

Geoffrey and Lynden Iddles

and

Fonterra Australia Pty Ltd (ACN 006 483 665), Fonterra Milk Australia Pty Ltd (ACN 114 326 448) and  
Fonterra Brands (Australia) Pty Ltd (ACN 095 181 669)

and

Adley Burstyner and David Burstyner

and

LLS Fund Services Pty Ltd (ABN 51 627 975 213) as trustee for Litigation Lending Fund 1

## **Settlement Agreement**

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**THIS AGREEMENT** is made on 4 November 2022

## **PARTIES**

**GEOFFREY IDDLES AND LYNDEN IDDLES**

of 1796 Bearii East Road, Strathmerton VIC 3641  
(together and severally, "**Plaintiffs**")

and

**FONTERRA AUSTRALIA PTY LTD (ACN 006 483 665), FONTERRA MILK AUSTRALIA PTY LTD (ACN 114 326 448) AND FONTERRA BRANDS (AUSTRALIA) PTY LTD (ACN 095 181 669)**

of Level 2, 40 River Boulevard, Richmond VIC 3121  
(together and severally, "**Fonterra**")

and

**ADLEY BURSTYNER (ABN 38 205 640 150) AND DAVID BURSTYNER**

of 124 Westbury Close, Balaclava VIC 3183  
(together and severally, "**Solicitors**")

and

**LLS FUND SERVICES PTY LTD (ABN 51 627 975 213) AS TRUSTEE FOR LITIGATION LENDING FUND 1**

of Suite 28.02, Level 28, Bligh Chambers, 25 Bligh Street, Sydney NSW 2000  
(**"Funder"**)

## **BACKGROUND**

- A The Plaintiffs commenced the Proceeding against Fonterra.
- B The Solicitors are the Plaintiffs' solicitors on record in the Proceeding.
- C The Funder has provided commercial litigation funding to the Plaintiffs for the Proceeding.
- D The Proceeding is a group proceeding within the meaning of Part 4A of the Act and the Plaintiffs bring the Proceeding on their own behalf and on behalf of Group Members.
- E The Plaintiffs on behalf of all Claimants make allegations against Fonterra and claim relief as set out in the Amended Statement of Claim dated 8 September 2020 filed in the Proceeding.
- F Fonterra denies it is liable to the Claimants (or any of them) and denies that the Claimants (or any of them) are entitled to the relief sought or any relief against it.
- G To avoid the costs, inconvenience and uncertainty of litigation, the Plaintiffs and Fonterra have agreed that (subject to the satisfaction of certain conditions) the Claims shall be settled upon the terms set out in this Agreement, without any admission of liability by any Party.
- H The Funder and the Solicitors have agreed to be parties to, and be bound by, this Agreement.

## AGREED TERMS

### 1 Definitions and interpretation

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#### 1.1 Definitions

In this Agreement, unless the context requires otherwise:

“**ABL**” means Arnold Bloch Leibler, Fonterra’s solicitors on the record in the Proceeding.

“**Adley Burstyner**” means Adley Burstyner, the Plaintiffs’ solicitors on the record in the Proceeding.

“**Act**” means the *Supreme Court Act 1986 (Vic)*.

“**Agreement**” means this Settlement Agreement.

“**Appeal Period**” means the period of time commencing on the day on which Settlement Approval is granted and ending:

- (a) if there is no appeal by a Claimant or any other person from the granting of Settlement Approval – on the date that is 42 days after the date on which Settlement Approval is granted; or
- (b) if there are any appeals by a Claimant or any other person from the granting of Settlement Approval – upon the final determination of all such appeals (including any subsequent appeals or applications to appeal) and the expiration of time for any further appeals or applications to appeal.

“**Business Day**” means a day that is not a Saturday, Sunday or any other day which is a public holiday in Melbourne, Victoria.

“**Claimants**” means the Plaintiffs and all Group Members, together and severally.

“**Claims**” means all claims, demands, costs (including legal costs and expenses), debts, dues, liabilities, damages, or losses, however arising, fixed or unascertained, actual or contingent, known or unknown, whether arising at common law, in negligence, in equity, under statute or otherwise in relation to the claims that are, or have been at any time, made in the Proceeding or the FASL Proceeding.

“**Common Fund Order Application**” means an application by the Plaintiffs for a Common Fund Order.

“**Common Fund Order**” means orders which require the Plaintiffs and all Group Members to pay to the Funder a share of the legal costs (including insurance premiums) incurred and a funding commission at a rate to be specified in any order for Settlement Approval from the common fund of the Settlement Sum as may be approved by the Court.

“**Court**” means the Supreme Court of Victoria.

“**Date of Execution**” means the date when the Solicitors and ABL have both received this Agreement (or counterparts of this Agreement) signed or executed by all Parties.

“**Escrow Agent**” means Perpetual Corporate Trust Limited (or one of its Related Bodies Corporate) or any other person that the Parties agree in writing will act as the Escrow Agent for the purposes of this Agreement.

**“Escrow Account”** has the meaning given by clause 3.3.

**“FASL Objection Notice”** means a notice in writing by a Claimant that the Claimant objects to a deduction or proposed deduction of the type referred to in clause 6.2(d) where the objection is on a basis other than a Claim and the notice includes an explanation of the basis of the objection.

**“FASL Proceeding”** means Supreme Court of Victoria proceeding number S ECI 2020 03513 (*Fonterra Australia Pty Ltd v Geoffrey Kenneth Iddles and Lynden Elizabeth Iddles*), being County Court of Victoria proceeding number CI-19-02195 commenced by Fonterra Australia Pty Ltd against the Plaintiffs and subsequently transferred to the Court, and includes the Plaintiffs’ counterclaim in that proceeding.

**“FY16”** means the financial year from 1 July 2015 to 30 June 2016 (both dates inclusive).

**“Group Member”** means a person who is a group member in the Proceeding (and, for the avoidance of doubt, does not include a person who was a group member but has opted out of the Proceeding).

**“Party”** means a Party to this Agreement and **“Parties”** means all of the Parties to this Agreement.

**“Proceeding”** means Supreme Court of Victoria proceeding S ECI 2020 02588 (*Geoffrey and Lynden Iddles v Fonterra Australia Pty Ltd and others*).

**“Provisional Distribution Amount”**, in respect of a Claimant who has a Support Loan Outstanding Balance, has the meaning given by clause 6.2(b) of this Agreement.

**“Related Body Corporate”** has the meaning given to it by section 50 of the *Corporations Act 2001*.

**“Related Entity”** has the meaning given to it by section 9 of the *Corporations Act 2001*.

**“Released Person”** in relation to a Party means:

- (a) any Related Body Corporate;
- (b) any Related Entity;
- (c) any present or past director, officer, employee, servant or agent of the Party;
- (d) any present or past director, officer, employee, servant or agent of a Released Person of the Party.

**“Settlement Approval”** means the Court making each and every of the following orders, save for any orders in respect of which Fonterra gives written notice under clause 2.3(a):

- (a) in the Proceeding:
  - (i) an order, pursuant to section 33V(1) of the Act, approving the settlement of the Proceeding in accordance with the terms of this Agreement; and
  - (ii) an order, pursuant to section 33ZF of the Act, to the effect that the Plaintiffs be authorised *nunc pro tunc* on behalf of all Claimants to enter into and give effect to this Agreement and the transactions contemplated by this Agreement for and on behalf of the Claimants (including, for the avoidance of doubt, the releases and covenants given on behalf of the Claimants in clause 5 of this Agreement); and

- (b) in each of the Proceeding and the FASL Proceeding – each of the orders referred to in clause 5.3 of this Agreement.

**“Settlement Distribution Scheme”** or **“SDS”** means a scheme approved by the Court for the distribution and payment of the Settlement Sum among Claimants, the Funder and any other person.

**“Settlement Sum”** means the sum to be paid by Fonterra in accordance with clause 3.1 together with any interest accruing on that sum after payment into the Escrow Account.

**“Support Loan”** means a loan made by Fonterra (or any of them) to a Claimant in or about May 2016 in connection with the milk price revision the subject of the Proceeding (and defined in the Plaintiffs’ Amended Statement of Claim dated 8 September 2020 in the Proceeding as the “May 2016 Price Decrease”).

**“Support Loan Offset Payment”** means the payment to be made to Fonterra referred to in clause 6.2(e) of this Agreement.

**“Support Loan Outstanding Balance”**, in respect of a Claimant, has the meaning given by clause 6.1 of this Agreement.

**“Support Loan Outstanding Balance Claim”** means any claim, by Fonterra against a Claimant who has a Support Loan Outstanding Balance, for payment of the Claimant’s Support Loan Outstanding Balance (or any part of it).

## 1.2 Words and expressions

In this Agreement, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) words denoting any gender include all genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a Party, clause, paragraph, schedule or annexure is a reference to a Party, clause, paragraph, schedule or annexure to or of this Agreement;
- (e) a reference to this Agreement includes any schedules or annexures;
- (f) headings are for convenience and do not affect interpretation;
- (g) the Background paragraphs of this Agreement are adopted as and form part of the Agreement;
- (h) a reference to any document or agreement includes a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (i) a reference to “\$”, “A\$” or “dollar” is a reference to Australian currency;
- (j) a reference to a Party includes that Party’s executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (k) a reference to writing includes any method of representing words, figures or symbols in a permanent and visible form;
- (l) words and expressions denoting natural persons include bodies corporate, partnerships, associations, firms, governments and governmental authorities and agencies and vice versa;
- (m) a reference to any legislation or to any provision of any legislation includes:

- (i) any modification or re-enactment of the legislation;
  - (ii) any legislative provision substituted for, and all legislation, statutory instruments and regulations issued under, the legislation or provision; and
  - (iii) where relevant, corresponding legislation in any Australian State or Territory;
- (n) 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; and
- (o) the words “including”, “for example”, “such as” or other similar expressions (in any form) are not words of limitation.

## **2 Conditions Precedent**

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2.1 Every term of this Agreement, save for clauses 1 and 2 of this Agreement, is conditional as set out in this clause.

2.2 If any of the following occurs:

- (a) the Court, upon the conclusion of the application for Settlement Approval, declines to grant Settlement Approval;
- (b) after the Court grants Settlement Approval, the Settlement Approval is appealed and, following the final determination of all appeals (including any subsequent appeals or applications to appeal), Settlement Approval is not granted; or
- (c) Claimants who together constitute more than 5% of all Claimants as at the Date of Execution (where percentage is measured by volume of milk supplied to Fonterra in FY16) cease to be Claimants;

and Fonterra has not, within 14 days of the relevant occurrence, given a notice under clause 2.3 of this Agreement in relation to that occurrence, then:

- (d) this Agreement shall cease to have any effect and shall be treated for all purposes as never having been made and never having had any effect;
- (e) no Party shall rely upon any term of this Agreement, other than clauses 1 and 2, for any purpose whatsoever in the Proceeding;
- (f) if any information about this Agreement has been disclosed to the public or to the Court, the Parties shall jointly inform the Court that the Parties are agreed that the Agreement was entirely without prejudice and should be treated as never having been made; and
- (g) if Fonterra has paid the Settlement Sum or any part of it, the Solicitors will within 7 days give all necessary instructions and take all necessary steps to cause to be repaid to Fonterra the Settlement Sum in the Escrow Account, together with any interest earned on that sum since it was paid by Fonterra.

2.3 Fonterra in its absolute discretion may give written notice to the Solicitors at any time (including after the Court has declined to make any order or any person has ceased to be a Claimant) that:

- (a) an order specified in the definition of “Settlement Approval” in clause 1.1 of this Agreement is not required for Settlement Approval;
- (b) Fonterra waives the condition in clause 2.2(c) of this Agreement, such that this Agreement is no longer conditional on no more than 5% of Claimants ceasing to be Claimants.

- 2.4 For the avoidance of doubt, Settlement Approval is not declined or prevented for the purposes of this clause by the Court:
- (a) inviting or requiring any Party to submit further evidence, make further submissions or provide further information or vary or make a further application; or
  - (b) varying, or requiring the varying of, any Settlement Distribution Scheme or proposed Settlement Distribution Scheme.

### **3 Settlement Payment**

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- 3.1 Subject to the terms of this Agreement, and in full and final settlement of the Claims, Fonterra will, within 7 days after ABL is notified of the account details of the Escrow Account in accordance with clause 3.3, pay the sum of twenty-five million dollars (\$25,000,000.00) by electronic transfer to the Escrow Account.
- 3.2 Upon receipt of the payment referred to in clause 3.1 into the Escrow Account, the Settlement Sum will be held in escrow in the Escrow Account until the end of the Appeal Period. After the end of the Appeal Period, the balance of the Escrow Account will either:
- (a) be paid to Fonterra in accordance with clause 2.2(g); or
  - (b) be paid to another bank account that is, subject to approval of the Court, controlled by the Solicitors and held as controlled monies for the benefit of the Claimants, the Funder, and any other persons with an entitlement to those monies in accordance with the SDS,
- subject in each case to the obligations set out in this Agreement.
- 3.3 Within 14 days of the Date of Execution, the Parties will arrange for the Escrow Agent to establish an interest-bearing bank account ("**Escrow Account**") with any of the Commonwealth Bank of Australia, National Australia Bank, Bendigo Bank, ANZ Banking Group and Westpac Banking Corporation and give notice to ABL of the account details of the Escrow Account required for payment of the Settlement Sum into the Escrow Account.
- 3.4 The Parties will establish the Escrow Account so that:
- (a) the Settlement Sum will be held in the Escrow Account in accordance with the terms of this Agreement;
  - (b) payment from the Escrow Account may only be made upon the joint written direction of both the Solicitors and Fonterra or otherwise as ordered by the Court;
  - (c) the Escrow Account will close upon payment of the balance of the Escrow Account in accordance with clause 3.2; and
  - (d) Fonterra will pay the Escrow Agent's fees required for the establishment of the Escrow Account, following which any subsequent fees of the Escrow Agent may be deducted by the Escrow Agent from the Escrow Account.
- 3.5 Subject to the approval of the Court:
- (a) the Settlement Sum is to be applied and/or distributed by the Solicitors in accordance with the SDS (unless it is paid to Fonterra in accordance with clause 2.2(g)); and
  - (b) the SDS will be consistent with the terms of this Agreement (including clauses 3.6 and 6).
- 3.6 Subject to the terms of this Agreement and approval by the Court, the Settlement Sum is to be applied and/or distributed by the Solicitors in the following order:



- (a) payment to the Funder as reimbursement of legal costs (including insurance premiums) incurred by the Funder in connection with the conduct of the Proceeding (and the Parties contemplate that this will be in the nature of a Common Fund Order);
- (b) payment to the Funder of a funding commission (and the Parties contemplate that this will be in the nature of a Common Fund Order);
- (c) payment to the Solicitors of the Plaintiffs' reasonable unpaid legal costs (including any uplift) and disbursements of and incidental to the Proceeding;
- (d) payment to the Solicitors of the Plaintiffs' reasonable legal costs (including any uplift) and disbursements of and incidental to the application for Settlement Approval;
- (e) payment of the reasonable legal costs and disbursements of the administrator of the Settlement Distribution Scheme in administering the Settlement Distribution Scheme;
- (f) any other payments as approved by the Court; and
- (g) after the above deductions are made, upon calculation of each Claimant's entitlement under the SDS ("**Claimant Allocation**"), subject to the final determination of any dispute in accordance with clause 6.6:
  - (i) payment to Fonterra of any Support Loan Offset Payment (or part thereof) relating to that Claimant; and
  - (ii) payment to the Claimant of any residue of the Claimant Allocation remaining after the payment in (i).

## 4 Settlement Approval

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- 4.1 The Plaintiffs, the Solicitors and the Funder must use their best endeavours to obtain Settlement Approval as soon as reasonably possible.
- 4.2 The Parties agree to:
- (a) execute all documents required for;
  - (b) do all other things reasonably necessary for; and
  - (c) refrain from performing acts incompatible with,
- compliance with the terms of this Agreement, the granting of Settlement Approval, the Common Fund Order Application and, with the exception of Fonterra, compliance with the SDS as approved by the Court.
- 4.3 The Parties acknowledge that Fonterra reserves its right to make submissions in respect of the application for Settlement Approval, including in respect of the proposed SDS.
- 4.4 The Plaintiffs, Fonterra, the Solicitors and the Funder must not take any step to encourage any person to:
- (a) cease to be a Claimant;
  - (b) opt out of the Proceeding;
  - (c) object to, or appeal from, Settlement Approval; or
  - (d) apply to the Court for an order which would have the effect that the person would not be bound by the settlement pursuant to the terms of this Agreement;

but nothing in this clause prevents a Party from advising a Claimant to seek independent legal advice in relation to their rights in respect of the proceeding.

- 4.5 Within 21 days of the Date of Execution, the Plaintiffs will apply to the Court for approval of the form and content of a notice to be sent to all Claimants in accordance with section 33X(4) of the Act advising Claimants of:
- (a) the provisions of this Agreement;
  - (b) the Plaintiffs' intention to apply for Settlement Approval;
  - (c) the date on which, and the manner by which, the Plaintiffs' proposed SDS (which must be consistent with the terms of clause 3.6 of this Agreement) will be available; and
  - (d) the right of Claimants to apply to be heard on the question of whether Settlement Approval should be granted.
- 4.6 Prior to filing the application referred to in clause 4.5, the Plaintiffs must provide Fonterra with:
- (a) a copy of the proposed notice to Claimants; and
  - (b) a reasonable opportunity to comment on the content of the proposed notice to Claimants.
- 4.7 Prior to the Plaintiffs' proposed SDS becoming available to Claimants, the Plaintiffs must provide Fonterra with a reasonable opportunity to comment on the content of the proposed SDS.
- 4.8 As soon as reasonably practicable, the Plaintiffs must apply to the Court for:
- (a) Settlement Approval; and
  - (b) approval of the Plaintiffs' proposed SDS,
- with such application to be heard at a date convenient to the Court.
- 4.9 Prior to filing the application for Settlement Approval, the Plaintiffs must provide Fonterra with a copy of the proposed application and a reasonable opportunity to comment on it.
- 4.10 At any hearing of an application for Settlement Approval, and at any hearing of any appeal from the granting of Settlement Approval:
- (a) the Plaintiffs will:
    - (i) request and recommend that the Court grant Settlement Approval; and
    - (ii) instruct their legal representatives to take all reasonable steps (consistent with the representatives' professional obligations) to obtain Settlement Approval, including the preparation and filing of court documents, evidence in support of the application, and submissions;
  - (b) Fonterra will, subject to clause 4.3 of this Agreement:
    - (i) support the Plaintiffs' application for Settlement Approval; and
    - (ii) instruct its legal representatives to take all reasonable steps (consistent with the representatives' professional obligations) to support the Plaintiffs' application for Settlement Approval.

## 5 Release and disposal of court proceedings

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### 5.1 Upon Settlement Approval:

- (a) the Plaintiffs for and on behalf of themselves and on behalf of all Claimants will release Fonterra and each of its Released Persons, and Fonterra (subject to clause 6) will release the Plaintiffs and all Claimants, from all Claims;
- (b) the persons released pursuant to (a) hereof (**releasee**) will have no further liability to the corresponding releasor in connection with any Claims, other than in respect of obligations under this Agreement;
- (c) the Plaintiffs for and on behalf of themselves and on behalf of all Claimants, and Fonterra, agree that they will not bring or pursue, or procure or assist a third party to bring or pursue, any Claims against a releasee;
- (d) the releasees may plead this Agreement in bar to any Claim by a corresponding releasor;
- (e) save for proceedings already brought by Tasmanian Land Company Pty Ltd and Tasman Farmdale Pty. Limited:
  - (i) each of the Solicitors covenants not to bring or otherwise aid, abet, counsel or procure the bringing of any Claim against Fonterra or any of its Released Persons;
  - (ii) the Funder covenants, on behalf of itself and each of its Related Bodies Corporate, Related Entities, directors, officers and employees, not to fund or otherwise aid, abet, counsel or procure any Claim against Fonterra or any of its Released Persons.

5.2 The Parties agree that, save for any entitlement of the Plaintiffs (subject to Court approval) to be repaid their costs of the Proceeding (or part of those costs) from the Settlement Sum as part of the SDS, they will each bear their own costs (if any) of and incidental to the Proceeding, the FASL Proceeding and the Plaintiffs' counterclaim in the FASL Proceeding, and they will not enforce any costs orders made in any of those proceedings.

5.3 The Parties agree that, and must consent to and do all other things reasonably necessary for the Court to make orders in the Proceeding and the FASL Proceeding that:

- (a) all costs orders made to date in each of the Proceeding and the FASL Proceeding (whether in the Court or in the County Court of Victoria) be vacated;
- (b) all amounts of security for costs provided by or on behalf of the Plaintiffs in the Proceeding be released; and
- (c) each of the Proceeding, the FASL Proceeding and the Plaintiffs' counterclaim in the FASL Proceeding be otherwise dismissed with no order as to costs.

## 6 Support Loans

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6.1 For the purposes of this Agreement, the amount (if any) outstanding and owed by any Claimant to Fonterra under a Support Loan ("**Support Loan Outstanding Balance**") is identified for each such Claimant respectively in the table in Schedule 1 to this Agreement, which shall remain confidential and not publicly produced with this agreement or otherwise unless ordered by the Court.

6.2 If a Claimant:

- (a) has a Support Loan Outstanding Balance; and

(b) is, or apart from the operation of this clause 6 of this Agreement would be, entitled to receive any amount as a distribution or payment under the Settlement Distribution Scheme (“**Provisional Distribution Amount**”),

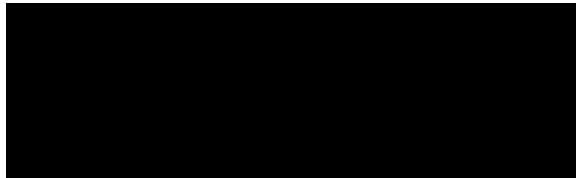
then:

(c) the Solicitors (as SDS administrator) will notify the Claimant in writing that it is proposed to deduct their Support Loan Outstanding Balance from their Provisional Distribution Amount in accordance with sub-clause (d) unless within 30 days the Claimant gives the Solicitors a FASL Objection Notice and any documentation that the Claimant wishes to rely upon in support of the objection in the FASL Objection Notice (such notice to be adequate where contact details provided by Fonterra are used, but without that preventing the Solicitors using any other contact information they may have);

(d) subject to the outcome of any objection raised in accordance with clause 6.6, not less than 60 days after providing the notification in sub-clause (c), the amount of the Support Loan Outstanding Balance (up to the amount of the Provisional Distribution Amount) will be deducted from the amount to be distributed or paid to the Claimant under the SDS; and

(e) subject to Court approval, the total of all amounts deducted in accordance with sub-clause (d), in respect of all Claimants who have a Support Loan Outstanding Balance, will be paid to Fonterra as a single payment (“**Support Loan Offset Payment**”), after the resolution of any disputes in accordance with clause 6.6, as part of the Settlement Distribution Scheme. At the same time as that payment, the Solicitors will provide Fonterra with a list of the Claimants in respect of whom a deduction has been made and a breakdown of the amount of the Support Loan Offset Payment showing the amount attributable to each such Claimant.

6.3 Subject to Court approval, the Solicitors will pay the Support Loan Offset Payment to Fonterra by electronic transfer to the following bank account as soon as is reasonably practicable having regard to the progress of the administration of the SDS:



6.4 Upon payment to Fonterra of the Support Loan Offset Payment:

- (a) Fonterra will release from all Support Loan Outstanding Balance Claims all Claimants who have a Support Loan Outstanding Balance; and
- (b) all Claimants who have a Support Loan Outstanding Balance may plead this Agreement in bar to any Support Loan Outstanding Balance Claim by Fonterra.

6.5 For the avoidance of doubt, if a Claimant’s Support Loan Outstanding Balance exceeds the Claimant’s Provisional Distribution Amount, the Claimant will not be required, under this Agreement or as part of the SDS, to make or contribute to any payment to Fonterra in respect of the Claimant’s Support Loan Outstanding Balance, other than the Support Loan Offset Payment.

6.6 If a Claimant:

- (a) has received a notification regarding a proposed deduction in accordance with clause 6.2(c); and
- (b) within 30 days of that notification, gives the Solicitors a FASL Objection Notice in respect of that proposed deduction,

then:

- (c) the Solicitors will hold the amount of the Settlement Sum relating to the proposed deduction until the resolution of the objection in the FASL Objection Notice;
- (d) within 30 days of receiving the FASL Objection Notice, the Solicitors, acting reasonably and in good faith, must either assess whether the Claimant's objection should be upheld, and provide the Claimant and Fonterra with the Solicitors' reasons for that assessment in writing or give notice that any determination of the Claimant's objection is to be by the dispute resolution process set out in clause 6.6(f) upon any referral by Fonterra or the Claimant;
- (e) if, within 14 days of the Solicitors' assessment or notice, the Claimant or Fonterra give notice to the Solicitors and each other that the Claimant or Fonterra (as the case may be) objects to the Solicitors' assessment or desires a determination in accordance with the dispute resolution process set out in clause 6.6(f), then the Claimant and Fonterra must first negotiate in good faith to try to resolve the objections the subject of the FASL Objection Notice for at least 21 days; and
- (f) after the end of the period of negotiation, if the dispute is not resolved, the Claimant and Fonterra may agree in writing to refer the dispute to be finally resolved by arbitration conducted in Victoria in accordance with the Arbitration Victoria Arbitration Rules for the time being in force, however, if they have not so agreed then either the Claimant or Fonterra shall be free to commence proceedings in an appropriate court to resolve the dispute.

6.7 For the avoidance of doubt, nothing in this clause 6 shall prevent the SDS administrator from distributing to a Claimant an amount (if any) that the Claimant is entitled to under the SDS if:

- (a) the Claimant does not have a Support Loan Outstanding Balance;
- (b) the Claimant has a Support Loan Outstanding Balance but did not submit a FASL Objection Notice in accordance with clause 6.6(b); or
- (c) the Claimant submitted a FASL Objection Notice in accordance with clause 6.6(b) and the objection the subject of that notice has been resolved in accordance with clause 6.6,

provided in all such cases that the SDS administrator holds in reserve sufficient funds from the Settlement Sum to satisfy the entitlements of Claimants whose FASL Objection Notice has not at that time been resolved, and of Fonterra in respect of the said Claimants.

## **7 Confidentiality**

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7.1 Unless required by law, the terms of this Agreement shall remain confidential unless and until an application seeking Settlement Approval is filed with the Court, provided however that the Parties are at liberty to disclose:

- (a) the fact of this Agreement;
- (b) the fact that this Agreement is conditional on approval by the Court; and
- (c) the fact that this Agreement provides for a settlement payment in the amount of the payment referred to in clause 3.1 to be made by Fonterra in the event that the preconditions are satisfied.

7.2 Nothing in clause 7.1 of this Agreement prohibits:

- (a) any Party from disclosing the terms of this Agreement for the purposes of obtaining Settlement Approval;

- (b) any Party from disclosing the terms of this Agreement on a confidential basis to the Party's legal or financial advisers, financial service providers (including insurers and those insurers' reinsurers and legal advisers) or auditors, for the purpose of obtaining legal, financial or auditing advice, or legal, financial or auditing services;
- (c) the Plaintiffs, the Solicitors or the Funder from disclosing the terms of this Agreement:
  - (i) confidentially to an individual Claimant upon the Claimant agreeing in writing not to disclose the terms or effect of this Agreement to any person other than on a confidential basis to the Claimant's authorised directors, officers or servants or its legal or financial advisers; or
  - (ii) with the prior written consent of Fonterra;
- (d) Fonterra from disclosing the terms of this Agreement:
  - (i) confidentially to any of Fonterra's Related Bodies Corporate or Related Entities; or
  - (ii) with the prior written consent of the Solicitors on behalf of the Plaintiffs;
- (e) any Party from a disclosure in the case of breach of any terms of this Agreement or for the purpose of making any claim against any other person;
- (f) any Party from disclosing any matter which is in the public domain other than as a result of its own breach of clause 7.1.

7.3 The parties acknowledge that, for the purposes of clause 7.2(f), information is in the public domain only if it is common knowledge, publicly known, public property or well-known.

## 8 No disparagement

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- 8.1 Each Party severally promises to each other Party (in its own right and as trustee for their Released Persons) not to make, and not to aid, abet, counsel or procure any other person to make, public comment disparaging, denigrating or otherwise criticising the other Party or any of the other Party's Released Persons in respect of any matter the subject of or giving rise to the Proceeding or the FASL Proceeding, or as to its conduct of the Proceeding or the FASL Proceeding (including the conduct of a mediation in the Proceeding or the FASL Proceeding, the negotiation of this Agreement and the completion of the settlement contemplated by this Agreement).
- 8.2 For the avoidance of doubt, and without limitation, nothing in clause 8.1 prevents the Parties or their legal representatives from making public comment summarising the nature of the allegations made in the Proceeding or the FASL Proceeding, or to the effect that the Agreement represents an early settlement of the Proceeding or the FASL Proceeding, and a positive outcome for any Party or for Claimants.

## 9 Goods and Services Tax

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- 9.1 In this clause, "**GST**", "**Taxable Supply**" and "**Tax Invoice**" have the meaning given by section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 9.2 For the purposes of this Agreement, any amount payable or other consideration to be provided under this Agreement, is inclusive of GST, if any, and the amount or consideration will not be increased for any GST payable.
- 9.3 The supplier in respect of any Taxable Supply, if registered to do so, must upon request by the recipient of the Taxable Supply, provide to the recipient a Tax Invoice in respect of the amount constituting any such Taxable Supply.

## **10 General**

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### **10.1 No admission**

The Parties agree and acknowledge that nothing in this Agreement constitutes an admission that, but for the terms of this Agreement, Fonterra would have had any liability to any person.

### **10.2 Notices**

Any notice required under this Agreement to be given by one Party to another Party must be in writing and may be given by email to the following email addresses (or any other email address that a Party subsequently advises by notice in writing should be used instead):

- (a) in the case of notice to Fonterra – to ABL using the email address [mlees@abl.com.au](mailto:mlees@abl.com.au); and
- (b) in the case of notice to any other Party – to the Solicitors using email address [dburstyner@adleyburstyner.com.au](mailto:dburstyner@adleyburstyner.com.au).

### **10.3 Binding effect**

This Agreement binds:

- (a) the Parties and any executor, successor, beneficiary, administrator, receiver, transferee, assignee, liquidator or trustee in bankruptcy appointed in respect of any Party; and
- (b) each Claimant and any executor, successor, beneficiary, administrator, receiver, transferee, assignee, liquidator or trustee in bankruptcy appointed in respect of such Claimant.

### **10.4 Paramountcy of Agreement**

If this Agreement conflicts with any other document, agreement or arrangement, this Agreement prevails to the extent of the inconsistency.

### **10.5 No merger**

The provisions of this Agreement will not merge on completion of any transaction contemplated in this Agreement and, to the extent that any provision has not been fulfilled, will remain in force.

### **10.6 Attorneys**

Each person who executes this Agreement on behalf of a Party under a power of attorney warrants that he or she has no notice of the revocation of that power or of any fact or circumstance that might affect his or her authority to execute this Agreement under that power.

### **10.7 Amendment**

This Agreement may not be amended or varied unless the amendment or variation is in writing signed by all Parties.

### **10.8 Entire agreement**

This Agreement constitutes the entire agreement between the Parties in relation to the Proceeding and the FASL Proceeding. All discussions, undertakings, agreements, representations, warranties and indemnities giving rise to the Proceeding or the FASL Proceeding, made in connection with the Proceeding or the FASL Proceeding or relating to the settlement of them are replaced by this Agreement and have no further effect. Without limiting the generality of the foregoing, each Party warrants that in entering into this

Agreement it has not relied upon, or otherwise been caused to act by, any act or omission, representation, statement or other conduct of any other Party or agent of or adviser to any other Party apart from any matter expressly recorded in this Agreement.

#### **10.9 Assignment**

No Party may assign, transfer or otherwise deal with this Agreement or any right or obligation under this Agreement without the prior written consent of each other Party, which must not be unreasonably withheld.

#### **10.10 Severability**

Part or all of any provision of this Agreement that is illegal or unenforceable will be severed from this document and will not affect the continued operation of the remaining provisions of this document.

#### **10.11 Waiver**

Waiver of any power or right under this Agreement:

- (a) must be in writing signed by the Party entitled to the benefit of that power or right; and
- (b) is effective only to the extent set out in that written waiver.

#### **10.12 Rights, remedies additional**

Any rights and remedies that a person may have under this Agreement are in addition to and do not replace or limit any other rights or remedies that the person may have.

#### **10.13 Further assurances**

Each Party must do or cause to be done all things necessary or reasonably desirable to give full effect to this Agreement and the transactions contemplated by it (including, but not limited to, the execution of documents).

#### **10.14 Legal advice**

The Parties agree that they:

- (a) have had a full and proper opportunity to consider the terms of this Agreement;
- (b) have had a full and proper opportunity to obtain independent legal advice in respect of the terms of this Agreement; and
- (c) have freely entered into this Agreement.

#### **10.15 Costs**

Each Party must bear its own legal, accounting and other costs arising out of the negotiation, preparation and execution of this Agreement.

#### **10.16 Counterparts**

This Agreement may be executed in any number of counterparts and all counterparts taken together will constitute one document.

#### **10.17 Governing law and jurisdiction**

This Agreement is governed by and construed in accordance with the laws in force in the State of Victoria and each Party submits to the exclusive jurisdiction of the courts of that State.



## Schedule 1

THIS SCHEDULE IS STRICTLY CONFIDENTIAL AS IT CONTAINS PERSONAL INFORMATION.  
IT IS NOT TO BE PUBLICLY PRODUCED UNLESS ORDERED BY THE COURT

Region	Roll	Farm	Owner	Company	Loan No.	Original Loan Amount (\$)	Amount outstanding (\$)
E	0	[REDACTED]	[REDACTED]	00100	13806	4,871.02	5,958.68
E	0			00100	14119	2,131.98	
E	0			00100	13978	44,821.10	19,418.00
E	0			00100	14467	2,982.32	8,091.55
E	0			00100	14573	10,592.68	
E	0			00100	14543	6,240.65	3,219.38
E	0			00100	14159	16,714.13	4,199.91
E	0			00100	13984	5,936.16	5,936.16
E	0			00100	13693	23,744.62	23,744.62
E	0			00100	14167	4,622.24	4,622.24
E	0			00100	14168	18,488.97	18,488.97
E	0			00100	14626	3,255.40	3,255.40
E	0			00100	14172	49,614.28	61,132.37
E	0			00100	14592	79,448.23	
N	0			07000	14195	5,947.15	2,812.60
N	0			07000	13824	37,291.43	26,644.08
N	0			00100	13825	23,119.92	19,103.10
N	0			00100	14199	36,123.89	26,776.27
N	0			00100	14214	24,705.34	11,959.39
N	0			00100	13997	68,743.95	115,582.92
N	0	00100	14219	61,626.05			
N	0	07000	13715	31,013.48	38,863.01		
N	0	07000	14231	26,718.98			
N	0	00100	14002	37,830.47	15,235.84		
N	0	07000	14579	55,398.91	9,996.06		
N	0	07000	13838	95,499.38	35,283.87		

Region	Roll	Farm	Owner	Company	Loan No.	Original Loan Amount (\$)	Amount outstanding (\$)		
S	0	[REDACTED]	[REDACTED]	00100	13906	35,984.63	19,701.38		
S	0			00100	14019	8,100.99	4,479.66		
S	0			00100	13852	10,270.01	6,752.74		
W	0			00100	14034	10,674.83	18,043.83		
W	0			00100	14350	15,076.58			
W	0			00100	13767	7,533.97	13,771.83		
W	0			00100	14367	8,229.18			
W	0			00100	14535	13,417.00	12,665.65		
W	0			00100	13916	29,999.55	22,274.50		
W	0			00100	14044	32,014.37	69,898.57		
W	0			00100	14419	40,832.16			
W	0			07000	14428	43,349.54	29,500.00		
W	0			00100	14437	21,682.99	15,856.78		
W	0			07000	13794	5,685.34	444.03		
W	0			07000	14439	2,272.66			
							Total:	1,062,606.53	673,713.39

**EXECUTED as an AGREEMENT**

**SIGNED** on behalf of the **Plaintiffs** )  
**(Geoffrey Iddles and Lynden Iddles)** by )  
their duly authorised solicitors )



Signature of Adley Burstyner

David Burstyner  
Name of signatory (print)



David Burstyner

**SIGNED** on behalf of **Fonterra Australia** )  
**Pty Ltd, Fonterra Milk Australia Pty Ltd** )  
**and Fonterra Brands (Australia) Pty Ltd** )  
by their duly authorised solicitors )



Signature of Arnold Bloch Leibler

Matthew Lees  
Name of signatory (print)

**SIGNED** on behalf of **Adley Burstyner** )  
and by **David Burstyner** )



Signature of Adley Burstyner

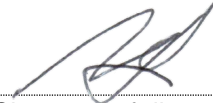
David Burstyner  
Name of signatory (print)



Signature of David Burstyner

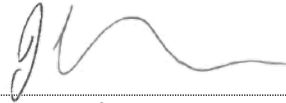
David Burstyner

**EXECUTED** in accordance with section )  
127(1) of the *Corporations Act 2001* by **LLS** )  
**Fund Services Pty Ltd (ACN 627 975 213)** )  
as trustee for **Litigation Lending Fund 1** )



Signature of director

Melinda Snowden  
Full name of director



Signature of company secretary

Jeff Chamberlain  
Full name of company secretary