



NEW ZEALAND  
DISPUTE RESOLUTION  
CENTRE

Te Pokapū Whakatau Tautōhe o Aotearoa

# **GROCERY INDUSTRY** **DISPUTE RESOLUTION SCHEME RULES** **2023 Draft**





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## FOREWORD

Every Regulated Grocery Retailer must comply with the dispute resolution scheme (the **Scheme**) established under Schedule 2 of the Grocery Industry Competition Act 2023 (the **Act**).

Disputes eligible for referral to the Scheme include those with a claimed amount not exceeding \$5 million or where no amount is claimed arising from Grocery Supply Code requirements or arising from wholesale supply of groceries requirements under Part 3 of the Act or falling within a class of eligible disputes prescribed by Regulations made under section 154 of the Act (together, **eligible Disputes**). Only Suppliers or Wholesale Customers (not Regulated Grocery Retailers) can refer Disputes to the Scheme. The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing further eligible classes of disputes that may be referred to the Scheme.

These are the rules (the **Rules**) of the Scheme. The Rules are set out in a manner designed to facilitate ease of use and provide both a framework and detailed provisions to ensure that parties to eligible Disputes have access to a Scheme that is user-focused, accessible, independent, fair, accountable, efficient, and effective.

The referral of a Dispute to the Scheme operates to stay other proceedings during the dispute resolution process unless ordered otherwise by a court or tribunal.

Regulated Grocery Retailers must comply with the Rules, and failure to do so could lead to adverse inferences being drawn by decision makers involved in resolving disputes.

An Adjudicator may receive and consider any statement, document or information from the Parties, regardless of whether the materials would be admissible in a court of law. Parties may also seek a court determination of a legal question during dispute resolution proceedings.

Binding decisions must be made in accordance with principles of law. Settlement Agreements and binding decisions resulting from the Scheme must be complied with and may be enforced as an order of the District Court.

A party who is dissatisfied with a binding decision may bring an appeal through the Courts, but only on a question of law, not fact.

Witnesses, counsel and experts participating in the Scheme have the same privileges and immunities that apply in court proceedings.

Parties cannot contract out of the Scheme and any such attempt is considered unenforceable unless it imposes a stricter duty on the Regulated Grocery Retailer than the Act mandates.

The Rules are intended to give parties the widest choice and capacity to adopt fully administered dispute resolution procedures that are independent, fair, prompt, efficient, and effective, and which provide a proportionate response to the amounts in dispute and the complexity of the issues involved.

NZDRC has long established itself as the leader in private commercial dispute resolution in New Zealand and these Rules will allow NZDRC to offer a world class dispute resolution scheme that is tailored to meet the needs and requirements of the grocery industry, and which is fundamentally and purposively directed to ensuring the resolution of eligible Disputes in a manner that is private, efficient, cost effective, and certain.

For more information visit: [www.nzdrc.co.nz](http://www.nzdrc.co.nz)



## TABLE OF CONTENTS

Part 1: Preliminary provisions .....	6
1 Use of these Rules.....	6
2 Purpose.....	7
3 Definitions and interpretation .....	7
Part 2: Dispute resolution processes and relationship with other dispute resolution procedures.	12
4 Dispute resolution.....	12
5 Relationship with other proceedings .....	12
6 Determination of preliminary point of law by court.....	13
7 How to start dispute resolution.....	14
Part 3: Mediation.....	16
8 Mediation.....	16
9 Representation at Mediation .....	18
10 Settlement .....	18
11 Costs .....	18
12 Confidentiality.....	18
13 End of Mediation .....	19
14 Enforcement of Settlement Agreement.....	20
15 Exclusion of liability and indemnity .....	20
Part 4: Adjudication.....	21
16 Adjudication.....	21
17 The Determination.....	25
18 Effect and enforcement of Determination .....	30
19 Representatives .....	32
20 Withdrawal or settlement of a Claim .....	32
21 The role of the Adjudicator .....	34
22 Consolidation.....	37
23 Adjudicator is immune.....	37
24 Costs .....	38
25 Confidentiality.....	40
26 Data protection.....	42
27 Exclusion of liability and indemnity .....	42
Part 5: Miscellaneous provisions .....	43
28 General provisions .....	43
Schedule 1: Appointment, revocation and replacement of Mediators and Adjudicators .....	53
1 Selection and appointment criteria.....	53



<b>2</b>	Revocation of appointment following Challenge Notice .....	54
<b>3</b>	Revocation of appointment for other reasons.....	55
<b>4</b>	Appointment of a replacement Mediator or Adjudicator .....	56
Schedule 2:	Calculation of Levy .....	57



# GROCERY INDUSTRY DISPUTE RESOLUTION SCHEME RULES

## PART 1: PRELIMINARY PROVISIONS

### 1 USE OF THESE RULES

- 1.1 These are the rules (the **Rules**) of the grocery industry dispute resolution scheme (the **Scheme**) established under Schedule 2 of the Grocery Industry Competition Act 2023 (the **Act**).
- 1.2 A Supplier or Wholesale Customer who is party to a Dispute with a Regulated Grocery Retailer or Related Parties may refer the Dispute to the Scheme if:
- (a) the amount claimed under the Dispute does not exceed \$5 million or no amount is claimed; and
  - (b) the Dispute:
    - i. arises from the performance or non-performance of a requirement, or the exercise of a power, under the Grocery Supply Code; or
    - ii. arises from the performance or non-performance of a requirement, or the exercise of a power, under Part 3 (wholesale supply of groceries) of the Act; or
    - iii. falls within a class of eligible disputes prescribed by Regulations made under section 154 of the Act (if any); and
  - (c) the Dispute has not been finally resolved by proceedings in any court or tribunal.
- (an **eligible Dispute**)
- 1.3 These Rules come into force on **[date]**.
- 1.4 NZDRC owns the copyright to these Rules.



### No contracting out

- 1.5 These Rules have effect despite any provision to the contrary in any agreement or contract. A provision that has the effect of overriding a provision of these Rules has no legal effect and is unenforceable in any civil proceedings.
- 1.6 A Regulated Grocery Retailer must comply with these Rules. If a Regulated Grocery Retailer fails to comply with these Rules, NZDRC may apply to the District Court to make an order requiring the Regulated Grocery Retailer to comply with these Rules.

## 2 PURPOSE

- 2.1 The purpose of these Rules is to ensure that:
- (a) Suppliers and Wholesale Customers that are party to an eligible Dispute with a Regulated Grocery Retailer have access to the Scheme to resolve their Dispute; and
  - (b) the Scheme is user-focused, accessible, independent, fair, accountable, efficient, and effective.

## 3 DEFINITIONS AND INTERPRETATION

- 3.1 Unless the context requires otherwise, in these Rules:

**Adjudication** means adjudication administered in accordance with these Rules.

**Adjudicator** means an adjudicator appointed to carry out an Adjudication.

**Adjudicator's Fee** has the meaning set out in Rule 24.2.

**Amount at issue** means, where an appeal is brought in any Court under section 161 of the Act, the amount of money required to be paid under an Adjudicator's Determination or the amount claimed unsuccessfully by the Claimant.

**Application for Dispute Resolution** means an application under Rule 7.7 for NZDRC to appoint a Mediator or Adjudicator and administer the process.

**Challenge Notice** means a notice from a Party under Clause 2.2 of Schedule 1.



**Claim** means the statement of the Claimant under Rule 16.5 setting out the particulars of the claim.

**Claimant** means the Party who starts a dispute resolution process by serving the Notice of Dispute. A Claimant may be a Supplier or a Wholesale Customer. A Regulated Grocery Retailer may not be a Claimant under the Scheme.

**Commencement Date** means the date NZDRC notifies the Parties that a Mediator or Adjudicator has been appointed (see Rule 7.13).

**Commission** means the New Zealand Commerce Commission.

**Confidential Information** has the meaning set out in Rule 12.3 and Rule 25.3.

**Costs** means the Mediator's or Adjudicator's Fee and/or the Parties' own costs and expenses of the Mediation or Adjudication.

**Contract** includes a contract, deed or similar arrangement (whether written or oral).

**Determination** means the binding decision of the Adjudicator on the Dispute and other related matters (see Rule 17.1). It includes a Determination on Costs, a Determination on agreed terms, and any decision declining the Claim (for example, due to lack of jurisdiction).

**Dispute** means a dispute that can be subject to Mediation or Adjudication (see Rule 1.2).

**Grocery Supply Code** means the Grocery Supply Code 2023 in Schedule 2 of the Grocery Industry Competition Regulations 2023, or a subsequent grocery supply code made by the Commission under the Act that supersedes the Grocery Supply Code 2023 which may apply to, and impose duties on, all Regulated Grocery Retailers or Related Parties, or a class of Regulated Grocery Retailers or those Related Parties.

**in relation to** a thing means in relation to, arising out of, under, or in connection with that thing.

**Mediation** means mediation administered in accordance with these Rules.

**Mediator** means a mediator appointed to carry out a Mediation.





**Mediator's Fee** has the meaning set out in Rule 11.1.

**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is responsible for the administration of the Act.

**NZDRC** means New Zealand Dispute Resolution Centre Limited, a company incorporated under the Companies Act 1993 (company number 2301888).

**NZDRC Website** means NZDRC's website, found at [www.nzdrc.co.nz](http://www.nzdrc.co.nz).

**Notice of Dispute** means the notice under Rule 7.1 that starts a Mediation or Adjudication.

**Notice of Withdrawal** means a notice by the Claimant under Rule 20.5.

**Party** means a party to the Mediation or Adjudication.

**Registrar** means the registrar of NZDRC (including any person who is authorised to act as registrar from time to time).

**Regulated Grocery Retailer** means:

- (a) a Regulated Grocery Retailer within the meaning of Part 2 (Grocery supply code) of the Act; and
- (b) a Regulated Grocery Retailer within the meaning of Part 3 (Wholesale supply of groceries) of the Act; and
- (c) a person that is no longer a Regulated Grocery Retailer under (a) or (b) but who was a Regulated Grocery Retailer at the time of the conduct giving rise to the Dispute;

and includes a Related Person.

**Regulations** means regulations made under the Act.

**Rejoinder** means the statement of the Respondent under Rule 16.15 answering the Reply (if there was a Reply).



**Related Person/Party** means a person that is any of the following in relation to a Regulated Grocery Retailer (person A):

- (a) a person that is an interconnected body corporate of A; or
- (b) a person that is a successor to A; or
- (c) a person that is a franchisee of A; or
- (d) a person that is a transacting shareholder of A; or
- (e) an associated person as that term is defined in section 5(1) of the Act; or
- (f) a person over whose business the Regulated Grocery Retailer has material influence.

**Reply** means the statement of the Claimant under Rule 16.12 answering the Response (if there was a Response).

**Representative** means an individual representing or assisting a Party (whether legally qualified or not).

**Respondent** means the Party against whom the Claim is made.

**Response** means the statement of the Respondent under Rule 16.7 answering the Claim.

**Settlement Agreement** means a written agreement signed by the Parties to a Mediation recording the terms of settlement of the Dispute which the Parties have agreed will be binding.

**Submission** means:

- (a) the Adjudication Claim, Response, Reply, or Rejoinder; and
- (b) submissions, information, documents, or evidence provided by the Parties in response to a request from the Adjudicator.

**Supplier** means:



- (a) any person that has taken, or is actively taking, steps towards entering into a supply agreement to supply groceries; and
- (b) a person that is no longer a Supplier, but was at the time of the conduct giving rise to the Dispute, provided that not more than three months have expired after the later of:
  - (i) the date on which the Supplier last provided supply to the Regulated Grocery Retailer under the supply agreement; or
  - (ii) the date on which the Regulated Grocery Retailer confirmed in writing to the Supplier that the supply agreement was ending (a **former supplier**).

**Working Day** has the meaning given to it in Rule 28.17.

**Wholesale Customer** means:

- (a) any person that receives the wholesale supply, or wants to obtain the wholesale supply, of groceries from a Regulated Grocery Retailer for the purpose of supplying groceries, directly or indirectly, at retail to consumers; and
- (b) a person that is no longer a Wholesale Customer, but was at the time of the conduct giving rise to the Dispute, provided that not more than three months have expired after:
  - (i) the date on which the Wholesale Customer last received supply from the Regulated Grocery Retailer under the wholesale agreement; or
  - (ii) the date on which the Regulated Grocery Retailer confirmed in writing to the Wholesale Customer that the wholesale agreement was ending (a **former Wholesale Customer**).

3.2 A person is **Related to a Party** if the person is:

- (a) a related company of the Party (as that term is defined in the Companies Act 1993, or under equivalent laws of an overseas jurisdiction);
- (b) a person in a partnership, unincorporated joint venture, or other unincorporated body of persons with the Party; or



(c) a trustee of a trust in which the Party is also a trustee.

3.3 Unless the context requires otherwise, in these Rules words in the singular include the plural, and words in the plural include the singular.

3.4 Rules that are included in any Overview section of these Rules (for example, Rules 7.1 to 7.3) are intended to be a guide. If there is any conflict between an overview Rule and any other Rule, the other Rule prevails.

## **PART 2: DISPUTE RESOLUTION PROCESSES AND RELATIONSHIP WITH OTHER DISPUTE RESOLUTION PROCEDURES**

### **Subpart 1 - Preliminary**

#### **4 DISPUTE RESOLUTION**

4.1 The Claimant must elect to refer a Dispute to either Mediation or Adjudication under the Scheme at the time the Notice of Dispute is served on the Respondent.

##### **Tikanga-based dispute resolution**

4.2 Parties may choose a tikanga-based Māori cultural support framework for the resolution of Disputes under the Scheme using Māori beliefs, principles, values, and practices that derive from traditional knowledge (mātauranga Māori) for improved outcomes for Parties.

4.3 NZDRC's tikanga-based approach recognises that tikanga is not static and can vary in form and application across different rohe (regions). Notwithstanding, there are key tikanga principles that are universal in nature.

4.4 NZDRC's tikanga-based approach to dispute resolution services recognises the principles envisaged in Te Tiriti o Waitangi (the Treaty of Waitangi) and affirms NZDRC's commitment to Te Tiriti o Waitangi and its principles, including those of partnership, protection and participation.

#### **5 RELATIONSHIP WITH OTHER PROCEEDINGS**

5.1 A Dispute can be subject to Mediation or Adjudication even if it is currently subject to arbitration or legal proceedings in any tribunal or court (**concurrent proceeding**).



- 5.2 However, if a concurrent proceeding is, or has been, commenced in relation to the matters that are the subject of a Dispute referred to the Scheme, the concurrent proceeding is stayed:
- (a) while the proceeding before the Scheme and any appeal rights continue; and
  - (b) while a Determination or a Settlement Agreement is in force.
- 5.3 However, the above provisions do not apply to proceedings brought by the Commission. The court or tribunal may, on its own initiative or on application of the Commission, make an order to do either or both of the following:
- (a) allow the concurrent proceeding to commence or continue in that court or tribunal:
  - (b) stay the proceeding before the Scheme.
- 5.4 The grounds on which the Commission may apply for a stay of the proceedings before the Scheme include the following:
- (a) the Commission has, or is likely soon to have, a relevant investigation in progress:
  - (b) the Commission is considering taking relevant compliance or enforcement action:  
or
  - (c) the Commission considers that there are reasons why one or more of the matters that are the subject of the Dispute would be better dealt with in the concurrent proceedings than by the Scheme.

## **6 DETERMINATION OF PRELIMINARY POINT OF LAW BY COURT**

- 6.1 A Party may, with the consent of the Mediator or Adjudicator, apply to the High Court to determine any question of law arising in the course of the dispute resolution proceedings.
- 6.2 The High Court must not consider an application that is made without the consent of every other Party unless it is satisfied that the determination of the question of law concerned:
- (a) might produce substantial savings in costs to the Parties; and



- (b) might, having regard to all the circumstances, substantially affect the rights of one or more of the Parties.

## Subpart 2 - Procedure for starting dispute resolution

### 7 HOW TO START DISPUTE RESOLUTION

#### Overview

- 7.1 Mediation or Adjudication can be started at any time by the Claimant serving a notice of its intention to commence dispute resolution under the Scheme on the other Parties (a **Notice of Dispute**).
- 7.2 Once a Notice of Dispute has been served, an Application for Dispute Resolution must be sent to NZDRC.
- 7.3 NZDRC will appoint a Mediator or an Adjudicator once the Application for Dispute Resolution is received.

#### Form and minimum content of Notice of Dispute

- 7.4 The Notice of Dispute must be in the form published on the NZDRC Website at the time the Notice of Dispute is served.
- 7.5 At a minimum, the Notice of Dispute must contain this information:
  - (a) a statement that the Claimant requires the Dispute to be subject to Mediation or Adjudication under the Scheme;
  - (b) a brief description of the nature of the Dispute;
  - (c) the names and contact details of the Parties and (if known) their Representatives, including details for electronic communication (if available);
  - (d) identification of the Contract, relationship or basis of claim that the Dispute relates to; and
  - (e) an explanation of the compensation, relief or remedy that is sought.



- 7.6 A Notice of Dispute that is missing any of the minimum information is invalid. However, the Claimant can fix the Notice of Dispute by providing the correct information within three Working Days of receiving notice that the information was missing.

### **Application for Dispute Resolution under the Scheme**

- 7.7 An Application for Dispute Resolution under the Scheme must be given to NZDRC within five Working Days of the Notice of Dispute being served. This period of time can be extended by written agreement between the Parties.
- 7.8 The Application for Dispute Resolution must be completed on the form NZDRC publishes on the NZDRC Website at the time the Application for Dispute Resolution is made.
- 7.9 NZDRC will not appoint a Mediator or Adjudicator or take any other steps in relation to the Mediation or Adjudication until the Application for Dispute Resolution is received.
- 7.10 If a Claim is declined due to an issue of jurisdiction, NZDRC may claim an amount that is reasonable having regard to the work done and costs, expenses or fees incurred by the Mediator or Adjudicator.

### **Appointment of Mediator or Adjudicator and Commencement Date**

- 7.11 A Mediator or an Adjudicator can only be appointed by NZDRC. No other person (Party or otherwise) can appoint a Mediator or an Adjudicator.
- 7.12 NZDRC will appoint a Mediator or an Adjudicator when it has received an Application for Dispute Resolution. Once received, NZDRC will use its best endeavours to make an appointment within three Working Days.
- 7.13 NZDRC will notify the Parties when a Mediator or an Adjudicator is appointed. The date of notification is the **Commencement Date**.
- 7.14 NZDRC will have regard to the selection and appointment criteria set out in Clause 1 of Schedule 1 of these Rules when appointing a Mediator or Adjudicator. However, NZDRC may appoint any person it thinks fit.
- 7.15 NZDRC can ask the Parties for any information it considers necessary (in its sole discretion) to enable it to appoint an appropriate Mediator or Adjudicator, and the Parties must promptly provide that information.



## PART 3: MEDIATION

### 8 MEDIATION

#### Overview

- 8.1 Every Mediation starts with an exchange of brief written statements prepared by each Party so that the Parties and the Mediator are better apprised of the issues in dispute and therefore better prepared for the Mediation. Each party should identify the issues that need to be resolved, provide a brief analysis of the issues and an explanation of the compensation, relief or remedy that is sought, and identify what legal and quantum issues are involved (**Position Statements**).
- 8.2 The Mediator can conduct the Mediation in any manner they think fit, having regard to the purpose of the Scheme, the nature of the issues in dispute and the overall circumstances of the Parties.
- 8.3 The Parties must co-operate in good faith with the Mediator and every other Party to the dispute in attempting to settle the matters in difference. The Parties must comply with the Mediator's reasonable requests and directions to attend Mediation and provide information.

#### Mediation process

- 8.4 The Mediator will, in consultation with the Parties, fix a date for the Mediation within 25 Working Days of the Claimant serving the Notice of Dispute on the Respondent. This period of time can be extended by the Mediator (or by mutual agreement of the Parties, in writing) if they consider that additional time is reasonably required for any reason (for example, due to the unavailability of key Party personnel or Representatives, or due to the size or complexity of the dispute, the Respondent has insufficient time to prepare for the Mediation as a result). An extension can be made at the request of any Party or on the Mediator's own initiative.
- 8.5 Each Party must provide the Mediator, NZDRC and every other Party with their Position Statements three Working Days prior to the Mediation.





- 8.6 The Mediator may conduct the Mediation in person, by telephone and/or video conference, or any combination of those methods that the Mediator considers appropriate.
- 8.7 The Mediator may talk or meet with the Parties separately and/or jointly at any time before the Mediation ends.
- 8.8 The Mediator will not provide legal advice.
- 8.9 The Mediator may, at their sole discretion, provide an analysis or evaluation of the relevant facts, evidence and legal merits of the matters in dispute in the Mediation to promote settlement discussions. In providing any such analysis or evaluation:
- (a) the Mediator will be acting as an independent neutral expert and not as an advisor to the Parties; and
  - (b) any analysis or evaluation is not binding on the Parties, and any decision the Parties may make for the purpose of settling the Dispute, whether in whole or in part, must be based entirely in reliance on their own skill and judgement, having taken such independent legal advice and having made their own enquiries as they think fit and not in reliance on any understandings, statements, opinions, or representations made by the Mediator.
- 8.10 The Parties may not at any time before, during or after the Mediation, call the Mediator to testify in any legal or administrative proceeding concerning the dispute, or the nature and extent of any agreement reached as a result of the Mediation.
- 8.11 The Parties may not call for the records, notes or work product of the Mediator for any purpose, including any legal or administrative proceedings that might arise before, during or after the Mediation. However, any Settlement Agreement resulting from the Mediation that is intended by the Parties to have legal effect and to be legally enforceable may be subpoenaed, called for or produced in any proceedings to which it is relevant.
- 8.12 The Mediation will be held without prejudice to any other legal rights or remedies available to the Parties.



## 9 REPRESENTATION AT MEDIATION

- 9.1 A Party may appoint a Representative to provide advice or support in relation to the Mediation.

## 10 SETTLEMENT

- 10.1 If the Parties reach agreement on any or all matters in dispute, such agreement must be recorded in a **Settlement Agreement** signed by the Parties. Any Settlement Agreement will be legally binding on the Parties, and any Party may enforce the terms of the Settlement Agreement by issuing court proceedings (see Rule 14.2).

## 11 COSTS

- 11.1 The Mediator is entitled to be paid a fee for carrying out their role in the Mediation (the **Mediator's Fee**) that is reasonable having regard to the work done and costs, expenses or fees incurred by the Mediator.
- 11.2 The Mediator's Fee is the amount that is fixed in accordance with the terms and conditions set out on the NZDRC Website at the time of the Application for Dispute Resolution.
- 11.3 Unless the Parties have agreed otherwise, the Mediator's Fee will be met by the Respondent and the Parties will meet their own costs and expenses of the Mediation (for example, legal or expert fees).

## 12 CONFIDENTIALITY

### Mediation is confidential

- 12.1 The Mediator must conduct the Mediation in private.
- 12.2 Any person involved in the Mediation (including the Parties, their Representatives, the Mediator, and NZDRC) must keep Confidential Information confidential, and must not publish, communicate or otherwise supply (**disclose**) that information to any non-party.
- 12.3 **Confidential Information** means all non-public materials and information that relate to the Mediation and includes:



- (a) all statements, admissions or other information, documents, or evidence provided to the Mediator by a Party;
- (b) any notes made by the Mediator;
- (c) any matters disclosed orally in the Mediation;
- (d) any documents used or generated by a Party, Representative or advisor for the purposes of the Mediation; and
- (e) any documents given to or generated by NZDRC for the purpose of the Mediation.

### **Permitted disclosures**

#### **Disclosure to pursue a legal right or comply with law, etc**

12.4 Confidential Information can be disclosed to the extent necessary to:

- (a) participate in arbitration or legal proceedings or pursue a legal right (for example, to prosecute the Dispute in arbitration or court proceedings or to enforce the Settlement Agreement);
- (b) comply with any law or other compulsory process (for example, a governmental request for information or a court order); or
- (c) seek professional advice or satisfy information requests of potential acquirers, investors or lenders (so long as the recipient of the Confidential Information agrees in writing and in advance to keep the Confidential Information confidential).

12.5 A person must notify the other Parties of an intended disclosure under Rule 12.4 within a reasonable time before they make the disclosure. The notification must include full details of the intended disclosure and an explanation of the reason for it.

## **13 END OF MEDIATION**

13.1 The Mediation ends on the signing of a Settlement Agreement by the Parties.

13.2 The Mediator can also end the Mediation on their own initiative if:

- (a) a Party is no longer willing or able to participate in the Mediation; or



- (b) they consider it unnecessary or impossible to continue the Mediation because they feel they are unable to assist the Parties to achieve resolution of the Dispute.

13.3 The Mediator will notify the Parties and NZDRC if the Mediation is terminated under Rule 13.2.

## **14 ENFORCEMENT OF SETTLEMENT AGREEMENT**

14.1 The Parties must comply with the Settlement Agreement.

14.2 A Party or NZDRC may apply to the District Court for an order requiring a Party to comply with the Settlement Agreement.

14.3 If the Court considers that the terms of the Settlement Agreement are manifestly unreasonable, the Court may modify the terms of the Settlement Agreement, but only to the extent that the modification results in an agreement that could have been entered into under the Scheme.

## **15 EXCLUSION OF LIABILITY AND INDEMNITY**

15.1 The purpose of this Rule is to give the Mediator and NZDRC (including its agents and employees) the widest immunity from liability that the law will allow. Any reference to NZDRC in these clauses includes a reference to the agents and employees of NZDRC (including the Registrar).

15.2 The Mediator and NZDRC are not liable for any act done or not done in relation to the Mediation or these Rules. The Parties release the Mediator and NZDRC from all liability of any kind (including negligence, misrepresentation, breach of contract or breach of duty of any kind (including statutory, fiduciary or equitable)). This release does not apply to the extent that the Mediator or NZDRC has acted fraudulently.

15.3 If a claim is brought against the Mediator or NZDRC despite Rule 15.2, the Parties (jointly and severally) indemnify the Mediator and NZDRC in respect of that claim.

15.4 Words of the Mediator or NZDRC (for example, written statements or oral comments) cannot be used in any action for defamation, libel, slander, or any similar complaint.



- 15.5 After the Mediation has ended (see Rules 13.1– 13.3), the Mediator and NZDRC have no obligation to make any statement about the Mediation, and no Party can ask the Mediator or NZDRC to give evidence in legal proceedings arising in relation to the Mediation.

## PART 4: ADJUDICATION

### 16 ADJUDICATION

#### Overview

- 16.1 Every Adjudication starts with a Claim. The Claim must be served by the Claimant within three Working Days of the Commencement Date (but see Rule 16.6).
- 16.2 A Claim may be followed by a Response and then, if the previous Submission was served, a Reply and a Rejoinder. These Submissions must be served within the relevant time periods, although the periods can be varied by the Parties or the Adjudicator (see Rules 16.6, 16.18 and 16.20). If the Claim is late the Adjudication ends. If the Response, Reply or Rejoinder are late the Adjudication continues, but the Adjudicator must disregard the late Submission.
- 16.3 Each Submission must be in reply to the previous one. No counterclaims are permitted.
- 16.4 The Adjudicator will determine the Dispute based on the Submissions. No hearing will be held, but conferences, visits or inspections are possible (see Rule 21.12).

#### Claim

- 16.5 Once an Adjudicator is appointed, the Claimant must serve a statement setting out the particulars of the claim (the **Claim**). The Claim must include:
- (a) the nature and basis of the claim;
  - (b) the amount of compensation claimed, or other relief or remedy sought, including any claim for interest;
  - (c) copies of any expert reports, witness statements or other documents the Claimant relies on; and



- (d) submissions on the factual and legal issues involved in the claim, and the Claimant's contentions as to those issues.

16.6 The Claimant must serve the Claim on the Adjudicator and every other Party on or before the third Working Day after the Commencement Date (the **Claim Period**). The Adjudicator may allow additional time for the serving of the Claim if the Adjudicator considers that additional time is reasonably required for any reason (for example, due to the size or complexity of the Claim) and they are satisfied that granting one will not undermine the purpose of the Scheme (see Rule 2.1). An extension can be made at the request of the Claimant. However, a request must be made before the expiry of the third working day, and the Adjudicator must disregard any late request. The Adjudication ends if the Claim is late.

### **Response**

16.7 The Respondent may serve a statement in answer to the Claim (the **Response**). The Response must include:

- (a) what matters in the Claim are accepted or agreed;
- (b) what matters are disputed, with reasons why;
- (c) any defence to the Claim;
- (d) copies of any expert reports, witness statements or other documents the Respondent relies on; and
- (e) submissions on the factual and legal issues involved in the Claim and the Response, and the Respondent's contentions as to those issues.

16.8 The Respondent must serve the Response on the Adjudicator and every other Party on or before the sixth Working Day after the Commencement Date (the **Response Period**). If the Response is late the Adjudication will continue but the Adjudicator must disregard the Response.

### **No counterclaims, but defences and set-off permitted**

16.9 The Response is not an opportunity for the Respondent to bring a counterclaim.



- 16.10 However, the Response can include defences to the Claim that are open to the Respondent (in fact or in law). It does not matter if the defences, or the matters that form the basis of the defences, have not been raised before.
- 16.11 The Response can include a claim for set-off or abatement. However, the Respondent acknowledges that the maximum that the Adjudicator is able to award is limited to the proved value of the Claim.

### Reply

- 16.12 The Claimant may serve a statement in answer to the Response (the **Reply**). The right to serve a Reply only applies if the Response is served within the Response Period.
- 16.13 The Reply must be strictly in reply to the Response. It cannot raise any new issues. It may include supporting documents.
- 16.14 The Claimant must serve the Reply on the Adjudicator and every other Party on or before the eighth Working Day after the Commencement Date (the **Reply Period**). If the Reply is late the Adjudication will continue but the Adjudicator must disregard the Reply.

### Rejoinder

- 16.15 The Respondent may serve a statement in answer to the Reply (the **Rejoinder**). The right to serve a Rejoinder only applies if the Reply is served within the Reply Period.
- 16.16 The Rejoinder must be strictly in reply to the Reply. It cannot raise any new issues. It may include supporting documents.
- 16.17 The Respondent must serve the Rejoinder on the Adjudicator and every other Party on or before the tenth Working Day after the Commencement Date (the **Rejoinder Period**). If the Rejoinder is late the Adjudication will continue but the Adjudicator must disregard the Rejoinder.

### Changes to Response, Reply or Rejoinder period

- 16.18 The Adjudicator must extend the Response Period, the Reply Period and the Rejoinder Period to the same extent the Claim Period is extended under Rule 16.6.



16.19 Parties may change the Response Period, Reply Period or the Rejoinder Period by agreement in writing. To be effective, any change must be notified to the Adjudicator before the expiry of the relevant period.

16.20 The Adjudicator may allow additional time for the Response Period, the Reply Period or the Rejoinder Period if the Adjudicator considers that additional time is reasonably required for any reason (for example, due to the size or complexity of the Claim and the Respondent has insufficient time to prepare a Response as a result). An extension can be made at the request of any Party or on the Adjudicator's own initiative. However, a request must be made before the expiry of the relevant period, and the Adjudicator must disregard any late request.

### **Copies of Contracts relied on**

16.21 The Parties are expected to provide copies of any Contracts relied on. However, if a Party is unable to do so for any reason (for example, in a case where there is an oral Contract) it is enough if the Party provides the information in the form of a statutory declaration. The declaration must be given to the Adjudicator and every other Party and should attach any supporting documents that are available.

### **Determination made on the papers**

16.22 The Adjudicator will determine the Dispute based on the Submissions (but disregarding any Response, Reply or Rejoinder that is late). No hearing will be held, but the Adjudicator can decide to hold a conference, visit or inspection (see Rule 21.12).

16.23 The Adjudicator may choose to make a ruling on jurisdiction issues before or as part of the Determination of the substantive issues.

### **End of Adjudication**

16.24 The Adjudication ends when a Determination is given to the Parties and any time for correction or explanation has expired (see Rules 17.24 to 17.29) or if the Claimant fails to serve the Claim within time (see Rule 16.6).

16.25 The Adjudicator can also end the Adjudication on their own initiative if they consider it unnecessary or impossible to continue the Adjudication (for example, because the Claim is withdrawn under Rule 20 or because there is a lack of jurisdiction for the Adjudication).





The Adjudicator will notify the Parties and NZDRC if the Adjudication is terminated for this reason.

- 16.26 The death of a Party does not end the Adjudication, and the deceased person will be substituted with their legal representative. This Rule does not apply if the Parties have agreed otherwise, or if a cause of action is extinguished by law on the death of a person.

### **Objections to process or jurisdiction**

- 16.27 A Party must promptly raise any objection they have to:
- (a) a direction, ruling or request of the Adjudicator;
  - (b) any failure by another Party or the Adjudicator to comply with these Rules;
  - (c) an irregularity affecting the conduct of the Adjudication; or
  - (d) the Adjudicator's jurisdiction.
- 16.28 If an objection is not raised promptly, a Party is deemed to have waived their right to object later. This Rule does not apply if the Party can show that, at the relevant time, they did not know about the grounds for objection and could not (with reasonable diligence) have discovered the grounds for objection.

## **17 THE DETERMINATION**

### **What the Adjudicator can determine**

- 17.1 The Adjudicator can only determine:
- (a) an eligible Dispute, as defined in the Notice of Dispute and the matters set out in the Claim and any Response, Reply or Rejoinder;
  - (b) Costs (see Rule 24);
  - (c) the Adjudicator's jurisdiction to determine a matter (for example, if there is a dispute about the eligibility of the Claim or if there is a dispute as to the existence of a Contract, the Adjudicator can make a decision on that); and



- (d) any matters that are necessary to carry out the Adjudicator's role in accordance with these Rules.

17.2 In making a Determination, the Adjudicator must have regard to:

- (a) the applicable law;
- (b) these Rules;
- (c) the provisions of any Contract the Dispute relates to, and/or specialised meanings applicable to the Dispute (for example, trade usage or particular usage of the Parties);
- (d) the Notice of Dispute;
- (e) the Claim;
- (f) any Response, Reply or Rejoinder that is served in time;
- (g) any other Submission or information, document or evidence provided by the Parties to the Adjudicator;
- (h) the results of any visit or inspection carried out by the Adjudicator or report of any Adjudicator-appointed expert (see Rules 21.13 to 21.18); and
- (i) any other matter the Adjudicator considers relevant.

### **Evidence and admissibility**

17.3 Each Party will bear the burden of proving the facts relied upon to support its Claim or any affirmative defence.

17.4 The admissibility, relevance, weight, and materiality of any evidence offered by the Parties will be determined by the Adjudicator.

17.5 The Adjudicator may receive in evidence any statement, document, information, or matter that may, in their opinion, assist them to deal effectively with the Dispute before them, whether or not the statement, document, information, or matter would be otherwise admissible in a court of law.



## **Substance of Determination**

- 17.6 If an amount of money is claimed by the Claimant, the Adjudicator must determine:
- (a) the Respondent's liability to pay that money (if any), including any conditions on that liability;
  - (b) the amount payable (or conditionally payable);
  - (c) the date on which the payment must be made or becomes payable; and
  - (d) the conditions on which it becomes payable.
- 17.7 If no amount of money is claimed by the Claimant, the Adjudicator must determine any questions in dispute about the rights and obligations of the Parties (for example, whether there has been a breach or repudiation of a supply agreement or non-compliance with the Grocery Supply Code or wholesale supply obligations). The Adjudicator can make orders for specific performance (for example, that a Party must act or refrain from acting in a particular way to remedy a breach and/or reduce or prevent loss or damage).
- 17.8 If the Adjudicator determines that any Respondent is required to take action other than the payment of money, the Adjudicator must (so far as it is possible) also fix:
- (a) an amount of money payable if the Respondent fails or refuses to take that action; and
  - (b) the date by which that amount is payable.
- 17.9 The Adjudicator can require the payment of general damages as compensation for loss or damage suffered by a Supplier or Wholesale Customer.

## **Interest**

- 17.10 The Adjudicator can award interest in any Adjudication in relation to the recovery of money.
- 17.11 Interest may be awarded whether or not the amount has been paid before the Determination is made.



### **Contractual Disputes**

- 17.12 For Disputes that arise in relation to a Contract, interest will be awarded on the terms agreed in the Contract, including any terms as to the rate of interest, the period for which interest is payable, and the whole or any part of the sum that interest is payable on.
- 17.13 If there is no agreement on interest in the relevant Contract (whether as to payment generally or on any particulars), the Adjudicator can award interest as they consider appropriate. For clarity, this may include an award of simple or compound interest, and the award can be at such rates and with such rests as the Adjudicator considers appropriate.

### **Non-contractual Disputes**

- 17.14 For all other Disputes, the Adjudicator can award interest as they consider appropriate. For clarity, this may include an award of simple or compound interest, and the award can be at such rates and with such rests as the Adjudicator considers appropriate.

### **Form of Determination**

- 17.15 The Determination must be in writing and be signed and dated by the Adjudicator.
- 17.16 A failure to sign and date a Determination does not affect the validity of a Determination. The Adjudicator will use their best endeavours to fix any failure to sign or date a Determination within three Working Days of receiving notice of the defect.
- 17.17 The Determination must contain the reasons for the Determination. This Rule does not apply if the Parties have agreed otherwise.
- 17.18 The extent of reasons given by an Adjudicator will be proportionate to the time available to the Adjudicator to make the Determination, the nature and number of matters for Determination, and the amount of money at issue in the Dispute or value of the Dispute.
- 17.19 The Adjudicator must submit the Determination in draft form to NZDRC for scrutiny before signing a Determination. Without affecting the Adjudicator's independence and autonomy, the Registrar may:
- (a) make recommendations directed to identifying errors in computation, any clerical or typographical errors, or errors of a similar nature in the Determination; and



(b) draw to the Adjudicator's attention any points of substance or internal inconsistencies in the Determination.

17.20 Unless the Parties have agreed otherwise, a monetary determination will be expressed in the currency of the relevant Contract, or currency most closely connected to the Dispute (in the case of a non-contractual Dispute).

### **Timing of Determination**

17.21 The Adjudicator must make their Determination within 25 Working Days of the Claimant serving the Notice of Dispute on the Respondent, or such longer period of time that:

(a) is needed to reflect any longer period agreed for the Claim Period Response Period, Reply Period or Rejoinder Period under Rules 16.6, 16.18, or allowed under Rule 16.20 and/or

(b) the Adjudicator considers necessary (for example, due to the size or complexity of the Claim).

17.22 However, to give the Parties time to make Submissions, the Adjudicator must wait until the end of the Response Period and (if applicable) any Reply Period or Rejoinder Period or other period specified by the Adjudicator for Submissions before making the Determination.

17.23 The Determination will be given to the Parties by NZDRC as soon as practicable after the Adjudicator has signed it.

### **Period for correction or explanation**

17.24 A Party may request a correction of the Determination or explanation of the directions in the Determination by following the process set out in Rules 17.25 to 17.29.

17.25 A request must be served on the Adjudicator and every other Party and must be made within two Working Days of the date on which a copy of the Determination is given to the Parties. The Adjudicator may extend this period of time if they consider that additional time is reasonably required to make the request.

17.26 A request may ask the Adjudicator to:



- (a) correct any errors in computation, any clerical or typographical errors, or any errors of a similar nature in the Determination; and/or
- (b) give further explanation of a direction, or part of a direction in the Determination that is not clearly expressed so that the Parties can action the directions of the Determination.

17.27 If the Adjudicator considers the request is justified, the Adjudicator will use their best endeavours to make the correction or give the explanation within three Working Days of the date on which a copy of the Determination is given to the Parties.

17.28 The Adjudicator may also correct any errors in computation, any clerical or typographical errors, or any errors of a similar nature in the Determination on their own initiative. Any corrections of this kind must be made within three Working Days of the date on which a copy of the Determination is given to the Parties.

17.29 No additional fees can be included in the Adjudicator's Fee for the correction or explanation.

## **18 EFFECT AND ENFORCEMENT OF DETERMINATION**

### **Determination is binding**

18.1 The Determination is binding on the Parties, unless and until the Dispute is finally determined by legal proceedings in a court (see Rules 18.9 and 18.11) or subsequent agreement between the Parties.

### **Relationship with other proceedings**

18.2 The Determination has full effect even if legal proceedings in relation to the Dispute are started or are in progress.

18.3 The Determination must be complied with before a Party starts legal proceedings to challenge a Determination. This Rule does not apply if the Parties have agreed otherwise.

### **Enforcement**

18.4 A Determination must be treated as an order of the District Court and may be enforced accordingly.



### **Enforcement of Determinations for payment of money**

- 18.5 Rules 18.6 to 18.8 apply to a Determination that requires the payment of money (whether conditional or not). In these clauses, **Relevant Date** has the meaning set out in Rule 18.8.
- 18.6 The Determination is a debt due and owing.
- 18.7 If a Party fails to pay an amount due (in whole or in part) under the Determination by the Relevant Date, the Party who is owed the money may recover the unpaid portion of the amount as a debt due in any court of competent jurisdiction, as well as the reasonable costs and expenses of recovery properly incurred.
- 18.8 The **Relevant Date** is the later of:
- (a) the date that is three Working Days after the date on which a copy of the Determination is given to the Parties;
  - (b) the date for payment specified by the Adjudicator in the Determination; or
  - (c) if applicable, the date of satisfaction of any conditions imposed in the Determination.

### **Appeals on questions of law**

- 18.9 A Party who is not satisfied with a Determination may appeal to:
- (a) the District Court if the Amount at issue does not exceed \$350,000 or if no amount was claimed; or
  - (b) the High Court if the Amount at issue exceeds \$350,000.
- 18.10 An appeal may be brought only on a question of law. For the purposes of this Rule, **question of law** includes an error of law that involves an incorrect interpretation of the applicable law (whether or not the error appears in the Determination), but does not include any question as to whether:
- (a) the Determination or any part of the Determination was supported by any evidence or any sufficient or substantial evidence; and
  - (b) the Adjudicator drew the correct factual inferences from the relevant primary facts.



- 18.11 Appeals against a decision of the District Court or the High Court under Rule 18.9 (the **first appeal court**) may be brought only with the leave of the first appeal court.

## 19 REPRESENTATIVES

- 19.1 A Party may appoint a Representative. The manner of appointment differs before and after the Adjudicator is appointed to ensure that the appointment does not create a possible conflict of interest (or similar impediment) once an Adjudicator is appointed.
- 19.2 Before an Adjudicator is appointed, a Party must notify NZDRC and every other Party of the name and contact details of any Representative they have appointed for the Adjudication.
- 19.3 Once an Adjudicator is appointed:
- (a) a Party who wants to appoint a Representative or change their Representative must notify the Adjudicator, NZDRC and every other Party of the name and contact details of their proposed Representative;
  - (b) the Adjudicator's prior approval must be obtained before that proposed Representative is appointed; and
  - (c) the Adjudicator may withhold approval if they consider (in their sole discretion) that person's appointment could create a possible conflict of interest (or similar impediment).

## 20 WITHDRAWAL OR SETTLEMENT OF A CLAIM

### Overview

- 20.1 A Claim can be withdrawn at any time before a Determination is issued. It can be withdrawn unilaterally by the Claimant (see Rules 20.5 to 20.7) or by agreement between the Parties (see Rules 20.8 to 20.10). If the withdrawal is because the Parties have reached a settlement, they can ask the Adjudicator to record the settlement as a Determination. A unilateral withdrawal by the Claimant will not take effect if the Adjudicator considers that the Respondent has a legitimate interest in obtaining a Determination.





### Timing and effect of withdrawal

- 20.2 A Claim can be withdrawn at any time before a Determination is issued, by following the processes set out in this Rule.
- 20.3 If there is a withdrawal, the Adjudicator does not need to make a Determination on the substantive matters (but see Rule 20.9 for the Adjudicator's ability to record the terms of a settlement in a Determination on agreed terms). The Adjudicator may make a Determination on Costs – see Rules 24.10 to 24.14.
- 20.4 A new Adjudication (with a new Application for Adjudication and new Deposit) can be started if the Claim is withdrawn unless the Dispute has been determined under another dispute resolution process.

### Unilateral withdrawal by Claimant

- 20.5 The Claimant can initiate a withdrawal unilaterally by serving a notice of withdrawal on the Adjudicator, the Respondent and NZDRC (a **Notice of Withdrawal**). However, the Claim will not be withdrawn if the Adjudicator considers that the Respondent has a legitimate interest in obtaining a Determination.
- 20.6 To assist the Adjudicator in considering whether there is a legitimate interest, the Respondent can object to the withdrawal by giving notice to the Adjudicator and the Claimant within three Working Days of receipt of the Notice of Withdrawal (a **Notice of Objection**). The Adjudicator may (in their sole discretion) have regard to a Notice of Objection that is late.
- 20.7 The Adjudicator will promptly notify the Parties and NZDRC if they consider the Respondent has a legitimate interest in obtaining a Determination.

### Withdrawal by agreement between the Parties

- 20.8 A Claim can be withdrawn by the Parties giving notice to the Adjudicator and NZDRC that they have reached a written agreement to withdraw the Claim. A copy of the agreement must be attached to the notice.
- 20.9 If the Claim is withdrawn due to the Parties settling the Dispute, the Parties can request that the Adjudicator records the terms of the settlement in the form of a Determination on agreed terms.



- 20.10 A request to record the settlement terms must be from all the Parties and must be given within three Working Days of giving the notice to the Adjudicator and NZDRC under Rule 20.8. If the Adjudicator receives a request within the timeframe, the Adjudicator will record the terms of settlement and issue a Determination on agreed terms. The Adjudicator is not required to give reasons for such Determination.

## **21 THE ROLE OF THE ADJUDICATOR**

### **Adjudicator must be suitable, impartial and independent**

- 21.1 The Adjudicator must be suitable, impartial and independent of the Parties. See Schedule 1 of these Rules for the selection and appointment criteria for Adjudicators.
- 21.2 Any person who is asked to act as an Adjudicator must give NZDRC the written declaration set out in Clause 1.3 of Schedule 1 of these Rules.
- 21.3 The Adjudicator has a continuing duty to immediately disclose to the Parties and NZDRC any circumstances arising which may be likely to give rise to justifiable doubts about their suitability, impartiality or independence in the eyes of any of the Parties. This duty starts at the time of the Adjudicator's appointment and continues until the Adjudication ends.
- 21.4 An Adjudicator's appointment can be revoked, and a new Adjudicator appointed, in accordance with the provisions of Schedule 1 of these Rules (for example, by a Party issuing a Challenge Notice).

### **Powers of Adjudicator**

#### **Procedure**

- 21.5 The Adjudicator can conduct the Adjudication in any manner they think fit, having regard to the purpose of the Scheme (see Rule 2.1) and the principles of natural justice.

#### **Power to make directions, rulings and requests, etc**

- 21.6 The Adjudicator can make any directions, rulings or requests that they think fit. This is a general power, and the specific powers under Rule 21.12 do not limit this general power. Directions, rulings or requests can be made at the request of any Party or on the Adjudicator's own initiative.



- 21.7 When making any directions, rulings or requests, or taking any other actions under these Rules, the Adjudicator must:
- (a) take the purpose of the Scheme into consideration (see Rule 2.1);
  - (b) comply with the principles of natural justice;
  - (c) act independently, impartially and in a timely manner; and
  - (d) avoid incurring unnecessary expense.

**Adjudicator may draw inferences and determine the Dispute based on available information**

- 21.8 The Parties must comply without delay with these Rules and any direction, ruling or request of the Adjudicator made or given in accordance with these Rules.
- 21.9 The Adjudicator's power to determine a Dispute is not affected by any failure of a Party to comply with these Rules or to respond to any requests or comply with any directions or rulings.
- 21.10 The Adjudicator may draw any reasonable inferences they think fit from any such failure and give any weight they think fit to information that was asked for or directed to be provided but was provided later than requested or directed.
- 21.11 The Adjudicator can make a Determination on the basis of the information available to them whether or not a Party complies with these Rules or responds to a request or complies with a direction or ruling of the Adjudicator.

**Specific powers**

- 21.12 The Adjudicator may:
- (a) request further written submissions, information or evidential material from the Parties, and set deadlines for the production of them, so long as the Adjudicator allows the other Parties an opportunity to comment on them;
  - (b) request a Party to provide copies of any documents that the Adjudicator may reasonably require;



- (c) convene a conference of the Parties if the Adjudicator considers it desirable (for example, to clarify any aspects of the matters in dispute or the Parties' Submissions);
- (d) extend time periods in accordance with Rules 16.20 or 17.25;
- (e) conduct visits or inspections in accordance with Rules 21.13 to 21.16;
- (f) appoint an expert in accordance with Rules 21.17 and 21.18;
- (g) direct a Party to provide a translation of a document or exhibit if that document or exhibit is not in the language of the Adjudication, or determine the language to be used in the Adjudication (see Rule 28.16);
- (h) limit the number of Representatives present at any conference, visit or inspection, to allow for the efficient conduct of the Adjudication;
- (i) request a Party to do something during the Adjudication that the Adjudicator considers is reasonably required to enable the complete and effective determination of the Dispute;
- (j) determine if Confidential Information can be disclosed under Rules 25.4 to 25.6 or otherwise permit disclosure of Confidential Information in accordance with Rule 25.7; and
- (k) adopt a measure in relation to information security or data protection (having first consulted with the Parties and NZDRC).

### **Visits and inspections**

- 21.13 To assist in making the Determination, the Adjudicator may visit or inspect land, premises, property, goods, documents, technologies, samples, or any other items relevant to the Dispute.
- 21.14 Visits or inspections must be carried out by the Adjudicator in the presence of all Parties unless otherwise agreed.
- 21.15 The Parties must be given reasonable notice to enable them to be present at any visit or inspection. However, unless a Party has good reason not to attend a visit or inspection,



their failure to attend will not affect the Adjudicator's ability to make the visit or inspection or decide an issue based on observations at the visit or inspection.

- 21.16 The consent of the owner or occupier of any land or premises must be obtained before entry is made. If the owner or occupier is a Party, that Party's consent must not be unreasonably withheld.

#### **Adjudicator-appointed expert**

- 21.17 To assist in making the Determination, the Adjudicator may appoint an expert to report to them on specific issues. In deciding whether to appoint an expert, the Adjudicator must consult the Parties. This Rule does not apply if the Parties agree otherwise in writing.

- 21.18 If the Adjudicator appoints an expert:

- (a) the Adjudicator must define the expert's terms of reference, and notify these to the Parties;
- (b) the Parties must give the expert any relevant information, or produce or give access to any relevant land, premises, property, goods, documents, technologies, samples, or any other items, and allow the expert to carry out appropriate steps (including taking of samples or photographs, weighing, observing any process, or testing); and
- (c) a copy of any report produced by the expert must be given to the Parties, and the Adjudicator must invite the Parties to submit written comments on the report.

## **22 CONSOLIDATION**

- 22.1 An Adjudicator who has two or more Adjudications that are subject to the same governing law can determine those Adjudications at the same time if all of the Parties to those Adjudications agree in writing.

## **23 ADJUDICATOR IS IMMUNE**

- 23.1 The Adjudicator is not liable for anything done or not done in carrying out their role as Adjudicator unless the Adjudicator acts fraudulently. See also Rule 27.



## 24 COSTS

### Overview

- 24.1 There are two types of Costs: the Adjudicator's Fee and the Parties' own costs and expenses. The Respondent must pay the Adjudicator's Fee and the Parties must pay their own costs and expenses (see Rule 24.5). However, the Adjudicator can make a different determination on Costs in some circumstances (see Rules 24.7 and 24.8).

### Amount of Adjudicator's Fee

- 24.2 The Adjudicator is entitled to be paid a fee for carrying out their role in the Adjudication (the **Adjudicator's Fee**). The Adjudicator's Fee includes an amount payable for the time the Adjudicator is engaged in their role, as well as any costs, expenses or fees incurred in relation to:

- (a) travel, accommodation, meals, taxis, couriers, and personal vehicle mileage charges;
- (b) communications, secretarial and administration services, transcription services, interpreters, and expert or legal advice (including any fees and expenses of any expert appointed by the Adjudicator under Rule 21.17); and
- (c) any other reasonable costs relating to the conduct of the Adjudication.

- 24.3 For Low Value Claims (as that term is defined on the NZDRC Website), the Adjudicator's Fee is the amount that is fixed in respect of Low Value Claims in accordance with the terms and conditions set out on the NZDRC Website at the time of the Application for Dispute Resolution.

- 24.4 For all other Claims, the Adjudicator's Fee is an amount that is reasonable having regard to the work done and costs, expenses or fees incurred by the Adjudicator.

### Who pays Costs

- 24.5 The Respondent must pay the Adjudicator's Fee. The Parties must pay their own costs and expenses of the Adjudication (for example, legal fees or experts' fees).

- 24.6 However, regardless of who was successful in the Adjudication the Adjudicator may make a different determination about payment of Costs in accordance with Rules 24.7 or 24.8.



### **Adjudicator can make different determination**

- 24.7 The Adjudicator may make a different determination about payment of the Adjudicator's Fee if the Adjudicator considers that:
- (a) the Claim was frivolous, vexatious and/or without substantial merit; or
  - (b) the Claimant acted in a contemptuous or improper manner during the Adjudication.
- 24.8 The Adjudicator may make a different determination about the Parties' own costs and expenses if the Adjudicator considers that a Party has caused those costs and expenses to be incurred unnecessarily by:
- (a) bad faith on the part of that Party; or
  - (b) allegations or objections by that Party that are frivolous, vexatious and/or without substantial merit.
- 24.9 If the Adjudicator is replaced during the Adjudication, NZDRC will determine the share of the Adjudicator's Fee that is appropriate to be paid to each Adjudicator in the circumstances.

### **Costs on withdrawal**

- 24.10 If the Claim is withdrawn under Rule 20, the Adjudicator may make a Determination on Costs on their own initiative or on request by a Party.
- 24.11 A request for a Determination on Costs must be served on the Adjudicator and every other Party and must be made within three Working Days of the withdrawal notice (either the Notice of Withdrawal if the withdrawal is unilateral, or the notice to the Adjudicator and NZDRC under Rule 20.8 if the withdrawal is by agreement between the Parties, as applicable).
- 24.12 A Determination on Costs on withdrawal can confirm that the Parties must pay Costs (or any part of the Costs) up to the date of withdrawal:
- (a) in accordance with Rule 24.5; or
  - (b) in accordance with different determination under Rule 24.7 or 24.8.



- 24.13 However, a Determination on Costs cannot vary an agreement on Costs between the Parties that is:
- (a) agreed after the Adjudication has started; and
  - (b) notified to the Adjudicator before the Determination on Costs is made (for example, by attaching a copy of the agreement to a Party's Submissions on Costs, or by the agreement being included in a settlement agreement notified under Rule 20.8).
- 24.14 The Adjudicator must make the Determination on Costs as soon as practicable after giving the Parties an opportunity to make Submissions on Costs.

### **Liability to pay**

- 24.15 Any agreement about how the Costs are to be apportioned (including an agreement that a Party is to indemnify another Party in relation to those Costs) is not binding on the Parties if that agreement was made before the Dispute arose.

## **25 CONFIDENTIALITY**

### **Adjudication is confidential**

- 25.1 The Adjudicator must conduct the Adjudication in private.
- 25.2 Any person involved in the Adjudication (including the Parties, their Representatives, the Adjudicator and NZDRC) must keep Confidential Information confidential, and must not publish, communicate, or otherwise supply (**disclose**) that information to any non-party.
- 25.3 **Confidential Information** means all non-public materials and information that relate to the Adjudication or to a Determination and includes:
- (a) all Submissions, information, documents, or evidence provided to the Adjudicator by a Party or an expert appointed by the Adjudicator;
  - (b) any direction, ruling, request, or Determination of the Adjudicator;
  - (c) any documents used or generated by a Party, Representative or advisor in the preparation or process of Adjudication; and





- (d) any documents given to or generated by NZDRC for the purpose of the Adjudication.

### **Permitted disclosures**

#### **Disclosure to pursue a legal right or comply with law, etc**

- 25.4 Confidential Information can be disclosed to the extent necessary to:
- (a) participate in arbitration or legal proceedings or pursue a legal right (for example, to prosecute the Dispute in arbitration or court proceedings, to enforce the Determination, or to publish a correction of a statement in a defamation claim);
  - (b) comply with any law or other compulsory process (for example, a governmental request for information or a court order); or
  - (c) seek professional advice or satisfy information requests of potential acquirers, investors or lenders (so long as the recipient of the Confidential Information agrees in writing and in advance to keep the Confidential Information confidential).
- 25.5 A person must notify the other Parties of an intended disclosure under Rule 25.4 within a reasonable time before they make the disclosure. The notification must include full details of the intended disclosure and an explanation of the reason for it.
- 25.6 If an intended disclosure under Rule 25.4 arises during the Adjudication, the notice under Rule 25.5 must also be given to the Adjudicator and NZDRC. The Adjudicator will determine whether the disclosure meets the requirements of Rule 25.4 after each Party is given an opportunity to be heard.

#### **Other disclosures**

- 25.7 A person can also request permission of the Adjudicator to disclose Confidential Information during the Adjudication for other reasons. The Adjudicator may permit disclosure if they are satisfied that disclosure will not undermine the purpose of the Scheme (see Rule 2.1(b)), after the other Parties are given an opportunity to comment on the request.
- 25.8 If a Party wants to involve a non-party to the Adjudication (for example, a fact or expert witness, or a translator) in the Adjudication, the non-party must agree to keep Confidential Information confidential before they can be involved. This agreement must be recorded



in the form published on the NZDRC Website and a copy of the agreement signed by each non-party must be given to the Adjudicator and the other Parties as a condition of the non-party's participation in the Adjudication.

- 25.9 NZDRC may collect information relating to the Adjudication for statistical or research purposes and may publish that information. NZDRC must not publish the information in a form that could reasonably be expected to identify any particular Party, person or Adjudicator.

### **Breach of confidentiality**

- 25.10 A breach of confidentiality made during the Adjudication can be dealt with by the Adjudicator in any way they consider appropriate (for example, by issuing directions requiring the defaulting Party to act or refrain from acting in a particular way or making a Determination for sanction or costs).

## **26 DATA PROTECTION**

- 26.1 The Adjudicator or NZDRC may issue directions in relation to information security or data protection (for example, by implementing a cybersecurity protocol, requiring the use of a particular electronic information system, or adopting measures to protect personal information). The directions are binding on the Parties and, in the case of a direction issued by NZDRC, on the Adjudicator. However, the directions are not binding to the extent they conflict with any applicable law or other mandatory provision. See also Rule 21.12(k) (which allows an Adjudicator to adopt an information security or data protection measure in relation to a particular Adjudication).

## **27 EXCLUSION OF LIABILITY AND INDEMNITY**

- 27.1 The purpose of this Rule is to give the Adjudicator and NZDRC (including its agents and employees) the widest immunity from liability that the law will allow. Any reference to NZDRC in these clauses includes a reference to the agents and employees of NZDRC (including the Registrar).
- 27.2 The Adjudicator and NZDRC are not liable for any act done or not done in relation to the Adjudication or these Rules. The Parties release the Adjudicator and NZDRC from all liability of any kind (including negligence, misrepresentation, breach of contract or breach



of duty of any kind (including statutory, fiduciary or equitable)). This release does not apply to the extent that the Adjudicator or NZDRC has acted fraudulently.

- 27.3 If a claim is brought against the Adjudicator or NZDRC despite Rule 27.2, the Parties (jointly and severally) indemnify the Adjudicator and NZDRC in respect of that claim.
- 27.4 Words of the Adjudicator or NZDRC (for example, written statements or oral comments) cannot be used in any action for defamation, libel, slander, or any similar complaint.
- 27.5 After the Adjudication has ended (see Rules 16.24 - 16.26), the Adjudicator and NZDRC have no obligation to make any statement about the Adjudication, and no Party can ask the Adjudicator or NZDRC to give evidence in legal proceedings arising in relation to the Adjudication.

## **PART 5: MISCELLANEOUS PROVISIONS**

### **28 GENERAL PROVISIONS**

#### **Application of these Rules**

- 28.1 With the approval of the Minister, these Rules may be amended from time to time by NZDRC.
- 28.2 A Mediation or Adjudication will be conducted in accordance with the Rules in effect at the time of the Notice of Dispute.
- 28.3 To facilitate the administration of Mediation and Adjudication under these Rules, the Registrar may issue practice notes that supplement, regulate or implement the Rules.
- 28.4 The Governor-General may, by Order in Council made on the recommendation of the Minister, make Regulations prescribing one or more further classes of Dispute between a Supplier or Wholesale Customer and a Regulated Grocery Retailer that may be referred to the Scheme or providing, among other things, for anything incidental that is necessary for carrying out or giving full effect to the Act.



## Communications and notices

### Communications must be in writing

- 28.5 All communications (including any notices, applications, requests, or Submissions that need to be given or served under these Rules) must be in writing. The preferred method is electronic communication, such as email (see Rule 28.7).

### Communications to NZDRC or the Mediator or Adjudicator

- 28.6 All communications to NZDRC must be addressed to the Registrar.
- 28.7 All communications to the Mediator or Adjudicator (or a person nominated as a Mediator or Adjudicator):
- (a) before they are appointed must be sent to the Registrar; and
  - (b) after they are appointed must be sent directly to the Mediator or Adjudicator but must be copied to the Registrar and every other Party to the Mediation or Adjudication.

### Electronic communication (email, etc)

- 28.8 Electronic communication is the preferred method of communication. **Electronic communication** means email or any other electronic means of communication that provides a record of its transmission, receipt or delivery. It includes the use of any designated electronic filing system operated by NZDRC.
- 28.9 A communication can be given or served by electronic communication. This Rule applies whether or not any Contract relevant to the Dispute allows electronic communication.
- 28.10 A Party can nominate an email address or other means of electronic communication as their preferred method of communication. The nomination must be notified to NZDRC, the Mediator or Adjudicator, and every other Party (for example, by including it in the Application for Dispute Resolution).
- 28.11 If a nominated email address or other means of electronic communication is notified, any communication may be given or served in that manner, and any communication delivered or served in that manner will be considered as having been **received** by the Party.



28.12 If there is no nominated email address or other means of electronic communication, but electronic communication has been used regularly in the Parties' previous dealings, any communication may be given or served in that manner. This Rule does not apply if the Mediator or Adjudicator or NZDRC directs otherwise.

28.13 In the absence of any proof to the contrary, an electronic communication is considered to be **given** or **served** on the day it is transmitted and is considered to be **received** on the same day.

#### **Other forms of communication**

28.14 A communication can also be given or served in the following ways:

- (a) by physically delivering it to the addressee;
- (b) by delivering it to the place of business, usual residence or usual mailing address of the addressee; or
- (c) if, after reasonable efforts to give delivery in another manner, it is sent to the addressee's last known place of business, usual residence or mailing address, by registered letter or any other means that provides a record of the attempt to deliver it.

28.15 In the absence of proof to the contrary, a communication given or served under Rule 28.14 is considered to be **given** or **served** on the day it is delivered and is considered to be **received** on the same day.

#### **Time and Language of Mediation and Adjudication**

28.16 Unless otherwise agreed between the Parties:

- (a) any period of time under these Rules is to be calculated in accordance with New Zealand Standard Time (UTC + 12) or New Zealand Daylight Savings Time (UTC + 13) as applicable; and
- (b) the language of the Mediation or Adjudication will be English (or such other language determined by the Mediator or by the Adjudicator under Rule 21.12).



## Working days

- 28.17 A **Working Day** means a day of the week other than:
- (a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, Matariki, the Sovereign's birthday, and Labour Day;
  - (b) a day in the period commencing on 24 December in a year and ending on 5 January in the following year;
  - (c) if Waitangi Day, Anzac Day or Matariki falls on a Saturday or a Sunday, the following Monday;
  - (d) any provincial holiday in New Zealand (such as Auckland Anniversary Day) that is observed as a public holiday in the province in which an act is to be done (for example and without limitation, to clarify, the filing and service of any Notice of Dispute, Claim, Response, Reply or Rejoinder or service of a Notice under Rule 7.13 ) ; and
  - (e) if a Party notifies the other Parties, the Mediator or Adjudicator and NZDRC that they reside in a country other than New Zealand, any day that is a public holiday in the country or province in which that Party resides.
- 28.18 A Working Day ends at 11:59 pm New Zealand Standard Time or New Zealand Daylight Time as applicable (UTC + 12 or UTC + 13) on that day.

## Calculation of time

- 28.19 When calculating any period of time referred to in these Rules, the day of the act or event is not included in the period of time. The period starts on the first Working Day after the date of the act or event.
- 28.20 For example, an Application for Dispute Resolution must be given to NZDRC within five Working Days of the Notice of Dispute being served (see Rule 7.7). A Notice of Dispute can be served by emailing it (see Rule 28.8). If a Notice of Dispute is emailed on a Friday, the five-Working-Days period does not start until the following Monday. Assuming there are no public holidays in that week and every day is a Working Day, the fifth Working Day is the Friday. This means that the Application for Dispute Resolution must be given to NZDRC no later than 11:59 pm on that Friday.



- 28.21 Time periods under these Rules are calculated in Working Days. If a period is agreed or specified that is not calculated in Working Days, and the last day of such a period is not a Working Day, the period will be extended to the first Working Day that follows.

### **No storage of documents**

- 28.22 Documents provided to the Mediator or Adjudicator or NZDRC will be destroyed after the expiry of three calendar months from the end of the Mediation or Adjudication. If a Party wants any original document returned to them, they must ask the Mediator or Adjudicator or NZDRC to return it before the end of the three months and pay the reasonable costs of returning it.

### **Authority of NZDRC**

- 28.23 All decisions of NZDRC under these Rules (for example, a decision to appoint a Mediator or Adjudicator or revoke a Mediator's or Adjudicator's appointment) are administrative in nature. They are final and binding on the Parties and the Mediator or Adjudicator and are not subject to appeal to NZDRC. NZDRC is not required to explain the reasons for its decision.
- 28.24 The Parties and the Mediator or Adjudicator are deemed to agree not to apply to any court, judicial authority or other body for relief in relation to NZDRC's jurisdiction or authority under these Rules. This Rule does not apply if NZDRC acts fraudulently.

### **General privileges and immunities**

- 28.25 Every witness giving evidence under the Scheme and every counsel or expert or other person assisting the Parties in a Mediation or Adjudication have the same privileges and immunities as witnesses and counsel in proceedings before a court.

### **Professional standards and complaints**

- 28.26 All Mediators and Adjudicators must be current members of a relevant professional body and abide by their membership rules (including but not limited to continuing professional development requirements) and code of ethics. Examples of relevant professional bodies include: the Arbitrator's and Mediator's Institute of New Zealand, Resolution Institute, the New Zealand Law Society, the Bar Association of New Zealand, and the ADR Institute of New Zealand.



28.27 Any Party wishing to make a complaint about the operation of the Scheme must complete the Complaints Form on the NZDRC Website. Any complaint received will be dealt with by NZDRC's Complaints Officer in accordance with the procedure set out in NZDRC's Complaints Policy published on the Website.

28.28 The complaints process may not be used to challenge the outcome of a particular dispute or delve into what happened in a Mediation unless all Parties waive confidentiality.

## Reporting

### Annual Report

28.29 NZDRC must supply an annual report to the Minister within three months after the end of the financial year applying to the Scheme (**Annual Report**).

28.30 The Annual Report must contain information about the Scheme identified by the Minister in relation to that financial year. As a minimum, the Annual Report must provide the following information:

- (a) matters relating to the last Annual Report:
- (b) how the Scheme is meeting its intended purpose set out in clause 1(a) of Schedule 2 of the Act; and
- (c) whether the Scheme is complying with the principles specified in clause 1(b) of Schedule 2 of the Act.

28.31 NZDRC must publish the Annual Report on its Website.

### Independent Review

28.32 The Minister must ensure that an independent review of the Scheme is undertaken at least once every three years after the date of the Scheme's approval (**Review**). The independent reviewer's report must be supplied to the Minister within three months of completion (**Report**).

## Promotion of Scheme

28.33 NZDRC must work with the Commission, the Grocery Commissioner and other interested parties to:





- (a) promote the Scheme; and
- (b) ensure the Scheme is accessible to those persons entitled to use the Scheme for the resolution of Disputes.

28.34 NZDRC may collect information in relation to the Scheme for statistical or research purposes and may publish that information in a statistical or summary form that could not reasonably be expected to identify any particular person.

### **Regulated Grocery Retailer complaints process and promotion of the Scheme**

28.35 Regulated Grocery Retailers must develop, operate and publicise an effective complaints process modelled on the principles of fairness, accessibility, responsiveness, and efficiency. The complaints process should be client focussed, visible and accessible to enable quick resolution, promote good decision making, and foster good relations with Suppliers and Wholesale Customers.

28.36 Regulated Grocery Retailers must take all reasonable steps to promote the Scheme to Suppliers and Wholesale Customers. Regulated Grocery Retailers must advise a Supplier or Wholesale Customer about access to the Scheme and the process for doing that as soon as a complaint concerning the subject matter of an eligible Dispute is received (see Rule 1.2 for eligibility).

28.37 The Scheme:

- (a) must maintain, or ensure there is maintained, at all reasonable times the [www.nzdrc.co.nz](http://www.nzdrc.co.nz) internet site for the Scheme on which it promotes the Scheme and information and documents to enable participation in the dispute resolution Scheme; and
- (b) may promote the Scheme's availability in any other way it thinks fit to the public at large, so as they may learn about the Scheme.

28.38 The Scheme may collect case studies of references to the Scheme and may (without any information identifying the parties involved) publish them on its website for the purpose of:

- (a) educating potential Claimants and Respondents;.



- (b) educating other groups that have an interest in the case studies or in complaints resolution processes; and
- (c) demonstrating the process of decision making under the Scheme.

NZDRC does not represent or warrant that the website will be free of error or operate without delay or interruption from time to time.

### **Scheme Funding**

- 28.39 Every Regulated Grocery Retailer specified in section 8 of the Act and every person designated as a Regulated Grocery Retailer under section 9 of the Act during all or part of a financial year (**Designated Regulated Grocery Retailers**) must pay a levy to fund the Scheme for that financial year to NZDRC (**Levy**).
- 28.40 For the financial year beginning on 1 April 2024 and ending on 31 March 2025, the Levy will comprise the relevant sub-levies specified in clause 1 of Schedule 2 of these Rules.
- 28.41 For each subsequent financial year, the Levy will comprise the relevant sub-levies specified in clause 2 of Schedule 2 of these Rules.
- 28.42 In deciding the amount of a Levy, NZDRC may take into account estimated as well as actual expenses.
- 28.43 The Levy will be split evenly between the Designated Regulated Grocery Retailers.
- 28.44 NZDRC may make a different apportionment of the Levy, but any differences must be based on criteria broadly intended to reflect the time and expense that NZDRC expects (in the light of previous experience) to spend in dealing with matters relating to different Designated Regulated Grocery Retailers and any Related Parties.
- 28.45 NZDRC must inform each Designated Regulated Grocery Retailer of its Levy and an explanation of how the amounts have been calculated (including any criteria applicable under Rule 28.44) at least 5 Working Days before payment is due.
- 28.46 Any additional Regulated Grocery Retailer designated under sections 9 or 26 of the Act during the financial year will be charged a flat rate Levy payment equivalent to an equal share of the total Levy based on the number of Regulated Grocery Retailers designated



at the time the Levy was fixed, pro-rated to reflect the portion of the financial year remaining from the date of designation.

- 28.47 If NZDRC has a surplus, NZDRC may roll the surplus over to fund the Scheme in whole or in part for the next financial year or it may repay some or all of it to the relevant Designated Regulated Grocery Retailers.
- 28.48 If NZDRC has a shortfall, NZDRC may recover that shortfall in deciding the amount of the Levy to be imposed on the Designated Regulated Grocery Retailers to fund the Scheme for the next financial year.
- 28.49 In this section:
- (a) “financial year” means the period beginning 1 April of any year and ending 31 March in the following year; and
  - (b) “surplus” means money held by NZDRC in relation to the provisional sum allowances specified in clause 4 of Schedule 2 of these Rules at the end of a financial year less liabilities for unpaid amounts for that financial year.

#### **When Levy must be paid**

- 28.50 NZDRC will collect the Levy annually in advance. The due date for each payment is the 30<sup>th</sup> of March of the year preceding the financial year for which the Levy is payable.

#### **Late payment of levy**

- 28.51 If any Designated Regulated Grocery Retailer liable to pay the Levy fails to pay the whole amount of that Levy by the date specified in Rule 28.50, the Designated Regulated Grocery Retailer must pay interest on the unpaid amount at the rate of 1.5% per month compounding monthly calculated from the date payment is due.
- 28.52 Interest will be calculated in monthly instalments for each month, or part of each month, that the payment is due.
- 28.53 The amount of any unpaid Levy or interest is recoverable in any court of competent jurisdiction as a debt due to NZDRC.



## **General Matters**

28.54 The rules of an approved scheme established under Schedule 2 of the Act must be treated as containing any provision that is implied into those rules by the Regulations (if any).

Any provision in these Rules has no effect to the extent that it is inconsistent with any provision implied into the Rules by the Regulations (if any).



## **SCHEDULE 1: APPOINTMENT, REVOCATION AND REPLACEMENT OF MEDIATORS AND ADJUDICATORS**

### **1 SELECTION AND APPOINTMENT CRITERIA**

- 1.1 In appointing a Mediator or an Adjudicator and deciding whether a person is suitable, impartial and independent, NZDRC will take into consideration:
- (a) the circumstances in which the Dispute arose (for example, the nature of the relevant Contract or legal relationship);
  - (b) the nature of the Dispute;
  - (c) the value of the Dispute;
  - (d) the number of Parties and their location and languages;
  - (e) the availability of a person to determine the Dispute in the timeframes set out in these Rules;
  - (f) the International Bar Association Guidelines on Conflicts of Interest in International Commercial Arbitration (as at the date of any Application for Adjudication);
  - (g) any information provided by the Parties (see Rule 7.15); and
  - (h) any other matters that NZDRC considers relevant in the circumstances.
- 1.2 NZDRC has a list of approved Mediators and Adjudicators. Any other person who is approached in connection with their possible appointment as a Mediator or an Adjudicator must provide to NZDRC:
- (a) a written résumé of their past and present professional positions and any relevant experience;
  - (b) a schedule of their fee rates; and
  - (c) any other information NZDRC considers relevant.
- 1.3 Any person requested to act as a Mediator or an Adjudicator must provide NZDRC with a written declaration:



- (a) confirming that, to the best of their knowledge, they are ready, willing and able to provide sufficient time, diligence and effort to ensure the conduct of the Mediation or Adjudication in a timely manner and in accordance with these Rules;
- (b) advising whether, to the best of their knowledge, there are any circumstances (past or present) that are likely to give rise to justifiable doubts as to their impartiality or independence in the eyes of any of the Parties; and
- (c) undertaking to comply with the continuing duty to disclose any circumstances arising which may be likely to give rise to justifiable doubts about their suitability, impartiality or independence in the eyes of any of the Parties (see Rule 21.3).

## 2 REVOCATION OF APPOINTMENT FOLLOWING CHALLENGE NOTICE

- 2.1 A Party may request the replacement of a Mediator or an Adjudicator if the Party becomes aware of information or circumstances that it considers gives rise to justifiable doubts about the Mediator's or Adjudicator's suitability, impartiality or independence.
- 2.2 A request for a replacement must be notified to the Mediator or Adjudicator, NZDRC and every other Party within five Working Days of the Party becoming aware of the information or circumstances that give rise to the request (**Challenge Notice**). The Challenge Notice must state the information or circumstances on which the request for replacement is based.
- 2.3 A recipient of a Challenge Notice has three Working Days from receipt of the Challenge Notice to respond to it. If a recipient is late in responding, NZDRC does not have to have regard to that response but may do so in its sole discretion.
- 2.4 NZDRC may revoke a Mediator's or an Adjudicator's appointment if it receives a Challenge Notice, and either:
  - (a) every other Party responds in time and agrees to the Challenge Notice;
  - (b) the Mediator or Adjudicator voluntarily withdraws as a result of the Challenge Notice; or



(c) NZDRC, having considered the Challenge Notice and any responses to it, considers that the Mediator's or Adjudicator's appointment should be revoked.

2.5 A Challenge Notice does not affect the conduct of the Mediation or Adjudication. However, if an Adjudicator withdraws or is replaced during the period between service of the last Submission provided by the Parties and the date by which the Adjudicator must use their best endeavours to make their Determination under Rule 17.21, the period of time referred to in Rule 17.21 will be extended by the period of time that elapses between service of the relevant Submission and the appointment of the replacement Adjudicator.

2.6 Revocation of an appointment as a result of a Challenge Notice does not imply acceptance of the validity of any ground referred to in the Challenge Notice.

### **3 REVOCATION OF APPOINTMENT FOR OTHER REASONS**

3.1 NZDRC can revoke a Mediator's or an Adjudicator's appointment if:

- (a) the Mediator or Adjudicator notifies NZDRC of their intention to resign as Mediator or Adjudicator;
- (b) the Mediator or Adjudicator becomes unable or unwilling to perform their role (either in fact or in law, because of infirmity, or otherwise);
- (c) the Mediator or Adjudicator fails to perform their role within the timeframes set out in these Rules; or
- (d) circumstances exist that NZDRC considers, in its sole discretion, give rise to justifiable doubts as to the Mediator's or Adjudicator's suitability, impartiality or independence.

3.2 In deciding whether to revoke under clause 3.1(c) or (d), NZDRC must consult with the Mediator or Adjudicator and the Parties.



## **4 APPOINTMENT OF A REPLACEMENT MEDIATOR OR ADJUDICATOR**

- 4.0 If the appointment of a Mediator or an Adjudicator is revoked, NZDRC will appoint a replacement Mediator or Adjudicator. NZDRC will use its best endeavours to appoint a replacement Mediator or Adjudicator within three Working Days of the revocation.





## SCHEDULE 2: CALCULATION OF LEVY

1. For the financial year beginning on 1 April 2024 and ending on 31 March 2025 the Levy will comprise the following sub-levies:
  - (a) one-off set-up costs for the Scheme (**Set-up Costs**);
  - (b) annual operational costs of the Scheme (**Operational Costs**); and
  - (c) an allowance for the cost of providing mediation and adjudication services (**Dispute Resolution Costs**).
2. For each subsequent financial year, the Levy will comprise:
  - (a) Operational Costs; and
  - (b) Dispute Resolution Costs.
3. The Levy will be in an amount calculated or set or reset by NZDRC in accordance with, or in connection with the preparation of the performance of, and in the performance of, NZDRC's functions, powers and duties arising under, out of or in connection with the Scheme.
4. For the purposes of clause 1 of this Schedule:
  - (a) Set-up Costs include a provisional allowance for stakeholder liaison and marketing;
  - (b) Operational Costs include a provisional allowance for marketing and reporting, attendances at conferences and tradeshows, and any costs of litigation incurred for or in connection with the performance of NZDRC's functions, powers and duties under the Scheme or the exercise of its powers under sections 157 and 159(3) of the Act (see Rules 1.6 and 14.2); and
  - (c) Dispute Resolution Costs include a provisional allowance For Mediators' Fees and Adjudicators' Fees;
  - (d) The annual gross Levy and its apportionment as between Designated Regulated Grocery Retailers, including the provisional amounts referred to in (a) – (c) above will be published on NZDRC's website; and



- (e) Mediators' and Adjudicators' Fees will be calculated in accordance with the schedule of Fees, rates, and terms and conditions published on NZDRC's website from time to time.
  
- 5. For the purposes of calculating or setting or resetting the Levy payable by each Designated Regulated Grocery Retailer for each subsequent financial year in terms of 28.41 and clause 3 of this Schedule, NZDRC must provide each Designated Regulated Grocery Retailer with a statement of accounting in respect of expenditure of the provisional sum allowances referred to in clause 4 above. Expenditure in relation to the provisional sum allowance included in the Set-up Costs referred to in clauses 1(a) and 4(a) above is relevant only to accounting for expenditure for the financial year beginning on 1 April 2024 and ending on 31 March 2025 and setting the Levy to be calculated for the financial year commencing 1 April 2025 and ending on 31 March 2026.