

# GLOBALDAIRYTRADE MARKET RULES



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## GUIDING PRINCIPLES

The goal is to develop and manage a multi-seller Trading Platform for trading dairy products that embraces the objectives of independence, neutrality and transparency, and is trusted by both buyers and sellers. In furtherance of this goal, the following principles will be used to guide any modifications to the Rules and governance structures, and to inform the administration and operation of the Trading Platform.

### 1 Foster efficient and competitive markets

The Rules are intended to foster efficient and competitive markets which:

- encourage the discovery of prices for the products traded through the competitive interaction of buyers and sellers;
- establish prices that clear the market (in the sense that the quantity the purchasers are willing to buy at the market price equals the quantity producers are willing to sell at the market price); and
- allow buyers and sellers to identify and take responsibility for managing risk.

### 2 Enable the entry of new buyers and sellers

The Rules are intended to enable the entry of new buyers and sellers on consistent terms and facilitate the trading of new products and contracts.

### 3 Comply with the law

The Rules and actions of all Participants are intended to comply with the laws of all applicable jurisdictions, including commercial, securities and competition laws.

### 4 Robust and enforceable Rules

The Rules are intended to be robust and enforceable through a process which is neutral, independent and confers sufficient power to monitor and enforce the Rules.

### 5 Transparent process

The Rules and governance structures are intended to maintain a process which:

- is transparent;
- is not biased to any party, including limiting the potential for any party to amend the Rules in a manner that introduces an unjustifiable bias; and
- achieves a balance between providing certainty within the Rules and flexibility to alter the Rules in line with changes in the market environment.

# GlobalDairyTrade Market Rules

## PART A: REGISTRATION AND PARTICIPATION

### 1 Registration as a Participant

#### 1.1 Participation in a Trading Event

Only Participants may participate in a Trading Event.

#### 1.2 Participation Agreement

Anyone who wishes to purchase or sell Products in a Trading Event must enter into a Participation Agreement with GDT. Such Participation Agreement, in respect of Bidders, will be in the form set out in Appendix 1. Such Participation Agreement, in respect of Sellers, will be in the form approved by GDT and the Trading Manager.

#### 1.3 Participant roles

Participants may be either a Bidder, a Seller or, if allowed by GDT, both. Any Participant granted dual Bidder-Seller status may participate on the Trading Platform only if it agrees to restrictions reasonably imposed by GDT in respect of the internal distribution and access to its Seller information provided under these Rules and information it receives in its capacity as a Bidder under these Rules regarding other Sellers, and (as provided under rule A3.1) on the proviso that it must not bid on its own Products during a Trading Event.

#### 1.4 How to register as a Participant

Application to become a Participant will be made in the manner specified by GDT from time to time on the Information Website.

#### 1.5 Acceptance

Each applicant to become a Participant will be accepted provided the person:

- (a) can demonstrate a bona fide intention and capability to comply with these Rules if admitted as a Participant; and
- (b) meets the published qualifications set out in Rule A1.6 (in the case of Bidders) and Rule A1.8 (in the case of Sellers),

in each case to the satisfaction of GDT acting reasonably and in a manner consistent with the Guiding Principles.

#### 1.6 Acceptance as Bidder

To be accepted as a Bidder an applicant must:

- (a) provide the standard information requested on the Information Website;
- (b) demonstrate that it intends to actively bid in Trading Events; and
- (c) provide such additional information requested by GDT relevant to consideration of the matters referred to in this Rule A1.6 and Rule A1.5.

#### 1.7 Acceptance does not confer Eligibility

Acceptance as a Bidder does not in itself confer the right to purchase Product in a Trading Event. A Bidder is eligible to purchase Product offered by a Seller only if that Seller has enabled them to bid for that Seller's Products as provided for in Part C of the Rules.



### 1.8 Acceptance as Seller

To be accepted as a Seller an applicant must:

- (a) commit to offer at least 5,000 MT annually of Product through the Trading Platform;
- (b) demonstrate to GDT that offering its Product through the Trading Platform has a reasonable chance of commercial success; and
- (c) provide such additional information requested by GDT relevant to consideration of the matters referred to in this Rule A1.8 and Rule A1.5.

### 1.9 Further information requests

GDT may from time to time request information from Participants where necessary for the efficient administration of Trading Events and Participants must provide such information by the requested date. A Participant should clearly mark as such any commercially sensitive information it provides and request that it be kept confidential.

*Explanatory Note: Rule B4.3 requires GDT to keep such information separate from any Affiliate that is a Seller.*

### 1.10 Information updates

The Participant must promptly notify GDT if any of the information provided by the applicant under Rules A1.6, A1.8 or A1.9 changes.

## 2 Binding obligations in relation to Trading Events

### 2.1 Rules binding on Participants

These Rules will govern the operation of the Trading Platform and Trading Events. The terms of use set out on the Bidding Website and the Information Website each form part of these Rules to the extent they are applicable to Participants. To the extent there is any inconsistency between the terms of use and the Rules, the Rules will prevail.

### 2.2 Rules an enforceable contract

The Rules are a contract enforceable against each Participant by GDT. To the extent that the Rules and/or any Participation Agreement confers benefits on the Trading Manager, the members of the Oversight Board, the members of the Rulings Panel and their respective Affiliates, or Affiliates of GDT, the Rules and/or such Participation Agreement (as applicable) shall be enforceable by such persons in accordance with the terms of the New Zealand Contracts (Privity) Act 1982.

Except as provided for in Rule A2.3, these Rules are not enforceable by Participants.

### 2.3 Contract between Winning Bidder and Successful Seller

When Product is sold in a Trading Event a binding contract is formed between each Winning Bidder and the Successful Seller. The terms of the contract formed are:

- (a) the total price payable for the Product is the applicable FAS Winning Price plus the additional charges specified in accordance with Rule C1.8 applicable to the Winning Bidder (less any adjustment under that Rule);
- (b) the Winning Quantity (or such quantity as may be rounded to the nearest container or truck load) will be shipped during the shipment period specified for the relevant Contract Period; and

- (c) Rules C1.3 and C7.6 and all other terms as specified in the Successful Seller's Supply Agreement, as published on the Information Website.

This Rule A2.3, and the terms of the Successful Seller's Supply Agreement, are enforceable by, and for the benefit of, the Successful Seller against the Winning Bidder, or by the Winning Bidder against the Successful Seller, and the New Zealand Contracts (Privity) Act 1982 applies accordingly. For the purposes of this Rule A2.3, Successful Seller includes any Affiliate of the relevant Seller notified to Bidders under Rule C2.3 as the nominated selling entity.

#### 2.4 **GDT and Trading Manager not parties to Supply Agreement**

GDT and the Trading Manager are not parties to, or liable or responsible for, any Supply Agreement entered into pursuant to Rule A2.3 or any other arrangement between a Winning Bidder and a Successful Seller.

#### 2.5 **Disputes governed by Supply Agreement**

Disputes between Successful Sellers and Winning Bidders under any Supply Agreement are governed by the terms of the Successful Seller's Supply Agreement.

### 3 **Conduct of Participants**

#### 3.1 **General obligation**

No Participant may take any action, or omit to take any action, if the act or omission will have, or may have, the effect of creating or causing a false or misleading appearance of, or a false or artificial market for, participation, supply or demand in a Trading Event, and the Participant knows, or ought reasonably to know, that person's act or omission will, or is likely to have, that effect. Without limiting the foregoing, in no event may:

- (a) any Participant who is granted dual Bidder-Seller status bid on its own Products;
- (b) any Bidder bid on the Products of any Seller that is an Affiliate of that Bidder; or
- (c) any Participant conduct shill-bidding or otherwise manipulate prices by assuming multiple roles in a single Trading Event.

#### 3.2 **Prohibition on collusion**

Participants will not at any time directly or indirectly communicate, or enter into any agreement, arrangement or understanding, with any other person with respect to:

- (a) whether or not they will participate in any Trading Event;
- (b) the amount of any bid or offers made or expected to be made by any Participant;
- (c) the bidding or sale strategies of any Participant; or
- (d) any action that is intended to, or may, have the effect of manipulating the outcome of a Trading Event.

#### 3.3 **Exceptions**

Rule A3.2 does not prohibit or restrict disclosure by a Participant to:

- (a) GDT or the Trading Manager under the Rules; or

- (b) any consultant to or lawyer representing the Participant, or any person that is providing financing to the Participant for the purposes of acquiring Products in a Trading Event, unless such consultant or person providing financing is also:
  - (i) a Participant or an Affiliate of a Participant;
  - (ii) a consultant to another Participant; or
  - (iii) is employed or engaged by, or is a director, partner or other principal of, a person which is a consultant or professional advisor to another Participant.

### 3.4 Participant responsible for breach by Affiliates

Participants will procure and be responsible for compliance with these Rules by each of their Affiliates (as if such Affiliates were Participants) that have any involvement (including as agent or sub-contractor) in the Participant's participation in Trading Events, access to any portion of the Trading Platform or dealings with GDT and/or the Trading Manager.

### 3.5 GDT may request information

At any time GDT may require a Participant to provide information to satisfy it that the Participant or any of its Affiliates has not engaged and does not intend to engage in conduct that would breach Rules A3.1 – A3.4.

## 4 Status of Rules, rights and liabilities of GDT

### 4.1 Governing Law

The Rules are governed by New Zealand law. Each Participant will be deemed, by entering into a Participation Agreement with GDT, to have submitted irrevocably to the non-exclusive jurisdiction of the Courts of New Zealand.

### 4.2 Costs

GDT and the Trading Manager will not be liable under any circumstances for any costs or expenses incurred by the Participant as a result of participating in, or attempting to participate in, any Trading Event (including for a situation where there has been a breach of these Rules by any person).

### 4.3 Liability of administrative and governance bodies limited

To the maximum extent permitted by law, none of GDT, the Trading Manager, the members of the Oversight Board and members of the Rulings Panel appointed under the Rules (in respect of conduct or omissions when acting in that capacity), or any of their directors, officers, employees, representatives, agents or, except as expressly provided in any Participation Agreement, Affiliates shall be liable to any person under these Rules, any Participation Agreement, or otherwise.

## 5 Termination, suspension and disputes

### 5.1 Termination by Participant

A Participant may terminate its Participation Agreement at any time on 21 days written notice to GDT.

### 5.2 Termination due to inactivity

GDT may terminate without notice the Participation Agreement of any Participant who has been inactive on the Trading Platform for a period of more than 18 months.

### 5.3 Termination by GDT due to discontinuation

GDT may terminate the Participation Agreements of each Participant on 21 days written notice to the Participant if GDT elects to discontinue the Trading Platform.

### 5.4 Termination or suspension by GDT due to default

A Participant is in default under these Rules if:

- (a) the Participant or any of its Affiliates has breached these Rules (as determined by the Rulings Panel or by GDT) and, if such breach is capable of being remedied, fails to remedy such breach to GDT's reasonable satisfaction within seven days after receiving written notice from GDT to remedy the breach; or
- (b) the Participant or its Guarantor:
  - (i) is insolvent or bankrupt;
  - (ii) is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;
  - (iii) has a value of its assets taken as a whole which is less than its liabilities (taking into account contingent and prospective liabilities);
  - (iv) has a moratorium declared in respect of any of its indebtedness;
  - (v) goes into receivership, administration, liquidation, statutory management or any similar process in any jurisdiction, or any such step is commenced, in respect of all or any of its property; or
  - (vi) undergoes any direct or indirect change of control, or direct or indirect change in the legal or beneficial ownership of more than 25% of its share capital, securities, possession of voting power or by contract, trust or otherwise, either by a single event or series of events over any period of time where such an event means that the Participant (in the reasonable opinion of GDT) no longer satisfies the acceptance criteria under Rule A1.5.

The Participant must give notice to GDT as soon as practical after it has become aware of any actual or proposed event or circumstance as a result of which the Participant could breach this Rule and must provide GDT with such further information that it may request in connection with that actual or proposed event or circumstance.

### 5.5 Default notice

If a Participant is in default under these Rules, GDT, by notice in writing to the Participant, may either:

- (a) terminate that Participant's Participation Agreement; or
- (b) suspend that Participant from one or more Trading Events.

## 5.6 Consequences of default

Upon a notice being given by GDT pursuant to Rule A5.5, the Participant will:

- (a) either permanently (in the case of termination) or for a period specified by GDT (in the case of suspension) cease to be a Bidder or a Seller (as applicable), and for the relevant period will have no right to directly or indirectly list, sell, purchase or acquire any of the Products at Trading Events.
- (b) be liable to GDT for any loss or damage incurred by GDT in connection with the relevant default.

## 5.7 Suspension of Participant

If a Participant is suspended under Rule A5.5(b), then GDT may, as a condition of permitting the Participant to recommence participating in the Trading Events, impose such conditions as GDT thinks fit. These conditions may include, but are not limited to, a requirement for the Participant to provide pre-event and success deposits.

## 5.8 Termination not to affect accrued rights

Notwithstanding anything herein to the contrary, termination of a Participation Agreement shall be prospective only and shall be without prejudice to any accrued rights, benefits or obligations of the parties or any third party beneficiary and will not relieve the Participant or any Guarantor of any obligation to conclude the purchase of any Product in respect of which the Participant is the Successful Seller or a Winning Bidder or for breach of any Rule or the Participation Agreement prior to such termination. For the avoidance of doubt, all provisions of the Rules and any Participation Agreement providing for any limitation on liability, disclaimer of liability, rights of indemnification or third party beneficiary rights, Section 4 of the Participation Agreement, and Part A Sections 4 and 5 of the Rules shall survive termination of the Participation Agreement.

## 5.9 Notices

All notices under these Rules must be in writing (which includes email and facsimile communications) and are deemed to be delivered if sent (physically or electronically) to the address, email account or facsimile number held by, or specified to, GDT from time to time.

## PART B: GOVERNANCE AND ADMINISTRATION

### 1 Governance

#### 1.1 Transition to Oversight Board

On and from the date that version 6.0 of these Rules comes into force, GDT will rename the Advisory Board the "**GDT Oversight Board**" (referred to herein as the "**Oversight Board**"), and the Oversight Board will have all powers, rights, duties and obligations of the Advisory Board and as set out in the Rules.

#### 1.2 Oversight Board governed by Charter

The Oversight Board will be governed by the Charter, and will include representation for Bidders, Sellers and members of the relevant financial markets.

#### 1.3 Objective of Oversight Board

The primary objective of the Oversight Board is to ensure the Trading Platform is operated and developed in accordance with the Guiding Principles.

#### 1.4 Role of Oversight Board

The role of the Oversight Board includes (but is not limited to):

- (a) identifying and proposing to GDT changes to the Rules and the operation of Trading Events that would further the objective in Rule B1.3;
- (b) approving changes to the Rules proposed by GDT in accordance with Rule B2.2;
- (c) responding to any notifications from, or requests for consultation by, GDT;
- (d) monitoring GDT's compliance with governance practices relevant to the operation of the Trading Platform;
- (e) in respect of the chairperson of the Oversight Board, convening an independent Rulings Panel to determine complaints; and
- (f) establishing working groups as agreed with GDT to consider specific issues and to develop recommendations regarding the Rules or operation of the Trading Platform for consideration by the Oversight Board.

#### 1.5 Appointment of Oversight Board

Members of the Oversight Board will be appointed and removed by GDT from time to time in accordance with the Charter.

#### 1.6 Oversight Board recommendations not binding

Any recommendation made by the Oversight Board will be considered by GDT in good faith and in a manner that is consistent with the Guiding Principles but GDT will not be under any obligation to adopt or follow such recommendation.

### 2 Amendments to the Rules

#### 2.1 Rule changes

GDT from time to time, with the approval of the Oversight Board, may change the Rules by implementing a new rule or amending or revoking an existing Rule by following the rule change procedure set out in Rule B2.2.

## 2.2 Rule change procedure

The procedure for implementing a rule change is as follows:

- (a) GDT will publish a rule change proposal on the Information Website containing the information required under Rule B2.3;
- (b) GDT will consider all valid submissions received on the rule change proposal. Where practical, GDT will consult with submitters and affected Participants in good faith and consider the merit and materiality of their submissions. A summary of all valid submissions received on the rule change proposal, as well as any responses from GDT, will be promptly disclosed by GDT to the Oversight Board;
- (c) after the end of the consultation period (which may be extended at any time in GDT's discretion), GDT will decide whether or not it wishes to adopt the rule change proposal and, if so, submit the final wording of the rule change proposal to the Oversight Board for approval;
- (d) GDT will publish on the Information Website whether or not the rule change proposal has been approved by the Oversight Board. If approved by the Oversight Board, GDT will also publish on the Information Website:
  - (i) the final wording of the new or amended Rule, which may vary from the initial rule change proposal as provided for in Rule B2.7; and
  - (ii) where applicable, the date that the rule change will take effect; and
- (e) where any change notified in a rule change proposal requires amendment in a manner that is a material change under Rule B2.7, GDT will issue the amended proposal as a new rule change proposal.

## 2.3 Information required for Rule change proposal

A rule change proposal will include the following information:

- (a) the wording of the proposed new rule or amended Rule, or where the proposal is to remove the Rule, the existing Rule being removed;
- (b) an explanation of why the rule change is being proposed;
- (c) the date the proposed rule change is proposed to take effect if adopted;
- (d) a statement describing the process for making submissions on the rule change proposal;
- (e) the date on which submissions must be received by GDT; and
- (f) the address and method by which submissions should be submitted to GDT.

## 2.4 Parties who may make submissions

All rule changes proposed under Rule B2.3 will provide a process for any person to make submissions to GDT on the proposed rule change unless otherwise specified in the rule change proposal.

**2.5 Publication of submissions**

Submissions with respect to rule change proposals will be confidential to the submitter, GDT and the Oversight Board, unless the rule change proposal specifies that submissions will be published on the Information Website.

**2.6 Notice periods**

Subject to Rule B2.9, the notice periods for rule change proposals are as follows:

- (a) the date on which the submission period under Rule B2.3(e) ends will be no earlier than seven days from the date on which the rule change proposal was published on the Information Website; and
- (b) the date any rule change will take effect if approved by the Oversight Board will be no earlier than five days from the date on which the final wording of the Rule change is published by GDT in accordance with Rule B2.2(d).

**2.7 Immaterial changes to proposed rule change**

GDT may amend the rule change notified in the rule change proposal at any time in response to submissions received without the need to issue a new rule change proposal provided such changes do not materially alter the intention or objective of the proposed change.

**2.8 Application to prior transactions**

Any amendments to the Rules pursuant to this Part B will not apply to transactions entered into prior to the date of the amendment unless GDT and the Participants involved in the transaction agree otherwise.

**2.9 Rule changes in case of urgent situation**

GDT may waive the rule change procedures in Rules B2.1 – 2.8 if an urgent rule change is required to maintain the orderly and efficient operation of Trading Events. Any change made under this Rule will be immediately notified to the Oversight Board (together with an explanation for the urgency of the change) and published on the Information Website.

**3 Complaints and Rulings****3.1 Participants may lodge complaint**

A Participant who considers that another Participant or any of its Affiliates has committed a breach of the Rules may lodge a complaint in the manner specified by GDT from time to time on the Information Website. Any such complaint must be:

- (a) made in writing and signed by the Participant's chief executive officer or general counsel (or a similar senior executive-level employee of the Participant); and
- (b) accompanied by the prescribed fee set out on the Information Website, provided that if the complaint is upheld by Rulings Panel such fee will be refunded to that Participant in full.

For the avoidance of doubt, this complaints process does not provide Participants with a forum through which to dispute any act or omission of GDT or any issues arising between Participants or any of their Affiliates under a Supply Agreement or otherwise at law (as stated in Rules A2.2 and A2.5).



### 3.2 GDT may lodge complaint

GDT, whether of its own volition or in response to information received from one or more Participants, may lodge a complaint from time to time in the prescribed manner where it considers that a Participant or any of its Affiliates has committed a breach of the Rules.

### 3.3 Complaints disclosed to chairperson of the Oversight Board

GDT will, as soon as reasonably practicable, disclose each valid complaint lodged to the chairperson of the Oversight Board (subject to any redactions necessary to comply with clause 14 of the Charter or compliance advice it has received). The chairperson of the Oversight Board will deal with any such complaints referred to him or her in accordance with the Charter, including, if necessary, by convening a Rulings Panel to determine the complaint. If the chairperson is conflicted in relation to a complaint or there is no chairperson currently appointed to the Oversight Board, the Rulings Panel may be convened in accordance with the process otherwise set out in the Charter, subject to any provisions therein.

### 3.4 Rulings

GDT in its absolute discretion may make rulings as to the meaning or interpretation of any one or more of the Rules, either at the request of a Participant, the Oversight Board, the Rulings Panel or otherwise, and whether or not a dispute exists.

### 3.5 Publication of interpretation rulings

GDT will publish on the Information Website each ruling made under Rule B3.4 unless GDT determines that the ruling is immaterial or trivial.

## 4 Market administration

### 4.1 Market administration

GDT will act as market administrator. This role will involve compiling and distributing certain Participant-related information under these Rules and carrying out certain other functions specified in the Rules including the monitoring of and publicly commenting on Trading Event outcomes and providing secretarial functions in respect of the Oversight Board established under Part B of the Rules and the Rulings Panel.

### 4.2 Exercise of discretions

In exercising its discretionary powers under these Rules, GDT will act by reference to the Guiding Principles. Without limitation to these obligations, GDT will seek appropriate legal and economic advice in respect to the exercise of its powers.

### 4.3 Confidential information protocols

In addition to its obligations under Rule C2.8, until GDT ceases to be an Affiliate of a Seller it must maintain in place the protocols and procedures it adopted, which reflect compliance advice it has received, to ensure that its activities and the information it holds in its capacity as market administrator are clearly separated from the other business activities such Seller carries on as a manufacturer of dairy products. Any changes to such protocols and procedures shall be provided to the Oversight Board and their consistency with compliance advice received by GDT confirmed by an independent person prior to implementation. GDT's on-going compliance with such protocols and procedures will be subject to an annual audit by an independent person.

### 4.4 Recognised financial markets

Where a financial instrument offered by a recognised financial market is settled by reference to the Winning Prices for a Product offered on the Trading Platform, GDT may modify the application of certain rules in respect of access to information relating to Trading

Events (including access to the Bidding Website to observe Trading Events) for the purpose of providing financial markets (including financial market operators) with access to the same information as Participants on the Trading Platform relevant to assessing the price of the Product and the operation of Trading Events. Such modifications will be notified to the Oversight Board prior to taking effect and will be published on the Information Website.

#### 4.5 Appointment of Trading Manager

GDT will appoint a Trading Manager to manage Trading Events and provide advice in relation to the Trading Platform. That Trading Manager must not be directly or indirectly controlled by any Participant. The terms of that appointment will be agreed by the Trading Manager and GDT but such terms must require the Trading Manager to operate Trading Events in accordance with these Rules. GDT at any time may change the Trading Manager in accordance with the terms of its agreement with the Trading Manager.

#### 4.6 Notifications to Oversight Board

GDT will advise members of the Oversight Board and the Trading Manager, as soon as practicable:

- (a) before it formulates any significant Rule change proposal (and in any event before commencing public consultation);
- (b) before new generic Product types are offered for sale on the Trading Platform;
- (c) of the compliance plans, confidential information protocols, or similar matters, adopted by GDT pursuant to Rule B4.3 and any material changes to such documentation;
- (d) of the appointment and terms of reference of the independent person pursuant to Rule B4.3 and any reports issued by such person;
- (e) prior to issuing any rulings;
- (f) of any proposed change to the Trading Manager;
- (g) of any proposed modifications to information disclosure developed under Rule B4.4; and
- (h) of any investigation, inquiry, request for information, complaint or proceeding from a regulatory or governmental agency in relation to any breach or alleged breach of any law in respect of the Trading Platform or the Rules.

## PART C: OPERATION OF TRADING EVENTS

### 1 General terms

#### 1.1 GDT to determine operational parameters

GDT will determine:

- (a) the dates and starting times for Trading Events;
- (b) the generic Product types that may be offered at Trading Events;
- (c) the content and format of information to be published on the Bidding Website and Information Website and the timing of its publication;
- (d) the fees payable by Participants and by other parties for any data, information or services related to Trading Events or the Trading Platform, and payment terms; and
- (e) any other operational matters required to operate Trading Events in accordance with these Rules.

#### 1.2 Contract Periods

A **Contract Period** defines the period during which Products will be shipped by Sellers from the specified shipment locations. Contract Period 1 means the Product will be shipped during the first calendar month following the month the Trading Event was held, Contract Period 2 means the Product will be shipped during the second calendar month following the month the Trading Event was held, and so on, such that Contract Period x means the Product will be shipped during the x<sup>th</sup> calendar month following the month the Trading Event was held. The Contract Periods available at Trading Events will be set by GDT from time to time and may be changed by notification on the Information Website.

#### 1.3 Sellers to ship within Contract Period

Each Successful Seller will ship the Winning Quantity, or such quantity as may be rounded to the nearest full container/truckload, at any time during the shipment period specified for the relevant Contract Period. The Seller has no obligation to ship the Winning Product on any particular days within the Contract Period unless such arrangements have been agreed in writing between the Successful Seller and the Winning Bidder.

#### 1.4 Exposures to be managed by Contract Period Bid Limits

Prior to each Trading Event, each Seller will specify for each Bidder a Contract Period Bid Limit for each Contract Period. The Contract Period Bid Limit is the maximum quantity that the Bidder may bid across all of the Seller's Products offered in the relevant Contract Period.

*Explanatory Note: The purpose of a Contract Period Bid Limit is to enable Sellers to manage their contract and credit exposure to each buyer. The total potential exposure that a Seller has to a Bidder in a Contract Period is the Contract Period Bid Limit and the total potential exposure that a Seller has to a Bidder in a Trading Event is the sum of the Contract Period Bid Limits specified for the Bidder across all the Contract Periods. Contract Period Bid Limits do not allow a Seller to restrict a Bidder to bid on a subset of the Seller's Products offered in the Contract Period.*

### 1.5 Restricted products to be managed by Bidder Product Restrictions

Prior to each Trading Event, each Seller may specify for a Bidder an individual product or group of the Seller's products the Bidder is not permitted to bid on during the Trading Event. A Seller must not permit a Bidder that is an Affiliate of that Seller to bid on any of that Seller's products during the Trading Event.

*Explanatory Note: The purpose of the Bidder Product Restrictions is to enable the eligibility determinations of a Seller in respect of a Bidder to be integrated into the processes of the Bidding Website as well as the contractual arrangements established under Rule A2.3.*

### 1.6 Prices to be denominated in USD

Unless otherwise specified on the Bidding Website all Starting Prices, Announced Prices, and Winning Prices for Products offered at Trading Events are denominated in US dollars per MT (USD/MT).

### 1.7 Prices to be specified on FAS basis

Unless otherwise specified on the Bidding Website all Starting Prices, Announced Prices, and Winning Prices for Products offered at Trading Events are specified on a Free Along Side (FAS) basis at the specified shipment locations.

*Explanatory Note: Adjustments to the final invoice price will be specified under Rule C1.8 to reflect delivery arrangements between the Seller and the Winning Bidder.*

### 1.8 Sellers may specify additional charges/adjustments

A Seller may specify additional charges to be paid by Winning Bidders for the Seller's Products that are additional to the Winning Price. Charges or adjustments also may be specified to reflect a non-sea freight mode of delivery. Any such additional charges will be to compensate the Seller for additional services provided to a Bidder, for example (but without limitation) freight, insurance, provision of health or other certification requirements and to take into account any export subsidies that may be available.

*Explanatory Note: Any additional charges or adjustments will not be payable unless they have been notified to Bidders in advance of the Trading Event as provided in Rules C2.2 and C2.3*

### 1.9 Sellers to provide Supply Agreement and specifications

To be eligible to offer Products in a Trading Event, the Seller must provide to GDT no later than 21 days before the first Trading Event that the Seller offers the relevant Product:

- (a) the Supply Agreement that will apply to any sale entered into as provided for in Rule A2.3;
- (b) the generic specifications for each Product the Seller may offer in the Trading Event; and
- (c) such other information about each Product as may be requested by GDT.

*Explanatory Note: As provided for in Rule C.7.6, Bidders must satisfy themselves that the Product they are bidding on meets their requirements in all respects, and in particular that any Product it places a bid on can be imported to their destination country.*

### 1.10 GDT to publish supply documents

GDT will publish the Supply Agreement, Product specification or other information provided under Rule C1.9 on the Information Website no later than five days after receipt from the Seller.

**1.11 Sellers may change supply documents**

A Seller at its sole discretion may replace or revise any Supply Agreement, Product specification or other information provided under Rule C1.9. No later than five days after receipt from the Seller, GDT must publish any such new or revised document on the Information Website.

**1.12 Notice period for new supply documents to take effect**

Any new or revised Supply Agreement, Product specification or other information provided under Rule C1.11 will take effect five days from the date of publication on the Information Website.

**1.13 GDT participation fees**

The fees payable by Participants are:

- (a) for Sellers, as set out on the fee schedule provided on the Information Website; and
- (b) for Bidders, no participation fees will be charged.

The fees payable by the Participants referred to above may be amended by GDT from time to time by publication of such amendment on the Information Website no later than three months before such changes take effect.

**1.14 Payment by Sellers**

In respect of each Trading Event, each Seller must pay its participation fee in the manner specified by GDT no later than 21 days after receipt of an invoice.

**1.15 Participants to provide information by approved method and format**

Each Participant must provide to GDT or the Trading Manager all information required under these Rules using the method and format specified by GDT.

**2 Pre-event process****2.1 GDT to provide list of Bidders**

No later than 10 days prior to each Trading Event, GDT will provide to each Seller the current list of Bidders.

**2.2 Sellers to provide contracting information**

No later than the date and time as notified by GDT from time to time prior to the Trading Event, each Seller will provide to GDT the following information in relation to each Bidder:

- (a) the Seller's Contract Period Bid Limits as provided under Rule C1.4;
- (b) the Seller's additional charges as provided under Rule C1.8;
- (c) the Seller's Inco Term;
- (d) the Seller's payment terms; and
- (e) if relevant, the Seller's Bidder Product Restrictions as provided under Rule C1.5.

**2.3 Bidders to access information prior to Trading Event**

Prior to the Trading Event, GDT will make available to each Bidder the information specific to them that has been received from Sellers under Rule C2.2 and any notice or information that a Seller may wish to provide to Bidders relating to Products offered by the Seller.

*Explanatory Note: GDT will aim to make information received under Rule C2.2 available 5 days prior to a Trading Event but provision of the information nearer to a Trading Event will not stop or invalidate the event.*

#### 2.4 **Sellers may set Contract Period Bid Limits at zero**

In any Trading Event, a Seller may set the Contract Period Bid Limits for one or more Bidders to zero.

*Explanatory Note: If a Seller sets a Bidder's Contract Period Bid Limits to zero for a Contract Period the Bidder will not be able to bid on the Seller's Products for that Contract Period during that Trading Event. If a Seller sets all of a Bidder's Contract Period Bid Limits to zero the Bidder will not be able to bid on any of the Seller's Products in the Trading Event.*

#### 2.5 **Sellers may disclose certain forecast information**

A Seller may, but is not required to, provide to Bidders or its customers or by publication to a recognised financial market in accordance with Rule B4.4, forecast offer quantities and other forecast information but must not provide such information to other Sellers. This forecast information may include forecast offer guidance ranges within which the Seller expects its actual and/or forecast offer quantities to be situated under normal circumstances (and given that Seller's normal range of offer quantity variability). Any Seller that elects to provide forecast offer guidance ranges may later cease this practice by giving not less than three months' prior notice to GDT.

#### 2.6 **Seller may be required to provide explanatory note**

Without limiting a Seller's general obligations under Rule A3.1, or a Seller's freedom to:

- (a) update its forecast information (including guidance ranges) from time to time; or
- (b) provide additional information to Bidders or its customers or any recognised financial market relevant to assist in interpreting its forecast information (including guidance ranges),

if one or more of a Seller's actual and/or forecast offer quantities will fall outside of its forecast guidance range provided under Rule C2.5, that Seller must, as close as reasonably possible to the release of its Product supply information to Bidders under Rule C2.11, issue an explanatory note to GDT outlining the reason(s) for such deviation from its forecast guidance range.

#### 2.7 **GDT to enforce confidentiality of pre-event information**

In the event that GDT, or an independent inspector appointed by GDT, determines (using such process as it thinks fit), that a Seller has not complied with Rule C2.5, or that a Seller or Bidder has not complied with Rule C2.8, GDT may suspend the Seller's or Bidder's (as applicable) participation in the Trading Platform in accordance with Rule A5.4.

#### 2.8 **Bidder information to be confidential**

Bidder-specific information provided under Rule C2.2(a)-(e) must be kept confidential to the relevant Bidder, relevant Seller, and GDT.

## 2.9 Sellers may offer Products as part of one or more groups

A Seller may offer a Product as part of:

- (a) a **Sales Group** that comprises multiple Products in the same Contract Period; and
- (b) one or more **Milk Component Groups** each of which comprises multiple Products in the same Contract Period, and each of which is identified with a relevant milk solid of milkfat, casein protein, whey protein, or lactose.

*Explanatory Note:*

*The purpose of a Sales Group is to take advantage of the Seller's product mix flexibility to sell Product quantities according to which Products are demanded most by Bidders during the Trading Event. For example, a Seller may list WMP Product specifications for Regular, Instant, and UHT as belonging to a WMP Sales Group with an overall Maximum Supply of 1000 MT. Although manufacturing flexibility may allow the Seller to produce (for example) up to 800 MT for each of Regular, Instant, and UHT (adding up to 2400 MT), limits on the volume of milk and/or total processing capacity may mean that only 1000 MT in total can be sold. The benefit of this approach is that it enables GDT to achieve a better match between Products that Bidders wish to buy and the range of Products that Sellers are able to supply.*

*A similar explanation applies for Milk Component Groups. For example, a Seller may have 1000 MT of milkfat available and the manufacturing flexibility to process that milkfat into AMF and/or butter and/or other milkfat-containing products.*

## 2.10 Sellers to provide Product supply information

No later than the date and time as notified by GDT from time to time prior to the Trading Event, each Seller will provide to the Trading Manager the following information:

- (a) for each Product they wish to offer, the **Minimum Supply** quantity, **Maximum Supply** quantity, and Starting Price for each Contract Period;
- (b) for each Sales Group and Milk Component Group specified by the Seller, the Minimum Supply quantity and the Maximum Supply quantity.

*Explanatory Note:*

*The information provided under clause (a) defines the degree of flexibility in sold quantity for a Product relative to its corresponding Sales Group. For example, for a Sales Group with Maximum Supply of 1000 MT, defining a Product as having Minimum Supply of zero and Maximum Supply of 1000 MT means there is unrestrained flexibility for that Product's sold quantity to fall within the range 0 – 1000 MT.*

*The information provided under clause (b) defines the degree of flexibility in the total sold quantity for a Sales Group relative to any Milk Component Groups specified by the Seller. For example, a Sales Group with a supply range of 900 – 1000 MT (being Minimum Supply of 900 MT and Maximum Supply of 1000 MT) would have a 10% flexibility, while a supply range of 750 – 1000 MT would indicate 25% flexibility in sold quantity.*

## 2.11 Product supply information to be published to Bidders

Prior to the Trading Event, Bidders will be provided:

- (a) the information received from Sellers under Rule C2.10 and, if provided, under Rule C2.5 and C2.6; and
- (b) a statement to the effect that Bidders must not provide such information to any other person.

## 2.12 Product supply information to be confidential

Subject to any modifications in force under Rule B4.4, Participants must keep strictly confidential the information provided under Rule C2.11. In particular, except for any modification in place pursuant to B4.4, such information should not be communicated by any Seller to another Seller.

**2.13 GDT to enforce confidentiality of Product supply information**

In the event that GDT, or an independent inspector appointed by GDT, determines (using such process as it thinks fit), that a Participant has not complied with Rule C2.12, GDT may suspend the Participant's participation in the Trading Platform in accordance with Rule A5.4.

**2.14 Sellers responsible for providing correct information**

Each Seller is responsible for ensuring the information required under this Rule C2 is complete and correct in all respects and in the format specified by GDT, in particular:

- (a) a Seller may not change its information provided under this Rule C2 later than the date and time as notified by GDT from time to time before the Trading Event;
- (b) where GDT or the Trading Manager determines in their sole discretion that the information is incomplete, incorrect or not in an acceptable format, the Seller's Products will not be offered at the Trading Event; and
- (c) GDT and the Trading Manager have no responsibility to any Participant for the consequences of information being incomplete, incorrect or in a non-prescribed format or if the Seller's Products are not offered at the Trading Event.

**2.15 Trading Manager to open Bidding Website**

The Trading Manager will open the Bidding Website to Participants, and to any third party observers approved by GDT in writing and notified to the Oversight Board, before the commencement of each Trading Event.

*Explanatory Note: The Bidding Website will open starting 48 hours prior to the Trading Event and will close 48 hours after the Trading Event. Failure to ensure the Bidding Website is open continuously during this period will not contravene these Rules or invalidate the Trading Event.*

**2.16 Bidders responsible for connection to Bidding Website**

Each Bidder is responsible for establishing and maintaining its Internet connection to the Bidding Website during the Trading Event. GDT and the Trading Manager have no responsibility for an Internet connection that is unsatisfactory or insufficient to enable the Bidder to participate in the Trading Event.

**2.17 Bidders unable to connect may contact Help Desk or GDT**

A Bidder who is unable to connect to the Bidding Website or otherwise encounters technical difficulties may contact:

- (a) the Help Desk by phone when it is open; or
- (b) GDT through the email help facility [help@globaldairytrade.info](mailto:help@globaldairytrade.info) available at the Information Website.

*Explanatory Note: The Help Desk ordinarily will be available starting two hours prior to the start of the Trading Event until the close of the Trading Event. Outside of these times, Bidders will direct all enquiries either to Sellers or to GDT through the email help facility [help@globaldairytrade.info](mailto:help@globaldairytrade.info). Failure to ensure the Help Desk is open continuously during this period will not contravene these Rules or invalidate the Trading Event. A person sending an email to [help@globaldairytrade.info](mailto:help@globaldairytrade.info) must be aware that GDT will view the email during New Zealand business hours and that failure to respond to the email prior to the Trading Event will not contravene these Rules or invalidate the Trading Event.*



## 3 Conduct of trading events

### 3.1 Trading Events to be conducted as clock auctions

Each Trading Event will be conducted by the Trading Manager as a simultaneous, multiple-round, ascending-price clock auction involving:

- (a) bidding rounds (a **Round**) during which Bidders may submit bids on multiple Products and Contract Periods as provided in Rule C4;
- (b) End-of-Round (**EOR**) periods during which the Trading Manager reviews the results of the Round and announces prices for the next Round as provided in Rule C5; and
- (c) closing the Trading Event when the closure requirements have been met.

### 3.2 Trading Manager determines duration of Rounds

The Trading Manager will determine the duration of Rounds and EOR periods, which may be varied at any time prior to and during a Trading Event.

### 3.3 Bidders not obligated to bid

A Bidder is under no obligation to submit a bid during a Trading Event.

### 3.4 Bidders may bid on any unrestricted Products

A Bidder may bid on any of the Products offered in a Contract Period that a Seller has not specified as being subject to a Bidder Product Restriction under Rule C1.5, subject to the Bidder's Contract Period Bid Limits with the Seller and the other Rules governing what a Bidder can bid including a Bidder's Eligibility. For the avoidance of doubt, as provided under Rules A3.1 and C1.5, a Bidder is not eligible to, and must not, bid on any Products offered by a Seller that is an Affiliate of that Bidder.

### 3.5 Trading Manager communication

Except for communication through the Bidding Website and the Help Desk, the Trading Manager must not communicate with Bidders at any time before, during or after Trading Events in relation to any matter that may affect a Trading Event.

## 4 Bidding Rounds

### 4.1 Announced Prices

Prior to the start of each Round, the Bidding Website will display the Announced Price for each Product in effect for that Round, such that:

- (a) for Round 1, the **Announced Price** is the Starting Price for the relevant Product; and
- (b) for subsequent Rounds, the **Announced Price** for a Product will be equal to its preceding Announced Price plus any Price Increment determined in accordance with Rule C5.15.

### 4.2 Bidder may submit a bid only during a Round

Bidders may submit bids only during a Round.

*Explanatory Note: Bidders may submit bids during Rounds without actively participating during the Trading Event by using the Auto-Bid option. A Bidder can specify an Auto-Bid before the Trading Event starts so that the Bidder need not log in during the Trading Event.*

**4.3 Bidders bid in quantity units of MT**

A Bidder may bid on a Product during a Round by entering the number of MT the Bidder commits to purchase at the Announced Price for the Product.

**4.4 Bidders cannot exceed Contract Period Bid Limit**

The total number of MT a Bidder may bid across all of a Seller's Products for a particular Contract Period cannot exceed the Bidder's Contract Period Bid Limit as specified by the Seller under Rule C2.2.

*Explanatory Note: Contract Period Bid Limits do not change from Round-to-Round; they are fixed prior to the start of the Trading Event and remain unchanged throughout the Trading Event.*

**4.5 Bidders cannot exceed Eligibility**

The total number of MT a Bidder may bid across all Products cannot exceed the Bidder's Eligibility for the relevant Round as notified on the Bidding Website.

*Explanatory Note: Eligibility differs from Contract Period Bid Limits in two ways. First, Eligibility is the total bidding limit across all Products, Contract Periods, and Sellers whereas Contract Period Bid Limits are specific to Sellers and Contract Periods. Second, a Bidder's Eligibility may decline as the Trading Event proceeds whereas Contract Period Bid Limits remain unchanged throughout the Trading Event.*

**4.6 Bidder Eligibility for first Round**

Each Bidder's Eligibility for Round 1 of the Trading Event will be equal to the sum of the Bidder's Contract Period Bid Limits across all Sellers.

**4.7 Bidder Eligibility for second and subsequent Rounds**

For the second and each subsequent Round, the Bidder's Eligibility will be determined by the EOR procedure under Rule C5.14.

*Explanatory Note: A Bidder's Eligibility cannot increase during the Trading Event; it can only remain the same or decrease from Round to Round. If a Bidder bids fewer total MT in a Round than its Eligibility in effect during the Round, then its Eligibility may be reduced for the next Round as determined by the EOR procedure described in Rule C5. The only way that a Bidder can ensure that its Eligibility is not reduced for the following Round is to bid total MT across all Products equal to its Eligibility in effect for the Round.*

**4.8 Bidders with zero Eligibility cannot bid**

A Bidder whose Eligibility falls to zero during the Trading Event is not allowed to submit further bids in the Trading Event and may lose access to the Bidding Website for the remainder of that Trading Event.

**4.9 Bidders cannot reduce bid if Announced Price is unchanged**

If the Announced Price for a Product in a Round is unchanged from the preceding Round then no Bidder can reduce the number of MT bid on that Product.

**4.10 Bidders may change bid quantity if Announced Price has increased**

If the Announced Price in the current Round for a Product has increased from the preceding Round, each Bidder may reduce, maintain, or increase their MT bid on the Product, provided that such a bid is consistent with the Bidder's Eligibility and Contract Period Bid Limits and do not exceed the Product's Maximum Supply.

*Explanatory Note: The Eligibility restriction means that a Bidder may increase the number of MT bid on a Product in a Round compared to the preceding Round only by reducing the number of MT it bid on one or more other Products.*

**4.11 Only Confirmed Bids are valid bids**

The Trading Manager will confirm to the Bidder that its bid is valid and is a Confirmed Bid by issuing a confirmation number on the Bidding Website observable only by the Bidder.

**4.12 New bids replace old bids**

If a Bidder submits and confirms more than one bid during a Round, each new Confirmed Bid replaces any prior bids that the Bidder may have submitted during that Round. The Bidder's Confirmed Bid for the Round is the last Confirmed Bid that it submitted while the Round was open.

*Explanatory Note: When a Bidder re-submits and confirms a bid the new Confirmed Bid will replace the previous Confirmed Bid in its entirety. This means that when re-submitting a bid, the Bidder must enter MT on all the Products for which it intends to bid, including those Products where it wishes to bid the same MT as in their previous Confirmed Bid.*

**4.13 End of Round Confirmed Bids are irrevocable and binding**

At the end of a Round, all Confirmed Bids are irrevocable and binding on the Bidder.

**4.14 Bidding via Help Desk**

A Bidder who is unable to participate in a Trading Event through the Bidding Website may phone the Trading Manager's Help Desk and request the Help Desk to place a bid on its behalf.

**4.15 Help Desk has no liability**

The Trading Manager and GDT have no liability whatsoever under any circumstances to the Bidder in the event that the Help Desk is not able to or does not for any reason submit and confirm the bid as requested by the Bidder.

**4.16 Help Desk validity**

A bid placed by the Help Desk on behalf of a Bidder will be valid as if the Bidder had placed the bid.

**4.17 Limited information disclosed to Help Desk**

A Bidder who contacts the Help Desk will identify itself solely through its username and password, and must not otherwise disclose its company name or similar identifying information.

*Explanatory Note: The Help Desk ordinarily will be available starting two hours prior to the start of the Trading Event until the close of the Trading Event. Outside of these times, Bidders will have no contact with the Trading Manager and will direct all enquiries either to Sellers or to GDT through the email help facility [help@globaldairytrade.info](mailto:help@globaldairytrade.info). Failure to ensure the Help Desk is open continuously during this period will not contravene these Rules or invalidate the Trading Event. A person sending an email to [help@globaldairytrade.info](mailto:help@globaldairytrade.info) must be aware that GDT will view the email during New Zealand business hours and that failure to respond to the email prior to the Trading Event will not contravene these Rules or invalidate the Trading Event.*

**5 End-of-Round procedure****5.1 Trading Manager to apply EOR procedure**

At the end of each Round the Trading Manager will process the Confirmed Bids to determine:

- (a) the level of demand for each Product, Sales Group, and Milk Component Group;
- (b) the subscription status for each Product, Sales Group, and Milk Component Group;
- (c) the Products (if any) which will be subject to the rollback procedure;
- (d) the Accepted Bid quantities determined for each Bidder as a result of the EOR procedure;
- (e) the Eligibility for each Bidder for the next Round;

- (f) the Announced Price for each Product for the next Round; and
- (g) whether the criteria have been met for the Trading Event to be closed.

## 5.2 Default bid

If no Confirmed Bid was received from a Bidder (or their Auto-Bid) with positive Eligibility, the Trading Platform will submit a default bid on behalf of the Bidder which will be treated as a Confirmed Bid in all respects as if the Bidder had submitted and confirmed the bid. For each Product, the default bid will be zero MT except for those Products where the previous EOR procedure did not increase the Announced Price, in which case the default bid will be equal to the number of MT that was allocated to the Bidder by the previous EOR procedure.

*Explanatory Note: It is assumed that a Bidder who does not submit a bid wishes to bid zero MT. The default bid reflects this by entering zero MT for each Product except where the Bidder is tentatively locked in to a quantity on a Product whose price has not increased.*

## 5.3 Demand measured as the sum of Confirmed Bids

The Trading Manager will calculate demand:

- (a) for each Product, by aggregating across Bidders the MT in the Confirmed Bids for that Product;
- (b) for each Sales Group, by aggregating demand across the Products included in that Sales Group, provided that, for the purpose of determining rollbacks, each Product's calculated demand is deemed not to exceed that Product's Maximum Supply;
- (c) for each Milk Component Group, by aggregating the utilisation of the relevant milk component across the Products included in the Milk Component Group, provided that, for the purpose of determining rollbacks, each Sales Group's calculated demand is deemed not to exceed that Sales Group's Maximum Supply.

## 5.4 Subscription status determined by comparing demand against supply

The Trading Manager will:

- (a) set the subscription status for a Product as:
  - (i) **Over-Subscribed** if demand exceeds the Product's Maximum Supply;
  - (ii) **Under-Subscribed** if demand is less than the Product's Minimum Supply;
  - (iii) **Subscribed** if the Product is neither Over-Subscribed nor Under-Subscribed;
- (b) set the subscription status for a Sales Group as:
  - (i) **Over-Subscribed** if demand exceeds the Sales Group's Maximum Supply;
  - (ii) **Under-Subscribed** if demand is less than the Sales Group's Minimum Supply;
  - (iii) **Subscribed** if the Sales Group is neither Over-Subscribed nor Under-Subscribed;
- (c) set the subscription status for a Milk Component Group as:

- (i) **Over-Subscribed** if demand exceeds the Milk Component Group's Maximum Supply;
- (ii) **Under-Subscribed** if demand is less than the Milk Component Group's Minimum Supply;
- (iii) **Subscribed** if the Milk Component Group is neither Over-Subscribed nor Under-Subscribed.

#### 5.5 **An Under-Subscribed Product will be subject to rollback**

If a Product or Sales Group or Milk Component Group is Under-Subscribed following a Round but was Subscribed or Over-Subscribed in the preceding Round, the Trading Manager will apply a rollback to allocate MT in previously Confirmed Bids to one or more Products in order to minimize within constraints the level of under-subscription for the relevant Product, Sales Group, or Milk Component Group.

#### 5.6 **Bidders who reduced or switched bid quantity may be subject to rollback**

Where Rule C5.5 requires a rollback to be applied, the Trading Manager will apply the rollback MT by MT (not Bidder by Bidder) according to the following priority:

- (a) first, using MT that represent reduced Eligibilities for Bidders (i.e. for those Bidders that reduced the total MT they bid); and
- (b) second, using MT that were switched from being bid on the Product requiring a rollback to being bid on another Product.

#### 5.7 **Bidders who maintained bid quantity are not subject to rollback**

A Bidder who maintained their MT bid on a Product from one Round to the next will not be subject to a rollback on that Product.

#### 5.8 **Rollback causes two-price bid stack to be established**

Where a Product is subject to a rollback following a Round, the Trading Manager will establish a two-price bid stack for that Product where:

- (a) the lower price is the Announced Price from the preceding Round;
- (b) the higher price is the Announced Price for the Round that just ended;
- (c) the quantity associated with the lower price in the Product's bid stack is equal to the number of MT allocated by the rollback process; and
- (d) the quantity associated with the higher price in the Product's bid stack is equal to the number of MT bid on the Product in the Round just ended as determined by the EOR procedure.

#### 5.9 **New higher-priced bid quantities may displace lower-priced bid quantities**

Where a Product has a two-price bid stack, new MT bid on the Product by any Bidder — necessarily bid at the higher price — may displace previously rolled back MT at the lower-price in the Product's bid stack if necessary to ensure demand does not exceed the Product's Maximum Supply.

#### 5.10 **Displaced bid quantities are included in Bidder's Eligibility for next Round**

A Bidder's displaced MT will be counted towards the Bidder's Eligibility for the next Round and referred to as the Bidder's **Free Eligibility** for that Round.

### 5.11 Free Eligibility ceases after one Round

The Free Eligibility created from displaced MT may be used by the Bidder to bid on any Product in the next Round. However, if not used in the next Round, the relevant MT will cease to count towards the Bidder's Eligibility and the Bidder's Eligibility will be reduced accordingly.

### 5.12 Two-price bid stack ceases if lower-priced MT reduces to zero

A Product with a two-price bid stack will revert to a single-price bid stack with a single Announced Price if and when displacements cause the quantity of lower-priced MT in the bid stack to reduce to zero.

### 5.13 Determination of Accepted Bids

On completion of the EOR procedure, the MT bid for each Product in the Bidder's accepted bid (**Accepted Bid**) will be equal to the MT bid for the Product in the Bidder's Confirmed Bid plus or minus adjustments (if any) resulting from rollbacks and displacements.

### 5.14 Determination of Eligibilities

On completion of the EOR procedure, each Bidder's Eligibility for the next Round will be equal to the Bidder's total MT across all Products in its Accepted Bid plus Free Eligibility (if any) resulting from displacements.

### 5.15 Determination of Price Increments

The Trading Manager will in its sole discretion determine for each Product the increase in the Announced Price for the next Round (**Price Increment**) provided that:

- (a) a Product that is Under-Subscribed or that has two prices in its bid stack will have a zero Price Increment;
- (b) a Product that is Over-Subscribed will have a Price Increment greater than zero.

### 5.16 Determination of Demand Indicators

The EOR procedure will determine the Demand Indicator status for each Product Group and for the total of all Product Groups as the ratio of aggregate demand to aggregate supply, where:

- (a) Aggregate demand is the sum of MT bid on the relevant Products; and
- (b) Aggregate supply is the sum of the Sales Group Maximum Supply quantities of all relevant Sales Groups;
- (c) Where a Sales Group is a part of a Milk Component Group (as provided under Rule C2.9), the Maximum Supply quantity included in (b) may be scaled to accommodate the Seller's aggregate supply constraints across Products included in the relevant Milk Component Groups;
- (d) The aggregate measures in (a), (b), and (c) exclude Product and Sales Group quantities where the MT bid attributed to a Sales Group is less than a threshold percentage of the Sales Group Minimum Supply as specified on the Bidding Website.

*Explanatory note:*

*The purpose of clause (c) is to ensure available supply quantities are not double counted. For example, a Seller may have 1000 MT of milkfat available and the manufacturing flexibility to process that milkfat into AMF and/or Butter in any combination that utilises the full 1000 MT of milkfat. This could be up to a maximum of 1000 MT of AMF (since 1 MT of milkfat converts into approximately 1 MT of AMF) or up to a maximum of 1200*

*MT of Butter (since 1 MT of milkfat combines with water to convert into approximately 1.2 MT of Butter). With only 1000 MT of milkfat available for processing, to use the 1000 MT of AMF and 1200 MT of Butter in the aggregate supply measures would be misleading. It is more accurate to scale these supply quantities so that no more than 1000 MT of milkfat would be used.*

*The purpose of clause (d) is to exclude Products with a Starting Price sufficiently high to cause the Product to be 'out of the market'. For example, if a Seller offered 10,000 MT of a Product at a Starting Price that is so high that it attracts no bids (or only few bids), the Product is effectively 'out of the market' and would have the effect of distorting the Demand Indicator for 'in the market' Products.*

### 5.17 Trading Manager to report Round results

As soon as possible following completion of the EOR procedure, the Trading Manager will report the Round results on the Bidding Website and, in the case of (a) and (b) below, to GDT as follows:

- (a) for each Product Group and in total across all Product Groups to be observed by all Participants and provided to GDT:
  - (i) the Demand Indicator for each completed Round; provided
  - (ii) the Product Group has a sufficient number of active bidders as specified on the Bidding Website;
  - (iii) the Demand Indicator will be rounded to the nearest whole number or part whole number or as otherwise specified on the Bidding Website.
- (b) for each Product to be observed by all Participants and provided to GDT:
  - (i) the Announced Price for the next Round;
  - (ii) the Price Increment for the next Round, measured as the Announced Price for the next Round minus the Announced Price in effect during the Round that just closed; and
  - (iii) the Price Increment for the next Round as a percentage of the Announced Price in effect during the Round that just closed;
- (c) for each Bidder to be observed only by the relevant Bidder:
  - (i) details of that Bidder's Confirmed Bid in the completed Round;
  - (ii) details of that Bidder's Accepted Bid in the completed Round; and
  - (iii) the Bidder's Eligibility for the next Round.

### 5.18 GDT to make Round results available to interested parties

Subject to Rule B4.3, as soon as possible after receiving data under Rule C5.17 or otherwise, GDT may make the following information available to any interested party, either by publishing free of charge or through a data subscription service:

- (a) the Demand Indicators as published on the Bidding Website;
- (b) for each Product Group and each Product Group / Contract Period combination:
  - (i) the average Announced Price for the next Round; and/or

- (ii) the average percentage change of Announced Prices from the preceding Round; and/or
  - (iii) the average percentage difference of Announced Prices from the relevant Winning Prices of the preceding Trading Event; and
- (c) such other information relating to the completed Round that GDT determines, with the approval of the Oversight Board.

## 6 Closure of Trading Event

### 6.1 The Closing Rule

The Trading Manager will end the Trading Event after the first Round in which the following closing requirements have been met:

- (a) each Product, Sales Group, and Milk Component Group is not Over-Subscribed; and
- (b) no Bidder has Free Eligibility.

### 6.2 Determination of Winning Prices

Following the last Round of the Trading Event as determined by the closing Rule, the **Winning Price** for each Product will be determined as follows:

- (a) if the Product has only one price in its bid stack, then that price is the Winning Price;
- (b) if the Product has two prices in its bid stack, then the lower of the two prices is the Winning Price.

### 6.3 Determination of Winning MT

For each Product, the Winning MT are those MT that are in the Product's bid stack as determined by the EOR procedure following the last Round of the Trading Event.

### 6.4 Determination of Winning Bidders

The **Winning Bidders** are the Bidders with Accepted Bids with greater than zero MT as determined by the EOR procedure following the last Round of the Trading Event.

### 6.5 Determination of Successful Sellers

The **Successful Sellers** are the Sellers who offered Products that have Winning MT as determined by the EOR procedure following the last Round of the Trading Event.

## 7 Post-event process

### 7.1 Publication of results

Without limiting Rule C7.7, as soon as possible following the close of a Trading Event:

- (a) the Trading Manager will publish on the Bidding Website all Winning Prices;
- (b) GDT will publish free of charge on the Information Website:
  - (i) each Winning Price published on the Bidding Website provided the Winning Price exceeds its corresponding Starting Price. In the event of any



inconsistency in data values between the two Websites, the Bidding Website will prevail;

- (ii) the total Minimum Supply, total Maximum Supply, and total Winning MT (each aggregated across all Products and all Sellers); and
  - (iii) other summary information regarding the Trading Event provided such information does not refer to or identify an individual Participant's results;
- (c) Subject to Rule B4.3, GDT may make the following information available to any interested party either by publishing free of charge or through a data subscription service:
- (i) the total Winning MT for each Sales Group and Milk Component Group;
  - (ii) the distribution of total Winning MT by Bidder region (aggregated across selected Product Groups and Bidder regions as determined by GDT);
  - (iii) the distribution of participating Bidders by Bidder region; and
  - (iv) such other information relating to the Trading Event that GDT determines, with the approval of the Oversight Board.

#### 7.2 **Trading Manager to give notice when results are final**

All Trading Event results displayed on the Bidding Website and Information Website at the close of a Trading Event are preliminary and subject to correction until such time as the Trading Manager declares them to be final.

#### 7.3 **Trading Manager to provide results to Participants**

After the close of a Trading Event, the Trading Manager will provide results through the Bidding Website or by other means:

- (a) to each Bidder, its Winning MT and Winning Price on each Product identifiable by Seller;
- (b) to each Seller, its Winning MT and Winning Price on each Product identifiable by Bidder; and
- (c) subject to Rule C7.4, to GDT such information as required for the purpose of analysing and improving the performance of the Trading Platform.

Except as expressly contemplated by Rules C5.18 and C7.1, information provided under Rule C7.3 must be kept confidential to the relevant Bidder, relevant Seller, and GDT.

#### 7.4 **Trading Manager cannot provide bidding history to non-Bidders**

Unless a Bidder has given consent in writing, the Trading Manager must not provide to GDT or any Seller any information that would enable GDT or any Seller to identify any Bidder's Round-by-Round MT bids in any Trading Event.

#### 7.5 **Seller to contact Winning Bidders**

Following the close of the Trading Event, each Seller must contact each Winning Bidder for its Products and take such action as is required to give effect to the sale on the terms set out in the Seller's Supply Agreement.

**7.6 Successful Sellers and Winning Bidders bound by Product specification**

Product supplied to Winning Bidders by Successful Sellers must meet the Product specification provided by each Seller. Bidders must satisfy themselves that the Product they are bidding on meets their requirements in all respects, and in particular that any Product it places a bid on meets the import requirements of the proposed destination country. Unless a Successful Seller agrees otherwise in writing with a Winning Bidder, the Successful Seller will not be required to satisfy any specific Product attributes, or provide test results or import documentation that is not listed in the Product specification.

**7.7 GDT may issue public statements**

From time-to-time, GDT may issue a public statement summarising the results of one or more Trading Events and/or setting out its intentions for future Trading Events. Except as provided in Rule C7.1 such statements must not refer to or identify an individual Participant's results.

**7.8 GDT may provide aggregate bidder information to sellers**

From time to time, GDT may provide to a Seller a list of the Bidders who have previously purchased specific products offered on the platform, where:

- (a) Bidders are divided into quartile ranges of purchase quantities (i.e. largest 25%, upper middle 50 – 75%, lower middle 25 – 50%, and smallest 25%); and
- (b) The allocation into quartile ranges is based on each Bidder's purchase quantity of the product or products over a period of at least 12 months that ends at least 3 months prior to the date at which the list is compiled.

*Explanatory Note: For the avoidance of doubt, the list will not provide the actual purchase quantity, names of sellers purchased from, or bidding data of any individual or group of bidders in one or more Trading Events.*

**7.9 Ownership of data relating to Trading Events and Trading Platform**

Each Participant acknowledges and agrees that all rights, title and interest in all information and/or data that is generated from, or connected with, any Trading Event or the Trading Platform (whether by GDT directly or through the Trading Manager), including data referred to in Rules C5.18 and C7.1, is owned by, and proprietary to, GDT.

**8 Intervention and review****8.1 Interventions prior to or during a Trading Event**

If exceptional circumstances arise, either of GDT or the Trading Manager may, in its sole discretion:

- (a) cancel a Trading Event at any time; or
- (b) adjourn, postpone, or suspend a Trading Event, or any part of a Trading Event, at any time and from time to time, for such period of time as it determines.

*Explanatory Note: Exceptional circumstances may include a situation where either of GDT or the Trading Manager considers that it is unable to operate the Trading Event in a manner consistent with the GlobalDairyTrade Market Rules.*

**8.2 Trading Manager may adjust offered volume**

Unless the Seller instructs otherwise, in the interests of maintaining an orderly and efficient process, the Trading Manager — solely for the purposes of the EOR procedure in Rule C5 — may adjust the Minimum Supply and/or Maximum Supply on one or more Products or Sales Groups or Milk Component Groups by no more than the greater of 50 MT or 2 percent of the Product, Sales Group, or Milk Component Group Maximum Supply.

## PART D: DEFINITIONS AND CONSTRUCTION

### 1 Definitions

In the Rules and the Participation Agreement, unless the context requires otherwise:

**Accepted Bid** has the meaning specified in Rule C5.13.

**Affiliate** means in relation to any person:

- (a) any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, that person. A person will be deemed to control another person if that person possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of that other person, whether by operation of law, by contract, through the ownership of voting securities or otherwise; and
- (b) any director, officer or employee, representative or agent of that person or any other person described in paragraph (a).

**Announced Price** has the meaning specified in Rule C4.1.

**Auto-Bid** means an optional tool or feature of the Trading Platform that a Bidder can use to instruct what bids the Bidder would like submitted on its behalf during a Trading Event absent intervention by the Bidder to override the Auto-Bid.

**Bidder** means a Participant who is accepted as approved to participate in a Trading Event and has signed an approved Participation Agreement.

**Bidding Website** means the Website notified to Participants.

**Charter** means the charter set out in Appendix 2, as may be amended from time to time.

**Confirmed Bid** means a bid submitted by a Bidder for which the Trading Platform has assigned a bid confirmation identification number.

**Contract Period** has the meaning specified in Rule C1.2.

**Contract Period Bid Limit** has the meaning specified in Rule C1.4.

**Eligibility** for a Round means the maximum number of MT across all Products that a Bidder can bid on that Round.

**EOR** has the meaning specified in Rule C3.1.

**Free Eligibility** has the meaning specified in Rule C5.10.

**GDT** means GlobalDairyTrade Holdings Limited, the entity that operates the Trading Platform in conjunction with the Trading Manager.

**Information Website** means the Website with address [www.globaldairytrade.info](http://www.globaldairytrade.info).

**Minimum Supply** and **Maximum Supply** have the meanings specified in Rule C2.10.

**Milk Component Group** has the meaning specified in Rule C2.9

**MT** means metric tonne.

**Over-Subscribed** has the meaning specified in Rule C5.4.

**Participant** means a person (other than GDT) who has entered into a Participation Agreement.

**Participation Agreement** means:

- an agreement entered into pursuant to Rule A1.2 on or after the date on which Version 1.0 of the Rules came into force; and
- an agreement originally entered into between Fonterra Co-operative Group Limited and a Bidder prior to the date on which Version 1.0 of the Rules came into force.

**Price Increment** has the meaning specified in Rule C5.15.

**Product** means any one of the dairy products listed on the Information Website as being for sale through the Trading Platform.

**Product Group** comprises all the Products and Sales Groups reported on the Information Website as belonging to the same group of products.

**Round** has the meaning specified in Rule C3.1.

**Rules** means these rules, including the Appendices, as may be amended from time to time.

**Rulings Panel** means the rulings panel convened, in accordance with the Charter, to hear a complaint lodged by a Participant or GDT under Rules B3.1 or B3.2.

**Sales Group** has the meaning specified in Rule C2.9.

**Seller** means a Participant who is accepted as eligible to use the Trading Platform to offer one or more Products for sale during a Trading Event and has signed an approved Participation Agreement.

**Starting Price** means the initial Announced Price at the start of the Trading Event for a Product of a Seller.

**Subscribed** has the meaning specified in Rule C5.4.

**Successful Seller** has the meaning specified in Rule C6.5.

**Supply Agreement** means in relation to any Product, the standard terms of supply on which a Seller will supply Product to Bidders that are listed on the Information Website by the Seller of that Product.

**Trading Event** means the GlobalDairyTrade trading events at which Sellers offer dairy Products for sale by via the Bidding Website in accordance with these Rules.

**Trading Manager** means the Trading Manager appointed under Rule B4.2 which at the date of adoption of these Rules is CRA International, Inc.

**Trading Platform** means the trading platform known as "GlobalDairyTrade" through which Trading Events are held and includes all activities and infrastructure associated with operation of Trading Events.

**Under-Subscribed** has the meaning specified in Rule C5.4.

**Winning Bidder** has the meaning specified in Rule C6.4.

**Winning Price** has the meaning specified in Rule C6.2.

## 2 Construction

In the Rules:

- (a) the Guiding Principles are for guidance purposes only and do not form part of the Rules. To the extent that there is any inconsistency between the Rules and the Guiding Principles, the Rules will prevail.
- (b) the headings appear as a matter of convenience and will not affect the construction of the Rules.
- (c) in the absence of an express indication to the contrary, references to Rules, sections, paragraphs and appendices are to rules, sections and paragraphs and appendices to, the Rules and reference to a Rule includes any of its sub-Rules or paragraphs.
- (d) the singular includes the plural and vice versa and words importing any gender include the other genders.
- (e) the appendices to the Rules will have the same force and effect as if set out in the body of the Rules.
- (f) the words "written" and "writing" include facsimile communications and any other means of communication resulting in permanent visible reproduction.
- (g) a reference to "days" means calendar days.
- (h) the word "person" includes any association of persons whether corporate or unincorporate, and any state or government or department or agency thereof, whether or not having separate legal personality.
- (i) unless stated otherwise, references to monetary amounts are to United States dollars (USD) currency and references to times are to New Zealand time.

## APPENDIX 1: FORM OF PARTICIPATION AGREEMENT

<b>GDT</b>	GlobalDairyTrade Holdings Limited Level 12, 23 Customs Street East Auckland 1010, New Zealand
<b>SIGNATURE</b>	
<b>NAME</b>	
<b>POSITION</b>	
<b>DATE</b>	

GDT operates the Trading Platform known as "GlobalDairyTrade" to facilitate sales of certain dairy Products.

The following person wishes to participate on the Trading Platform as a Participant and agrees to be bound by the terms set out in this Agreement.

<b>PARTICIPANT</b>	
<b>SIGNATURE</b>	
<b>NAME</b>	
<b>POSITION</b>	
<b>DATE</b>	

The Guarantor (if any) specified below agrees to guarantee the performance of such obligations of the Participant that are expressly mentioned in this Participation Agreement and GDT also wishes to appoint the Guarantor as a Participant.

*[Note: The following section is only to be completed if GDT notifies the person wishing to register as a Bidder that it requires a third party guarantee.]*

<b>GUARANTOR</b>	
<b>SIGNATURE</b>	
<b>NAME</b>	
<b>POSITION</b>	
<b>DATE</b>	

### Participant's contact person

<b>CONTACT NAME</b>	
<b>POSITION</b>	
<b>PHONE NUMBER</b>	
<b>EMAIL</b>	
<b>FACSIMILE</b>	

## 1 GENERAL OBLIGATIONS

By entering into this agreement ("**Agreement**"), the Participant and any Guarantor, agrees to, and will comply with, the terms of the GlobalDairyTrade Market Rules, as amended from time to time ("**Rules**"). All capitalised terms used in this Agreement, but not otherwise defined, shall have the respective meanings ascribed to such terms in the Rules.

## 2 PARTICIPANT

GDT accepts the Participant and any Guarantor on the terms of this Agreement.

## 3 ASSURANCES FROM THE PARTICIPANT

Each of the Participant and any Guarantor undertakes to GDT and the Trading Manager that each of the following statements is true and accurate at the date of this Agreement and on the date of each Trading Event held pursuant to this Agreement:

- (a) it has all necessary power, authority and capacity to enter into and carry out its obligations under this Agreement, and the execution, delivery and performance of this Agreement by the Participant and any Guarantor has been duly authorised.
- (b) entry into this Agreement, and performing and complying with its terms, will not result in violation by the Participant or any Guarantor of any laws, restrictions, or requirements to which the Participant or any Guarantor is subject.
- (c) the Participant and any Guarantor has entered into and executed this Agreement as a principal (and not as an agent or in any other capacity whatsoever).

## 4 DISCLAIMER, INDEMNITY AND LIMITATION OF LIABILITY

- 4.1 GDT, the Trading Manager, the Oversight Board, the Rulings Panel and their respective Affiliates have not made, nor do they make, any representation or warranty (whether express or implied) as to the accuracy or the completeness or fitness for any particular use or purpose of any information related to the Trading Events or Trading Platform, including the conduct of Trading Events, provided or to be provided to the Participant by or on behalf of GDT or the Trading Manager.
- 4.2 Participants use the Trading Platform entirely at their own risk and GDT, the Trading Manager, the Oversight Board, the Rulings Panel, and their respective Affiliates, directors, employees, representatives and advisors will not be liable to the Participant or any Guarantor or any of their respective Affiliates or any companies of which the Participant or any Guarantor is an Affiliate ("**Participant Group**"):
  - (a) for any Participant Group reliance by any person on any statement or representation (written or oral) made by or on behalf of GDT or, the Trading Manager, the Oversight Board or the Rulings Panel;
  - (b) with respect to the accuracy or, completeness or fitness for any particular use or purpose of any information related to any Trading Event or the Trading Platform provided by or on behalf of GDT or the Trading Manager; or

- (c) resulting from or related to the functionality of, or errors, faults or omissions in, the Trading Platform, to the extent that such functionality, error, fault or omission impacts the Participant's or Guarantor's use of the Trading Platform or ability to participate in any Trading Event; or
- (d) for or in respect of any acts or omissions of other Participants.

The Participant and any Guarantor agree that their sole remedy for dissatisfaction with the Trading Platform, GDT or the Trading Manager is to terminate this Agreement and stop using the Trading Platform.

- 4.3 The Participant and any Guarantor will conduct and complete their own due diligence and satisfy themselves as to the relevance, accuracy, applicability, completeness and fitness for any particular use or purpose of the Trading Platform and its websites, services, content, data, information, materials, products, software and tools.
- 4.4 The Participant and any Guarantor will:
- (a) pay all costs and expenses incurred by the Participant and any Guarantor in or as a result of participating in any Trading Event notwithstanding any cancellation, postponement, suspension, or adjournment of a Trading Event, or any amendment or other change to a Trading Event, any sale or any bid, any of the documents referred to in clause 5.1, or any other transaction or matter relating to the Trading Events or the Trading Platform; and
  - (b) indemnify and hold GDT, the Trading Manager, the Oversight Board, the Rulings Panel and their respective Affiliates harmless from any and all claims, demands, liabilities, investigations or causes of action arising from or related to the Trading Events or the Trading Platform, whether or not: (i) resulting from actions or omissions of the Participant, any Guarantor or any of their respective Affiliates or any breach by the Participant, any Guarantor or any of their respective Affiliates of this Agreement or the Rules, including, but not limited to, participation in any Trading Event or use of the Trading Platform or any information reported or provided in connection therewith; or (ii) resulting from the Participant's, Guarantor's or any of their respective Affiliate's loss, misuse or failure to properly secure its usernames and passwords.
- 4.5 To the maximum extent permitted by law, none of GDT, its Affiliates, the Trading Manager, the Oversight Board, the Rulings Panel or any of their respective Affiliates, successors or assigns will be liable to anyone whatsoever for any losses, claims, suits, actions or causes of action for direct, incidental, indirect, special, punitive, multiple or consequential damages or loss of profits or loss of revenue (including solicitor's fees or litigation costs) in connection with, relating to, or resulting from the Rules, any Trading Event or the Trading Platform. This includes, without limitation:
- (a) any losses, claims, suits, actions or damages that are in connection with, or relate to, or result from use of the Trading Platform (or any related procedures for buying or selling Products during a Trading Event);
  - (b) the cancellation, adjournment, postponement or suspension of a Trading Event;
  - (c) any failure to follow the Rules;



- (d) any failure to operate the Trading Platform as expected; and
- (e) any information provided that is inaccurate or incomplete.

## 5 MISCELLANEOUS

- 5.1 GDT or the Trading Manager may terminate this Agreement and/or the right of the Participant or any Guarantor to participate in any Trading Event in accordance with the Rules. Notwithstanding anything herein to the contrary, termination of this Agreement by any party shall be prospective only and shall be without prejudice to any accrued rights, benefits or obligations of the parties or any third party beneficiary and shall not relieve the Participant or any Guarantor of any obligation to conclude the purchase of any Product in respect of which the Participant is the Successful Seller or a Winning Bidder or for breach of this Agreement (including the Rules) prior to such termination. For the avoidance of doubt, all provisions of the Rules and this Agreement providing for any limitation on liability, disclaimer of liability, rights of indemnification or third party beneficiary rights, Section 4 of this Agreement and Part A Sections 4 and 5 of the Rules shall survive any termination of this Agreement.
- 5.2 GDT may novate, assign, transfer, mortgage, charge, pledge or otherwise dispose of (including by way of sub-contract) (each a "**Transfer**") its rights, interests, obligations and liabilities in, to or under this Participation Agreement to any person. If GDT transfers any obligations or liabilities in accordance with this clause, it will be released from such obligations or liabilities incurred after the date of such Transfer.
- 5.3 This Agreement is governed by the laws of New Zealand. To the extent that this Agreement (including the Rules) confers benefits on the Trading Manager, GDT, the Oversight Board, the Rulings Panel and their respective Affiliates, this Agreement (including the Rules) shall be enforceable by such persons in accordance with the terms of the New Zealand Contracts (Privity) Act 1982. Any dispute, difference or claim arising out of or in connection with this Agreement, or the subject matter of this Agreement, will be referred to and resolved by arbitration in accordance with the UNCITRAL Arbitration Rules (**Arbitration Rules**). The place of the arbitration will be Singapore. The tribunal will consist of one arbitrator appointed in accordance with the Arbitration Rules. For the purpose of article 6 of the Arbitration Rules, the appointing authority will be the Singapore International Arbitration Centre (**SIAC**), on the basis of the SIAC International Panel. The language of the arbitration will be English.
- 5.4 Each party will make all applications, execute all documents and do all acts and things reasonably required to implement and to carry out its obligations under the Agreement.
- 5.5 The Participant and any Guarantor will not be entitled to directly or indirectly assign, transfer, mortgage, charge, pledge or otherwise dispose of (including by way of sub-contract) any of its rights or interests in, or any of its obligations or liabilities under, or in connection with, or arising out of, the Agreement, except with the prior written consent of GDT.
- 5.6 This Agreement may be executed in any number of counterparts (including facsimile copies) and provided that every party has executed a counterpart, the counterparts together will constitute a binding and enforceable agreement between the parties.
- 5.7 In this Agreement, unless the context otherwise requires:

- (a) capitalised terms have the meanings given to them in the Rules;
- (b) the singular includes the plural and vice versa;
- (c) one gender includes both genders;
- (d) references to individuals include companies and other corporations and vice versa;
- (e) reference to monetary amounts, money, or money's worth are to US dollars unless in each case specifically stated otherwise; and
- (f) references to times of day or dates are to New Zealand times and dates respectively unless in each case specifically stated otherwise.

5.8 If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the extent possible.

## APPENDIX 2: CHARTER FOR GDT OVERSIGHT BOARD AND RULINGS PANEL

The Charter is held separately on the GDT public website, download [here](#).