



# **Milk Supply Agreement**

**VERSION 1 JUNE 2023**

## BACKGROUND

The Purchaser wishes to purchase, and the Supplier wishes to non-exclusively supply to the Purchaser, Milk from the Dairies in accordance with the terms of this Agreement.

### 1 TERM

- 1.1 **Term:** This Agreement will take effect on the Effective Date and will continue until the end of the Milk Supply Period, unless sooner terminated in accordance with clause 16 (**Termination**) or extended by the Supplier in accordance with clause 1.4.
- 1.2 **Cooling-off period:** Despite clause 16, the Supplier may immediately terminate this Agreement without incurring any liability to the Purchaser by providing a written notice to the Purchaser within 14 days after the date this Agreement is entered into. For the avoidance of doubt, this clause does not allow the Supplier to terminate this Agreement in response to any variation of this Agreement.
- 1.3 **Future agreement:** By mutual negotiation and agreement, the Supplier and Purchaser may enter into a future agreement for the supply of Milk from the Supplier to the Purchaser.
- 1.4 **Extension:** If the Milk Supply Period of this Agreement is longer than 3 years, the Supplier may, subject to clause 1.5, give the Purchaser a written notice (**Extension Notice**) postponing the end of the Milk Supply Period by 12 months. For the avoidance of doubt, the Supplier may only postpone the end of the Milk Supply Period once under this Agreement, and such postponement is not taken to be a variation of this Agreement.
- 1.5 The Supplier must give the Extension Notice to the Purchaser:
  - 1.5.1 no earlier than 30 days before the end of the initial Milk Supply Period; and
  - 1.5.2 no later than 7 days before the end of the initial Milk Supply Period.

### 2 BENEFIT OF AGREEMENT

- 2.1 The Supplier will provide the Milk under this Agreement to the Purchaser. However, the Supplier acknowledges and agrees that:
  - 2.1.1 each Noumi Group Company may make use of and enjoy the benefit of the Milk under this Agreement;
  - 2.1.2 the Purchaser will benefit from this Agreement as through all references to "Purchaser" in this Agreement (other than in this clause 2) were references to the Noumi Group;
  - 2.1.3 all losses and liability suffered or incurred by the Noumi Group in connection with this Agreement (Group Losses) are deemed to be suffered or incurred by the Purchaser for the purpose of this Agreement; and
  - 2.1.4 the Purchaser may exercise all rights and remedies under this Agreement or at law in respect of Group Losses as if those Group Losses had been

suffered or incurred by the Purchaser directly.

### **3 COMPLIANCE WITH THE DAIRY CODE**

- 3.1 This Agreement implements the required terms of the Dairy Code and to the extent that there is any inconsistency between the terms of this Agreement and the Dairy Code, then the Dairy Code prevails.

### **4 GOOD FAITH**

- 4.1 The Purchaser and Supplier must at all times deal with each other in good faith, within the meaning of the unwritten law as in force from time to time, in relation to the supply of Milk.

- 4.2 Without limiting clause 4.1, clause 4.1 applies in relation to the following:

4.2.1 negotiating and entering into this Agreement;

4.2.2 exercising rights, or performing obligations, under this Agreement;

4.2.3 dealing with or resolving complaints or disputes arising under or in connection with this Agreement; and

4.2.4 varying or terminating this Agreement.

- 4.3 Without limiting clause 4.1, in determining whether the Purchaser or Supplier (the **first party**) has acted in good faith in dealing with the Supplier or Purchaser (the **other party**), the following may be taken into account:

4.3.1 whether the first party has acted honestly;

4.3.2 whether the first party has tried to cooperate with the other party to achieve the purposes of this Agreement;

4.3.3 whether the first party has not acted arbitrarily, capriciously, unreasonably, recklessly or with ulterior motives;

4.3.4 whether the first party has not acted in a way that constitutes retribution against the other party for past complaints and disputes;

4.3.5 whether the first party's relationship with the other party has been conducted without duress;

4.3.6 whether the first party's relationship with the other party has been conducted in recognition of the need for certainty regarding the risks and costs of supplying or purchasing Milk;

4.3.7 whether the first party has undermined, or denied the other party, a benefit of this Agreement;

4.3.8 whether the first party has observed any confidentiality requirements relating to information disclosed or obtained in dealing with or resolving a

complaint or dispute with the other party; and

4.3.9 whether, in dealing with the first party, the other party has acted in good faith.

## **5 PURCHASE AND NON - EXCLUSIVE SUPPLY OF MILK**

5.1 **Purchase and supply of Milk:** The Supplier agrees to non-exclusively supply to the Purchaser, and the Purchaser agrees to purchase from the Supplier at the Price, Milk in accordance with the requirements of this Agreement (including the Specifications and Volumes) during the Milk Supply Period.

5.2 **Dairies:** The Supplier may only supply Milk to the Purchaser that is produced by the Dairies, unless otherwise agreed by the Purchaser.

## **6 VOLUMES AND FORECASTS**

6.1 **Volumes:** The Supplier must supply the Volumes of Milk to the Purchaser during the Milk Supply Period.

6.2 **Forecasts:** The Supplier must provide its Milk production Forecasts to the Purchaser in accordance with Schedule 2.

6.3 **Volume measuring:** The Purchaser will measure the volume of Milk supplied by the Supplier at the Collection Point via meters installed on the Milk delivery vehicles. The Purchaser must give the Supplier, as soon as practicable after the volume measurement, written notice of the results of the measurement.

## **7 MILK SPECIFICATIONS, TESTING AND STATEMENTS**

7.1 **Specifications:** The Milk supplied by the Supplier must comply with the specifications set out in Schedule 2 (**Specifications**).

7.2 **Changes to Specifications:** If the Purchaser wishes to change the Specifications, the Purchaser must notify the Supplier of its requested changes. The parties must promptly discuss whether, and any terms and conditions on which, the Supplier is willing (acting reasonably) to agree to the Purchaser's requested changes to the Specifications. Any changes to the Specifications, and any terms and conditions applying to such changes:

7.2.1 must be mutually agreed by the parties in writing; and

7.2.2 take effect 3 months after they are agreed; unless the changes are business critical, in which case, they take effect as soon as practicable after they are agreed and no later than 3 months after they are agreed.

7.3 **Milk testing:**

7.3.1 The Purchaser will test and sample the Milk in accordance with Schedule 2.

7.3.2 The Purchaser must give the Supplier, as soon as practicable after the

Purchaser tests the Milk, written notice of the results of the test.

- 7.3.3 Subject to clause 7.3.4, test results are binding on both the Purchaser and the Supplier.
- 7.3.4 If there are reasonable grounds that a test result is inaccurate, then the Purchaser must re-perform that test on the next available Milk sample. If the parties dispute the result of the re-testing, then the dispute resolution procedures set out in clause 17 apply.
- 7.4 **Milk statements:** The Purchaser will provide, on or before the 15<sup>th</sup> day of each month, the Supplier with statements about the Milk supplied during the Milk Supply Period. The Purchaser will set the form and content of these statements, which will include (but is not limited to):
- 7.4.1 the Milk Solids rate for the prior month;
- 7.4.2 details of the payments to be made to the Supplier for Milk supplied in the prior month, including the basis for their calculation;
- 7.4.3 details of any Quality Deductions for Milk supplied in the prior month, including the basis for their calculation;
- 7.4.4 details of the applicable dairy levies for the prior month, including the basis for their calculation;
- 7.4.5 a production statement for Milk supplied in the prior month for each collection of Milk, including the number of litres, the butterfat and protein contents and the total amount of Milk Solids; and
- 7.4.6 any other information that is relevant in the opinion of the Purchaser.
- 7.5 **Intended use:** The Purchaser acknowledges that the Milk supplied under this Agreement is not intended for retail sale without further processing and is sold in bulk by the Supplier for further processing.

## **8 FAILURE TO COMPLY WITH SPECIFICATIONS AND VOLUMES**

### **8.1 Failure to comply with Specifications:**

- 8.1.1 If any Milk supplied by Supplier fails to comply with the Specifications (**Defective Milk**) then the Purchaser may elect whether to:
- 8.1.1.1 apply the applicable Quality Deduction to the Price (**Quality Discounted Price**) and accept and purchase the Defective Milk at the Quality Discounted Price; or
- 8.1.1.2 accept and purchase the Defective Milk at the Price; or
- 8.1.1.3 reject and not purchase the Defective Milk.
- 8.1.2 In addition to clause 8.1, the Purchaser may also:

- 8.1.2.1 suspend future Collections of the Supplier's Milk until the Supplier satisfies the Purchaser (acting reasonably) that the Milk to be supplied complies with the Specifications;
  - 8.1.2.2 require the Supplier to submit a corrective action plan; and/or
  - 8.1.2.3 conduct further testing of the Supplier's Milk without prior notice to the Supplier.
- 8.1.3 If the Purchaser rejects the Defective Milk, as soon as practicable after the Purchaser rejects the Defective Milk, the Purchaser must give the Supplier written notice of the rejection including:
- 8.1.3.1 the reasons for the rejection; and
  - 8.1.3.2 the consequences for the Supplier of the rejection (including any costs and fees payable by the Supplier arising as a result of the rejection).
- 8.1.4 If the Collection of Defective Milk has occurred, the Supplier must arrange for the disposal of the Defective Milk at the Supplier's cost.
- 8.1.5 If the Collection of Defective Milk has occurred and the Defective Milk has been commingled with other Milk, including Milk from other suppliers (for example, in a tanker) (**Spoiled Milk**), the Supplier is liable to compensate:
- 8.1.5.1 the Purchaser; and
  - 8.1.5.2 if applicable, the suppliers or owners of the Spoiled Milk,
- for any loss or damage arising from the Defective Milk or Spoiled Milk, including the cost of the Spoiled Milk, and the Collection costs for the Defective Milk and Spoiled Milk. The Purchaser may elect to deduct these amounts from future payments to the Supplier.
- 8.1.6 If Collection of Defective Milk has not occurred, the Supplier will arrange for the disposal of the Defective Milk at the Supplier's cost.

## 9 COLLECTION

- 9.1 **Collection Point:** The Purchaser will arrange Collection of the Milk from the Collection Point and delivery of the Milk from the Collection Point to the Delivery Point.
- 9.2 **Age of Milk:** The Supplier must ensure that the Milk is available for Collection at the times agreed between the Supplier and the Purchaser, which for twice-a-day milking the Milk should be available for Collection no later than 9am for the first milking and 7pm for the second milking.
- 9.3 **Collection and delivery charges:** The Purchaser will pay all Collection and delivery charges during the Milk Supply Term.
- 9.4 **Collection:** Collection of Milk occurs when the Milk leaves the Supplier's refrigerated

Milk storage and enters the Purchaser's equipment, or equipment under the Purchaser's control, at the Collection Point.

## **10 PRICING AND PAYMENT**

- 10.1 **Price:** The Price payable by the Purchaser to the Supplier for Milk supplied during the Milk Supply Period is determined in accordance with Schedule 2 based on the Milk Solids components of the Milk.
- 10.2 **Payment:** The Purchaser will pay the Supplier the Price for the Milk supplied by the Supplier to the Purchaser in each month on or before the 15<sup>th</sup> day of the following month.
- 10.3 **Minimum Price:** The Minimum Price and a statement of the Purchaser's justification for the Minimum Price is set out in Schedule 2. The Minimum Price may only be varied in accordance with clause 20.3. If a variation under this clause reduces the Minimum Price, the reduction must not occur before the variation.
- 10.4 **Unilateral step downs:** Under no circumstances, will Purchaser retrospectively decrease the amount it pays for Milk. In exceptional circumstances only, and as provided for under the Dairy Code, Purchaser may prospectively decrease the amount it pays for Milk.
- 10.4.1 If the Purchaser reduces the Minimum Price as permitted by the Dairy Code, the Purchaser will:
- 10.4.1.1 provide the Supplier and the Australian Competition and Consumer Commission (ACCC) at least 30 days prior written notice of the reduction in Minimum Price (Notice); and
  - 10.4.1.2 include in the Notice, all other details required by the Dairy Code.
- 10.4.2 The Supplier will have a right to terminate this Agreement within 21 days after receiving the Notice, with effect from the day the price decrease occurs. The Supplier will also have the right to rescind any such termination before the end of those 21 days.
- 10.5 **Dairy levy and licence:**
- 10.5.1 The Purchaser will pay the dairy produce levy payable on the supply of Milk under this Agreement and will deduct the amount of the levy from payments to the Supplier.
  - 10.5.2 If this Agreement is for Milk supplied from New South Wales, then the Supplier will pay the dairy produce levy payable on the supply of Milk under this Agreement directly to the New South Wales Food Authority.
  - 10.5.3 If this Agreement is for Milk supplied from Victoria, then the Purchaser will pay the dairy product levy payable on the supply of Milk under this Agreement and the Purchaser will deduct the amount of the levy from future payments to the Supplier.

10.5.4 The Purchaser will deduct any other levies or licence fees from payments to the Supplier at the request of the Supplier.

10.6 **GST:** In this clause, expressions defined in the *A New Tax System (Goods and Services Tax) 1999* (Cth) have the meaning given to them in that Act. Unless otherwise stated, all prices or other sums payable or consideration to be provided under or in accordance with this Agreement are exclusive of GST. Each party acknowledges that it is registered for GST as at the date of this Agreement and will notify the other party if it ceases to be registered. If GST is imposed on any supply made in accordance with this Agreement, the recipient of the taxable supply must pay the supplier an additional amount equal to the amount of GST payable for the taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made under this Agreement. The right of a party to recover any amount in respect of GST under this Agreement on a supply is subject to the issuing of a valid tax invoice or an adjustment note to the recipient.

## 11 PURCHASER MILK POLICY

11.1 The Supplier, and Milk supplied by the Supplier, must comply with any Milk supply policy, quality assurance program and/or Sustainability Policy set out in Schedule 3 (together, the **Purchaser Milk Policy**). The Purchaser Milk Policy will remain as the version set out in Schedule 3 unless the parties agree (acting reasonably) in writing on a variation in accordance with clause 11.2.

11.2 **Changes to Purchaser Milk Policy:** If the Purchaser wishes to change the Purchaser Milk Policy, the Purchaser must notify the Supplier of its requested changes. The parties must promptly discuss whether, and any terms and conditions on which, the Supplier is willing (acting reasonably) to agree to the Purchaser's requested changes to the Purchaser Milk Policy. Any changes to the Purchaser Milk Policy, and any terms and conditions applying to such changes:

11.2.1 must be mutually agreed by the parties in writing; and

11.2.2 take effect 3 months after they are agreed; unless the changes are business critical, in which case, they take effect as soon as practicable after they are agreed and no later than 3 months after they are agreed.

## 12 RISK AND TITLE AND INSURANCE

12.1 **Risk and title:** Risk and title in the Milk pass to the Purchaser upon Collection.

12.2 **Insurance:** The Supplier must purchase and maintain adequate policies of insurance (including public liability insurance, product liability insurance and workers compensation insurance), giving full and comprehensive coverage, in respect of the risks involved in its operations and its obligations under this Agreement. The Supplier must provide the Purchaser with a certificate of currency for each policy upon the Purchaser's written request.

## 13 WARRANTIES AND ACKNOWLEDGEMENTS

13.1 **Supplier warranties:** The Supplier warrants and represents that:



- 13.1.1 the Supplier has the power to execute this Agreement and that all necessary corporate or other actions (as applicable) have been taken to authorise the execution and performance of this Agreement;
- 13.1.2 the Milk supplied to the Purchaser complies with:
  - 13.1.2.1 the Specifications;
  - 13.1.2.2 the Volumes; and
  - 13.1.2.3 all relevant laws and regulations, industry codes of practice and good industry practice;
- 13.1.3 the Supplier will, and the Supplier will ensure that the Dairies, comply with all relevant laws and regulations, and have and maintain all necessary licenses, approvals and permits necessary for the performance of this Agreement;
- 13.1.4 the Supplier will, and the Supplier will ensure that the Dairies, comply with the Purchaser Milk Policy, relevant industry codes of practice and good industry practice; and
- 13.1.5 at the time of Collection, the Supplier owns the Milk and the Supplier has the right to supply the Milk to the Purchaser.

13.2 **Purchaser warranties:** The Purchaser warrants and represents that the Purchaser has the power to execute this Agreement and that all necessary corporate or other actions (as applicable) have been taken to authorise the execution and performance of this Agreement.

## 14 RECORDS AND AUDITS

14.1 **Records:** The Supplier must keep proper, complete, up-to-date and accurate records and other data relating to this Agreement. Within 5 Business Days of a request by the Purchaser, the Supplier must give:

- 14.1.1 copies of such records and data to the Purchaser; and/or
- 14.1.2 the Purchaser all necessary access to inspect and take copies of such records and data.

14.2 **Record-keeping:** Without limiting clause 14.1, the parties must keep originals or copies of:

- 14.2.1 this Agreement;
- 14.2.2 any amendments, variations or termination of this Agreement; and
- 14.2.3 any notices or statements issued under this Agreement or the Dairy Code, for the period set out in subclause 14.3 below.

14.3 **Period of record-keeping:** A record, or a copy of a record, must be kept for the

period:

14.3.1 starting on the day on which the record is made or given; and

14.3.2 ending on the last day of the 6 years beginning on the day this Agreement ends.

14.4 **Audit:** The Purchaser may audit the Supplier's and the Dairies' records, other data, premises and facilities for compliance with this Agreement (including the Specifications and Purchaser Milk Policy). At the Purchaser's request, for the purpose of assessing the Supplier's compliance with this Agreement, the Supplier must:

14.4.1 provide evidence of the Supplier's compliance with this Agreement;

14.4.2 permit the Purchaser, or its representatives, to enter, inspect and take copies of the records, other data, premises and facilities (including the equipment and methods used) at any reasonable times; and/or

14.4.3 cooperate with all reasonable requests of the Purchaser.

## 15 CONFIDENTIALITY

15.1 **Confidential Information:** Neither party will at any time use, exploit or disclose to any person (including to industry or benchmarking groups):

15.1.1 this Agreement;

15.1.2 the contents of this Agreement, including de-identified information and/or the prices payable under this Agreement; and/or

15.1.3 any information held by it relating to the business or affairs of the other party (including de-identified information),

except strictly to the extent:

15.1.4 necessary to perform its obligations under this Agreement and on a "need-to-know" basis only;

15.1.5 reasonably required to be disclosed to its officers, employees, agents and advisers (**Representatives**), and who are under confidentiality obligations comparable to this clause 15;

15.1.6 authorised in writing by the other party;

15.1.7 required by law or the rules of any recognised stock exchange; and/or

15.1.8 it is in the public domain, other than due to a breach of any obligation of confidence owed to the other party.

Each party must promptly return or destroy such Confidential Information (and any derivative from it) at the other party's written request. Each party must require its Representatives to comply with this clause 15 and will be responsible for non-

compliance by any of them.

- 15.2 **Indemnity:** The Supplier indemnifies the Purchaser in respect of any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment that that Purchaser pays, suffers, incurs or is liable for as a result of a breach of the Supplier's obligations under this clause 15.

## 16 TERMINATION

- 16.1 **Termination for cause:** Either party may terminate this Agreement with immediate effect by written notice to the other party, in accordance with clause 16.4, if any of the following events occur:

- 16.1.1 **Material breach:** the other party is in material breach of this Agreement and:

16.1.1.1 such breach is not capable of rectification; or

16.1.1.2 if such breach is capable of rectification, the other party has failed to rectify the breach within 15 Business Days of being given notice requiring the rectification;

- 16.1.2 **Insolvency:** to the extent permitted by law, an Insolvency Event occurs in relation to the other party; and

- 16.1.3 **Force Majeure:** a right to terminate for force majeure arises in accordance with clause 20.4.

- 16.2 **Termination without cause:** Neither party has the right to terminate this Agreement without cause.

- 16.3 **Termination due to sale of dairy business or ceasing Milk production:** Either party has the right to terminate this Agreement on 3 months' prior written notice to the other party if:

16.3.1 The Supplier's dairy business is sold in a genuine sale on "arm's length" commercial terms to a third party; or

16.3.2 The Supplier's dairy business permanently ceases Milk production, including due to retirement.

- 16.4 **Termination notice:** As soon as practicable after either party terminates this Agreement, it must give the other party written notice of:

16.4.1 the termination;

16.4.2 the reason for the termination; and

16.4.3 the day the termination takes effect.

- 16.5 **Consequence of termination:** If either party provides a notice to terminate this Agreement, this Agreement will remain in force until the date the termination takes

effect. For the avoidable of doubt, if this Agreement is terminated (including by the Supplier during the cooling-off period set out in clause 1.2), this Agreement will continue to apply to Milk supplied under this Agreement before the termination takes effect.

16.6 **Return of property:** Following the expiry or termination of this Agreement, at the other party's written request, a party must promptly (and in any event within 15 Business Days):

16.6.1 return to the other party; or

16.6.2 destroy,

all property and Confidential Information (and any derivative from it) of the other party in its, or any of its representatives', possession or control.

16.7 **Survival:** Clauses 4.1, 11, 12, 14, 15, 16.6, 17 and this clause 16.7 survive termination or expiry of this Agreement. The termination or expiry of this Agreement does not affect the rights and obligations of the parties that have accrued as at the date of termination or expiry.

## 17 DISPUTE RESOLUTION

17.1 **General:** If a party to this Agreement has a complaint or there is a dispute in relation to a matter arising under or in connection with this Agreement, the matter may be dealt with or resolved:

17.1.1 in accordance with the Internal Complaints Handling Procedure provided for in clauses 17.3 to 17.5; or

17.1.2 subject to clause 17.6, by Mediation; or

17.1.3 subject to clause 17.6, by Arbitration.

17.2 If the matter that is the subject of the complaint or dispute is the termination of this Agreement, this clause 17 applies as if a reference to a party to this Agreement included a reference to a person who was a party to this Agreement before it was terminated.

17.3 **Internal complaints handling:** If a party (the **complainant**) wishes to have a complaint in relation to a matter arising under or in connection with this Agreement dealt with in accordance with the Internal Complaints Handling Procedure, the complainant must notify the other party (the **respondent**) in writing addressed to the respondent's Complaints Handling Officer (**Complaint Notice**).

17.4 The Complaint Notice must specify:

17.4.1 the nature of the complaint;

17.4.2 that the complainant wishes the complaint to be dealt with in accordance with the Internal Complaints Handling Procedure; and

- 17.4.3 the outcome the complainant wants.
- 17.5 Within 5 Business Days after receiving the Complaint Notice, the respondent, via its Complaints Handling Officer, must give a written acknowledgement of the complainant stating:
  - 17.5.1 that the Complaint Notice has been received; and
  - 17.5.2 the steps to be taken to deal with the complaint, which may include that a representative of each party meet in good faith with the purpose of resolving the dispute.
- 17.6 The complainant and the respondent must attempt to resolve any complaint or disputes (other than proceedings for urgent interlocutory relief) by the following procedures in the following order:
  - 17.6.1 Internal Complaints Handling Procedure;
  - 17.6.2 if unresolved by the Internal Complaints Handling Procedure within 60 days after the acknowledgement was given to the complainant under section 17.5, then either party may refer the matter to Mediation;
  - 17.6.3 if unresolved by Mediation, either the Purchaser or Supplier may refer the matter to Arbitration.
- 17.7 The complainant may, at any time, withdraw the complaint by notice in writing to the respondent via the respondent's Complaints Handling Officer.
- 17.8 **Confidentiality requirements regarding complaints or disputes:** The parties to a complaint or dispute arising under or in connection with this Agreement must observe any confidentiality requirements, including under clause 15, relating to the information disclosed or obtained in dealing with or resolving the complaint or dispute.
- 17.9 **Continuity:** During the Milk Supply Term, in the event of a complaint or dispute, the Supplier will continue to make Milk available for Collection and the Purchaser will continue to pay the Supplier for Milk supplied in accordance with this Agreement.
- 17.10 **Dispute reporting:** The Supplier must promptly provide the Purchaser with any information reasonably requested by the Purchaser to assist the Purchaser in complying with its dispute reporting obligations under section 56 of the Dairy Code.

## 18 INDEMNITY AND LIABILITY

- 18.1 **Exclusion of the liability:** In no circumstances will either party be liable to the other party for any indirect or consequential loss or damage, loss of business, loss of opportunity, economic loss or loss of profits arising out of or in connection with this Agreement howsoever caused.
- 18.2 **Indemnity for defective products:** The Purchaser will indemnify and keep the Supplier indemnified against any loss, damage, cost or expense suffered by the Supplier for claims made in respect of any products manufactured by the Purchaser to the extent that such loss, damage, cost or expense was caused or contributed to by the Purchaser.

18.3 **Mitigation:** Each party will take reasonable steps to mitigate any loss or damage it may suffer under this Agreement, and a party's liability under this Agreement will be reduced to the extent that the other party fails to comply with this clause.

## 19 MODERN SLAVERY

19.1 The Supplier must:

19.1.1 comply with all applicable laws, statutes, regulations and codes relating to modern slavery or human trafficking, including the *Modern Slavery Act 2018* (Cth); and

19.1.2 take reasonable steps to ensure that there is no modern slavery or human trafficking in any part of its business or supply chains.

19.2 The Supplier represents and warrants that the Supplier has not, nor, to its reasonable knowledge, its officers, employees or others associated with it, been convicted or investigated for modern slavery or human trafficking offences.

19.3 The Supplier must promptly report to the Purchaser any actual or suspected slavery or human trafficking in a supply chain in connection with this agreement.

19.4 The Supplier must maintain complete records evidencing its compliance with this clause 19 and grants the Purchaser the right to audit the Supplier for compliance with this clause 19.

## 20 GENERAL

20.1 **Notices**

20.1.1 All notices, demands, consents, approvals, requests or other communications required or contemplated by this Agreement must be in writing and:

20.1.1.1 delivered personally; or

20.1.1.2 sent by prepaid post or email,,

20.1.1.3 addressed to the intended recipient at its address or email detailed in Schedule 1 (or to such other address or email as the intended recipient may from time to time notify in writing).

20.1.2 In proving delivery, it will be sufficient to show that:

20.1.2.1 personal delivery was made;

20.1.2.2 an envelope containing such notice was properly addressed and posted as a prepaid letter; or

20.1.2.3 the email was properly addressed and sent, and that no transmission failure, delay or "out of office" notification was received.

## 20.2 **Assignment, sub-contracting and Supplier Change of Control:**

- 20.2.1 A party must not assign, transfer, license, sub-license or subcontract this Agreement or any of its rights or obligations under it without the prior written consent of the other party, whose consent must not be unreasonably withheld in the case of a responsible, experienced and solvent assignee or transferee.
- 20.2.2 Notwithstanding a party's sub-contracting of the performance of any of its obligations under this Agreement and the other party's consent to such sub-contracting, that party must remain responsible for the performance of its obligations by the sub-contractor.
- 20.2.3 Any Change of Control of the Supplier is deemed to be an assignment for the purposes of this clause. The Supplier must notify the Purchaser as soon as possible and in advance of any proposed or actual Change of Control of the Supplier.

## 20.3 **Variations to this Agreement:**

- 20.3.1 **Mutual variation:** Except for a variation under clause 20.3.3, this Agreement may only be varied mutually in writing and signed by both parties.
- 20.3.2 **Unilateral variations:** This Agreement may only be unilaterally varied during the Term by the Purchaser in the circumstances permitted by the Dairy Code and provided that variation is effected in accordance with the requirements of the Dairy Code. The Purchaser will provide the Supplier with written notice of any such unilateral variation as soon as practicable after the variation and will include the details and reason for the variation, and the day the variation takes effect.
- 20.3.3 All variations to this Agreement must comply with the Dairy Code.

## 20.4 **Force majeure:**

- 20.4.1 If a party's performance of any obligation under this Agreement is prevented or delayed by a Force Majeure Event (the **affected party**), upon the affected party giving prompt notice to the other party in accordance with clause 20.4.2, that obligation is suspended as long as the Force Majeure Event continues. The affected party must use reasonable endeavours to remove the Force Majeure Event or to limit its impact.
- 20.4.2 The affected party's notice under clause 20.4.1 must set out the details of the Force Majeure Event; its impact on the affected party's performance of its obligations under this Agreement; and the anticipated end date of the Force Majeure Event (where applicable).
- 20.4.3 If a Force Majeure Event has the effect of substantially preventing or delaying the affected party's performance of this Agreement for a period of more than 60 days, then either party may terminate this Agreement immediately by written notice to the other party in accordance with clause 16.1.

- 20.5 **Costs and legal advice:** Each party will bear its own legal and other costs and expenses incurred in connection with the preparation and execution of this Agreement. The Supplier warrants that it has sought its own independent legal advice in respect of this Agreement.
- 20.6 **Approval:** Unless expressly stated otherwise, any approval, agreement or consent of a party required or referred to in this Agreement may be given or withheld in that party's absolute discretion.
- 20.7 **Waiver:** No term or condition of this Agreement will be deemed to have been waived and no delay, breach or default will be deemed to have been excused unless the waiver or excuse is in writing and signed by the party providing the waiver or excusing such delay, breach or default (as the case may be). No single or partial exercise of a right or remedy under this Agreement prevents a further exercise of that or of any other right or remedy.
- 20.8 **Set off:** Each party is entitled to set off against any amount that it owes to the other party under this Agreement, any amount that the other party owes to it under this Agreement.
- 20.9 **Relationship of parties:** Nothing in this Agreement constitutes an agency, partnership or joint venture between the parties. No party may hold itself out as the agent or representative of the other party and must not give any representation to this effect to any person.
- 20.10 **Severability:** If any part of, or any variation to, this Agreement is:
- 20.10.1 invalid, void, illegal or unenforceable in any jurisdiction (**Invalidity**); or
  - 20.10.2 non-compliant with the Dairy Code (**Non-Compliance**),
- it is to be read down or severed to the extent of the Invalidity or Non-Compliance, and the remainder of this Agreement or the variation (as applicable), will remain in full force and effect.
- 20.11 **Currency:** All prices, rates and amounts expressed as payable under this Agreement are in Australian currency.
- 20.12 **Counterparts:** This Agreement may be executed in several counterparts, all of which when taken together will constitute one single agreement between the parties.
- 20.13 **Entire agreement:** This Agreement records the entire understanding and agreement between the parties relating to its subject matter. This Agreement supersedes all previous understandings or agreements (whether written or oral) between the parties relating to its subject matter. No terms and conditions, standard or otherwise, contained on any invoice, licence or other document of the Purchaser or any other person will apply to this Agreement.
- 20.14 **Governing law and jurisdiction:** This Agreement is governed by the laws of New South Wales and each party submits to the non-exclusive jurisdiction of the courts of New South Wales.

## 21 GLOSSARY AND INTERPRETATION



## 21.1 Glossary:

In this Agreement, the following terms have the following meaning:

**A2 Protein Milk** means Milk that contains <0.5% of the A1 protein type.

**Agreement** means this Milk supply agreement including all of its schedules.

**Arbitration** means arbitration in accordance with the procedure and terms for arbitration specified in Schedule 4.

**Arbitration Adviser** means the person appointed as arbitration adviser under section 45 of the Dairy Code by the Minister administering the *Dairy Produce Act 1986* (Cth).

**Base Milk** means Milk that is not A2 Protein Milk.

**Business Day** means any day in which the banks are open for business in Sydney, New South Wales.

**Change of Control**, in relation to a party, means any change in the legal or beneficial ownership of that party, or any of its business assets.

**Collection** has the meaning given in clause 9.4.

**Collection Point** means the location or locations for Collection of the Milk specified in Schedule 2, or as otherwise agreed in writing between the parties.

**Complaints Handling Officer** means the persons specified in Schedule 1 who are nominated by each party to receive and manage complaints in accordance with the Internal Complaints Handling Procedure.

**Confidential Information** has the meaning given in clause 15.1.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Dairies** means all of the Supplier's dairy farms that are approved by the Purchaser in writing in advance before and during the Term.

**Dairy Code** means the dairy industry code within the *Competition and Consumer (Industry Codes – Dairy) Regulations 2019* (Cth), as updated from time to time.

**Defective Milk** has the meaning given in clause 8.

**Delivery Point** means 1/102 Old Dookie Road, Shepparton, Victoria, or as otherwise agreed in writing between the parties.

**Effective Date** means the date set out in Schedule 1.

**Force Majeure Event** means an event that could not be foreseen or reasonably controlled or avoided by either party (excluding droughts) and which prevents or delays either party from performing any obligations under this Agreement.

**Forecasts** has the meaning given in Schedule 2.

**Individual Supplier Milk Samples** has the meaning given in Schedule 2.

**Insolvency Event** means, in respect of a party:

- (a) taking any step or action in connection with the party entering into any composition, arrangement or compromise with its creditors;
- (b) failing to pay its debts when they are due;
- (c) being deemed under the Corporations Act to be insolvent;
- (d) entering liquidation or provisional liquidation;
- (e) having a receiver or similar official appointed to any of its assets;
- (f) ceasing or threatening to cease carrying on business; or
- (g) having an application or order made or resolution passed for its winding up, or in connection with any analogous or substantially similar procedure.

**Internal Complaints Handling Procedure** means the internal complaints handling procedure set out in clauses 17.3 to 17.5.

**Mediation** means mediation in accordance with the procedure and terms for mediation specified in Schedule 4.

**Mediation Adviser** means the person appointed as mediation adviser under section 44 of the Dairy Code by the Minister administering the *Dairy Produce Act 1986* (Cth).

**Milk** means all raw milk produced at the Dairies to be supplied under this Agreement.

**Milk Solids** means butterfat and protein.

**Milk Supply Period** means the period that the Supplier supplies Milk to the Purchaser as set out in Schedule 1.

**Minimum Price** means the lowest price payable under this Agreement for Milk supplied during the Milk Supply Period, disregarding any fees payable by the Supplier under this Agreement.

**NATA** means National Association of Testing Authorities.

**Noumi Group** means Noumi Limited and its Related Bodies Corporate from time to time.

**Noumi Group Company** means any entity that is part of the Noumi Group.

**Price** has the meaning given in Schedule 2.

**Purchaser** means the person listed in Schedule 1.

**Purchaser Milk Policy** has the meaning given in clause 11.

**Quality Deductions** means the deductions set out in Schedule 2.

**Related Body Corporate** means a related body corporate as that expression is defined in the Corporations Act.

**Specifications** has the meaning given to it in clause 7.1.

**Supplier** means the person listed in Schedule 1.

**Sustainability Policy** means the Purchaser's policy, created in consultation with its Milk suppliers, that sets out the Purchaser's requirements in respect of animal welfare practices, environmental stewardship, and workplace health and safety practices and compliance.

**Term** has the meaning given to it in clause 1.1.

**Volume** has the meaning given in Schedule 2.

## 21.2 Interpretation:

21.2.1 **headings:** headings are for convenience only and do not affect the interpretation of this Agreement;

21.2.2 **without limitation:** "including" and similar words do not imply any limitation;

21.2.3 **legislation:** a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether before or after the date of this Agreement);

21.2.4 **persons:** reference to a party, person or entity includes an individual, partnership, firm, body corporate, corporation, association, trust, estate, state, government or any agency thereof, municipal or local authority and any other entity, whether incorporated or not (in each case whether or not having a separate legal personality);

21.2.5 **rights:** every right, power and remedy of a party remains unrestricted and may be exercised without prejudice at any time;

21.2.6 **singular:** the singular includes the plural and vice versa;

21.2.7 **gender:** one gender includes the other genders;

21.2.8 **times:** references to times of day or dates are Australian times and dates;

21.2.9 **day:** any reference to a "day" will mean a period of 24 hours running from midnight to midnight;

21.2.10 **clauses:** reference to a section, clause, sub-clause, schedule or a party

is a reference to that section, clause, sub-clause, schedule or party in this Agreement;

- 21.2.11 **document:** reference to any document includes reference to that document (and, where applicable, any of its provisions) as amended, novated, supplemented, or replaced from time to time;
- 21.2.12 **schedules:** each schedule or other attachment forms part of this Agreement;
- 21.2.13 **ambiguity:** unless expressly stated otherwise, if there is any ambiguity or inconsistency between a provision in this Agreement and any other document, this Agreement will prevail;
- 21.2.14 **contract interpretation:** a provision must not be construed against a party merely because that party was responsible for preparing this Agreement or that provision;
- 21.2.15 **in writing:** “written” and “in writing” include any means of reproducing words, figures or symbols in a tangible and visible form; and
- 21.2.16 **month and year:** any reference to “month” or “monthly” means calendar month or calendar monthly, and any reference to “year” or “yearly” means calendar year or calendar yearly.

**Executed as an agreement:**

Signed for and on behalf of

**Noumi Dairy Trading Pty Ltd**

in accordance with section 126 of the *Corporations Act 2000* (Cth):

\_\_\_\_\_  
*Authorised Signature*

**Jason Leeman**

\_\_\_\_\_  
*Name*

**Dairy Supply Manager**

\_\_\_\_\_  
*Position*

\_\_\_\_\_  
*Authorised Signature*

**Michael Perich**

\_\_\_\_\_  
*Name*

**Director**

\_\_\_\_\_  
*Position*

Signed for and on behalf of

**[insert]**

in accordance with section 126 of the *Corporations Act 2000* (Cth):

\_\_\_\_\_  
*Authorised Signature*

\_\_\_\_\_  
*Name*

\_\_\_\_\_  
*Position*

\_\_\_\_\_  
*Authorised Signature*

\_\_\_\_\_  
*Name*

\_\_\_\_\_  
*Position*

## SCHEDULE 1: PURCHASER DETAILS

### Part 1: Purchaser details

Name	Noumi Dairy Trading Pty Ltd
ACN	653 316 422
Address	80 Box Road, Taren Point NSW 2229
Telephone	(02) 8543 3514
Email	<a href="mailto:jason.leeman@noumi.com.au">jason.leeman@noumi.com.au</a>
Mobile	0427 001 906
Contact Name	Jason Leeman

### Part 2: Supplier details

Name	
ACN	
Address	
Telephone	
Email	
Mobile	
Contact Name	

### Part 3: Effective Date and Milk Supply Period

Effective Date	
Milk Supply Period	

### Part 4: Notices

If to the Supplier	Contact Name: Address: Email:	
If to Purchaser	Contact Name: Address: Email:	Company Secretary 8A Williamson Road, Ingleburn, NSW 2565 <a href="mailto:companysecretary@noumi.com.au">companysecretary@noumi.com.au</a>

### Part 5: Complaints Handling Officers

Purchaser's Complaints Handling Officer	Contact Name: Address: Email:	Company Secretary 8A Williamson Road, Ingleburn, NSW 2565 <a href="mailto:companysecretary@noumi.com.au">companysecretary@noumi.com.au</a>
Supplier's Complaints Handling Officer	Contact Name: Address: Email:	

**SCHEDULE 2: VOLUMES, FORECASTS, MILK SAMPLING AND TESTING, MILK SPECIFICATIONS, QUALITY DEDUCTIONS, PRICES AND COLLECTION POINT**

**Part 1: Volumes and Forecasts**

<b>Volumes and Forecasts</b>	
Volume	<p>The Purchaser must purchase all the Supplier's Milk during the Milk Supply Term on the terms of this Agreement.</p> <p>The Volume will be measured in accordance with clause 6.3.</p>
Forecast	<p>The Supplier will provide the Purchaser with a twelve (12) month forecast of its Milk production volumes and percentage fat and protein of its Milk at the commencement of the Milk Supply Term. Thereafter, the Supplier must provide a revised rolling forecast:</p> <p>(a) every 6 months or more frequently at the Purchaser's request; and</p> <p>(b) when the Supplier delivers, or expects to deliver, Milk volumes, or percentage fat and protein of its Milk that varies by greater than 10% from the Supplier's prior forecast.</p>

**Part 2: Milk Sampling Procedures**

<b>Milk Sampling Procedures</b>	
Milk Sampling Procedures	<p>At the time of Collection of the Supplier's Milk at the Collection Point, the Purchaser (or its representative) will arrange for Milk samples (<b>Individual Supplier Milk Samples</b>) to be taken for the purposes of Milk testing.</p> <p>Milk samples for testing will be collected using methods that are commonly accepted in the dairy industry and are approved in advance by the Purchaser including without limitation drip sampling and/or dip sampling. The samples must be representative of the Milk being supplied.</p> <p>Samples must be transferred into an ice slurry until delivery to the Delivery Point.</p>

**Part 3: Milk testing methods**

<b>Milk Testing Methods</b>	
Butterfat and protein	<p>The Purchaser will test each of the Supplier's Individual Supplier Milk Samples at:</p> <p>(a) a NATA accredited facility; or</p> <p>(b) the Delivery Point or the Purchaser's site with the Supplier's prior consent, which must not be unreasonably withheld.</p>



Bulk Milk Cell Count	The Purchaser will test each of Supplier's Individual Supplier Milk Samples at: (a) a NATA accredited facility; or (b) the Delivery Point or Purchaser's site with the Supplier's prior consent, which must not be unreasonably withheld.
Bactoscan (Colony Forming Units)	The Purchaser will test 3 of Supplier's Individual Supplier Milk Samples per month, without prior notice to the Supplier, at a NATA accredited facility.
Antibiotic & Inhibitory Substances	<p>The Purchaser will test all tanker loads of Milk at the Delivery Point using a rapid screen and/or broad spectrum test prior to unloading the Milk. The Purchaser (or its representative) will take a sample from the sample port on the trailer.</p> <p>If a tanker of Milk tests positive, then the Purchaser will test the:</p> <ul style="list-style-type: none"> <li>• Supplier's Individual Supplier Milk Samples; and</li> <li>• individual supplier Milk samples of each supplier who contributed Milk to the tanker,</li> </ul> <p>using a rapid screen and/or broad spectrum tests, to determine whether the Supplier's (or another supplier's) Milk is the source of the tanker's positive test result.</p> <p>The Purchaser may also conduct random tests on the Supplier's Individual Supplier Milk Samples, without prior notice to the Supplier, using a broad spectrum test at a NATA accredited facility.</p>
Quaternary Ammonium Compounds (QAC) & nonylphenol ethoxylates (NPE)	The Purchaser may test the Supplier's Individual Supplier Milk Samples, without prior notice to the Supplier, at a NATA accredited facility.
Other Foreign Contaminants	The Purchaser (or its representative) will visually and by smell assess the Supplier's Milk at Collection.
Temperature	<p>The Purchaser (or its representative) will test the temperature of the Supplier's Milk via an in-line thermometer at Collection.</p> <p>If the Supplier's Milk is Collected within 2 hours and 20 minutes after milking or if Supplier's Milk is &gt;5°C but &lt; 25°C, then the Purchaser (or its representative) will conduct a risk assessment (acting reasonably) using the Early Milk Collection Index (EMCI) model. The Purchaser's risk assessment is binding on the Supplier. The EMCI model was developed by the University of Tasmania and has been validated and has been accepted by domestic and export food safety regulators.</p>

Thermodurics	The Purchaser will test 3 of Supplier's Individual Supplier Milk Samples per month, without prior notice to the Supplier, at a NATA accredited facility.
pH	The Purchaser (or its representative) may test each of Supplier's Individual Supplier Milk Samples using a calibrated pH meter with a temperature correction probe.

#### Part 4: Milk Specifications

Milk Specifications		Details of requirements and Rejection conditions
Bulk Milk Cell Count	Weighted average test results of each of Supplier's Individual Supplier Milk Samples per month is $\leq 200,000$ cells per ml.	Requirements – refer to Schedule 2, Part 5 (Quality Deductions).
	For the purpose of calculating the weighted average test results, a maximum of 3 test results per month of Supplier's Individual Supplier Milk Samples that are in the range of $> 200,000$ and $\leq 250,000$ will not be included in the calculation.	Rejection conditions – refer to Clause 8 (Failure to Comply with Specifications and Volume).
Bactoscan (Colony Forming Units)	Weighted average test results of 3 of Supplier's Individual Supplier Milk Samples per month is $< 20,000$ colony forming units per ml.	Requirements – refer to Schedule 2, Part 5 (Quality Deductions).
		Rejection conditions – refer to Clause 8 (Failure to Comply with Specifications and Volume).
Antibiotic & Inhibitory Substances	Not detected.	Rejection conditions – refer to Clause 8 (Failure to Comply with Specifications and Volume).
Quaternary Ammonium Compounds (QAC) & nonylphenol ethoxylates (NPE)	Not detected.	Rejection conditions – refer to Clause 8 (Failure to Comply with Specifications and Volume).
Other Foreign Contaminants	Not detected.	Rejection conditions – refer to Clause 8 (Failure to Comply with Specifications and Volume).
Temperature	If the Supplier's Milk is Collected after 2 hours and 20 minutes after the end of	Rejection conditions – refer to Clause 8 (Failure to

	milking: $\leq 5^{\circ}\text{C}$ .  If the Supplier's Milk is $> 5^{\circ}\text{C}$ but $< 25^{\circ}\text{C}$ : If the Supplier's Milk passes the Purchaser's risk assessment (in the Purchaser's absolute discretion yet acting reasonably) using the EMC1 model. For the avoidance of doubt, the Supplier's Milk must not be $\geq 25^{\circ}\text{C}$ .	Comply with Specifications and Volume).
Thermoturics	Advisory specification only. Target is average test results of 3 of Supplier's Individual Supplier Milk Samples per month is $\leq 2,000$ colony forming units per ml.	Rejection conditions – refer to Clause 8 (Failure to Comply with Specifications and Volume).
pH	Between 6.65 and 6.8.	Rejection conditions – refer to Clause 8 (Failure to Comply with Specifications and Volume).
Quality Assurance	Compliance with the Purchaser's quality assurance program referred to in clause 11.1.	Rejection conditions – refer to Clause 8 (Failure to Comply with Specifications and Volume).

### Part 5: Quality Deductions

Quality Deduction			
	Bulk Milk Cell Count test results		Bactosan (Colony Forming Units) test results
3% Quality Deduction (Band 2)	Weighted average test results of each of Supplier's Individual Supplier Milk Samples per month is 200,001 – 300,000 cells per ml	<b>AND/OR</b>	Average test results of at least 3 of Supplier's Individual Supplier Milk Samples per month is 20,000 – 50,000
15% Quality Deduction (Band 3)	Weighted average test results of each of Supplier's Individual Supplier Milk Samples per month is $\geq 300,001$ cells per ml		Average test results of at least 3 of Supplier's Individual Supplier Milk Samples per month is $\geq 50,001$

Note: For the avoidance of doubt, the above Quality Deductions are not cumulative.

## Part 6: Prices and Collection Point

<b>Prices and Collection Point for Base Milk</b>	
Price	Price for Base Milk is \$9.30 excluding GST per kg of Milk Solids, excluding GST. The Purchaser will test for Base Milk in accordance with Part 3 of Schedule 2.
Minimum Price and justification of Minimum Price	<p>For completeness, where the Supplier supplies Base Milk that does not comply with the Specifications and the 15% Quality Deduction (Band 3) set out in Part 5 of Schedule 2 applies, then the minimum price at which the Purchaser may elect to accept and purchase such Base Milk is \$7.905 excluding GST per kilogram of Milk Solids. This price represents the 15% maximum discount to the price for Base Milk that does not comply with the Specifications, which reflects the lower value to the Purchaser's business.</p> <p>For the avoidance of doubt, any contractual discounts and/or offsetting of levies and fees including those set out in clauses 8.1.1.1, 9.3 and 10.5 shall not reduce the price below the Minimum price.</p>
Collection Point	[insert]

**SCHEDULE 3: PURCHASER MILK POLICY**

**Not used.**

## **SCHEDULE 4: MEDIATION AND ARBITRATION PROCEDURES**

### **Part 1: Mediation**

#### *Appointment of mediator*

- (1) The parties must request the Mediation Adviser to appoint a mediator for the dispute.
- (2) The Mediation Adviser:
  - (a) must appoint a mediator within 14 days after receiving the request under subsection (1) unless the Mediation Adviser is satisfied that the complaint giving rise to the dispute:
    - (i) is frivolous or vexatious; or
    - (ii) has previously been the subject of another mediation; and
  - (b) must give the parties to the dispute, in writing, details of the mediator appointed.

#### *Conduct of mediation*

- (3) Subject to subsection (4), the mediator must decide:
  - (a) how the mediation is to be conducted (for example, by telephone or in meetings); and
  - (b) the time and place for the mediation; and
  - (c) the day the mediation commences for the purposes of this Agreement.
- (4) The mediation must be conducted in Australia.

#### *Mediator must notify Mediation Adviser that mediation has commenced*

- (5) Within 14 days after the mediation has commenced, the mediator must notify the Mediation Adviser, in writing, that the mediation has commenced and of the nature of the dispute.

#### *Attendance at mediation*

- (6) Each party to the dispute must attend the mediation and attempt to resolve the dispute.
- (7) For the purposes of subsection (6), a party is taken to attend a mediation to attempt to resolve a dispute if the party is represented at the mediation by a person who has authority to enter into an agreement to settle the dispute on behalf of the party.

#### *Mediator must give notice of successful mediation*

- (8) If an agreement is reached in relation to the dispute, the mediator must, within 14 days after the agreement is reached:
  - (a) set out, in writing, the terms of the agreement; and
  - (b) give a copy of the terms to each party to the dispute; and
  - (c) notify the Mediation Adviser that an agreement has been reached.
- (9) For the avoidance of doubt, the parties agree that the terms of the

agreement referred to in subsection (8)(a) is final and binding on the parties.

- (10) The party who requested the mediation may, at any time, withdraw the complaint that is the subject of the dispute by notice in writing to the other party to the dispute and the mediator.

#### *Termination of mediation*

- (11) The mediator conducting a mediation of a dispute in accordance with this Agreement:
- (a) may terminate the mediation at any time if the mediator is satisfied that a resolution of the dispute is not likely to occur; and
  - (b) must terminate the mediation if the party who requested the mediation requests the mediator to do so.
- (12) If a dispute that is the subject of mediation in accordance with this Agreement is not resolved within 30 days after the mediation commenced:
- (a) the respondent to the mediation may ask the mediator to terminate the mediation; and
  - (b) the mediator must do so.
- (13) If the mediator terminates a mediation under subsection (11) or (12), the mediator must issue a certificate stating:
- (a) the names of the parties to the mediation; and
  - (b) the nature of the dispute that was the subject of the mediation; and
  - (c) that the mediation has been terminated; and
  - (d) that the dispute has not been resolved.
- (14) The mediator must give a copy of the certificate to:
- (a) the Mediation Adviser; and
  - (b) each party to the dispute.

#### *Costs of mediation*

- (15) Each party to a dispute that was the subject of a mediation in accordance with this Agreement must pay half the costs (if any) of the mediation (being all reasonable costs associated with the conduct of the mediation), unless the parties to the mediation agree otherwise.
- (16) Each party to a dispute that was the subject of a mediation in accordance with this Agreement must pay that party's costs of attending the mediation, unless the parties agree otherwise.

## **Part 2: Arbitration**

#### *Appointment of arbitrator*

- (1) The parties must request the Arbitration Adviser to appoint an arbitrator for the dispute.
- (2) The Arbitration Adviser:
- (a) must appoint an arbitrator within 14 days after receiving the request

under subsection (1) unless the Arbitration Adviser is satisfied that the complaint giving rise to the dispute:

- (i) is frivolous or vexatious; or
  - (ii) has previously been the subject of another arbitration; and
- (b) must give the parties to the dispute, in writing, details of the arbitrator appointed.

#### *Conduct of arbitration*

- (3) Subject to subsection (5), the arbitrator must decide:
- (a) how the arbitration is to be conducted (for example, by telephone or in meetings); and
  - (b) the time and place for the arbitration; and
  - (c) the day the arbitration commences for the purposes of this Agreement.
- (4) The arbitration must be conducted in Australia.

#### *Arbitrator must notify Arbitration Adviser that arbitration has commenced*

- (5) Within 14 days after the arbitration has commenced, the arbitrator must notify the Arbitration Adviser, in writing, that the arbitration has commenced and of the nature of the dispute.

#### *Attendance at arbitration*

- (6) Each party to the dispute must attend the arbitration.
- (7) For the purposes of subsection (7), a party is taken to attend an arbitration if the party is represented at the arbitration by a person who has the authority to enter into an agreement to settle the dispute on behalf of the party.

#### *Arbitrator must give notice of successful arbitration*

- (8) If the dispute is resolved, the arbitrator must, within 14 days after the dispute is resolved:
- (a) set out, in writing, the terms of the resolution; and
  - (b) give a copy of the terms to each party to the dispute; and
  - (c) notify the Arbitration Adviser that the dispute has been resolved.
- (9) The parties agree and acknowledge that the decision of an arbitrator in respect to a dispute made under or in relation to this Agreement is final and binding on the parties. To the maximum extent permitted by law, neither party may appeal the decision without reasonable grounds to do so.
- (10) For the avoidance of doubt, the parties agree that the terms of the resolution referred to in subsection (8)(a) is final and binding on the parties.

#### *Termination of arbitration*

- (11) The arbitrator conducting an arbitration of a dispute in accordance with this



Agreement must terminate the arbitration if the complainant (as defined in clause 17.3) requests the arbitrator to do so.

- (12) If the arbitrator terminates an arbitration under subsection (11), the arbitrator must issue a certificate stating:
  - (a) the names of the parties to the arbitration; and
  - (b) the nature of the dispute that was the subject of the arbitration; and
  - (c) that the arbitration has been terminated; and
  - (d) that the dispute has not been resolved.
- (13) The arbitrator must give a copy of the certificate to:
  - (a) the Arbitration Adviser; and
  - (b) each party to the dispute.

*Costs of arbitration*

- (14) Each party to a dispute that was the subject of an arbitration in accordance with this Agreement must pay half the costs (if any) of the arbitration (being all reasonable costs associated with the conduct of the arbitration), unless the parties to the arbitration agree otherwise.
- (15) Each party to a dispute that was the subject of an arbitration in accordance with this Agreement must pay that party's costs of attending the arbitration, unless the parties agree otherwise.