 Construction of certain references

In this Agreement, unless the contrary intention appears, a reference to:

- (a) an **agreement** includes a contract, deed, licence, undertaking and other document or legally enforceable arrangement (in each case, whether or not in writing, present and future) and includes that document as amended, assigned, novated or substituted from time to time;
- (b) **business day** means a day (other than a Saturday or Sunday) on which registered banks are open for general banking business in Wellington;
- (c) **consent** includes:
 - (i) an agreement, approval, authorisation, clearance, exemption, filing, licence, notification, order, permit, recording and registration; and
 - (ii) in relation to anything which will be prohibited or restricted in whole or in part by law if a person intervenes or acts in any way within a specified period after filing, lodgement, notification or registration, the expiry of such period without such intervention or action;

- (d) a **disposal** of property includes:
- (i) selling, transferring, assigning, leasing, lending, subordinating, varying the terms of, parting with possession of, granting an option in respect of and otherwise dealing with that property;
 - (ii) the payment of money or any distribution by way of dividend; and
 - (iii) an agreement for any of these,
- and **dispose** has a corresponding meaning;
- (e) **dollars** or "\$" is a reference to New Zealand currency and all amounts payable by a party under this Agreement are to be paid in that currency;
- (f) **holding company** means a holding company as defined in section 5 of the Companies Act;
- (g) **indebtedness** means any obligation (whether present or future, actual or contingent, secured or unsecured, joint or several, as principal, surety or otherwise) relating to the payment or repayment of money and it includes indebtedness under or in respect of a redeemable share, finance or capital lease, hire purchase and the deferred purchase price of an asset or service;
- (h) **liquidation** of a person includes the dissolution, winding-up or bankruptcy of that person and any analogous procedure under the law of any jurisdiction in which that person is incorporated, domiciled, carries on business or has property;
- (i) **person** includes an individual, body corporate, an association of persons (whether corporate or not), a trust, a state, a Public Authority and any other entity (in each case, whether or not having separate legal personality);
- (j) **property** includes the whole and any part of the relevant person's business, assets, undertaking, revenues and rights (in each case, present and future), and reference to any property includes any legal or equitable interest in it and includes such property as held by the person's executors, administrators, successors and substitutes (including persons taking by novation and permitted assigns);
- (k) a **security interest** includes:
- (i) a mortgage, pledge, charge, lien, hypothecation, encumbrance, deferred purchase, title retention, finance lease, contractual right of set-off, flawed asset arrangement, sale-and-repurchase and sale-and-leaseback arrangement, order and other arrangement of any kind, the economic effect of which is to secure a creditor; and
 - (ii) a "security interest" as defined in section 17(1)(a) of the Personal Property Securities Act 1999,
- and includes any agreement to grant or create any of the above;
- (l) **subsidiary** means a subsidiary as defined in sections 5 to 8 of the Companies Act and includes any person that is classified as a subsidiary under the terms of any applicable financial reporting standard approved from time to time under the Financial Reporting Act 1993;

- (m) **transfer** means, in relation to a Share or other Security issued by the Company, means sell, transfer, assign or otherwise dispose of or deal with any legal or equitable interest in that Share or other Security;
- (n) **writing** includes an email communication and any means of reproducing words in a tangible and permanently visible form.

1.3 General references

In this Agreement, unless the context otherwise requires:

(a) **Defined terms**

words or phrases (other than proper names) appearing in this Agreement with capitalised initial letters are defined terms and bear the meanings given to them in this Agreement;

(b) **Financial references**

references to and expressions used in connection with financial calculations, valuations, accounting or financial reporting functions or their description in this Agreement bear the respective meanings ascribed to like expressions or expressions to similar intent in accordance with the Auditor-General's Auditing Standards;

(c) **Gender**

words denoting any gender include all genders;

(d) **Inclusive expressions**

specifying anything in this Agreement after the words 'including', 'includes' or 'for example' or similar expressions does not limit what else is included unless there is express wording to the contrary;

(e) **Joint and several**

an agreement, representation or warranty given by or in favour of two or more persons is given by or for the benefit of (as applicable) them jointly and severally;

(f) **Share calculations**

if any calculations relating to the issue or transfer of Shares, Sale Shares or Additional Shares under this Agreement result in a number that is, or includes, a fraction, that fraction will be rounded upwards to the nearest whole number;

(g) **Singular includes plural**

the singular includes the plural and *vice versa*;

(h) **Statutes**

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 Agreement Date); and

(i) **Party, clause, paragraph and schedule**

a reference to a party, clause, paragraph or schedule is a reference to a party to, clause of, or schedule to, or paragraph of a schedule to, this Agreement and reference to a party also includes a person who has executed an Accession Deed.

1.4 **Headings and table of contents**

Headings and the table of contents in this Agreement are for convenience only and do not affect the interpretation of this Agreement.

1.5 **Contra proferentem rule**

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it.

2. **Purpose and functions**

2.1 **Specific purpose**

- (a) The purpose of the Company is to undertake targeted investments and actions to accelerate the development, commercialisation and/or deployment of effective and affordable solutions that will be used by New Zealand farmers and others to significantly reduce biogenic methane and nitrous oxide emissions (the **Purpose**).
- (b) The Company acknowledges that the Crown is required to have due consideration to Te Tiriti o Waitangi obligations, including consideration of the principles of rangatiratanga, partnership, tikanga, active protection, equity, options and mutual benefit, and will work in good faith with the Crown to ensure this obligation is considered in the process of achieving the Purpose.
- (c) The Company will be highly flexible and adaptive to achieve the Purpose.

2.2 **Objectives**

In order to achieve the Purpose, the primary objectives of the Company include:

- (a) accelerating the development and adoption of pastoral farming solutions for reducing biogenic methane and nitrous oxide emissions;
- (b) coordinating and aligning capability across the public and private sector, including partnering with offshore parties to maximise the ability to accelerate the development, commercialisation and/or uptake/adoption of effective and affordable solutions to significantly reduce biogenic methane and nitrous oxide emissions;
- (c) increasing commitment between industry and government, and increasing the amount of investment;
- (d) investing for returns not only in the traditional financial sense, but in a way that can be measured through the six capitals of value creation: natural capital, social capital, financial capital, manufactured capital, intellectual capital, and human capital;
- (e) undertaking a balanced portfolio of investments, equitably reflecting the strategic and commercial interests of all beneficiaries of the Purpose; and

- (f) supporting the New Zealand primary sector's competitiveness and reputation for sustainable production in a world where environmental credentials are increasingly a driver of commercial success.

2.3 Functions and powers

While a prescribed set of functions are not intended, the Company's functions are expected to include:

- (a) **Research and development (R&D)** - Drive a targeted research and development programme, concentrating effort and investment on a portfolio of promising solutions or mitigations to achieve the Purpose. The Company will have the flexibility to contract others to do R&D and/or co-invest in R&D with other entities, including NZAGRC (as provided in clause 3) and/or the Shareholders (and any of their Related Parties) or employ its own workforce and have its own facilities to undertake the R&D if others are lacking what is required;
- (b) **Commercialisation** - Support the pathway to uptake / commercialisation of solutions to achieve the Purpose, with the flexibility to undertake commercialisation activities itself and/or licence others to do so; and
- (c) **Funding & partnerships** – Develop partnerships and raise funds from the private and public sectors to finance the development of potential solutions to achieve the Purpose, enabling the use of Intellectual Property within agreed frameworks.

2.4 Restricted activities

- (a) The Company is not to undertake any activities other than activities related to the purposes set out in clauses 2.1 and 2.2, unless otherwise approved by a Special Shareholders' Resolution.
- (b) The Company is not to become a Crown entity under the Crown Entities Act 2004 unless first approved in writing by all of the Private Sector Parties.

3. Relationship with an enhanced NZAGRC as part of the 'Centre for Climate Action on Agricultural Emissions'

- (a) The Company and NZAGRC may contribute to the development of a strategy which will further help to support their complementary roles (and for the avoidance of doubt, in the event where there is a conflict between the Strategic Plan and the system level strategy, the Strategic Plan will prevail).
- (b) There will be a close working relationship between the Company and NZAGRC to ensure alignment in an overarching pipeline, including industry-good fundamental biological research, industry-good development / validation, through to commercial programmes and projects to facilitate the achievement of the Purpose of the Company.
- (c) The Company may enter into a contractual arrangement with NZAGRC to provide the Company with access to critical capability and infrastructure to facilitate the achievement of the Purpose.

4. Commitments

- (a) Funding of the Company will be by way of subscription for shares and in proportion to shareholding in the Company.

- (b) A Contribution amount may be made in-kind subject to the provision of an independent valuation and the Board's approval, on the basis that the proposed in-kind Contribution will, in the opinion of the Board, facilitate the achievement of the Purpose and be consistent with the Strategic Plan.
- (c) The Crown will match dollar for dollar the annual sum of the Contributions by the Private Sector Parties, up to a limit of \$50,000,000 per annum plus GST (if any). For the avoidance of doubt, the Crown's shareholding in the Company is to remain at 50 per cent and, accordingly, the Private Sector Parties will not be able to contribute greater than \$50,000,000 per annum without the Crown's prior written approval.
- (d) There is an initial four-year commitment (**Initial Contributions**) as follows, with payment due on the date specified:

	Financial Year (1 July to 30 June)			
	22/23 (payable by the Private Sector Parties on 20 January 2023)	23/24 (payable by the Private Sector Parties on 20 June 2023)	24/25 (payable by the Private Sector Parties on 20 June 2024)	25/26 (payable by the Private Sector Parties on 20 June 2025)
ANZCO	s 9(2)(j), s9(2)(g)(ii)			
Fonterra				
Rabobank				
Ravensdown				
Silver Fern Farms ¹				
Synlait				
Crown				

- (e) The Crown and Fonterra will be providing initial funding for the set-up of the Company. Accordingly, the payment of the Initial Contributions for the first Financial Year will be reduced for each of the Crown and Fonterra by the amount of such respective initial funding.

- (f) s 9(2)(g)(i), s9(2)(g)(ii)

¹ Subject to final approval of the Silver Fern Farms Ltd Board.

s 9(2)(g)(i), s9(2)(g)(ii)

(g)

(h)

5. Completion

5.1 Completion Date

Completion is to take place by 5pm on 23 December 2022 or such other date as agreed by all the parties (the **Completion Date**), when the parties will procure that the matters referred to in clause 5.2 will take place.

5.2 Establishment of Company

The parties will take such steps, including procuring such meetings of the Company and the Board, as are necessary to procure that, on (or as from) the Completion Date:

(a) s 9(2)(g)(i), s9(2)(g)(ii)

- (b) the Company adopts the Constitution;
- (c) the Company changes its name to Centre for Climate Action Joint Venture Limited;
- (d) the Directors are appointed in accordance with this Agreement;
- (e) the registered office of the Company will be c/o Ministry for Primary Industries, Charles Fergusson Building, 34-38 Bowen Street, Pipitea, Wellington 6011; and
- (f) the Company's financial year will end on 30 June in each year.

5.3 Activity prior to Completion

- (a) The Crown has made certain short-term investments in the research and development of biogenic methane and nitrous oxide emissions reduction tools and practices through an early investment advisory panel (**Investment Advisory Panel**).
- (b) Subject to the agreement in writing of the Shareholders, certain early investments, and knowledge, Intellectual Property, research or otherwise, may be adopted by the Company as guided by the Investment Advisory Panel's investments. Such adoptions may include:
 - (i) specific investment ready and/or time-limited research and development projects;
 - (ii) greenhouse gas measurement infrastructure; and
 - (iii) capability development.
- (c) Subject to clause 5.3(b), the intention is that, as at the Agreement Date, the Company has not traded, has no assets, contracts or employees, and has no indebtedness or other liabilities.
- (d) Subject to clause 5.3(b), the intention is that the Company will not have carried on any business, and will have no assets or liabilities, prior to the Completion Date.

6. Duration

- (a) As set out in clause 4 the Company has an initial four year funding commitment from the Shareholders. It is intended that investment in the Company will require a long-term commitment, for at least an initial 10 year period.
- (b) The Shareholders will use their respective reasonable endeavours to discuss a further six year funding commitment three years following Completion having regard to whether sufficient progress has been made in relation to the Purpose.
- (c) The Shareholders will undertake non-binding reviews of the Company, including engaging independent consultants, to gauge progress in accordance with clause 2 and to confirm, or not, the need for the Company to continue as well as assessing

whether the Crown still needs to maintain a 50 per cent shareholding or significant shareholding, at the following times:

- (i) three years following the date of Completion; and
- (ii) eight years following the date of Completion.

7. Shareholder control

7.1 Matters to be determined by Shareholders

Without limitation, and subject to any shareholder approval requirements under the Companies Act or another clause of this Agreement, each Reserved Matter is to be determined by Special Shareholders' Resolution.

7.2 Shareholder resolutions

- (a) Ordinary Shareholders' Resolution

Subject to clause 7.1 and the Companies Act, all other Shareholder resolutions are to be passed by an Ordinary Shareholders' Resolution.

- (b) Voting entitlements

The parties acknowledge and agree that on a poll, every Shareholder has one vote for each Share of which that Shareholder is the holder.

7.3 Shareholders not to exercise Board powers

Subject to the Companies Act, if a matter specifically requires a decision of the Board under clause 9, the Shareholders are not to exercise decision-making rights as Shareholders in respect of that matter.

7.4 Suspension of Shareholder's rights

If a Shareholder becomes a Defaulting Shareholder all rights attaching to Shares held by the Defaulting Shareholder are suspended for the period of the default.

8. Directors and composition of the Board

8.1 Number of Directors

- (a) For the period from the Completion Date to 30 June 2023, the Board will be constituted by not less than five Directors comprising:
 - (i) not less than two Directors appointed by the Crown;
 - (ii) not less than two Directors appointed by the Private Sector Parties; and
 - (iii) an Independent Chair.
- (b) Following this period, the Board will be constituted by not less than seven and not more than nine Directors comprising:

- (i) not less than three and not more than four Directors appointed by the Crown;
- (ii) not less than three and not more than four Directors appointed by the Private Sector Parties; and
- (iii) an Independent Chair.

8.2 Appointment and removal of Directors

(a) Appointment

- (i) Directors will be appointed based on an assessment against a skills and competency framework. The appointments of the Directors made by the Crown will be undertaken in accordance with the Cabinet Appointments and Honours committee process.
- (ii) The Crown (holding 50 per cent of the issued share capital in the Company) will be able to appoint the minimum and up to the maximum number of Directors described in clause 8.1, and the Private Sector Parties (as a collective representing 50 per cent of the issued share capital in the Company) will be able to appoint the minimum and up to the maximum number of Directors described in clause 8.1, provided that, for the avoidance of doubt, the number of Directors appointed by the Crown and the Private Sector Parties respectively must be the same at all times.
- (iii) The Private Sector Parties will, collectively, through their own arrangement outside of this Agreement, have in place an appointment and removal process for the Directors appointed by them. The intention is that any new Shareholders (i.e. new Private Sector Parties) must agree to be bound by this arrangement, in addition to entering into a Deed of Accession, and the parties will ensure that this is a requirement on any new Shareholder.

(b) Initial Director term

The term for the initial Directors of the Company will be staggered on either a one, two, three, or four-year term (with the ability to renew this term for one further four-year period).

(c) Removal of Directors

A Director may only be removed by his or her appointing party (either the Crown or the Private Sector Parties (as a collective representing 50 per cent of the issued share capital in the Company)).

(d) Procedure for appointment or removal

The appointment or removal of any Director under clauses 8.2(a) and 8.2(c) must be by notice in writing to the Company, signed by or on behalf of the Crown or the Private Sector Parties entitled to appoint or remove the Director and lodged at the registered office of the Company or delivered to a duly constituted meeting of the Board. Subject to clause 8.2(c), any appointment or removal of a Director takes effect when the relevant notice is lodged or delivered or at such later time specified in the notice.

(e) Shareholders to procure representation

The parties undertake to use all reasonable steps and actions as is necessary (including approving all necessary resolutions) to ensure that the Shareholders obtain

and continue to enjoy, on an on-going basis, the representation described in this clause 8.2.

8.3 Independent Chair

- (a) The Shareholders will collaborate to recommend one to two candidates for the Independent Chair of the Company who will be put forward for approval by the Minister of Finance and Minister of Agriculture.
- (b) An Independent Chair of the Company will have a three year term.
- (c) Subsequent nominations for an Independent Chair will require a Special Shareholders' Resolution.
- (d) The Independent Chair is to be a person who is suitably qualified to be chair of a company such as the Company.
- (e) The removal of the Independent Chair will require approval by Special Shareholders' Resolution.

8.4 Duties of Directors

The Directors are to act in good faith and in the best interests of the Company as a whole.

8.5 Committees of the Board

The Board may establish committees of the Board, including a remuneration committee and an audit committee.

8.6 Remuneration

- (a) Directors' fees

A decision on Directors' fees is subject to a Special Shareholders' Resolution.

- (b) Expenses of Directors

- (i) Reimbursement of reasonable expenses

A Director may be reimbursed out of the funds of the Company for reasonable travelling, accommodation and other expenses which the Director incurs when travelling to or from meetings of the Board or when otherwise engaged on the business of the Company.

- (ii) Board policy on expenses

This entitlement is subject to, and is to be in accordance with, any policy adopted by the Board from time to time relating to those expenses.

8.7 Indemnities and insurance

The Company will indemnify every Director of the Company appointed to the Board on such terms as the Board sees fit, and the Board will effect insurance for every Director appointed by the Company respectively (again on such terms as they see fit).

9. Management of the Company

9.1 Role of the Board

- (a) Subject to applicable law and except in respect of the Reserved Matters, the Board is responsible for:
 - (i) the overall direction and management of the Company and its business and affairs;
 - (A) giving due consideration to any direction to support a whole of government approach by virtue of the Public Finance Act 1989 and the Crown Entities Act 2004; and
 - (B) the formulation of policies to be applied in the conduct of the Business, and the Board must ensure that the Business is managed in accordance with this Agreement and the Business Plan.
- (b) Except to the extent specifically set out in this Agreement, the Constitution and the Companies Act, the Shareholders must not exercise or seek to exercise rights as shareholders in respect of matters that are within the authority of the Board.

9.2 Accountability

The Board will be accountable to the Shareholders for the performance of the Company.

(a) Appointments made by the Board

The Board will appoint the Chief Executive Officer who will be accountable for day-to-day management of the operations of the Company.

(b) Decisions made by the Board

Decisions which are not part of the day-to-day management of the Company (namely, those decisions which do not relate to the Company's efforts to conduct the Business in the ordinary course) must be made at duly constituted meetings of the Board.

(c) Committees and delegates

- (i) The Board delegates the appointment or removal of any person to the Chief Executive Officer, who reports directly to the Board, or materially changing the role or responsibilities, or other terms of employment, of any such person, except to the extent, and in the manner, expressly provided for in this Agreement.
- (ii) The Board may delegate any of its powers (including this power to delegate) to a committee of Directors, a Director, an employee of the Company or any other person in accordance with this Agreement and the Companies Act.
- (iii) The Board may revoke or vary any such power delegated.

(d) Day-to-day management

The Chief Executive Officer appointed by the Board, and such other persons as the Board determines from time to time, are authorised to manage the Business and

implement the Business Plan on a day-to-day basis, subject to any directions of the Board and subject to this Agreement. The Board may revoke or vary such authorisation at any time and from time to time.

9.3 Directors' voting rights

- (a) Directors' votes
 - (i) Each Director is entitled to one vote on a Board resolution.
 - (ii) A Director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board unless that Director expressly dissents or expressly abstains from voting on, or votes against, the resolution.
- (b) Independent Chair has no casting vote

The Independent Chair is not entitled to a casting vote at any meeting of the Board or of the Company.

9.4 Employees

The Company will employ staff with relevant commercial, science, legal, Intellectual Property expertise and experience, and use appropriate external advisory support as required, to ensure that it can perform its functions.

9.5 Statements

- (a) The Crown may, at its discretion, require that the Board prepares the equivalent of a statement of intent and a statement of performance expectations (representing the equivalent of such statements as set out in the Crown Entities Act 2004) that may be presented by the Crown to the House of Representatives.
- (b) For the avoidance of doubt, any such statements would not be binding on the Company and would be consistent with the Strategic Plan and the Business Plan.

9.6 International considerations

The Crown will inform the Company as soon as practicable if the Crown becomes aware that any of the Company's activities or affairs will require the approval of a Special Shareholders' Resolution under clause 1 of Part 1 of Schedule 2 (Reserved Matters).

10. Portfolio of investments

- (a) The Company will undertake a portfolio of investments that will facilitate achieving the Purpose, in accordance with the Strategic Plan. This could include investments in R&D, infrastructure, and capability.
- (b) The Company will make decisions that:
 - (i) balance risk against opportunity;
 - (ii) recognise and respond to Māori agribusiness needs and opportunities; and
 - (iii) address specific interest and sector needs (e.g., red meat, dairy, species specific).

- (c) The Company will seek to work in partnership with both domestic and international third parties to accelerate the creation and deployment of solutions, while actively minimising unnecessary duplication of existing research.
- (d) The Company will actively minimise unnecessary duplication of existing research by considering investment in existing projects, programmes and the priorities identified in the R&D Plan and work being undertaken by NZAGRC.
- (e) The Company will identify any gaps in current investments and further areas of support required.
- (f) While the Company is anticipated to be the principal vehicle for investment by the Shareholders to accelerate the delivery of biogenic methane and nitrous oxide emissions reducing mitigation to New Zealand farmers, the Shareholders retain the ability to progress similar existing and future initiatives and activities outside of the Company from time to time.

11. Business Plan and Strategic Plan

11.1 Business Plan

- (a) The Company must conduct its business in accordance with the Business Plan in force from time to time.
- (b) The Board is to adopt the Business Plan in respect of the upcoming Financial Year (i.e. the 23/24 Financial Year) within six months of the Completion Date.
- (c) The parties must procure that the Company's management, in consultation with the Board, prepares and distributes to the Directors a draft Business Plan for the upcoming Financial Year at least 30 business days before the commencement of each subsequent Financial Year.
- (d) The Board must consider the draft Business Plan, and approve a Business Plan for the next Financial Year before commencement of the relevant Financial Year.
- (e) Without limiting the scope of the Business Plan, the Business Plan must cover the three year period following its proposed adoption (**Plan Period**) and include the following:
 - (i) an operating budget for the Financial Year of the period of the Business Plan, containing projections, as at the end of each month during that year, of the consolidated income, expenses and cash flows of the Business;
 - (ii) comparisons of the most recent actual results with the projections for the Plan Period;
 - (iii) a forecast of working capital requirements during the Plan Period and a projection of whether any additional capital will be required in the Plan Period; and
 - (iv) projected capital expenditure during the Plan Period.
- (f) If, on the first day of any Financial Year, the Board has not approved any Business Plan for that Financial Year, the Board is deemed to have approved a Business Plan for that Financial Year on the terms of the Business Plan for the immediately preceding Financial Year until such time as a Business Plan for the relevant Financial Year is approved.

11.2 Variation of Business Plan

- (a) The Board may, at its discretion, agree to amend the then current Business Plan at any time during a Financial Year.
- (b) However, the Board must ensure that any updated Business Plan is still consistent with the Strategic Plan and does not require capital or operating expenditure beyond the Contributions for the applicable Financial Year.

11.3 Strategic Plan

- (a) The Strategic Plan is set out in Schedule 4. For the avoidance of doubt the Strategic Plan will prevail over the R&D Plan in the event of any conflict.
- (b) The Strategic Plan will include:
 - (i) the strategic objectives that the Company intends to achieve or contribute to in relation to the Purpose;
 - (ii) the nature and scope of the Company's functions and intended operations;
 - (iii) how the Company proposes to manage its organisational health and capability to achieve the Purpose; and
 - (iv) how the Company proposes to assess its performance against the Purpose.
- (c) The Strategic Plan will be valid for a three year period. The Board will then update the Strategic Plan, provided that any material change (as defined in clause 11.3(d) below) must be approved by Special Shareholders' Resolution.
- (d) A material change to the Strategic Plan (**Material Change**) includes:
 - (i) adopting any new, and changing any, key performance indicators (**KPIs**);
 - (ii) reducing any reduction targets for biogenic methane and nitrous oxide emissions;
 - (iii) changing the group contemplated as being the beneficiaries of the achievement of the Purpose;
 - (iv) changing the focus to investing primarily in early stage research;
 - (v) changing the focus to being only on the commercialisation of solutions; and
 - (vi) changing the intent and focus of the following core functions:
 - (A) Catalyst fund;
 - (B) Ventures fund;
 - (C) Strategy and engagement.

11.4 Quarterly reporting

The Company will provide a quarterly report to the Shareholder on the operations and business activities of the Company in a format approved by the Board, with such reports to include coverage of:

- (a) assessment against the KPIs set out in the Strategic Plan;
- (b) details of all in-kind Contributions and Related Party Proposals approved by the Board in the relevant quarter.

12. Financial reports and other accounting related matters

12.1 Financial reports

The Company must:

- (a) cause its financial affairs to be audited on a consolidated basis at the end of each Financial Year in accordance with applicable law;
- (b) cause its financial affairs to be audited on a consolidated basis at such other times as may be required by, and in accordance with, applicable law;
- (c) cause its financial statements to reflect the Auditor-General's Auditing Standards as consistently applied by the Company and approved by the Board; and
- (d) make available to each Director and each Shareholder as soon as possible and in any event within four months after the end of each Financial Year, a copy of the audited financial report, directors' report and auditor's report of the Company, as at the end of that Financial Year (including all reasonable detail) prepared in accordance with applicable law and the Auditor-General's Auditing Standards.

12.2 Monthly and quarterly financial reports

- (a) The Company must provide to each Director within 15 business days after the end of each month:
 - (i) the Company's provisional financial statements for that month and the year to date as at the last day of that month (including a detailed consolidated profit and loss account, balance sheet and cash flow statement for that month); and
 - (ii) revised monthly forecast profit and loss accounts, balance sheets and cash flow statements for the remainder of the then current Financial Year,together with a management report as to the operational and strategic matters (relating to the current Strategic Plan) arising during that period.
- (b) The Company must provide to each Director within 30 business days after the end of each calendar quarter, unaudited quarterly management accounts for the immediately preceding quarter, comprising at least:
 - (i) a profit and loss statement and cash flow statement for the immediately preceding quarter;
 - (ii) a balance sheet as at the end of the immediately preceding quarter;

- (iii) commentary on the financial performance for the immediately preceding quarter; and
 - (iv) a quarterly management report regarding variations from the current Business Plan.
- (c) The statements and forecasts referred to in clauses 12.2(a) and (b) are:
- (i) to the extent practicable to be prepared in accordance with the Auditor-General's Auditing Standards as consistently applied by the Company and approved by the Board; and
 - (ii) in any event to be prepared in a manner which provides a true and fair impression of the Company as at the date and for the period to which they relate.

12.3 Information and maintenance of records

- (a) The Company must maintain books and records in accordance with applicable law including the Companies Act, the Income Tax Act 2007 and the Goods and Services Tax Act 1985.
- (b) Each Director, Shareholder or Shareholder's representative must at all times, and subject to giving reasonable notice to the Company, be given reasonable access to:
 - (i) inspect the assets of the Company;
 - (ii) inspect and take copies of documents relating to the Business, including the accounts of the Company and any Board delegations; and
 - (iii) discuss the affairs, finances and accounts of the Company with its officers, employees, agents, representatives or contractors and the Auditor.
- (c) Each Shareholder will have access at all reasonable times to the books and records of the Company.

12.4 Review of Company's operations and performance

- (a) The Board will assist the Crown in reviewing the operations and performance of the Company if the Crown has genuine concerns that the Company is not consistently achieving any significant element of the Purpose or the objectives in clause 2.2. Any costs associated with such a review will be attributed to the Crown.
- (b) Before the Crown undertakes a review under clause 12.4(a), the Crown must:
 - (i) consult with the Company on the purpose and nature of the review; and
 - (ii) consider any submissions made by the Shareholders and the Company on the proposed review.
- (c) The Company will take reasonable steps to co-operate with the review.
- (d) The written report from the review by the Crown will be made available to the other Shareholders.

12.5 Consolidation

If any Shareholder holds over 50 per cent of the issued share capital of the Company, the Company must maintain books and records which enable that Shareholder to incorporate the Company's financial results in its accounts so as to comply with any applicable law and the Auditor-General's Auditing Standards.

12.6 Annual reporting

The Company must, as a part of the Company's annual reporting requirements, for the Financial Year to which it relates (as applicable), set out at a high level:

- (a) any class of outputs produced by the Company in relation to the achievement of the Purpose for the Financial Year;
- (b) a concise explanation of how the class of outputs may facilitate the achievement of the Purpose;
- (c) where applicable, the identification of any expected revenue and the proposed expenses for the class of outputs;
- (d) a concise explanation of how the performance of the class of outputs will be assessed against the Purpose; and
- (e) forecast financial statements.

13. Intellectual Property

(a) Discretion of the Board

IP arrangements will be agreed by the Company, acting consistently with the Strategic Plan and the Business Plan on a case-by-case basis, but the Company's decision-making will be consistent with this clause 13 (noting that each Director is required under the Companies Act, when considering any IP arrangements, to act in what the Director believes to be the best interests of the Company).

(b) IP strategy

The Company will develop an IP strategy for its R&D programme and specific projects that will align with the Strategic Plan (and the Business Plan as applicable).

(c) IP contributed by a Shareholder

- (i) Background IP may be contributed by a Shareholder as an in-kind Contribution in accordance with clause 4(b), provided that any valuation of such an in-kind Contribution of Background IP must account for the rights to that Background IP proposed to be provided to the Company.
- (ii) Where Background IP is intended to be contributed by a Shareholder as an in-kind Contribution, the Background IP will either be:
 - (A) assigned by the Shareholder to the Company; or
 - (B) licensed by the Shareholder to the Company, on a worldwide, perpetual, irrevocable, royalty-free, transferable (including the right to sub-license), and (unless otherwise agreed in writing by the Company) exclusive (at

least for biogenic methane and nitrous oxide emissions) basis to use, copy, modify, adapt, develop and exploit the IP, but restricted to uses that, in the reasonable opinion of the Board, may enable the Company to achieve the Purpose,

provided that the parties expect that any in-kind Contribution of Background IP will generally be by assignment unless there are circumstances that mean a licence is preferred.

- (iii) Where Background IP is intended to be contributed by a Shareholder to the Company, but not as an in-kind Contribution, the Shareholder and the Company will negotiate the IP agreement on the basis of a commercial arm's-length negotiation. The parties anticipate that:
 - (A) this will be the most likely method of a Shareholder providing Background IP and that in-kind Contributions will be rare; and
 - (B) licensing of Background IP from Shareholders will generally be avoided in favour of the Company taking an assignment.
 - (iv) There is no obligation on a Shareholder to contribute the Background IP it owns to the Company where such Background IP may facilitate the achievement of the Purpose. IP will only be contributed by a Shareholder to the Company at the Shareholder's discretion.
- (d) **Improvements and new Intellectual Property**
- (i) Improvements generated via Background IP will be owned by the owner of the Background IP.
 - (ii) Where Improvements are generated through Background IP that has been licensed to the Company as an in-kind Contribution, the Improvements will be licensed by the Shareholder to the Company on a worldwide, perpetual, irrevocable, royalty-free, transferable (including the right to sub-license), and (unless otherwise agreed in writing by the Company) exclusive (at least for biogenic methane and nitrous oxide emissions) basis to use, copy, modify, adapt, develop and exploit the IP, but restricted to uses that, in the reasonable opinion of the Board, may enable the Company to achieve the Purpose.
 - (iii) Subject to the terms of any IP licence, the Company will own any IP created by or on behalf of the Company that is not Improvements.
- (e) **Exit**
- (i) Where a Shareholder exits the Company, any Background IP that the Shareholder has:
 - (A) assigned to the Company as an in-kind Contribution will remain the property of the Company. The Shareholder will have no right to such Background IP (and any Improvements generated through such Background IP);
 - (B) licensed to the Company as an in-kind Contribution will remain licensed to the Company, subject to the terms of the licence agreement.
 - (ii) Any Background IP (and any Improvements generated through such Background IP) contributed by a Shareholder to the Company, but not as an in-kind Contribution, will be governed by the terms of the applicable agreement.

(f) **Dissolution of the Company**

- (i) In the event that the Company is to be dissolved, the Shareholders will have the right of first refusal to purchase any Background IP owned by the Company (together with any Improvements generated through such Background IP) for fair value (as assessed by the Board, obtaining independent valuations if appropriate).
- (ii) In the event that more than one Shareholder offers to purchase any such Background IP, the Board will accept the highest offer for such Background IP unless such highest offer is less than the Board's assessment of fair value.
- (iii) In the event that no Shareholder offers to purchase the Background IP owned by the Company (together with any Improvements generated through such Background IP), the Board (or a liquidator or equivalent as applicable) may offer the Background IP (together with any Improvements generated via such Background IP) to a third party who is a Qualified Buyer.

(g) **Shareholder access to Technology**

The Company will, in a manner consistent with the Purpose, provide the Shareholders (and through them, the stakeholders of Shareholders):

- (i) Priority involvement in any pilot or testing of any Technology in New Zealand owned by (or exclusively licensed to) the Company that is likely to be deployed in New Zealand; and
- (ii) Priority access, commensurate to any shareholding, to any Technology owned by (or exclusively licensed to) the Company that is deployed in New Zealand.

(h) **Public availability**

IP that is owned by the Company and is:

- (i) not intended to be commercialised; and
- (ii) will not enable the Company to achieve the Purpose (as determined by the Board),

will be made publicly available by the Company, subject to approval by Special Shareholders' Resolution.

14. **Distributions**

The Company will reinvest any profits which may have been available for distribution back into the Company. Accordingly, the Company does not intend to pay dividends until such time in the future that the Shareholders decide to amend this dividend policy by Special Shareholders' Resolution.

15. **Relationship of parties**

15.1 **No partnership**

This Agreement does not constitute, and nothing contained in this Agreement will be deemed or construed to constitute, any party (except as specifically contemplated by this Agreement) as a partner, agent or representative of any other party. This Agreement does

not give and is not to be construed as giving to any party any of the liabilities arising from a partnership, agency or representative relationship.

15.2 Contractual relationship

The parties acknowledge that their rights and obligations under this Agreement are contractual in nature and that no party has any fiduciary responsibility or duty to any other party in respect of that other party's rights or obligations under this Agreement.

15.3 Duties

To the maximum extent permitted by law, no party owes any other party any duty or obligations in relation to the Business or the Company except as set out in this Agreement.

15.4 Parties to exercise rights as Shareholders

- (a) Shareholders to ensure Board and the Company acts in manner required

To the extent that any provision of this Agreement, or the Constitution, requires the Board or the Company to operate in a particular manner or requires the parties to ensure that the Company is operated in a particular manner, the parties will procure their collective representatives on the Board to act accordingly and will exercise their rights as Shareholders (including the right to vote their Shares) accordingly, in each case to the fullest extent permitted by law.

- (b) Directors duties not to be breached

Nothing in this clause 15.4 places a party under any obligation to procure or request any Director to act in breach of any duty which that Director owes to the Company, or places any Director under any obligation to act in breach of any such duty.

16. Commerce Act considerations

16.1 Legal review

The parties acknowledge that they have entered into this Agreement having obtained legal advice and have reviewed this Agreement for compliance with the Commerce Act.

16.2 Parties to be aware of competition law risks

The parties acknowledge that some of the Private Sector Parties are competitors. Accordingly, any meetings or correspondence between such parties for the purposes of the Company could give rise to competition concerns if any form of anticompetitive arrangement or understanding is reached, or if competitively sensitive information is shared.

16.3 No anticompetitive arrangements

The parties confirm that they will not come to any form of arrangement or understanding regarding their future conduct or intentions in relation to the markets in which they currently compete, or may in the future compete. This includes arrangements or understandings in relation to pricing, output levels or third parties to or from whom they will supply or procure products, prior to receiving written legal advice on the competition law implications of such arrangements.

16.4 Restriction on sharing competitively sensitive information

Competitively sensitive information is information that is not publicly known and includes:

- (a) product pricing information (including product-level pricing or future pricing strategies);
- (b) contract negotiations or tenders;
- (c) commercial strategies;
- (d) detailed information on output levels, supply arrangements or input prices;
- (e) target customers, terms, etc.; or
- (f) more generally, any information which might cause the parties to compete differently as a result of receiving that information,

(together, **Competitively Sensitive Information**).

The parties agree and acknowledge that Competitively Sensitive Information should not be discussed or provided to the other parties who are, or may be, in competition. If sharing information that is potentially Competitively Sensitive Information is necessary for the purposes of the Company, then the parties will:

- (g) redact, summarise, aggregate or anonymise the information to the extent that it no longer contains Competitively Sensitive Information; or
- (h) if desensitising Competitively Sensitive Information in accordance with clause 16.4(g) is not possible, seek legal advice and put in place any necessary protections to avoid breaching competition law before providing the Competitively Sensitive Information to the other parties.

17. Transactions with the Company

17.1 Related Party Proposals

Subject to the Companies Act, if a Shareholder or a Related Party of a Shareholder proposes to implement a Related Party Proposal, that Related Party Proposal is to be on arm's length terms and approved by the Board.

17.2 Pre-emptive right for further issues of Shares

- (a) First offer to existing Shareholders

Subject to clause 17.4, if the Company wishes to issue or allot any new Shares (**New Shares**) in the Company which rank equally with or in priority to the Shares, the Company must, by way of prior notice in writing, offer to each Shareholder its Relevant Proportion of the total number of New Shares to be issued (the **New Shares Offer**). Any New Shares Offer must:

- (i) set out the terms of issue of the New Shares (including the subscription amount) and allow the relevant Shareholder to subscribe for the whole or part of the number of the New Shares offered to that Shareholder; and

- (ii) allow each Shareholder 20 business days to accept or reject the offer (or such longer period as may be reasonably required to obtain any necessary approvals or consents of any Public Authority).

(b) Subsequent offers to existing Shareholders

If any Shareholder rejects, or does not accept in full, an offer made to it under the New Shares Offer, then the New Shares in respect of which that offer was not accepted are to be offered progressively for a further period, or further periods, of 10 business days on the same terms as the offer made under clause 17.2(a) to all Shareholders who accepted in full their Relevant Proportion of the New Shares Offer (as made under clause 17.2(a) and this clause 17.3(b)) until such time as:

- (i) all of the New Shares proposed to be issued are allotted; or
- (ii) every Shareholder has rejected an offer made to it in respect of such unissued New Shares.

(c) Payment

If a Shareholder accepts the offer in respect of some or all of the New Shares offered to it under a New Shares Offer, the Shareholder must pay the agreed subscription amount at such time and in such manner as set out in the offer (provided that such payment is due not less than 20 business days from the date of the offer (or such later date as may be required to obtain any necessary approvals or consents of any Public Authority)).

17.3 Issues of New Shares to third parties

(a) Offer to a third party

In the event that the Shareholders do not accept the offer for all of the New Shares pursuant to clauses 17.2(a) and 17.2(b), the Board may offer any remaining New Shares to a third party who is a Qualified Buyer.

(b) Conditions of offer

Any offer made under clause 17.3(a), must be made:

- (i) on terms no more favourable than those offered to existing Shareholders under the New Shares Offer and within the period ending 60 business days after the date that the last offer under clause 17.3(b) was rejected; and
- (ii) on condition that the third party duly executes and delivers to the Company an Accession Deed.

17.4 Exceptions for certain issues

Clauses 17.2 and 17.3 do not apply to any issues or allotments of Shares or other Securities which occur as a result of the Contributions or as approved by Special Shareholders' Resolution. For the avoidance of doubt, all issues or allotments of Shares, other than for Contributions, will require a Special Shareholders' Resolution under Schedule 2 and a separate Special Shareholders' Resolution would be required to waive the application of pre-emptive rights under clauses 17.2 and 17.3 in accordance with this clause 17.4.

17.5 Accession Deed

The Board must not allot or issue any Securities to any person that is not a Shareholder unless and until:

- (a) the Board has passed a resolution approving the proposed allottee; and
- (b) the proposed allottee has executed, and delivered to the Company, an Accession Deed, in the form set out in Schedule 3 and otherwise on such terms as the parties may agree, binding it to the terms and conditions of this Agreement (as may be modified by that Accession Deed).

17.6 Existing rights of Shareholders

- (a) The parties acknowledge that any issue by the Company of further shares ranking equally with, or in priority to, existing Shares whether as to voting rights, distribution or otherwise, is deemed not to be an action affecting the rights attaching to the existing Shares provided the issue is made in accordance with this Agreement.
- (b) Each Shareholder acknowledges that if it does not participate in full in respect of any offer of Securities in accordance with clause 17.2, its interest in the Company may be diluted.

17.7 Application to other securities issues

This clause 17.7 applies with the necessary changes to any proposed issue or allotment of Securities (other than Shares).

18. Dealing with Shares

18.1 Lock-up period

The Shareholders each agree and acknowledge that they may not sell, transfer or otherwise dispose of any of their Shares during the Lock-up Period.

18.2 General Restriction

No Shareholder may during the term of this Agreement either:

- (a) transfer any of its Shares, or agree to do so, whether conditionally or not, unless the transfer complies with this Agreement and the Constitution; nor
- (b) create or permit to subsist a security interest over any of its Shares without:
 - (i) the consent of each other Shareholder; and
 - (ii) obtaining an undertaking in writing by the proposed holder of the security interest in favour of the other Shareholders not to transfer any Share unless it has complied with clause 19 as if it were itself the shareholder of that Share.

18.3 Permitted transfers

- (a) Notwithstanding any contrary provision in this Agreement or the Constitution:
 - (i) Unanimous Approval of Shareholders

a Shareholder may transfer legal or beneficial ownership of its Shares with the prior unanimous consent in writing of each other Shareholder;

(ii) Related party

Private Sector Parties may transfer legal or beneficial ownership of all its Shares to any Related Party of that Shareholder provided that Related Party is a Qualified Buyer;

(iii) Trustees holding legal title

where Shares are held by any person as a trustee, the replacement of that person as a trustee will not be considered to be a transfer of the Shares to that person provided that the transfer is not in connection with a change to the beneficial holders of such Shares, (each a **Permitted Transfer**) subject, in each case, to:

(iv) Entering into an Accession Deed

if the proposed transferee is not already a party to this Agreement) the transferee signing and delivering an Accession Deed to the Board, in the form set out in Schedule 3 and otherwise on such terms as the parties may agree, binding it to the terms and conditions of this Agreement (as may be modified by that Accession Deed); and

(v) Notifying the Company

the Company being notified in writing prior to, or as soon as reasonably practicable after, the transfer; and

(vi) Requirement to re-transfer

the transferee being required to re-transfer to the Shareholder all of the Shares previously transferred to the transferee by the Shareholder under this clause 18.3 where the transferee ceases to be a Related Party of that Shareholder, or the ultimate holding company of that Shareholder (or a wholly-owned subsidiary of such ultimate holding company), as the case may be.

(vii) Pre-emptive rights waived

For any transfer under clause 18.3(a) any pre-emptive rights in this Agreement or the Constitution are deemed to be irrevocably waived.

18.4 Rights on transfer

(a) Subject to clause 18.4(b):

(i) any person who, having entered into an Accession Deed, takes a transfer of any Shares or any beneficial interest in any Shares, will have the same rights and obligations as the person from whom those Shares or that interest was transferred (the **Seller**) and will be deemed to be a party to this Agreement (provided that any such person will have no liability for any obligations of the Seller which are not discharged as at the date of transfer); and

(ii) any party who transfers legal and beneficial ownership of all of its Shares will cease to be a party to this Agreement from the date on which that party transfers legal and beneficial ownership of the last of its Shares (but without releasing that party from liability for any of its obligations under this Agreement,

which are not discharged as at the date of transfer and subject to the remainder of this clause) but only if that party has complied with clause 19.9 if the transfer is to a third party, and this Agreement will be interpreted accordingly.

- (b) Any party who transfers any or all of its Shares must continue to comply with any obligations imposed on it under this Agreement in any capacity other than its capacity as a Shareholder.

19. Transfers of Shares

19.1 Transfer Notice

Subject to clause 18.3, a Shareholder proposing to transfer all or some of its Shares (the **Transferor**) must give prior notice in writing (the **Transfer Notice**) to the Board stating:

- (a) Number of Sale Shares

the total number of its Shares being offered for sale (the **Sale Shares**) and the number of Sale Shares being offered to each other Shareholder (the **Recipients**) of the class of shares of which the Sale Shares form part, which number is to be, in respect of each Recipient, that Recipient's Relevant Proportion of the Sale Shares (the **Share Entitlement**), provided that where the Transferor is a Private Sector Party, the Shares will first be offered to the other Private Sector Parties as a collective (and for the avoidance of doubt, does not include the Crown) on a pro-rata basis to ensure that the Crown will, post transfer, continue to have 50 per cent of the Shares and the Private Sector Parties will collectively have the other 50 per cent of the Shares in the Company; and

- (b) Sale Price and other terms

the price of the Sale Shares as determined by the Transferor and any other terms upon which the Sale Shares are offered for sale, which must be no less favourable than if the Sale Shares were being sold to a bona fide third party on an arm's length basis, (**Sale Price**); and

- (c) Name of proposed third party

the name of any proposed transferee of the Sale Shares who is not an existing Shareholder.

19.2 Board to act as agent

The Transfer Notice is irrevocable and is deemed to appoint the Board as the Transferor's agent to sell the Sale Shares on the terms set out in the Transfer Notice or as fixed in accordance with clause 21, provided that the Transfer Notice may be revoked by the Transferor if the expert determines that Fair Value is less than the price specified in the Transfer Notice.

19.3 Determination of the Sale Price

If the Board disagrees with the Transferor's assessment of the Sale Price and the Board and the Transferor cannot agree on a price within 20 business days after the date of receipt by the Board of the Transfer Notice, the Sale Price will be the Fair Value of the Sale Shares determined under clause 21.

19.4 Board to invite offers from other Shareholders

The Board must once the Sale Price has been agreed, or determined, in accordance with clause 19.3 within five business days of receiving a Transfer Notice give each of the Recipients notice in writing (the **Sale Notice**):

(a) Share Entitlement

specifying each Recipient's Share Entitlement; and

(b) Offer

inviting each Recipient to make an offer for:

(i) that Recipient's Share Entitlement; and

(ii) a maximum number of Additional Shares,

at the Sale Price and on the terms applicable to that offer; and

(c) Closing Date

specifying a date (the **Closing Date**), being at least 10 and not more than 20 business days after the date of the Sale Notice, after which any offer will not be accepted.

19.5 Response to Sale Notice

If, by the Closing Date, the Recipients offer to purchase all of the Sale Shares on the terms specified in the Sale Notice, then the Board must immediately:

(a) accept the offers for the Share Entitlements;

(b) allocate the Additional Shares (if any) in accordance with clause 19.6 and accept the offers for Additional Shares as allocated; and

(c) arrange for the transfer of the Sale Shares in accordance with clause 19.7.

19.6 Allocation of Additional Shares

The Board must allocate any Additional Shares to those Recipients who made offers for them in response to the Sale Notice on the following basis:

(a) Initial allocation

The number of Additional Shares to be allocated to each Recipient will be the lesser of:

(i) the number of Additional Shares specified in the Recipient's offer; and

(ii) the number of Additional Shares (including any fraction of a Share) calculated according to the formula:

$$(A \div B) \times C$$

Where:

- A** is the number of Shares held by the Recipient as at the date of the Sale Notice;
- B** is the total number of Shares held by all the Recipients who offered to purchase Additional Shares, as at the date of the Sale Notice; and
- C** is the total number of Additional Shares;

(b) Subsequent allocations

If one or more of the Additional Shares remain unallocated after the initial allocation under clause 19.6(a), the Board will allocate those remaining Additional Shares by applying the formula in clause 19.6(a)(ii) to them as many times as it takes to complete the allocation of all the remaining Additional Shares to the Recipients.

19.7 Completion of Sale Shares

- (a) The Sale Price payable for the Sale Shares is payable in Immediately Available Funds on the closing of the purchase and sale (or as otherwise provided in the payment terms set out in the Sale Notice), which must take place on the day that is five business days after the Closing Date.
- (b) At the closing of the purchase and sale, the Transferor must deliver to the Recipients who have elected to acquire the Sale Shares transfers for the Sale Shares acquired by that Recipient duly executed by the Transferor.
- (c) The Transferor will be deemed to warrant in favour of each Recipient acquiring Sale Shares that the Transferor transfers to that Recipient clear and unencumbered legal and beneficial title to the Sale Shares acquired by that Recipient, free of any security interests or third party rights.
- (d) The Transferor appoints each Recipient acquiring Sale Shares as its attorney in accordance with clause 22 in relation to the sale and purchase of the Sale Shares acquired by that Recipient on default by the Transferor of performance of any of its obligations under this clause 19.7.

19.8 Position where all Sale Shares are not taken up by the Recipients

Unless directed otherwise by the Transferor, if, by the Closing Date, the Board has not received offers for all of the Sale Shares specified in the Sale Notice, the Board must immediately reject all offers and give the Transferor and the Recipients notice in writing to that effect. The Transferor will be then free to transfer the Sale Shares in accordance with clause 19.9.

19.9 Sale to third party

If the Board does not (within 60 business days after being served with a Transfer Notice) notify the Transferor that it has found Recipients who are willing to purchase all of the Sale Shares specified in the Transfer Notice then the Transferor may, subject to a Special Shareholders' Resolution (at any time or within 30 business days afterwards) transfer the remaining Sale Shares (but not part of) to a person who is not an existing Shareholder (a **Third Party**) provided:

- (a) Similar sale terms

the transfer is at a price which is not lower than the lesser of:

- (i) the value which was specified by the Transferor in the Transfer Notice;

- (ii) the price agreed by the Transferor and the Board under clause 19.2; and
- (iii) the Fair Value fixed by the expert as provided in clause 21,

and otherwise on terms not more favourable to the Third Party than those previously offered to the Recipients under clause 19.4;

- (b) Qualified Buyer

the Third Party is a Qualified Buyer;

- (c) Consents

the Third Party has obtained all consents required (if any) from any Public Authority.

- (d) Accession Deed

the Third Party has signed and delivered an Accession Deed to the Board, in the form set out in Schedule 3 and otherwise on such terms as the parties may agree (including required Contributions), binding it to the terms and conditions of this Agreement (as may be modified by that Accession Deed).

19.10 Transfer of other Securities

This clause 19 applies equally to a proposed transfer of other Securities.

20. Shareholder default

20.1 Effect of Default Event or a Change of Control Event

If:

- (a) a Change of Control Event occurs and a Shareholder will no longer be a Qualified Buyer, without the prior approval of Shareholders by a Special Shareholders' Resolution; or
- (b) a Default Event occurs,

(referred to in this clause 20 as a **Trigger Event**) in respect of a Shareholder (the **Defaulting Shareholder**), the other Shareholders (the **Non-Defaulting Shareholders**) will have the rights set out in clause 20.2, without prejudice to any other right those Shareholders may have.

20.2 Call option

Immediately on the occurrence of a Trigger Event, the Non-Defaulting Shareholders have the option to together purchase all (but not part only) of the Defaulting Shareholder's Shares at the Fair Value of those Shares, provided that the Shares will first be offered to the other Private Sector Parties as a collective (and for the avoidance of doubt, does not include the Crown) on a pro-rata basis to ensure to the extent possible that the Crown will have 50 per cent of the Shares and the Private Sector Parties will have the other 50 per cent of the Shares in the Company (the **Call Option**). In the event that the Non-Defaulting Shareholders are unable to agree the allocation of the Defaulting Shareholder's Shares amongst themselves, each shall be entitled to its Relevant Proportion of the Defaulting Shareholder's Shares.

20.3 Determination of Fair Value

- (a) At any time within 60 days of a Non-Defaulting Shareholder becoming aware of the occurrence of the Trigger Event, that Non-Defaulting Shareholder may serve a notice in writing on the Board, the Defaulting Shareholder and the other Shareholders setting out the details of the Trigger Event and stating that it requires that the Fair Value of the Defaulting Shareholder's Shares and the Non-Defaulting Shareholders' Shares to be determined (the **Appraisal Notice**).
- (b) If the Shareholders cannot agree on the Fair Value within 10 business days of the issue of the Appraisal Notice, the Fair Value of the Defaulting Shareholder's Shares and the Non-Defaulting Shareholders' Shares will be determined in accordance with clause 21.

20.4 Exercise of options

- (a) Provision of information for valuation

If a Non-Defaulting Shareholder gives a notice under clause 20.3(a), then the Shareholders must procure the Company to provide to the Non-Defaulting Shareholders all information and assistance reasonably required by the Non-Defaulting Shareholders in order for them to consider and, if they so determine, exercise their rights under this clause 20 (including all information and assistance reasonably required for due diligence investigations on the Company) and the Non-Defaulting Shareholders may, despite clause 23, disclose any such information on a confidential basis to each of their Related Companies, advisers and financiers.

- (b) Notice to exercise option

Within 30 days of:

- (i) the Fair Value being agreed by all the Shareholders under clause 20.3(b); or
- (ii) the receipt of the certificate issued by the valuer under clause 21,

the Non-Defaulting Shareholders may together exercise the Call Option by giving written notice to that effect to the Defaulting Shareholder and the Board.

- (c) Purchase or sale of all Defaulting Shareholder's Shares

If the Non-Defaulting Shareholders exercise the Call Option, the Defaulting Shareholder must sell to the Non-Defaulting Shareholders all of its Shares and the Non-Defaulting Shareholders must purchase those Shares at their Fair Value.

- (d) Lapse of options

If the Non-Defaulting Shareholders do not exercise the Call Option within the time specified in clause 20.4(b), the Call Option will lapse and be no longer capable of exercise.

20.5 Completion of transfer

- (a) No security interests

The Transferor will be deemed to warrant in favour of the transferee(s) of the Shares (the **Transferee**) that the Transferor transfers to the Transferee clear and

unencumbered legal and beneficial title to the Shares being transferred (the **Transfer Shares**), free of any security interests or Third Party rights.

(b) Payment terms

The purchase price payable for the Transfer Shares is payable in Immediately Available Funds on the closing of the purchase and sale, which must take place on the day which is 10 business days after the date of the exercise of the option under clause 20.4(b).

(c) Transfers, share certificates and resignations

At the closing of the purchase and sale, the Transferor must deliver to the Transferee transfers for the Transfer Shares acquired by the Transferee duly executed by the Transferor.

(d) Power of Attorney

The Transferor appoints the Transferee as its attorney in accordance with clause 22 on default by it of performance of any of its obligations under clause 20.5(c).

21. Fair Value of Sale Shares

21.1 Appointment of valuer

If this Agreement requires the valuation of Shares under clause 19.3 or clause 20.3(b):

(a) Appointment of valuer by Special Shareholders' Resolution

the Shareholders are, within five business days of the date on which the need for valuation arises, to appoint, by means of a Special Shareholders' Resolution, as a valuer a member of the Institute of Chartered Accountants in New Zealand of at least five years' standing;

(b) Failure to appoint valuer by Special Shareholders' Resolution

if a Special Shareholders' Resolution is not passed appointing a valuer within the period referred to in clause 21.1(a), the Shareholders are, within a further period of two business days, to request the President for the time being of the Institute of Chartered Accountants of New Zealand, or the nominee of the President, to appoint a valuer;

(c) Determination of Fair Value

the valuer is, as soon as practicable and in any event within 10 business days after its appointment (or another time specified in this Agreement), to issue a certificate specifying the Fair Value determined by the valuer to each Shareholder and the Board; and

(d) Valuer to act as expert

the valuer is to act as an expert and not as an arbitrator in conducting the valuation.

21.2 Process for valuation

In determining Fair Value, the valuer is to conduct the valuation:

- (a) in accordance with valuation standards, practices and principles generally accepted in New Zealand for determining fair value; and
- (b) to establish a value that is fair and equitable.

21.3 Valuation binding

The Shareholders agree that the Fair Value determined by the valuer, as detailed in the certificate provided under clause 21.1(c), is final and binding on each of them in the absence of fraud or manifest error.

21.4 Costs of valuer

The costs of the valuer in connection with the valuation are to be borne by:

- (a) the Transferor in the case of a valuation required by clause 19.3; and
- (b) the Defaulting Shareholder in the case of a valuation required by clause 20.3(b).

22. Powers of attorney

22.1 Terms of appointment

Each appointment of an attorney by a Shareholder (the **Appointor**) under clause 19.7(d), or clause 20.5(d) is made on the following terms:

- (a) the Appointor irrevocably appoints the relevant person as its attorney to complete and execute such instruments for and on its behalf as the attorney thinks necessary to give effect to any of the transactions contemplated by clause 19.7(d), or clause 20.5(d) (as applicable);
- (b) the Appointor agrees to ratify and confirm whatever the attorney lawfully does, or causes to be done, under the appointment;
- (c) the Appointor agrees to indemnify the attorney against all claims, demands, costs, charges, expenses, outgoings, losses and liabilities arising in any way in connection with the lawful exercise of all or any of the attorney's powers and authorities under that appointment; and
- (d) the Appointor agrees to deliver to the Company on demand any power of attorney, instrument of transfer or other instruments as the Company may require for the purposes of any of the transactions contemplated by clause 19.7(d), or clause 20.5(d) (as applicable).

22.2 Company to act as agent

Whenever an Appointor appoints an attorney under clause 19.7(d), or clause 20.5(d), it appoints the Company as its agent as follows:

- (a) the Company will hold the purchase moneys on trust for the Appointor;
- (b) receipt by the Company of the purchase moneys will be good discharge of the buyer's obligation to the Appointor and the buyer will not be bound to see to the application of it; and

- (c) the Company must pay the purchase moneys to the Appointor on surrender of the relevant Share certificates (if any),

and if the relevant default relates to the provision of Share certificates, the Appointor indemnifies the buyer against any claims, demands, costs, charges, expenses, outgoings, losses and liabilities arising in any way in connection with the non-provision of those Share certificates.

23. Confidentiality and public announcements

23.1 Confidential Information not to be disclosed

Subject to clause 23.2, a party in receipt of Confidential Information (the **Disclosee**) must:

- (a) use that information only for the purposes for which it was provided by the relevant disclosing party to the Disclosee (and the Disclosee may disclose that information internally within its organisation or corporate group (as applicable) to relevant personnel for which it has responsibility); and
- (b) not make public or disclose that Confidential Information to any third party.

23.2 Permitted disclosure

Confidential Information may be used or disclosed by a Disclosee where:

(a) **Performance of obligations**

a party must use or disclose the Confidential Information in order to perform its obligations under, or comply with the terms of, this Agreement;

(b) **Already in lawful possession**

the Confidential Information was at the time immediately before the first disclosure to or observation by the Disclosee already in the lawful possession of the Disclosee;

(c) **Public domain**

the Confidential Information is or becomes part of the public domain (otherwise than by reason of a breach of this clause by the Disclosee or a Related Party of the Disclosee);

(d) **Third parties**

the Confidential Information is disclosed to a third party who is already in receipt of that information and that information was not obtained directly or indirectly from the Disclosee;

(e) **Employees, agents and advisers**

the Confidential Information is disclosed to its directors, contractors, employees and professional advisers who need to know the same for the sole purpose of enabling the Disclosee to evaluate the Confidential Information and perform its obligations under this Agreement, provided that the Disclosee must ensure that any person to whom the Recipient makes any disclosure in accordance with this clause 23 is made aware of, and complies with, the Recipient's obligations under clause 23;

(f) **Related Party**

the Confidential Information is disclosed to any Related Party of the Company or any of the Shareholders, but only where such Related Party has been requested to keep the information confidential;

(g) **Financiers and prospective purchasers**

the Confidential Information is disclosed to a financier of the Disclosee or any bona fide prospective purchaser (or financier of such a purchaser) of some or all of the Shares or Securities held by the Disclosee, but only where such person has been requested to keep the information confidential;

(h) **Requirements of law or stock exchange**

- (i) the Confidential Information is required to be disclosed by law or the disclosure is made in compliance with the order of any Court of competent jurisdiction or to comply with the listing rules of any stock exchange on which any securities of any parties or any of their respective Related Companies are listed;
- (ii) as otherwise required to be disclosed by law including the Disclosee's obligations under the Official Information Act 1982, the Privacy Act 2020, parliamentary processes and any other such parliamentary processes, legislation or regulations relevant to its operations and nothing in this agreement applies to any disclosure required under any such legislation or regulations;

(i) **Consent**

the party who first provided the Confidential Information to the Disclosee consents to the disclosure of the information by the Disclosee; and

(j) **Developed**

where the information is independently acquired or developed by the Disclosee without the use or benefit of any Confidential Information.

23.3 **Making announcements**

All parties will coordinate publicity and media activity related to the Company. A party must not make, or authorise or cause to be made, any public announcement relating to the Company, its Business or any other matter or thing contemplated by this Agreement unless:

- (a) the announcement is made in accordance with a communications plan to be developed by the Company;
- (b) it has consulted with the other parties in advance of making the public announcement; or
- (c) it is required to do so by law, an order of any Court of competent jurisdiction or to comply with the listing rules of any stock exchange on which any securities of any parties or any of their respective Related Companies are listed.

23.4 **Requirements for compulsory disclosure**

If a party is required to make a disclosure under clause 23.2(h) or an announcement under clause 23.3(c), it must before doing so, to the extent practicable and as soon as reasonably possible:

- (a) notify each other parties of the proposed disclosure or announcement;
- (b) consult with each other party as to its content; and
- (c) use its reasonable endeavours to comply with any reasonable request by any other parties concerning the proposed disclosure or announcement.

23.5 **Survival of obligations**

The rights and obligations of the parties set out in this clause 23 survive termination of this Agreement.

24. **Dispute resolution**

24.1 **Escalation**

If any dispute arises between the parties under or in connection with this Agreement the dispute must initially be referred to each Shareholder's respective chief executive officer (or similarly senior manager) who will use his or her reasonable endeavours to resolve the dispute within five Business Days. If the chief executive officers (or similarly senior managers) are unable to resolve the dispute within 10 Business Days of the referral, then any party to the dispute may refer the dispute to mediation

24.2 **Mediation**

- (a) If the dispute is not resolved under clause 24.1, then a party may refer the dispute to mediation by written notice to the other parties, nominating a mediator for that purpose.
- (b) If the parties fail to agree on a mediator within five Business Days then the mediator shall be appointed by the President of the New Zealand Law Society.
- (c) The costs of the mediator shall be shared equally between the parties.
- (d) Where the dispute remains unresolved following the completion or termination of mediation, the relevant party may commence court proceedings.

24.3 **Equitable remedies**

Notwithstanding anything in this clause 24, a party may commence court proceedings in relation to any dispute at any time where that party seeks urgent interlocutory relief or specific performance of an obligation under this Agreement.

25. **Termination**

25.1 **Termination events**

This Agreement will terminate immediately:

- (a) if the Company is placed in liquidation or is removed from the Companies Register;
- (b) upon completion of any transfer of Shares in accordance with this Agreement resulting in there being only one Shareholder; or

- (c) when the Shareholders agree in writing by Special Shareholders' Resolution to terminate this Agreement (in which case the provisions of any such agreement will apply).

25.2 Survival of provisions

Upon termination of this Agreement for any reason, the provisions of clauses 23 and this clause 24, together with those other provisions of this Agreement which are incidental to and required in order to give effect to those clauses, will remain in full force and effect.

25.3 Prior rights and remedies

Termination of this Agreement under clause 25.1 is without prejudice to any rights and remedies arising as a consequence of any such termination or which have accrued or arisen prior to termination.

26. Representations and warranties

26.1 Representations and warranties of each party

Each party represents and warrants to each other party that:

(a) **Registration**

(in the case of a body corporate) it is registered and validly existing under its laws of incorporation;

(b) **Power**

(in the case of a body corporate) it has the corporate power to own its assets and to carry on its business as it is now being conducted;

(c) **Authority**

it has full power and authority to enter into and perform its obligations under this Agreement;

(d) **Authorisations**

it has taken all necessary action to authorise the execution, delivery and the performance of its obligations under this Agreement;

(e) **Binding obligations**

this Agreement constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms, subject to:

- (i) the effect of general principles of equity, including concepts of materiality, reasonableness, good faith and fair dealing (regardless of whether considered in a proceeding in equity or at law); and
- (ii) the effect of any applicable bankruptcy, insolvency, reorganisation, moratorium or similar laws affecting creditors' rights generally;

(f) **Solvency**

it is solvent and will not become insolvent as a result of it entering into and performing its obligations under this Agreement;

(g) **Agreements permitted**

the execution, delivery and the performance by it of its obligations under this Agreement do not and will not violate, breach, or result in a contravention of:

- (i) any law, regulation or authorisation; or
- (ii) (in the case of a body corporate or a trustee) its constituent documents; or
- (iii) any security interest or document which is binding on it or any of its assets; and

(h) **Consent**

- (i) each consent required in connection with the execution, delivery and performance by it, and the validity and the enforceability against it, of its obligations under this Agreement has been obtained or effected and is in full force and effect; and
- (ii) there has been no material default by it in the performance of any of the terms and conditions of any such consent.

26.2 **Representations and warranties continuing**

Each of the representations and warranties in this clause 26 is deemed to be repeated continuously by reference to the facts and circumstances then existing.

27. **Inconsistency with Constitution**

27.1 **This Agreement prevails**

If any of the Agreement's provisions are found to conflict with the Constitution, the provisions of this Agreement are to prevail. This Agreement will not however have the effect of amending the Constitution, or except as provided by clause 27.2, of requiring its alteration.

27.2 **Alteration of Constitution**

If it is not possible to secure the operation of this Agreement as set out in clause 27.1 by reason of any contrary provision of the Constitution, the parties must exercise all voting and other rights and powers respectively available to them to procure the alteration of the Constitution to the extent necessary to permit the affairs of the Company to be so operated.

27.3 **Observance of the Constitution**

Subject to the preceding provisions of clause 27, the parties undertake to each other to observe the provisions of the Constitution.

28. Notices

28.1 Addresses and references

Each notice or other communication under this Agreement is to be made in writing and sent by personal delivery or by post or electronically to the addressee at the address or email address, and marked for the attention of the person or office holder (if any), from time to time designated for the purpose by the addressee to the other parties. The initial address, email address and relevant person or office holder of each party is set out under its name at the end of this Agreement.

28.2 Receipt

Without limiting any other means by which a party may be able to prove that a notice has been received by another party, a notice will be deemed to be duly received:

- (a) if sent by hand when left at the address of the recipient; or
- (b) if sent by pre-paid post, three days (if posted within New Zealand to an address in New Zealand) or 10 days (if posted by airmail from one country to another) after the date of posting; or
- (c) if sent by email, on the receipt of an email confirming that the addressee has received the email, as evidenced by a 'read-receipt message',

but if a notice is served by hand, or is received by the recipient on a day which is not a business day, or after 5.00 pm on a business day, recipient's local time, the notice is deemed to be duly received by the recipient at 9.00 am on the first business day after that day.

29. Assignment

29.1 Benefit and burden of this Agreement

This Agreement is binding on, and continues for the benefit of, the parties and their respective successors and permitted assignees or transferees.

29.2 Assignment

Except as provided in this Agreement, no party may assign, or in any other way dispose of, any of its rights or obligations under this Agreement without obtaining the prior consent in writing of the other parties.

30. Miscellaneous

30.1 Entire Agreement

This Agreement and the Constitution constitute the entire agreement of the parties in respect of the matters covered by them and supersede all previous agreements in respect of those matters.

30.2 **Exercise of rights and waivers**

Time is of the essence in respect of all dates and times for compliance by the parties with their obligations under this Agreement. However, no failure to exercise, and no delay in exercising, a right of a party under this Agreement will operate as a waiver of that right, nor will a single or partial exercise of a right preclude another or further exercise of that right or the exercise of another right. No waiver by a party of its rights under this Agreement is effective unless it is in writing signed by that party.

30.3 **Remedies cumulative**

The rights of the parties under this Agreement are cumulative and not exclusive of any rights provided by law.

30.4 **Amendments**

No amendment to this Agreement is effective unless it is in writing signed by a representative of the Crown and the Private Sector Parties.

30.5 **Further assurances**

The Company and each party must and, where applicable, each party must procure its Related Parties to, sign, execute and do all documents, deeds, acts, and things as may reasonably be required to carry out and give effect to the terms and intentions of this Agreement and the Constitution.

30.6 **Costs**

Whether or not any of the transactions contemplated by this Agreement are completed, each party is to (unless otherwise specified in this Agreement) bear its own legal and accountancy costs and other expenses of and incidental to the preparation, execution and completion of this Agreement.

30.7 **Partial invalidity**

If any provision of this Agreement offends any law applicable to it and is as a consequence illegal, invalid or unenforceable then:

- (a) where the offending provision can be read down so as to give it a valid and enforceable operation of a partial nature, it must be read down to the minimum extent necessary to achieve that result; and
- (b) in any other case the offending provision must be severed from this Agreement, in which event the remaining provisions of this Agreement operate as if the severed provision had not been included.

30.8 **Counterparts**

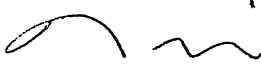
If this Agreement consists of a number of signed counterparts, each is an original and all of the counterparts together constitute the same document. This Agreement may be executed on the basis of an exchange of scanned copies and execution of this Agreement by such means is to be a valid and sufficient execution.

30.9 **Governing law**

This Agreement is governed by, and is to be construed in accordance with, the law of New Zealand.

Execution

**SIGNED by His Majesty the King
in right of New Zealand acting by
and through the Director-General,
the Ministry for Primary Industries
by**



Director-General

Ray Smith

Print Name

ANZCO Foods Limited by

Chief Executive

Print Name

**Fonterra Co-operative Group
Limited by**

Chief Executive

Print Name

Released under the Official Information Act 1982

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Execution

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in right of New Zealand acting by
and through the Director-General,
the Ministry for Primary Industries
by**

Director-General

Print Name

ANZCO Foods Limited by



Chief Executive

Peter Conley

Print Name

**Fonterra Co-operative Group
Limited by**

Chief Executive

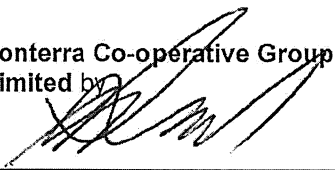
Print Name

ANZCO Foods Limited by

Chief Executive

Print Name

**Fonterra Co-operative Group
Limited by**



Chief Executive

MILES HURRELL

Print Name

**Rabobank New Zealand Limited
by**

Chief Executive

Print Name

Ravensdown Limited by

Chief Executive

Print Name

Released under the Official Information Act 1982

Rabobank New Zealand Limited

by



signed subject to Rabobank Head Office approval

Chief Executive

Todd Charteris

Print Name

Ravensdown Limited by

Chief Executive

Print Name

Silver Fern Farms Limited by

Chief Executive

Print Name

Synlait Milk Limited by

Chief Executive

**Centre for Climate Action Joint
Venture Limited by**

Director

Print Name

Released under the Official Information Act 1982

Rabobank New Zealand Limited
by

Chief Executive

Print Name

Ravensdown Limited by

M. M. D. [Signature]

Chief Executive

GARRY J. BLACK.

Print Name

Silver Fern Farms Limited by

Chief Executive

Print Name

Synlait Milk Limited by

Chief Executive

**Centre for Climate Action Joint
Venture Limited** by

Director

Print Name

Released under the Official Information Act 1982

Rabobank New Zealand Limited
by

Chief Executive

Print Name

Ravensdown Limited by

Chief Executive

Print Name

Silver Fern Farms Limited by



Chief Executive

Simon Limmer

Print Name

Synlait Milk Limited by

Chief Executive

**Centre for Climate Action Joint
Venture Limited** by

Director

Print Name

Released under the Official Information Act 1982

Rabobank New Zealand Limited
by

Chief Executive

Print Name

Ravensdown Limited by

Chief Executive

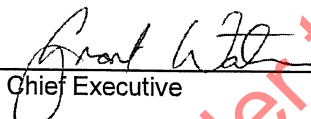
Print Name

Silver Fern Farms Limited by

Chief Executive

Print Name

Synlait Milk Limited by



Chief Executive
Grant Watson

**Centre for Climate Action Joint
Venture Limited** by

Director

Print Name

Released under the Official Information Act 1982

Schedule 2: Reserved Matters

Part 1:

The matters requiring the prior written consent or approval of the Crown are set out in the following paragraphs:

1. International considerations

Any decision or action by the Company which is likely to prejudice the international relations or national security of Aotearoa New Zealand, or engage the international obligations of the New Zealand Government, including under any bilateral or multilateral agreement to which the New Zealand Government is a party.

2. Presentation of Constitution

The presentation of the Constitution, and any changes to the Constitution and any replacement Constitution, to the House of Representatives.

Part 2:

The matters requiring a Special Shareholders' Resolution are:

- set out in the base terms of the Agreement, being as follows; and
- as set out further below in this Schedule 2,

clause 2.4 – Restricted activities;

clause 8.3(c) – Subsequent nominations for Independent Chair;

clause 8.3(e) – Removal of Independent Chair;

clause 8.6(a) – Directors' fees;

clause 11.3(d) – Material Changes to the Strategic Plan;

clause 13(h) – Public availability of IP

clause 14 – Amending dividend policy;

clause 17.4 – Waiver of pre-emptive rights for share issues;

clause 19.9 – Sale of shares to third party;

clause 20.1(a) - Change of Control Event and a Shareholder no longer a Qualified Buyer;

clause 21.1 – Appointment of valuer; and

clause 25.1(c) – Termination of Shareholders' Agreement.

1. **Securities**

- (a) The issue, agreement to issue, grant or creation by the Company of any Security, other than where that action is expressly permitted under this Agreement.
- (b) The acquisition, disposal, repurchase, buy back, redemption, conversion or cancellation of any Security of the Company, other than where that action is expressly permitted under this Agreement.
- (c) Any increase, reduction, consolidation, subdivision or cancellation of, or variation of the rights attaching to any class of Shares in, the share capital of the Company, other than where that action is expressly permitted under this Agreement.
- (d) The cancellation of any uncalled amount of share capital of the Company.

2. **Offshore sale of Intellectual Property**

The sale or exclusive licensing of any Intellectual Property or technology developed by or for the Company to an overseas entity, and for the avoidance of doubt, will not include a New Zealand subsidiary of an overseas entity (**Offshore Party**) which individually or in aggregate with other similar or related disposals exceeds NZ\$20,000,000.

3. **Material expenditure**

The incurring of any expenditure of NZ\$5,000,000 or more beyond the approved budget contained in the Business Plan.

4. **Acquisitions and disposals**

The acquisition, disposal, distribution or revaluation, or a series of related acquisitions, disposals, distributions or revaluations, by the Company in any 12-month period of any assets or other property which individually or in aggregate with other similar or related acquisitions, disposals, distributions or revaluations, over that period, exceeds NZ\$20,000,000.

5. **Amending Dividend Policy**

Any amendment to the Company's Dividend Policy.

6. **Constitution**

The amendment, repeal or replacement of the Constitution.

7. **Reorganisation or liquidation**

- (a) The reorganisation or amalgamation of the Company.
- (b) The merger, consolidation, joint venture or amalgamation of the Company with or into any other entity.
- (c) The taking of any step to liquidate the Company.

8. Business

The entry into by the Company of, or amendment to, any contract, commitment or transaction:

- (a) which is outside the ordinary course of its business; or
- (b) whereby any person would or might receive remuneration which is calculated by reference to the income or profits of the Company; or
- (c) which is of an unusual or onerous nature.

9. Debt capital and financial assistance

- (a) The Company funding its operations or functions in any manner through debt raising.
- (b) The provision of any loans or other financial assistance to any Shareholder or Director or their respective Related Parties or any variation of the terms of any loans or other financial assistance previously provided to any Shareholder or Director or their respective Related Parties.

10. Power to appoint directors of another company

The appointment or removal of any director of a company in relation to which the Company has the power to appoint or remove a director.

11. Security interests

The entry into by the Company of, or amendment to, any:

- (a) contract, commitment or transaction creating any mortgage, charge, pledge or other security interest over any asset or undertaking of the Company; or
- (b) guarantee, letter of comfort or performance bond.

12. Profit shares, share schemes and superannuation

The establishment, implementation or amendment by the Company of a profit sharing, incentive, share option or superannuation scheme for any director, employee or contractor of the Company.

13. Disputes

The commencement or conduct of any proceedings (including with any tax authority) other than debt collection in the ordinary course of business.

14. Variation of Reserved Matters

Varying the list of Reserved Matters in this Schedule 2.

Schedule 3: Form of Accession Deed

This Deed is made on

- between (1) [] (the **New Shareholder**)
- and (2) [His Majesty the King in right of New Zealand acting by and through the Director-General, the Ministry for Primary Industries]
- and (3) [ANZCO Foods Limited]
- and (4) [Fonterra Co-operative Group Limited]
- and (5) [Rabobank New Zealand Limited]
- and (6) [Ravensdown Limited]
- and (7) [Silver Fern Farms Limited]
- and (8) [Synlait Milk Limited]
- and (9) [Centre for Climate Action Joint Venture Limited]

(Parties (2), (3), (4), (5), (6), (7) and (8) together the **Existing Shareholders**)

Introduction

- A. [[] and [] entered into a Shareholders' Agreement dated [] (the **Shareholders' Agreement**) relating to [[] Limited (the **Company**).
- B. [*Recite any previous deeds of covenant/adherence and any releases from the Shareholders' Agreement.*]
- C. The New Shareholder has become entitled to [a transfer of] [*number*] Shares in the capital of the Company.
- D. It is a term of the Shareholders' Agreement that no [issue/transfer] of Shares in the Company may be effected to a person who is not already a party to the Shareholders' Agreement unless the person has first entered into a deed in the form of this Deed.

It is agreed

The New Shareholder covenants with each of the Existing Shareholders that, with effect from the date of this Deed, the New Shareholder [is bound by and is to observe and perform every provision of the Shareholders' Agreement [(as modified by the provisions of this Deed)] [by which [*outgoing party*] was

bound] in every way as if the New Shareholder was a party to the Shareholders' Agreement [(as modified by the provisions of this Deed)].

The New Shareholder represents and warrants to each of the Existing Shareholders:

(a) Registration

[(in the case of a body corporate) it is registered and validly existing under its laws of incorporation;]

(b) Power

[(in the case of a body corporate) it has the corporate power to own its assets and to carry on its business as it is now being conducted;]

(c) Authority

it has full power and authority to enter into this Deed and perform its obligations under this Deed and (to the extent specified in clause 1) under the Shareholders' Agreement;

(d) Authorisations

it has taken all necessary action to authorise the execution and delivery of this Deed and the performance of its obligations under this Deed and (to the extent specified in clause 1) under the Shareholders' Agreement;

(e) Binding obligations

this Deed and (to the extent specified in clause 1) the Shareholders' Agreement constitute its legal, valid and binding obligations and are enforceable in accordance with their terms, subject to:

(i) the effect of general principles of equity, including concepts of materiality, reasonableness, good faith and fair dealing (regardless of whether considered in a proceeding in equity or at law); and

(ii) the effect of any applicable bankruptcy, insolvency, reorganisation, moratorium or similar laws affecting creditors' rights generally;

(f) Solvency

it is solvent and will not become insolvent as a result of it entering into this Deed and performing its obligations under this Deed and (to the extent specified in clause 1) under the Shareholders' Agreement;

(g) Agreements permitted

the execution and delivery of this Deed and the performance by it of its obligations under this Deed and (to the extent specified in clause 1) under the Shareholders' Agreement do not and will not violate, breach, or result in a contravention of:

- (i) any law, regulation or authorisation; or
 - (ii) (in the case of a body corporate or a trustee) its constituent documents; or
 - (iii) any security interest or document which is binding on it or any of its assets; and
- (h) Consent
- (i) each consent required in connection with the execution and delivery by it of this Deed and the performance by it, and the validity and the enforceability against it, of its obligations under this Deed and (to the extent specified in clause 1) under the Shareholders' Agreement has been obtained or effected and is in full force and effect; and
 - (ii) there has been no material default by it in the performance of any of the terms and conditions of any such consent.

Each of the representations and warranties in this clause 3 is deemed to be repeated continuously by reference to the facts and circumstances then existing.

Unless otherwise defined in this Deed, terms defined or construed in the Shareholders' Agreement will have the same meanings and constructions when used in this Deed.

Execution

**SIGNED by His Majesty the King
in right of New Zealand** acting by
and through the Director-General,
the Ministry for Primary Industries
by

Director-General

Print Name

ANZCO Foods Limited by

Chief Executive

Print Name

**Fonterra Co-operative Group
Limited by**

Chief Executive

Print Name

**Rabobank New Zealand Limited
by**

Chief Executive

Print Name

Ravensdown Limited by

Chief Executive

Print Name

Silver Fern Farms Limited by

Chief Executive

Print Name

Synlait Milk Limited by

Chief Executive

Print Name

**Centre for Climate Action Joint
Venture Limited by**

Chief Executive

Print Name

Released under the Official Information Act 1982

Schedule 4: Strategic Plan

Released under the Official Information Act 1982