

Memorandum of Understanding

relating to

A public-private joint venture to reduce biological emissions

The Crown (represented by the Ministry for Primary Industries)

and
ANZCO Foods Limited

and
Fonterra Co-operative Group Limited

and
Ngāi Tahu Holdings Limited

and
Ravensdown Limited

and
Silver Fern Farms Limited

and
Synlait Milk Limited

date

Released under the Official Information Act 1982

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This Memorandum of Understanding is made on

2022

- between (1) **The Crown (represented by the Ministry for Primary Industries)**
- and (2) **ANZCO Foods Limited (ANZCO)**
- and (3) **Fonterra Co-operative Group Limited (Fonterra)**
- and (4) **Ngāi Tahu Holdings Corporation Limited (Ngāi Tahu Holdings)**
- and (5) **Ravensdown Limited (Ravensdown)**
- and (6) **Silver Fern Farms Limited (Silver Fern Farms)**
- and (7) **Synlait Milk Limited (Synlait)**

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 biological 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 public-private joint venture (**JV**) 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 JV and wider biological emissions reduction efforts. Completing the Centre will be a 'scaffold' that supports partnership, connections, and strategic alignment across the Centre's core components and the biological emissions system more broadly.
- D. Several companies have been working with officials from MPI, MBIE, and DPMC 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 a new JV. The companies involved in these discussions are: Fonterra, Ngāi Tahu Holdings, Ravensdown, Silver Fern Farms, ANZCO and Synlait (**Companies**).
- E. The Companies 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 Companies see a concerted, structured research initiative such as could be achieved via the JV 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 Companies are supportive of partnering with the Crown in the JV 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 Companies 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 JV will 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. Definitions

1.1 Unless the context otherwise requires, the following words shall have the following meaning:

Board has the meaning given to that term in clause 11.1;

Centre has the meaning given to that term in recital B;

CEO has the meaning given to that term in clause 12.2;

Companies has the meaning given to that term in recital D;

Companies Act means the Companies Act 1993;

Company has the meaning given to that term in clause 3;

Competitively Sensitive Information has the meaning given to that term in clause 19.3;

Confidential Information has the meaning given to that term in clause 16.2;

Director has the meaning given to that term in clause 11.1;

Independent Chair has the meaning given to that term in clause 11.1;

JV has the meaning given to that term in recital C;

MOU means this Memorandum of Understanding;

NZAGRC has the meaning given to that term in recital C;

Parties means the Crown, Fonterra, Ngāi Tahu Holdings, Ravensdown, Silver Fern Farms, ANZCO, and Synlait and **Party** means any one of them, as the case may be;

Recipient has the meaning given to that term in clause 16.2;

R&D has the meaning given to that term in recital G; and

R&D Plan means the Biological Emissions Reduction Science Accelerator research and development plan.

2. Purpose of Memorandum

The purpose of this MOU is to record the Parties intention (subject to agreeing and entering further comprehensive and legally binding arrangements) to work together towards the establishment of a public-private JV that meets the respective interests of the Parties and set out the key aspects of the proposed JV.

3. Entity Form

Following discussion, it is anticipated that the JV will be formed as a limited liability company (**Company**).

The Parties believe a Company will best support the objectives for the JV as this vehicle:

- a) provides an easily understood and commonly used commercial vehicle;
- b) enables effective governance and application of commercial disciplines;
- c) enables flexibility in terms of functions and use of commercial operating models;
- d) facilitates accountability for all Parties (Crown and private) through the structure;
- e) facilitates investor (shareholders) entry and exit; and
- f) provides procedures and mechanisms for investors to influence strategic direction, where and when appropriate.

4. Purpose of the public-private joint venture

- 4.1 The purpose of the JV 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.

5. Investment objectives

- 5.1 The shared investment objectives for the purpose of the JV of the Parties, include:
- (a) accelerating the development and adoption of pastoral farming solutions for reducing 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; and

- (e) support the New Zealand primary sectors' competitiveness and reputation for sustainable production in a world where environmental credentials are increasingly a driver of commercial success.

6. Functions and powers

- 6.1 The JV will need to be highly flexible and adaptive to achieve its purpose.
- 6.2 While a prescribed set of functions is not intended, the JV's functions are expected to include:
 - (a) **Research & development** - Drive a targeted research and development programme - concentrating effort and investment on a portfolio of promising solutions or mitigations. The JV will have the flexibility to contract others to do R&D (particularly in collaboration and close alignment with NZAGRC) 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, with the flexibility to undertake commercialisation activities itself and/or licence others to do so.
 - (c) **Funding & partnerships** – Develop partnerships and raise funds from the private and public sectors to finance the development of potential solutions, enabling the use of intellectual property within agreed frameworks – see the section on 'Intellectual Property'. The JV will have the ability to raise debt, but only if agreed by special resolution of shareholders.

7. Duration

- 7.1 The JV will have a long-term commitment to producing solutions for reducing biogenic methane and nitrous oxide emissions. The investment in the JV will require a long-term commitment, for at least an initial 10-year period. Noting that there will be mechanisms for shareholders to exit and enter.
- 7.2 Alongside other accountability mechanisms, regular reviews (3 years and 8 years) will be undertaken to gauge progress and to confirm, or not, the need for the JV to continue as well as assessing whether the Crown still needs to maintain a 50% shareholding or significant shareholding.

8. Protection of Partner Interests

- 8.1 Under the Companies Act, a number of material decisions are already reserved for special resolution of shareholders including approval of a major transaction, putting the company into liquidation, altering, or revoking the constitution, and approving an amalgamation.
- 8.2 It is anticipated that there may also be a small of number of additional areas of interest—Crown, private sector, or both—that may also require specific provisions (reservations) for shareholding decision. These might include, inter alia,
 - (a) facilitating Crown accountability and oversight obligations;
 - (b) critical international partner investments;
 - (c) thresholds for investment decisions; and

(d) protection of minority shareholder interests.

8.3 The Parties will work cooperatively to identify these interests and agree on the appropriate mechanisms for addressing these in formal company documentation and processes.

9. Funding

9.1 The Parties agree funding will be in proportion to shareholding in the JV.

9.2 Initial set up costs and funding for the first year are expected to be in the range of \$1.8m for the operations of the JV and \$3.6m per annum thereafter.

9.3 Funding of projects will depend on the Strategy and investment decisions made by the Board, but a four-year commitment to funding will be agreed (until the first review).

9.4 The Financial Year for investment will be 1 July to 30 June.

9.5 The companies agree to scale up annual investment (including operating and programme costs) in the JV from 22/23 to reach the following indicative individual annual commitments by no later than the 24/25 Financial Year (noting the MOU is non-binding so it is only indicative).

Company	Year 1 (half)	Year 2	Year 3	Year 4
ANZCO	s 9(2)(j), s9(2)(g)(ii)			
Fonterra				
Ngai Tahu Holdings				
Ravensdown				
Silver Fern Farms				
Synlait				
Sum of Company Contribution				
Total including Crown Contribution				

9.6 The Crown will match dollar for dollar the annual sum of company investment up to a total of \$50 million per year.

9.7 Notwithstanding clause 9.3 of this MOU, the funding commitments of the Parties will be subject to specific drawdown requirements agreed by the Parties in the Shareholder's Agreement.

10. Shares

10.1 The Crown will have 50% of the shares and the private sector participants will have the other 50% of the shares.

- 10.2 A share in the Company will confer on the holder:
- (a) the right to one vote on any resolution;
 - (b) the right to a share in any dividends authorised by the Board in proportion to shareholding; and
 - (c) the right to an equal share in the distribution of the surplus assets of the Company.
- 10.3 Shares may be issued on a partly paid basis and calls made as funding is required, with the extent of lock-in to be agreed.
- 10.4 Different classes of shares may be issued to:
- (a) confer special, limited, or conditional voting rights; and
 - (b) limit or restrict transferability.

11. Governance

- 11.1 There will be a minimum of six directors (**Directors**) and a maximum of eight, and an independent chair (**Independent Chair**) comprising the board of the Company (**Board**).
- 11.2 The Directors of the JV will all be appointed based on their experience, skills and expertise judged against an agreed set of objective criteria.
- 11.3 Rights to appoint Directors (other than the Independent Chair) will reflect shareholding, with the Crown and the Companies (as a collective representing 50% private sector shareholding) each appointing the same number of directors. It will also be critical that the collective skills of the Board members create a strong whole. The process for appointing directors will therefore be undertaken collectively to the extent possible while also providing clarity on how both the Crown and private sector appointments will be made.
- 11.4 The Independent Chair appointment process will involve all shareholders working collaboratively to agree a candidate they all are comfortable with to put forward to the Minister. Ministerial approval is then expected on this basis.
- 11.5 Board decision making will be by consensus where possible.
- 11.6 There will be an establishment committee made up of the chief executives of the Parties to oversee the effective set-up and commencement of the JV. An Independent Chair of the establishment committee could be appointed to support transition to the JV legal entity.
- 11.7 The Board will have all the powers normally reserved to a board of a commercial company. Key decisions for the Board could include:
- (a) approval of the annual business plan;
 - (b) approval of the strategic plan;
 - (c) any material changes to the business plan or portfolio of work, budget and cashflow forecast;
 - (d) entering into a contract or arrangement with shareholders (this could require both Board approval and a special resolution of shareholders); and

- (e) the financial policies of the Company.

12. Management

- 12.1 The business and affairs of the Company will be managed under the direction or supervision of the Board. The Board will be accountable to shareholders for performance of the JV.
- 12.2 The Board will appoint a chief executive officer (**CEO**), who is accountable for day-to-day management of operations.
- 12.3 The CEO will appoint the executive team.
- 12.4 The JV 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.

13. Portfolio of investments

- 13.1 The JV is intended to undertake a portfolio of investments that will help to accelerate delivery of biological emissions tools to all New Zealand farmers. This could include investments in R&D, infrastructure, and/or capability.
- 13.2 The portfolio of investments approach will enable the JV to make decisions that balance risk against opportunity, recognise and respond to Māori agribusiness needs and opportunities, and address specific interest and sector needs (e.g., red meat, dairy, species specific).
- 13.3 Initial (and in some cases substantial) research has already been undertaken on a range of potential solutions (such as feed additives, genetics, and vaccines).
- 13.4 The JV will need to work in partnership with the broader ecosystem both locally and globally to accelerate the creation and deployment of solutions, while actively minimising unnecessary duplication.
- 13.5 To rapidly accelerate the development of such solutions, the JV will need to use a range of commercial operating models, building on what is already in place (including considering investment in existing projects and programmes and priorities identified in the R&D Plan and work being undertaken by the NZAGRC). The JV will also need to identify any gaps in current investments or further areas of support required.
- 13.6 Whilst the JV is anticipated to being the principal vehicle for investment by the companies to accelerate the delivery of emissions reducing mitigation to New Zealand farmers, the Parties retain the ability to progress similar existing and future initiatives and activities outside of JV from time to time.

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

- 14.1 The JV and NZAGRC will work together under a shared strategic framework taking into account the priorities in the R&D Plan, and will contribute to the development of a system-level strategy which will further help to support their complementary roles. Overall responsibility for development of the system-level strategy is likely to vest with the 'Centre scaffold' function of the Centre.
- 14.2 A contractual arrangement with the NZAGRC is proposed to provide the JV with access to critical capability and infrastructure.

- 14.3 Beyond a purely contractual arrangement, there will be a close working relationship between the JV and the NZAGRC to ensure alignment in an overarching pipeline, including industry-good fundamental biological research, industry-good development / validation, through to commercial programmes and projects. This will be supported by a memorandum of understanding.
- 14.4 A close working relationship may also involve common membership at a governance level.
- 14.5 The Centre, and its component parts will have due consideration to Te Tiriti o Waitangi obligations including consideration of the principles of rangatiratanga, partnership, active protection, equity, options and mutual benefit.

15. Intellectual property

- 15.1 The JV will develop, and the shareholders shall unanimously agree upon, a long-term intellectual property strategy for its R&D programme and specific projects (**IP Strategy**).
- 15.2 The IP Strategy will include establishing a framework for the exploitation/use of new Intellectual Property to be generated under different scenarios and contracted agreements (**IP Framework**).
- 15.3 Intellectual Property arrangements will be agreed for programmes and projects on a case-by-case basis but guided by the IP Framework.
- 15.4 In principle:
- (a) the JV will own any Intellectual Property it produces in its own right. It will not be the property of any shareholder;
 - (b) JV Intellectual Property will be managed such that it is prioritised firstly for the direct benefit of New Zealand farmers, secondly managed for the benefit of New Zealand more broadly, and thirdly managed for the benefit of the JV itself;
 - (c) Subject to clause 15.4(b), to the extent permitted by law, the JV will also endeavour to ensure that all commercial returns the JV is entitled to receive from the commercialisation of JV Intellectual Property, Intellectual Property exploited by the JV, or otherwise,
 - (d) will be reinvested in the JV; or
 - (e) subject to the agreement of the shareholders of the JV, will be returned to the shareholders of the JV (reflecting funding contributed on a pro-rata, case-by-case basis);
 - (f) the JV will secure rights of access and use of Intellectual Property to support future business needs and commercial opportunities where the Intellectual Property has been developed in conjunction with third parties or with third party funding;
 - (g) Pre-existing Intellectual Property that is contributed by a Party to the JV (including through a license arrangement) shall be valued prior to contribution by a commercial negotiation between the JV and the contributing Party. This Intellectual Property contribution could be recognised as an in-kind capital contribution to the JV; and
 - (h) Intellectual Property that is not intended to be commercialised through the JV should be made available for wider use in line with clause 15.4(b).
- 15.5 For the avoidance of doubt, the JV will not own any IP developed outside of performance of the Programme e.g. developed in the course of any existing or future research and development programmes undertaken by a Shareholder from time to time which will remain the property of the shareholder. Any IP developed from other existing or future research and

development programmes will not be the property of the JV unless the shareholder explicitly provides for this in writing.

15.6 The sale or licencing of any Intellectual Property or technology developed by or for the JV to an offshore party will require approval by special resolution of shareholders if over a certain dollar threshold, as the development of that Intellectual Property or technology has been funded by JV share capital, including contributions from the Crown.

15.7 In this clause 15:

- (a) Intellectual Property means all intellectual property rights existing anywhere in the world under statute, common law or equity including but not limited to 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;
- (b) Pre-existing Intellectual Property means Intellectual Property which is owned by, or licensed to, a party at the date of this MOU or developed outside of the programme, whether or not it is used in, or contributed for use in connection with, the programme.

16. Confidentiality and Privacy

16.1 Once agreed, this MOU will be made publicly available, subject to any redactions of sensitive and/or confidential information agreed to by all parties.

16.2 Unless otherwise agreed by all Parties, each Party (the **Recipient**) should keep any verbal or written confidential information in relation to the other Party or its business or affairs provided by or on behalf of the other Party in respect to implementation of this MOU (**Confidential Information**) strictly confidential, and must not use that Confidential Information for any purpose other than for the purpose of performing its obligations under this MOU.

16.3 Clause 16.2 does not preclude a Party disclosing Confidential Information to the extent that the Confidential Information:

- (a) enters the public domain without breach by the Recipient of its confidentiality obligations under this MOU or at law;
- (b) was lawfully known to the Recipient prior to the date it was received;
- (c) as otherwise required to be disclosed by law including the Recipient's obligations under the Official Information Act 1982, the Privacy Act 2020, any other legislation or regulations relevant to its operations and stock exchange rules and nothing in this agreement applies to any disclosure required under any such legislation, regulations or rules;
- (d) where the information is independently acquired or developed by the Recipient without the use or benefit of any of the Confidential Information; or
- (e) is disclosed in accordance with clause 16.4.

16.4 The Recipient may disclose the Confidential Information to its directors, contractors, employees and professional advisors who need to know the same for the sole purpose of enabling the Recipient to evaluate the Confidential Information and perform its obligations under this Agreement, provided that the Recipient must ensure that any person to whom the Recipient makes any disclosure in accordance with this clause 16.4 is made aware of, and complies with, the Recipient's obligations under clause 16.2.

17. Communications

- 17.1 The Parties will ensure they consult each other in advance before making any public statement directly related to any matter within the scope of this MOU.
- 17.2 Wherever appropriate and possible, all Parties will coordinate publicity and media activity related to this MOU.

18. Status of Memorandum

18.1 Memorandum generally not binding

The Parties agree that this MOU is a genuine reflection of the matters that have been agreed between them relating to the formation of potential integration arrangements. Subject to clause 18.2, the Parties do not intend for any provisions of this MOU to be legally binding or to create any legal liability or claim by a Party against the other Party.

18.2 Certain provisions of Memorandum are binding

Clause 16 (Confidentiality and Privacy) is binding on the Parties and will survive termination or expiry of this MOU.

18.3 Subsequent agreements

The Parties acknowledge that entry into any contract, arrangement or understanding between the Parties with respect to any proposal relating to the JV will be conditional and subject to legal review, including for compliance with competition law, as set out in clause 19.2.

For completeness, the provisions of the MOU are subject to the agreement and execution of any subsequent agreements negotiated by the Parties for the purposes of the JV. Any subsequent agreement (or agreements) will supersede the provisions of this MOU.

19. Commerce Act considerations

19.1 Parties to be aware of competition law risks

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

19.2 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 market 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.

19.3 Restriction on sharing competitively sensitive information

Competitively sensitive information is information that is not publicly known and includes (but is not limited to):

- (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 JV, 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 19.3(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.

20. **General**

20.1 **Amendments**

Any amendment to this MOU must be in writing and signed by all Parties.

20.2 **Relationship of Parties**

Except as expressly provided in this MOU, nothing in this MOU is intended to constitute a relationship of employment, trust, agency, joint venture, partnership or any other fiduciary relationship between the Parties. No Party has authority to bind or incur debts on behalf of the other Parties.

20.3 **Assignment**

No Party may assign or transfer, or purport to assign or transfer, all or any part of their respective rights or interests under this MOU.

20.4 **Governing law**

This MOU shall be governed by, and construed in accordance with, the laws of New Zealand and the Parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

20.5 **Termination**

This MOU shall terminate on the date on which subsequent legal documentation is entered.

20.6 **Counterparts**

This MOU may be executed in any number of counterparts (including by scanned pdf copy) all of which, when taken together, will be treated as constituting one instrument. The date on which the last counterpart is executed will be the date of this MOU.

Released under the Official Information Act 1982

Execution

Executed as a Memorandum of Understanding.

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

**Ngāi Tahu Holdings Corporation
Limited** by

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Synlait Milk Limited by

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