

Warehousing Agreement

- (1) Simplot Australia Pty Limited
- (2) NewCold Melbourne No.2 Pty Ltd

Dated 11/9/2020 | 9:10:49 PM PST

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This Agreement is made on 11/9/2020 | 9:10:49 PM PST

Between

- (1) **Simplot Australia Pty Limited**, ACN 070 579 609 of 2 Chifley Drive, Moorabin Airport, Victoria, Australia (the "**Customer**"); and
- (2) **NewCold Melbourne No.2 Pty Ltd**, a company registered under the laws of Australia (Company registration: 613 140 453) whose registered office is at 108 Agar Drive, Truganina, Victoria Australia ("**NewCold**").

Background:

- (A) Customer has requested, and NewCold has agreed, to provide the Services to the Customer at the Warehouse in respect of goods owned by the Customer on the terms and conditions set out in this Agreement.

It is agreed as follows:

1. Definitions and interpretation

- 1.1 In this Agreement, unless the context otherwise requires, the following definitions shall apply:

"\$" means the lawful currency of Australia.

"Additional Services" has the meaning given to it in Clause 5.6.

"Affected Party" has the meaning given to it in Clause 23.1(a).

"Agreement" means this agreement including its Schedules.

"Applicable Law" means any legislation including any statute, statutory instrument, treaty, regulation, directive or by-law relating to the Services or NewCold in force from time to time in Victoria.

"Assets" has the meaning given to it in Clause 30.1.

"Back-Up Operator" means each and any of the approved alternative providers of Back-Up Services as agreed between the parties pursuant to Clause 3.1.

"Back Up Period" means the period starting on the Intended Services Commencement Date and ending three months after the Services Commencement Date.

"Back-Up Services" has the meaning given to it in Clause 3.3(a).

"Best Industry Standards" means standards, practices, methods and procedures in accordance with the degree of skill, care, efficiency and timeliness as would reasonably be expected from a well-managed cold-store warehousing and logistics provider, performing services substantially similar to the Services in Victoria.

"Business Day" means any day other than a Saturday, Sunday, or public holiday in Victoria.

"Calendar Year" means a 12 month period beginning on 1 January and ending on 31 December.

"Charges" means the charges for the Standard Services calculated in accordance with Schedule 1 and, where applicable, the Minimum Annual Storage Charges and any charges for Additional Services notified to the Customer by NewCold in accordance with Clause 5.6.

"Charges Review Date" has the meaning given to it in Schedule 1 (Part 3 (*Charges Review Mechanism*)).

"Confidential Information" has the meaning given to it in Clause 25.1.

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

"Customer Group" means the Customer and any company which it controls, is controlled by or is in common control with, where 'control' means directly or indirectly owning or controlling the voting rights attached to not less than 50% of the issued ordinary share capital, or controlling directly or indirectly the appointment of a majority of the board of management, and references to a member of the Customer Group shall be construed accordingly.

"Customer's Information" means the information provided to NewCold by Customer as specified in Schedule 2 **Part 2** (*Operating Specification*).

"Customer IPR" means patents, trademarks, design rights, copyright (including rights in computer software and databases), know-how and moral rights and other intellectual property rights of any member of the Customer Group, in each case whether registered or unregistered and including applications for, and the right to apply for, the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world.

"Delivered into NewCold's Custody" has the meaning given to it in Clause 16.4.

"Delivered out of NewCold's Custody" has the meaning given to it in Clause 16.5.

"Disaster" has the meaning given to it in Clause 22.2.

"Disaster Recovery Plan" has the meaning given to it in Clause 22.1.

"Discloser" has the meaning given to it in Clause 25.1.

"Dispute" means any dispute or difference between the parties arising out of or in connection with this Agreement.

"Dispute Resolution Procedure" means the procedure for resolving disputes set out in Clause 24.

"Electricity Index" means the effective percentage change in rates as invoiced to NewCold per kilowatt hour for electricity at the Warehouse over the twelve month period immediately preceding each Charges Review Date, as reasonably evidenced by NewCold.

"ERP" means the Customer's Enterprise Resource Planning system.

"Expected Storage Volume" has the meaning given to it in Clause 7.2.

"Extension Period" has the meaning given to it in Clause 3.6.

"Financing" has the meaning given to it in Clause 30.1.

"Forecast" means each annual forecast provided by the Customer in accordance with Clause 7.3.

"Forecast Year" means the period of 12 months from the Services Commencement Date, and each subsequent 12 month period from an anniversary of the Services Commencement Date.

"Force Majeure Event" means any of the following events or any event analogous to any of the following events:

- (a) fire, flood or other egress or ingress of water, gas leak, earthquake, lightning strike, windstorm, volcanic activity, natural disaster, exceptional weather conditions, epidemic or pandemic, including, without limitation, COVID19;
- (b) war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;
- (c) terrorist attack, civil war, civil commotion or riots;
- (d) national, state or industry wide strikes, industrial action or lockouts which are not primarily directed towards the Affected Party;
- (e) damage to the Warehouse or means of accessing the Warehouse;
- (f) interruption or failure of a utility service, including but not limited to internet, telephone, electric power, gas or water;
- (g) shortage of available labour and/or shortage of available supplies (including, without limitation, fuel);
- (h) nuclear, chemical or biological contamination or sonic boom;
- (i) collapse of buildings, explosion or accident;
- (j) any law or any action taken by a government, public or regulatory authority, including without limitation imposing an export or import restriction, quota or prohibition;
- (k) cyber-attack or IT failure including as a consequence of malicious third party software;

which is outside the reasonable control of, and not due to the wrongful act or negligence of, the Affected Party or its Representatives and which wholly or partly prevents or delays the performance of any material obligation of the Affected Party arising under this Agreement.

"good faith" means observing reasonable commercial standards of fair dealing, acting consistently with the reasonable, justified expectations of the other party and not knowingly providing false or misleading information to the other party.

"GST Act" means A New Tax System (Goods and Services Tax) Act 1999 Cth).

"GST Supplier" means the entity making the supply of goods or services subject to GST.

"Initial KPIs" means each of the key performance indicators applicable to the Standard Services during the Initial Period, as set out in Schedule 4 Part 2 (*Initial KPIs*).

"Initial Period" means the period of 6 (six) months after the Services Commencement Date.

"Insolvency Event" means, in respect of a party to this Agreement, any of the following events, which is not dismissed, revoked, withdrawn or otherwise undone within thirty (30) Business Days:

- (a) that party is (or states that it is) an insolvent under administration or insolvent;
- (b) that party is in liquidation, in provisional liquidation, under administration or wound up or has had a controller appointed to its property;
- (c) that party is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this Agreement);

- (d) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 60 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that party, which is preparatory to or could be reasonably expected to result in any of paragraphs (a), (b) or (c) above;
- (e) that party is taken (under section 459(F)(1) of the Corporations Act) to have failed to comply with a statutory demand and is unable to otherwise prove that it is solvent;
- (f) that party is the subject of an event described in sections 459(C)(2)(b) or 585 of the Corporations Act;
- (g) that party is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to paragraphs (a) to (g) above happens in connection with that party under the law of any jurisdiction, to which that party is subject.

Any event that takes place as part of a bona fide solvent reconstruction, amalgamation, merger, or consolidation, is excluded from this definition.

"Intended Services Commencement Date" means 1 January 2023.

"Lender" has the meaning given to it in Clause 30.1.

"Long Stop Date" means 30 June 2023.

"Losses" means all losses, claims, demands, actions, proceedings, damages, compensation awards and other payments (including without limitation those made under any settlement arrangements), charges, costs, expenses and other liabilities of any kind, including reasonable attorney's legal and other professional fees together with any goods and services tax thereon (on an indemnity basis).

"Maximum Volume" has the meaning given to it in Clause 7.2 as it may be varied in accordance with Clause 7.7.

"Minimum Volume" means 35,000 Pallet spaces per week, as may be varied in accordance with Clause 7.7 and 7.8.

"Minimum Annual Storage Revenue" has the meaning given in Part 5 of Schedule 1.

"Minimum Performance Targets" means the Initial KPIs and/or the Standard KPIs.

"NewCold Group Company" means NewCold and any company which it controls, is controlled by or is in common control with, where 'control' means directly or indirectly owning or controlling the voting rights attached to not less than 50% of the issued ordinary share capital, or controlling directly or indirectly the appointment of a majority of the board of management, and references to a member of the NewCold Group shall be construed accordingly.

"Non Affected Party" has the meaning given to it in Clause 23.1(a).

"OLCOT Figure" means the percentage figure for the combined Standard KPIs of (1) 'Vehicle Turn around Time' and (2) 'Order quality' as set out in Schedule 4 Part 1 (*Standard KPIs*).

"Operating Specification" means the specification set out in Schedule 2 **Part 2** (*Operating Specification*) and **Part 3** (*IT Landscape and EDI Solution*) setting out the procedures and standards to be adhered to by NewCold in its performance of the Services, as may be amended from time to time in accordance with the procedure set out in Clause 10 (*Service Change Procedure*) of this Agreement.

"Pallet" means a pallet with the maximum specifications set out in the Operating Specification containing the Products.

"Personal Data" has the meaning given in the Privacy Act.

"Prices Index" means the Consumer Price Index, All Groups - Victoria, or any replacement index, as published by the Australian Bureau of Statistics (or any successor body) from time to time.

"Privacy Act" means the Privacy Act 1988 (Cth).

"Products" means all of the frozen food products sent by or on behalf of the Customer to the Warehouse.

"Quality Assurance Standards" means the Simplot Supplier Food Safety & Quality Standard (PRC-COR-00088) as provided to NewCold on or prior to the date of this Agreement, as updated and agreed under clause 5.2.

"Quarter" means each successive 3 month period commencing on 1 January, 1 April, 1 July, 1 October in each Calendar Year.

"Receiving Party" has the meaning given to it in Clause 25.1.

"Representatives" means the employees, contractors, sub-contractors and agents from time to time of the party concerned.

"Service Change Procedure" means the service change procedure as set out in Schedule 3 (*Service Change Procedure*).

"Services" means the Standard Services to be provided by NewCold (as set out in Schedule 2), and any Additional Services provided by NewCold in accordance with this Agreement.

"Services Commencement Date" means the date on which NewCold first accepts the Customer's Pallets at the Warehouse.

"Signature Date" means the date of the last signature of this Agreement.

"Standard KPIs" means each of the key performance indicators applicable to NewCold's supply of the Standard Services from the end of the Initial Period, as set out in Schedule 4 Part 1 (*Standard KPIs*).

"Standard Services" means the warehousing services to be provided by NewCold (as set out in Schedule 2 Part 1 (*Description of Services*) and **Part 2** (*Operating Specification*)).

"Storage Charges" means the storage charges specified in Schedule 1, Part 2.

"Term" means the term of this Agreement as defined in (and as may be extended pursuant to) Clause 4.

"Term Forecast" means the Customer's forecast of its requirements for the Services during the Term, as referred to in Clause 7.1 and set out in Schedule 8.

"Warehouse" means the warehouse to be built at 108 Agar Drive, Truganina, Melbourne and to be operated by NewCold.

"WMS" means the Warehouse Management System used by NewCold at the Warehouse.

2. **Appointment of NewCold**

2.1 The Customer hereby appoints NewCold, and NewCold hereby accepts appointment, as an independent contractor to provide the Services to the Customer with effect from the Services Commencement Date, subject to the terms and conditions of this Agreement.

2.2 The Customer appoints NewCold as its non-exclusive supplier of the Standard Services and other warehousing, handling, case picking and related services in the State of Victoria. Notwithstanding the foregoing, from the expiry of the Initial Period, the Customer warrants on an ongoing basis that:

- (a) NewCold is its primary and preferred supplier of Standard Services in the state of Victoria, Australia; and
- (b) at any given time, not less than 80% of the Customer's total frozen food products stored in the state of Victoria, Australia, shall be stored at the Warehouse (the "**Minimum Storage Requirement**") save where:
 - (i) the Minimum Storage Requirement would exceed the Maximum Volume; and
 - (ii) NewCold has notified the Customer that it cannot or does not wish to store such excess and in such circumstances the Minimum Storage Requirement shall be reduced by such amount and for such period as NewCold may reasonably determine.

2.3 The terms and conditions of this Agreement (other than this sub-Clause 2.3, Clause 24, Clause 25 and Clauses 29 to 43, each of which shall come into effect on the Signature Date) are conditional on the fulfilment (or written waiver by NewCold) of the condition precedent set out in clause 2.4 on or before the date falling six months after the Signature Date (the "**Condition Precedent Deadline**"), failing which this Agreement will terminate automatically (unless the parties agree otherwise in writing) and neither party shall have any liability to the other in respect of that termination.

2.4 The condition precedent referred to in clause 2.3 is NewCold delivering to the Customer a written notice that either:

- (a) NewCold and financiers have entered into a loan agreement on terms satisfactory to NewCold in an amount sufficient for the development, construction and fit-out of the Warehouse, and all related expenditures; or
- (b) NewCold has a binding commitment(s), for debt and/or equity, in an amount sufficient for the development, construction and fit-out of the Warehouse, and all related expenditures.

3. **Services Commencement**

3.1 Not more than six months following the Signature Date, the parties shall (each acting reasonably and in good faith) agree in writing a list of Back-Up Operators whom NewCold and the Customer pre-approves to provide Back-Up Services pursuant to Clause 3.2. The Back-Up Operators shall include any existing storage or logistics provider of the Customer. The parties shall be entitled by agreement in writing to amend such list from time to time. The Customer shall be entitled to procure Back-Up Services from any Back-Up Operator (or more than one) under Clause 3.2 without the need for further approval from NewCold.

3.2

- (a) On the date six months before the Intended Services Commencement Date, NewCold must give the Customer written notice of when it anticipates the Services Commencement Date will occur. If it anticipates that the Services Commencement

Date will not occur on or before the Intended Services Commencement Date, it must specify the date NewCold anticipates will be the Services Commencement Date.

- (b) NewCold will give the Customer four weeks' notice of when the Warehouse will be sufficiently complete, commissioned and operational to enable NewCold to receive the Customer's Pallets at the Warehouse and fulfil its obligations under this Agreement ("**Readiness Date**").
- (c) The Customer will commence providing the Customer's Pallets to the Warehouse from the Readiness Date (thus triggering the Services Commencement Date), provided that:
 - (i) it has received four weeks' notice of the Readiness Date under clause 3.2(b);
 - (ii) the Warehouse is sufficiently complete, commissioned and operational to enable NewCold to receive the Customer's Pallets at the Warehouse and fulfil its obligations under this Agreement on the Readiness Date; and
 - (iii) the Customer is under no obligation to provide any Pallets to the Warehouse prior to the Intended Services Commencement Date (but may do so in its discretion subject to NewCold's prior written agreement).
- (d) For the avoidance of doubt, any dates specified by NewCold under this clause do not replace or amend the Intended Services Commencement Date.

3.3 If the Services Commencement Date does not occur on or before the Intended Services Commencement Date:

- (a) the Customer may arrange for alternative storage and handling services ("**Back-Up Services**") for the Products from a Back-Up Operator for the Back Up Period. Where Back-Up Services are to be provided, the Customer shall pay the charges for the Back-Up Services; and
- (b) Subject to Clause 3.3(c), NewCold must compensate the Customer for all direct out-of-pocket costs that the Customer suffers as a result of the Services Commencement Date not occurring by the Intended Services Commencement Date, to the extent that the Customer is not able to mitigate those costs having used reasonable endeavours to do so, including:
 - (i) to the extent the charges for the Back-Up Services exceed the Charges that would have been payable for equivalent services in accordance with this Agreement, NewCold must reimburse the Customer for such excess (but, for the avoidance of doubt, NewCold is not required to reimburse the Customer for any charges to the extent that they do not exceed the Charges that would have been so payable to NewCold); and
 - (ii) reasonable and necessary direct transition costs incurred by the Customer if the Customer needs to use a Back-Up Operator which is not an existing storage or logistics provider of the Customer,

provided that:

 - (iii) the Customer provides reasonable evidence to NewCold of such losses or costs; and
 - (iv) the Customer uses all reasonable endeavours to mitigate its losses suffered under this Clause 3.3(b)); and
- (c) NewCold's total liability in respect of such costs is limited to the lower of:

- (i) the amount per month for each month of delay during the Back Up Period that would otherwise be payable by the Customer to its existing third party warehouse supplier as evidenced by the details provided to NewCold by the Customer pursuant to Clause 3.4; and
- (ii) where no extension to the Long Stop Date is granted in accordance with clause 3.7, \$200,000 (two hundred thousand Australian dollars) per month for each month of delay in the Back Up Period; or
- (iii) where an extension to the Long Stop Date is granted in accordance with clause 3.7:
 - (A) in respect to that part of the Back Up Period before the original Long Stop Date of 30 June 2023, \$200,000 (two hundred thousand Australian dollars) per month; and
 - (B) in respect to that part of the Back Up Period after the original Long Stop Date of 30 June 2023, \$500,000 (five hundred thousand Australian dollars) per month,

provided always that NewCold's aggregate liability for such costs and expenses shall not exceed:

- (iv) where no extension to the Long Stop Date is granted in accordance with clause 3.7, \$2,000,000 (two million Australian dollars); or
 - (v) where an extension to the Long Stop Date is granted in accordance with clause 3.7, \$5,000,000 (five million Australian dollars).
- (d) For the avoidance of doubt in relation to Clauses 3.3(c)(ii) and (iii), NewCold's total liability prior to the Long Stop Date shall not exceed \$200,000 (two hundred thousand Australian dollars) per month.
- 3.4 In order to facilitate the application of the principles set out in Clause 3.3, the Customer shall, as a pre-condition of its entitlement to claim any compensation from NewCold under that Clause, provide to NewCold full details of the charges payable by the Customer to its existing warehouse provider.
- 3.5 Where Clause 3.3 applies and to the extent that the Customer's Products are, at the start of the Back Up Period, stored at a facility operated by a third party warehouse provider engaged by the Customer and the third party warehouse provider is willing to continue that arrangement, NewCold shall, at the request of the Customer, use those facilities and that third party subject to the same payment and reimbursement terms as set out in Clause 3.3 and the limits to NewCold's liability included in Clause 3.3(c).
- 3.6 Subject to Clause 3.7, If the Services Commencement Date has not occurred on or before the Long Stop Date, then unless the parties (acting reasonably and in good faith) agree that the Long Stop Date shall be extended, the Customer may terminate this Agreement and neither party shall have any further liability to the other from the date of termination (any liability which has accrued prior to the date of termination will still apply).
- 3.7 If the Services Commencement Date has not occurred on or before the Long Stop Date as a result of a Force Majeure Event then provided NewCold has served notice in writing not less than 90 days prior to the Long Stop Date requesting an extension to the Long Stop Date due to such Force Majeure Event the Long Stop Date shall be extended by the period of delay caused by such Force Majeure Event (the "**Extension Period**") as specified in the written notice from NewCold (where possible). Such period shall not, unless approved by the Customer, exceed six (6) months after the original Long Stop Date. Where such notice is served, NewCold shall be liable during the Extension Period for the costs referred to in Clause 3.3, subject to the monthly and aggregate caps in Clause 3.3(c).

- 3.8 NewCold shall keep the Customer reasonably informed regarding the construction and completion of the Warehouse. Without limitation, NewCold shall provide the Customer with monthly progress reports and otherwise keep the Customer reasonably informed of material delays and the steps NewCold is taking to address those delays.

4. **Term**

- 4.1 This Agreement shall come into force on the Signature Date and shall (unless terminated at an earlier date in accordance with its terms) continue in force for a term of ten (10) years from the Services Commencement Date (the "**Initial Term**").
- 4.2 The Customer shall be entitled to extend this Agreement from the end of the Initial Term for a period of between six (6) months and five (5) years by providing not less than 12 months' written notice to NewCold prior to the end of the Initial Term specifying the period of the extension. On receipt of such a notice by NewCold, this Agreement will be extended by the period of the extension specified in the notice. If the Customer does not provide such written notice at least 12 months prior to the end of the Initial Term, the Agreement will expire at the end of the Initial Term.

5. **Services to be provided by NewCold**

- 5.1 NewCold shall provide the Services to the Customer with effect from the Services Commencement Date in accordance with the terms of the Agreement, the Operating Specification and the Standard KPIs save that, during the Initial Period, NewCold shall provide the Services to the Customer in accordance with the Initial KPIs instead of the Standard KPIs.
- 5.2 NewCold shall carry out the Services in accordance with Best Industry Standards and, once the parties have agreed the Quality Assurance Standards in accordance with this clause 5.2, the Quality Assurance Standards. The Quality Assurance Standards, as drafted at the date of this Agreement, are designed for a manual warehouse and require modification for an automated warehouse. Accordingly, the parties will together update the standard and the updated standard, once agreed, will form part of the Operating Specification. If there is any contradiction or duplication between the Best Industry Standards and the Quality Assurance Standards, the higher standard will apply. NewCold shall and shall procure that its Representatives engaged in the provision of the Services observe all health, safety and security rules and procedures applicable at the Warehouse or required under Applicable Law or this Agreement.
- 5.3 NewCold shall, from the Services Commencement Date, accept delivery of Products which it has been notified by the Customer in accordance with Clause 7 (*Forecasts*) are to be stored at the Warehouse, provided that such Products do not exceed either:
- (a) the number of Pallet positions specified in the Forecast (as defined in Clause 7.3) and updated under Clause 7.7 plus the buffer contemplated by Clause 7.6; or
 - (b) the Maximum Volume (unless otherwise agreed in accordance with Clause 7.4).
- 5.4 NewCold shall provide regular reports to the Customer (as set out in the Operating Specification) on the number of Pallet positions available and remaining for use by the Customer.
- 5.5 NewCold shall not provide the Services at any site other than the Warehouse without the prior written consent of the Customer (such consent not to be unreasonably withheld, delayed or conditioned).
- 5.6 The Customer may from time to time request (using the Service Change Procedure set out in Schedule 3) that NewCold carry out other services separate from and in addition to the Standard Services in relation to the Products provided such services are within the scope of services generally provided by NewCold and can reasonably be accommodated (the "**Additional Services**"). The charges and conditions (which must be reasonable and in accordance with

market prices) for providing such Additional Services shall be agreed between the parties in advance of such Additional Services being performed.

- 5.7 The Customer acknowledges that the charges, conditions and specification of the Additional Services are based on assumptions and information which may not be correct, or may cease to be correct over time as circumstances change. If the actual costs incurred by NewCold in providing any Additional Services exceed the charges agreed pursuant to Clause 5.6, then NewCold shall be entitled to give Customer not less than 20 Business Days' notice in writing of any proposed increase in the charges for any Additional Services, and the parties shall seek to agree the increase to the charges, each acting in good faith. If the parties are unable to agree the amount of the increase within such 20 Business Day period, then NewCold shall be entitled to cease provision of the Additional Services on not less than 20 Business Days' notice.

6. **Continuous Improvement**

- 6.1 In order to provide an ongoing focus on:

- (a) improving the standard of delivery of the Services to the Customer;
- (b) developing sustainable productivity and customer service initiatives;
- (c) improving the sustainability of the provision of the Services; and
- (d) minimising the existing cost base to NewCold of providing the Services,

NewCold shall establish a team of appropriately skilled employees and experts, who will be responsible for identifying continuous improvements throughout the Term, and, in consultation with the Customer, developing and implementing a continuous improvement plan in relation to the Services. NewCold shall, utilizing agreed evaluation processes, identify possible ways to improve the quality of the Services and, together with the Customer, shall review the Minimum Performance Targets and use reasonable endeavours to improve the performance of the Services where necessary and commercially feasible to do so. Where commercially viable opportunities for improvements are identified, they will be processed in accordance with Clause 10 (*Service Change Procedure*).

- 6.2 To support the continuous improvement plan, teams will be formed on different operational and strategic levels with members both from NewCold and the Customer. These teams will meet on a regular basis and will report to the steering committee established under Clause 6.3. The overall objective of these meetings is to achieve cost effectiveness for the management of the Products and quality improvement for the combined operation with associated savings being shared between the parties as agreed during the relevant meeting.
- 6.3 The parties shall constitute a steering committee made up of representatives of each of the parties to oversee the operation of the Services and the performance of this Agreement and to consider proposals made by the teams referred to in Clause 6.2. The steering committee may propose potential modifications to the Services and the Minimum Performance Targets. Such proposals shall be managed in accordance with the process set out in Clause 10 (*Service Change Procedure*).

7. **Forecasts**

- 7.1 The Customer has provided to NewCold the forecast set out in Schedule 8 for the period commencing on the Services Commencement Date and ending on the last day of the Term covering the storage, inbound, outbound, handling, case picking and other services required by the Customer ("**Term Forecast**"). NewCold has configured the Warehouse size, reserved pallet capacity for the Customer and made operational arrangements to service the Customer's requirements on the basis of the Term Forecast and the Customer's Information.
- 7.2 As indicated in the Term Forecast, the Customer expects to require an average storage volume of 45,000 Pallet spaces per week in the Warehouse for each Forecast Year (the "**Expected**

Storage Volume"). Taking into account seasonal variations to the Products, as detailed in the Operating Specification, the Customer expects that the maximum storage volume will not exceed 50,000 Pallet spaces in the Warehouse at any one time (the **"Maximum Volume"**). The Customer acknowledges and confirms that the Maximum Volume will only occur as a seasonal peak in volumes during the seasonal peak period indicated in the Term Forecast.

7.3 The Customer shall provide to NewCold:

- (a) not less than 3 months before the Intended Services Commencement Date, a forecast of its storage volume requirements the period from the Services Commencement Date up to the subsequent 31 December; and
- (b) at least 120 days before the next 1 January following the Services Commencement Date and then at least 90 days before each subsequent 1 January, a forecast of its expected month-by-month storage volume requirements for the Warehouse for the relevant Forecast Year,

(each a **"Forecast"**) and such Forecasts will be used by NewCold to enable it to make operational plans to accommodate the Customer's requirements.

7.4 Where a Forecast exceeds the Maximum Volume, NewCold will use reasonable endeavours to facilitate the Pallet spaces excess to the Maximum Volume, subject to the Customer paying any actual and reasonable out-of-pocket costs incurred by NewCold in facilitating the excess Pallet spaces and notified to the Customer by NewCold in advance of them being incurred.

7.5 NewCold shall ensure Pallet spaces are reserved to accommodate the number of Pallets contemplated in the Forecast, together with an additional buffer of 10% of the relevant number of Pallets specified in that Forecast (**"Buffer"**), provided that:

- (a) NewCold shall never be required to reserve spaces in excess of the Maximum Volume unless agreed in writing by NewCold (at its sole discretion); and
- (b) if the Forecasts provided by the Customer are inaccurate by 20% or more for any 6 months in a 12 month period (a **"Forecast Failure"**), Simplot shall prior to the next quarterly meeting under clause 2.16(d) of Schedule 5 demonstrate to the NewCold's reasonable satisfaction that it has implemented such procedures as are necessary to ensure that Simplot shall not commit a further Forecast Failure. If NewCold (acting reasonably) is not satisfied that Simplot has put in place the procedures necessary to ensure that Simplot does not commit a further Forecast Failure or if Simplot does commit a further Forecast Failure, the Buffer referred to in this clause shall be immediately reduced to 5% for the remainder of the Term.

7.6 The Customer shall provide a rolling update to each Forecast on a monthly basis and, provided that the Customer provides not less than 30 days' prior written notice of such changes and that the total requested pallet spaces do not exceed the Maximum Volume, NewCold shall use reasonable endeavours to accommodate pallets in excess of the Forecast plus the Buffer on an ongoing basis. NewCold must accommodate all pallets which are below the Forecast plus the Buffer.

7.7 Subject to Clause 7.8, if

- (a) the Customer wishes to reduce the Minimum Volume by up to a maximum amount of 20%; and
- (b) such proposed reduction is a direct result of a permanent, demonstrable and material change in the inventory profile that the Customer requires in Melbourne,

then, it may request the reduction by providing not less than six (6) months' prior written notice (a **"Volume Notice"**) to NewCold specifying the revised volume and explaining in sufficient detail the change in inventory profile that necessitates the reduction. The Maximum Volume

shall be deemed automatically reduced by the same percentage by which the Minimum Volume is reduced with effect from the date the Minimum Volume is reduced.

- 7.8 The Customer is entitled to issue more than one Volume Notice during the Term. NewCold is required to accept the reduction specified in the first Volume Notice, provided it does not reduce the Minimum Volume by more than 20%. Any further reductions are subject to NewCold's consent (such consent to be given or refused in its sole and absolute discretion).
- 7.9 On termination of this Agreement by NewCold in accordance with Clause 26.5(a) or Clause 26.5(b), the Customer shall, for the period from the date of termination until the date falling 10 years after the Services Commencement Date, pay to NewCold in equal quarterly payments (on 31 March, 30 June, 30 September and 31 December in each Forecast Year) such sum as shall fully compensate NewCold for the Minimum Annual Storage Revenue that would have been payable in that Quarter if this Agreement had not terminated. NewCold shall use commercially reasonable efforts to mitigate its losses in respect of any such termination and the Minimum Annual Storage Revenue shall, provided there is no other space available in the Warehouse at the relevant time, be reduced by the amount of any storage revenue received from another customer in cleared funds using storage space at the Warehouse that was intended by NewCold to be used for the Products.
- 8. Payment and taxation**
- 8.1 In consideration of the provision by NewCold of the Services, the Customer shall pay to NewCold the Charges set out in Schedule 1. The Charges shall be payable in accordance with the terms of this Clause 8.
- 8.2 Invoices submitted by NewCold shall contain the information set out in Schedule 1 Part 4 (Information on Invoice). The Charges for any Additional Services referred to in Clause 5.6 shall be invoiced separately and contain the information set out in Schedule 1 Part 4 (*Information on Invoice*).
- 8.3 NewCold shall present to the Customer, within 1 week of the end of each week (the first week beginning on the Service Commencement Date), an invoice for the Charges incurred in the preceding week together with details (in a form as reasonably specified by the Customer from time to time) of all the Products stored at the Warehouse during the preceding week. The detailed calculation of Charges based on the activities provided in a given week and information necessary for any service credit calculation shall be attached to the invoice. NewCold shall produce a separate invoice for any Additional Services performed by NewCold pursuant to Clause 5.6 within 1 week of such services being carried out by NewCold.
- 8.4 The Customer shall pay NewCold the Charges and any other payments due to NewCold within 30 days from the date of invoice.
- 8.5 If there is a bona fide disagreement regarding any invoice, the Customer shall notify NewCold in writing within 30 days of receipt of such invoice and the Customer shall not be liable for and shall be under no obligation to pay the amount which is disputed until the resolution of the disagreement. NewCold shall cancel the original invoice and issue separate invoices for any undisputed amount and for the disputed amount. The Customer shall make payment for the undisputed invoice on the original due date. If any such disagreement is not resolved within 5 Business Days the disagreement shall be deemed a Dispute and resolved in accordance with the Dispute Resolution Procedure.
- 8.6 The Charges shall be reviewed in accordance with Schedule 1 Part 3 (*Charges Review Mechanism*).
- 8.7 Subject to paragraph 1.1 of Part 2 of Schedule 1, the Charges are all inclusive of all taxes (other than GST or any replacement or variation of GST), out of pocket expenses, levies and other costs and charges payable by NewCold in relation to the provision of the Services. No further amounts (other than GST or any replacement or variation of GST in accordance with Clause 9) will be payable by the Customer to NewCold.

9. GST

- 9.1 The Charges and any other payments due to NewCold shall be exclusive of any applicable GST or other taxation which shall be payable by the Customer subject to receipt of a Tax Invoice. Any words capitalised in this Clause 9 and not already defined in this Agreement have the meaning given to those words in the GST Act.
- 9.2 If a Supply made under or in connection with this agreement is a Taxable Supply, then at or before the time any part of the consideration for the Supply is payable:
- (a) the Recipient must pay the GST Supplier an amount equal to the total GST applicable to the Supply, in addition to and in the same manner as the consideration otherwise payable under this Agreement for that Supply; and
 - (b) the GST Supplier must give the Recipient a Tax Invoice for the Supply.
- 9.3 If either party has the right under this Agreement to be reimbursed or indemnified by another party for a cost incurred in connection with this agreement, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified.
- 9.4 Where a Tax Invoice is given by the GST Supplier, the GST Supplier warrants that the Supply to which the Tax Invoice relates is a Taxable Supply and that it will remit the GST (as stated on the Tax Invoice) to the Australian Taxation Office.

10. Service Change Procedure

The parties shall comply with the service change procedure in Schedule 3 (*Service Change Procedure*).

11. Warranties

11.1 NewCold warrants to the Customer that:

- (a) this Agreement constitutes valid and binding obligations on NewCold and that NewCold has full power and authority to enter into and perform its obligations under this Agreement and has taken all necessary corporate and other actions to approve and authorise the transactions contemplated by this Agreement and neither the entering into nor the performance by it of its obligations under this Agreement will constitute or result in any breach of any contractual or legal restriction binding on itself or its assets or undertakings;
- (b) it has and shall have throughout the Term the necessary skill, experience and knowledge to perform the Services in accordance with the terms of this Agreement;
- (c) it will provide the Services with reasonable care and skill, in a proper and efficient manner, using that standard of skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced provider of services which are similar to the Services in Australia;
- (d) it will employ for the purposes of this Agreement appropriately licensed, accredited, competent and experienced personnel and must provide all necessary instructions and training so as to ensure the proper performance of NewCold's obligations under this Agreement;
- (e) from the Services Commencement Date and throughout the Term it shall perform the Services in all material respects in accordance with all Applicable Law and in material compliance with all licences, permits and authorisations required under such Applicable Law;

- (f) it will handle the Products in such a way as to preserve their condition and quality in accordance with the relevant Product's shelf-life, save that NewCold shall not be liable for any failure to preserve the condition or quality of a Product if a Product deteriorates as a result of or in connection with any deficiency in the Product's packaging, the Product itself, its handling prior to being Delivered into NewCold's Custody or its handling after it is Delivered out of NewCold's Custody, or where NewCold's handling of the Products was in accordance with instructions or directions provided by the Customer;
- (g) it will provide the Services in accordance with the Operating Specification and the Quality Assurance Standards.
- (h) it shall store the Products away from any goods and products of third parties which may damage or contaminate the Products and shall store the Products in such a way to ensure that they are clearly identifiable as the Customer's property;
- (i) it shall keep the Warehouse clean and dry, shall have sufficient fire-retardant measures in place, shall have a power solution in place to provide back-up power to the Warehouse within 24 hours of a loss of power, and shall take reasonable measures to prevent theft of, or damage to, any Products stored at the Warehouse;
- (j) in performing the Standard Services it shall meet the applicable Australian cold storage and handling requirements, including storing Product at minus eighteen (-18) degrees Celsius or colder and providing a chilled dock area at four (4) degrees Celsius or colder; and
- (k) ensure that the Warehouse and the Services meet the Customer's Quality Assurance Standards and the relevant Global Food Safety Initiative (GFSI) standards.

11.2 The Customer represents and warrants to NewCold that:

- (a) this Agreement constitutes valid and binding obligations on the Customer and that the Customer has full power and authority to enter into and perform its obligations under this Agreement and has taken all necessary corporate and other actions to approve and authorise the transactions contemplated by this Agreement and neither the entering into nor the performance by it of its obligations under this Agreement will constitute or result in any breach of any contractual or legal restriction binding on itself or its assets or undertakings;
- (b) all Products will only consist of frozen food products that have been manufactured, packaged, labelled and transported in accordance with all Applicable Law and such Products shall not constitute, contain or consist of any contaminated, dangerous or hazardous goods;
- (c) it will give NewCold written details of the manner in which the Products are to be handled and stored, and that these will be sufficient to enable NewCold to comply with all Applicable Law concerning the storage, handling and transportation of the Products and will be consistent with the operating parameters of the Operating Specification, including (without limitation) NewCold's requirements as to measures protecting against cross-contamination.

11.3 The Customer acknowledges and agrees that NewCold has priced its Services, among other things, on the basis of the Customer's Information. The Customer represents and warrants that the Customer's Information is true, accurate and complete.

11.4 NewCold and the Customer shall at all times (and shall procure that their Representatives shall at all times) in good faith, act reasonably and co-operatively work together in order to enable NewCold to perform the Services in accordance with this Agreement.

12. **WMS**

- 12.1 From the Services Commencement Date and throughout the Term NewCold shall use the WMS.
- 12.2 NewCold shall not move, alter or modify the WMS in any way that has a material detrimental effect on the Customer's receipt of the Services without the consent of the Customer (such consent not to be unreasonably withheld, delayed or conditioned), and must not move, alter or modify the WMS in a material way during the Initial Period.
- 12.3 NewCold shall:
- (a) at NewCold's cost, ensure that the WMS will interface to the Customer's ERP system through Electronic Data Interchange as at the Services Commencement Date, as required by the Customer;
 - (b) throughout the Term, ensure that the WMS will interface to the Customer's ERP system through Electronic Data Interchange. Changes in the requirements of the Customer or its ERP System must be agreed in accordance with the Service Change Procedure;
 - (c) update and modify the WMS to enable it to properly interface to, or to be used in conjunction with, any technology operated by the Customer from time to time, as agreed in accordance with the Service Change Procedure; and
 - (d) provide all upgrades and modifications to the WMS necessary to maintain the level of operation to interface to the Customer's ERP, as requested by the Customer and agreed in accordance with the Service Change Procedure.

13. **Personnel**

- 13.1 NewCold shall engage all personnel necessary to carry out the Services and shall ensure that all staff are appropriately trained. NewCold shall be responsible for the payment of wages, salaries, training costs, contributions, taxes and any other remuneration, compensation, taxes, benefits or other amounts due to or in respect of the personnel that it employs.
- 13.2 NewCold shall consult with the Customer on the appointment of the Warehouse manager ("**Warehouse Manager**") such Warehouse Manager to appointed not less than 9 months prior to the Intended Services Commencement Date. If the Customer, acting reasonably, believes that the Warehouse Manager has demonstrated that they do not have sufficient expertise or is not using due care and skill in their role the Customer can raise its concerns with NewCold and request NewCold to replace the Warehouse Manager and NewCold must have reasonable regard to the Customer's concerns.

14. **Data Protection**

- 14.1 The parties confirm that it is not their intention to collect or process any Personal Data in connection with this Agreement, however if any Personal Data is transferred from the Customer to NewCold, the provisions of this Clause 14 shall be applicable.
- 14.2 Without prejudice to NewCold's other obligations in respect of information security, NewCold shall:
- (a) having regard to the state of technological development and to the cost of implementing any measures, implement and maintain administrative, physical and technical safeguards of the Personal Data and be responsible for any unauthorized collection, loss, destruction, storage, disclosure and use of, and access to, Personal Data;
 - (b) immediately notify the Customer of an actual or reasonably suspected breach of security of its systems that it reasonably suspects would lead to the unauthorized access to or acquisition, use, compromise or disclosure of any Personal Data; and

- (c) take reasonable steps to ensure the reliability of NewCold's personnel who have access to the Personal Data.
- 14.3 NewCold must comply in all respects with its obligations under the Privacy Act in respect of any Personal Data acquired by NewCold from the Customer and must only use, store, process and transmit such Personal Data as reasonably necessary for the purpose of performing this Agreement and for any other purpose. Unless otherwise expressly approved in writing by the Customer, NewCold must not transfer any Personal Data outside of Australia, or allow any person outside of Australia to view or otherwise access the Personal Data.
- 14.4 All Personal Data acquired by NewCold from the Customer or any other member of the Customer Group shall be returned or deleted (at the option of the Customer) on request.
- 14.5 The Customer must obtain any necessary consents from, and make any necessary disclosures to, all relevant individuals for the purpose of disclosing their Personal Data to NewCold under this Agreement, and must otherwise comply in all respects with its obligations under the Privacy Act in respect of any Personal Data disclosed to NewCold.
- 14.6 Each party must give all reasonable assistance required by the other party from time to time in relation to compliance with the Privacy Act, or any investigation, request or enquiry (formal or otherwise) from the Privacy Commissioner, regarding the Personal Data disclosed to NewCold under this Agreement.
- 14.7 Each party ("**the first party**") indemnifies the other party against all costs, expenses, losses, proceedings and claims of any nature suffered, brought or incurred directly or indirectly as a result of a breach by the first party of its obligations under this Clause 14.
- 15. **Customer IPR**
- 15.1 NewCold shall not (and shall procure that none of its Representatives), without the prior written consent of the Customer, utilise any Customer IPR for its own advertising purposes or apply or display any Customer IPR at the Warehouse or on any plant, vehicles, premises or equipment. If such consent is given by the Customer, the Customer IPR in question shall only be used for the specific purpose set out by the Customer in its consent and in accordance with any reasonable specific licence conditions notified in writing by the Customer.
- 15.2 NewCold acknowledges that the Customer IPR is owned by members of the Customer Group and that NewCold has no, and does not by virtue of this Agreement obtain any, proprietary rights in or to the Customer IPR and NewCold undertakes that it will make no claim to any such rights.
- 15.3 NewCold shall not (and shall procure that none of its Representatives), without the prior written consent of the Customer, in any way alter the packaging or labelling of Products or alter, remove or tamper with any trade mark on any Products or affix any other trade mark or logo on any Products or any labels on, or on the packaging of, any Products.
- 15.4 To the extent that NewCold provides any deliverables to Customer under this Agreement that comprise intellectual property rights of either NewCold or a third party, NewCold grants the Customer a non-exclusive, non-transferable licence for the Term to use those deliverables solely to the extent necessary to receive the Services.
- 16. **Delivery**
- 16.1 Risk of loss of or damage to Products shall transfer to NewCold when those Products are Delivered into NewCold's Custody (as such term is defined in Clause 16.4) and will remain with NewCold until the Products are Delivered out of NewCold's Custody (as such term is defined in Clause 16.5). NewCold shall be liable for the loss of or damage to the Products from the point such Products are Delivered into NewCold's Custody until those Products are Delivered out of NewCold's Custody.

- 16.2 NewCold shall not be authorised or obligated to open sealed collective packs of Products (unless instructed to do so by the Customer for quality sampling purposes in accordance with the Operating Specification). NewCold shall not be liable for incorrect number of units in a collective pack not opened by NewCold, or for latent defects of Products or packaging, which cannot be identified immediately by sight upon the receipt of Products.
- 16.3 NewCold shall promptly notify the Customer (within one Business Day) of the receipt of any Products Delivered into NewCold's Custody that appear damaged in any way.
- 16.4 Products are deemed **"Delivered into NewCold's Custody"** when the Products have been unloaded from the delivery vehicle into the Warehouse and the delivery driver's documentation has been signed and returned to the driver. In the event of an alleged discrepancy in the volumes delivered, the driver shall be given the opportunity to inspect the Products delivered.
- 16.5 Products are deemed **"Delivered out of NewCold's Custody"** when the Products have been loaded securely for transportation on to the delivery vehicle at the Warehouse and the relevant paperwork accompanying such Products has been signed by the carrier.
- 16.6 Regarding outbound deliveries, NewCold shall be responsible for making sure that prior to loading onto a delivery vehicle the Products are securely and safely bundled in accordance with all Applicable Law for transportation and distribution.
17. **Management of Products**
- 17.1 All Products stored by NewCold at the Warehouse shall remain the property of the Customer and title to the Products shall not pass to NewCold at any time. The Customer shall at any time on reasonable notice be entitled (provided all Charges due and not in dispute have been paid in full) to require NewCold to make available (in accordance with the Operating Specification) the Products to the Customer at the relevant Charges applicable to the Standard Services. If NewCold fails to do so the Customer shall have the right forthwith to enter the Warehouse or any other premises of NewCold or its Representatives where the Products are held and repossess the Products at NewCold's expense.
- 17.2 NewCold will properly designate the Products at all times as belonging to the Customer. NewCold will execute and deliver to the Customer any document reasonably requested by the Customer necessary to protect its title to the Products and the proceeds thereof.
- 17.3 Nothing in this Agreement creates a security interest for the purposes of the Personal Property Securities Act 2009 (Cth).
- 17.4 All Products stored at the Warehouse shall be managed by NewCold in accordance with the Operating Specification.
- 17.5 NewCold shall ensure that proper systems and controls are maintained to ensure the secure storage of Products at the Warehouse in accordance with the Operating Specification and Quality Assurance Standards.
- 17.6 If at any time either party finds that Products appear from its records to have been delivered to the Warehouse but are no longer at, and have not been dispatched from the Warehouse or have been damaged or destroyed while at the Warehouse or otherwise in NewCold's custody, that party shall promptly notify the other party that such Products appear to have been so lost or damaged.
- 17.7 Products which are damaged or destroyed while in the custody of NewCold shall be treated as if they were lost for the purposes of this Clause 17.
- 17.8 On identifying damaged Products, NewCold shall clearly separate that damaged Product from undamaged Products. Damaged Products must be isolated in a designated area until the Customer provides NewCold with directions on what to do with the damaged products or the expiry of 48 hours, whichever occurs first. NewCold must not dispose of any damaged products

without the approval of the Customer provided such approval is not unreasonably withheld or delayed. NewCold must use its reasonable endeavours to minimise the damage, for example, by immediately taping up the damage.

- 17.9 Upon receipt of a notice from the Customer requesting an investigation into the matters described in Clause 17.6, NewCold shall investigate (as quickly as reasonably possible) the circumstances surrounding any apparent loss or damage of Products in order to ascertain (so far as is reasonably possible) whether such apparent loss or damage may be accounted for and shall forthwith notify the Customer regarding the reason for such loss or damage. If there are any differences between NewCold's records and the Customer's records the parties shall use reasonable endeavours to reconcile any differences. If any differences have not been reconciled within 20 Business Days, NewCold's records shall prevail subject to the Customer's right to refer the matter for dispute resolution in accordance with Clause 24.
- 17.10 Unless within two (2) months of receiving any notice from the Customer pursuant to Clause 17.9 or sending any notice to the Customer pursuant to Clause 17.6, NewCold has provided the Customer with reasonable evidence to show that the actual loss or damage to which the notice relates has not occurred or was not due to the breach or negligence of NewCold, NewCold shall be liable for the loss or damage to which the notice relates in accordance with Clause 17.14.
- 17.11 If the Customer (acting reasonably) is of the opinion that the evidence provided by NewCold pursuant to Clause 17.10 is not sufficient, the Customer may object to such evidence. Either party may thereafter activate the Dispute Resolution Procedure.
- 17.12 The parties agree to undertake stock counts as set out in Schedule 6.
- 17.13 All losses during the course of each month shall be noted in NewCold's records by the end of the relevant month. The cumulative loss for each three month period from the Services Commencement Date and each successive three month period shall be determined by offsetting any gains against losses only of the same stock item number.
- 17.14 NewCold shall be liable to compensate the Customer for any direct loss and damage caused to the Customer due to any Products being lost, damaged or destroyed while in NewCold's custody where the loss, damage or destruction exceeds 0.01% of the total volume of Products delivered to the Warehouse in the relevant three month period. Such loss and damage will include manufacturing and disposal costs. The Customer must use reasonable endeavours to mitigate its losses. The manufacturing cost shall, at NewCold's request, be determined by an independent auditor.
- 17.15 NewCold will visually check the quantity and condition of all Products upon the arrival of the Products at the Warehouse according to the process documented in the Operating Specification, and shall obtain the relevant delivery/consignment notes for all Products from the carrier. NewCold shall be responsible for preparing the delivery/consignment notes for all Products leaving the Warehouse and shall ensure that all such delivery/consignment notes are complete and accurate.
- 17.16 If NewCold disputes the completeness or content of any Products or any seals have been broken or tampered with on any Products which are Delivered into NewCold's Custody, NewCold shall accept delivery of the Products and (noting on the relevant delivery/consignment notes that it disputes the completeness or content or that the seals have been broken or tampered with) will be entitled physically to set aside such Products (providing such action does not affect the quality of such Products) and NewCold shall have no liability in relation to any Products which have been so set aside. NewCold shall send the Customer as soon as reasonably practicable (and in any event within 1 Business Day of accepting delivery) an incident report in the form specified in the Operating Specification in relation to such disputed Products and the Customer shall arrange for such Products to be collected promptly from the Warehouse at its own cost.
- 17.17 The Customer shall indemnify and hold harmless NewCold against all reasonable costs and Losses suffered by NewCold to the extent they arise as a direct result of any recall of Products

(where that recall has not arisen because of NewCold's handling of the Products) or any breach by the Customer of its obligations under this Agreement in respect of the Products. NewCold shall use its reasonable endeavours to mitigate any such costs and Losses.

18. Access to Premises and Records

- 18.1 NewCold shall provide the Customer and its Representatives and invitees reasonable access to the Warehouse as necessary for the purpose of Product related quality assurance, inspections by regulatory authorities and certifying bodies, and for such other purposes as the Customer may reasonably require, subject always to duties of confidentiality owed by NewCold to third parties.
- 18.2 Auditing visits shall take place during normal business hours, and be notified to NewCold in writing not less than 5 Business Days in advance.
- 18.3 The Customer shall procure that its Representatives, when visiting the Warehouse, comply with NewCold's reasonable security and safety procedures and rules in place at the Warehouse, provided that such security and safety procedures are specified in the Operating Specification or have been notified in advance to the Customer in writing.
- 18.4 NewCold shall ensure that full accurate and proper records are kept relating to the provision of the Services (including details of Products delivered to and despatched from the Warehouse) and the Charges. All such records must be kept up-to-date and contain information which is current and accurate. Records shall be kept for a minimum period of six (6) years from (as the case may be) such Products being Delivered out of NewCold's Custody or such Charges being invoiced. NewCold shall make such documentation available for examination and copying by the Customer and its Representatives at any time during such period on reasonable notice. Notwithstanding the foregoing, NewCold shall not be obliged to disclose any commercially sensitive or confidential information about its business, its other customers or their businesses.
- 18.5 Nothing in this Clause 18 shall give the Customer access to any records of NewCold to the extent that they concern third party goods or products stored at the Warehouse, or any other Confidential Information of NewCold or any third party.

19. Liability

- 19.1 Nothing in this Agreement shall be deemed to limit or exclude the liability of a party (the **"Defaulting Party"**) for:
- (a) death or personal injury caused by the Defaulting Party's wilful act, negligence or default or the wilful act, negligence or default of the Defaulting Party's Representatives;
 - (b) fraud or fraudulent misrepresentation of the Defaulting Party or its Representatives; or
 - (c) any other type of liability which cannot be validly limited or excluded at law.
- 19.2 Subject to Clause 19.1, neither party will be liable, whether in contract, tort (including negligence), breach of statutory duty, under any indemnity or otherwise in connection with or arising from this Agreement for any:
- (a) loss of profits, revenues or business opportunities;
 - (b) depletion of goodwill or loss of reputation;
 - (c) loss of actual or anticipated savings; or
 - (d) any indirect or consequential loss;

save that nothing in this Clause 19.2 shall relieve Customer of its obligations to make payments in accordance with this Agreement (including without limitation Customer's obligation to make

the Minimum Annual Storage Revenue payments) or any liability of the Customer in connection with Minimum Storage Requirement.

19.3 NewCold shall have no liability:

- (a) for any loss of or damage to Products for which it would otherwise have been liable unless it is advised in writing of such loss or damage by the Customer within 6 months of the date on which the Customer was, or ought reasonably to have been, aware of that loss or damage; or
- (b) for any shortfall of Products contained within sealed containers or packaging, which NewCold collected from the Customer or which were delivered to NewCold and which have remained in such packaging without being tampered with or replaced.

19.4 Subject to Clause 19.1 but notwithstanding any other provision of this Agreement, NewCold's total aggregate liability, whether in contract, tort (including negligence), breach of statutory duty, under any indemnity or otherwise in connection with or arising from this Agreement shall be limited:

- (a) for liability arising in connection with a failure to meet the Intended Services Commencement Date, to the costs specified in Clause 3.3 subject to the caps specified in that Clause;
- (b) for costs arising from loss of or damage to Products, to the manufacturing costs and reasonable and evidenced disposal cost of the Products;
- (c) for failure to comply with the Minimum Performance Targets, to the service credits calculated in accordance with Schedule 4 Part 3 (*Service Credits*) and the Customer's right of termination in accordance with Clause 26.3; and
- (d) in aggregate for all liabilities arising under this Agreement in the sum of \$10,000,000 (ten million Australian dollars), save that such aggregate cap shall not apply to NewCold's liability for costs arising from loss of or damage to Products (which shall only be limited in accordance with Clause 19.4(b)).

19.5 The Customer acknowledges that NewCold's Charges are predicated on the exclusions and limitations of liability set out in this Clause 19 and the levels of insurance cover specified in Clause 20.

19.6 Subject to the Customer using its reasonable endeavours to mitigate any such loss or damage, NewCold shall indemnify the Customer against all losses and damages suffered by the Customer as a direct result of:

- (a) the wilful act, negligence or default of NewCold or its Representatives; or
- (b) damage to, destruction or loss of Products at the Warehouse during the period from when such Products are Delivered into NewCold's Custody until such Products are Delivered out of NewCold's Custody, such loss and damage to include the direct manufacturing and disposal costs of such Products.

20. Insurance

20.1 NewCold shall take out and maintain throughout the Term (and for at least 12 months after the Term has ended) adequate and proper insurance with reputable insurers (which complies with all applicable statutory requirements) in respect of:

- (a) employer's liability for all of its personnel who perform any obligations of NewCold under this Agreement to the extent required by law;
 - (b) public liability insurance with a minimum indemnity limit of \$10,000,000 in respect of any one occurrence, against the legal liability for death of or bodily injury to persons, and/or damage to or loss of destruction of any property (including damage to or the loss or destruction of the Products) arising out of or in connection with the provision by NewCold or its Representatives of the Services;
 - (c) motor vehicle liability insurance providing third party property damage cover with a minimum indemnity limit of \$10,000,000 in respect of any one occurrence where the limit is not otherwise governed by legislation, and NewCold will ensure that any contractors or subcontractors have a similar policy in place; and
 - (d) Logistics liability insurance with a minimum indemnity limit of \$8,000,000 in respect of any one occurrence against any damage to or the loss or destruction of any Products stored at NewCold arising out of or in connection with the provision by NewCold or its Representatives of the Services.
- 20.2 The Customer is responsible for insuring the Products against all risks to their full insurable value.
- 20.3 Each party shall inform the other as soon as reasonably practicable (and in any event within 5 Business Days of the relevant occurrence) of the occurrence of any event connected with the Services which could give rise to either party making an insurance claim under NewCold's insurance policy. If the Customer is claiming under any insurance policy of NewCold, the Customer shall provide such assistance as NewCold may reasonably require in order to progress the claim. NewCold will keep the Customer regularly informed of the progress of any such claim.
- 20.4 On receipt of the Customer's reasonable written request from time to time, NewCold shall promptly provide to the Customer:
- (a) written details or copies of the insurance policies it is required to maintain pursuant to Clause 20.1; and
 - (b) written evidence, reasonably satisfactory to the Customer, of the continuing validity of such insurance policies and that all premiums payable in respect of such insurance have been paid and are up to date.
21. **Service Credits**
- 21.1 Except for the Initial Period, throughout the duration of the Agreement and subject to the terms of this Agreement, the Services will be provided so as to satisfy all the Standard KPIs, subject always to Clause 23.
- 21.2 Failure by NewCold to meet the Standard KPIs shall give rise to service credits in accordance with Schedule 4 Part 3 (*Service Credits*).
- 21.3 The parties acknowledge that the service credits specified in Schedule 4 Part 3 (*Service Credits*) are a reasonable pre-estimate of the actual loss that may be suffered by the Customer as a result of NewCold's failure to meet the Standard KPIs.
22. **Disaster Recovery**
- 22.1 NewCold shall, within 30 days of the Services Commencement Date, put in place in accordance with the provisions of Schedule 7 a customary and commercially reasonable plan of the business continuity and recovery procedures to be followed by NewCold in the event of a Disaster (as such term is defined in Clause 22.2 below) ("**Disaster Recovery Plan**"). The Disaster Recovery Plan shall be such as to meet any reasonable requirement set by the

Customer and shall be designed to ensure that as far as reasonably practicable despite any Disaster or Force Majeure Event, the Services continue to be performed without interruption or derogation and in accordance with this Agreement.

22.2 If NewCold becomes aware of any event or circumstance which has or may lead to circumstances likely to affect NewCold's ability to provide all or part of the Services (which is likely to have a material impact for the Customer) in accordance with this Agreement (a **"Disaster"**), it shall (save where the event is a Force Majeure Event to which the notice provisions in Clause 23 apply instead) notify the Customer as soon as practicable and indicate the expected duration of such effect.

22.3 For the avoidance of doubt, the development of and compliance with the Disaster Recovery Plan does not relieve NewCold of any of its obligations under this Agreement.

23. **Force Majeure**

23.1 Neither the Customer nor NewCold will be liable to the other for any delay, hindrance or failure to comply with all or any of its obligations under this Agreement (save for an obligation to pay money) to the extent that such delay, hindrance or failure is attributable to a Force Majeure Event, provided that:

(a) the party affected by the Force Majeure Event (the **"Affected Party"**) as soon as possible and in any event within 3 Business Days after commencement of the Force Majeure Event, notifies the other party (the **"Non Affected Party"**) in writing of the Force Majeure Event. Such notice shall state the effects of the Force Majeure Event on the Affected Party's ability to perform its obligations under the Agreement and contain an estimate as to how long the Affected Party believes the Force Majeure Event will continue; and

(b) the Affected Party uses all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations under this Agreement and to ensure the continuity of the performance of the Services.

23.2 NewCold shall, within a reasonable period of notifying the Customer of a Force Majeure Event in accordance with Clause 23.1(a), put forward reasonable proposals to the Customer for alternative arrangements for performing its obligations under this Agreement. Following consideration of each proposal made by NewCold together with any reasonable proposals of its own (which may include allowing a third party to perform the relevant Service on NewCold's behalf), the Customer may select a proposal which is, in its reasonable opinion, the most suitable for its requirements. NewCold shall, if reasonably required by the Customer, be obliged to implement such proposal as soon as reasonably practicable following its selection by the Customer.

23.3 During the continuation of the Force Majeure Event in which NewCold (but not the Customer) is an Affected Party, Charges shall remain payable for, and terms of this Agreement still apply to, the Services which NewCold continues to provide (or the provision of which it procures from a third party in accordance with the terms of this Agreement) but shall not be payable for Services to the extent that, due to the Force Majeure Event, they are not provided or procured.

23.4 As soon as reasonably practicable and in any event within 5 Business Days after the cessation of the Force Majeure Event, the Affected Party shall notify the Non Affected Party in writing of the cessation of the Force Majeure Event and shall resume performance of the suspended obligations under this Agreement.

23.5 If a Force Majeure Event causes or results in a partial or complete destruction of the Warehouse, NewCold and the other NewCold Group Companies will have the option to rebuild or repair the Warehouse and to procure a third party supplier (or more than one), approved by the Customer, (such approval not to be unreasonably withheld, conditioned or delayed) and/or a Back-Up Operator to provide the alternative storage and handling services for the Products provided that:

- (a) the Customer shall continue to pay the Charges to NewCold for the Services it receives;
 - (b) the repaired or rebuilt Warehouse shall be completed and the full Services restored within 24 months of the start of the Force Majeure Event; and
 - (c) NewCold has provided the Customer with sufficient evidence demonstrating the ability (including financial ability) and commitment of NewCold to complete the repair or rebuild within the time period specified.
- 23.6 Save where Clause 23.5 applies, if the Force Majeure Event continues for more than 9 months, either party shall be entitled to terminate this Agreement by serving no less than 3 months' notice in writing to the other party.
- 23.7 NewCold is not entitled to rely upon this Clause 23 to the extent the effects or impact of the circumstances in respect of which NewCold seeks to rely could reasonably and ordinarily have been materially mitigated or avoided by the application of those business practices, methods, standards, procedures and policies which would reasonably be expected of a competent and experienced provider of similar services in Victoria.
- 23.8 In no event shall a Force Majeure Event where Customer is the Affected Party relieve Customer of its obligations to make payments in accordance with this Agreement, including without limitation Customer's obligation to make the Minimum Annual Storage Revenue payments even if Customer is unable to supply Products to the Warehouse due to a Force Majeure Event, provided that if:
- (a) the Customer is unable to utilise some or all of the Minimum Volume due to a Force Majeure Event; and
 - (b) the Customer has notified NewCold in writing of the Force Majeure Event, the effects of the Force Majeure Event on the Customer's ability to utilise some or all of the Minimum Volume and an estimate as to how long the Customer believes the Force Majeure Event will continue,

NewCold shall use reasonable endeavours to find other customers to utilise the storage space which would have been used by the Customer but for the Force Majeure Event. To the extent NewCold receives storage income from third parties using the storage space which would otherwise have been used by the Customer but which is not being used by the Customer due to the Force Majeure Event and there is no other space available in the Warehouse, the Minimum Annual Storage Revenue payments payable by the Customer will be reduced by an amount equal to that storage income. Notwithstanding any other provision of this Agreement, to the extent NewCold allocates storage space to a third party's products which would otherwise have been used for the Customer's Products during the estimated period of the Force Majeure Event (as notified to NewCold by the Customer in accordance with Clause 23.8(b)), NewCold shall have no liability to the Customer under Clause 7.5 if the duration of the Force Majeure Event is less than estimated.

24. **Dispute Resolution**

- 24.1 Any Dispute under this Agreement shall be treated in accordance with the provisions of this Clause 24.
- 24.2 The Customer and NewCold undertake that upon a Dispute arising a senior Representative of each of the Customer and NewCold, who shall each have authority to settle the Dispute, meet (either in person or via teleconference) in good faith as soon as reasonably practicable and in any event no later than 10 Business Days after a written request from either party to the other, and use all reasonable endeavours to resolve the Dispute.
- 24.3 If the Dispute cannot be resolved by negotiation as set forth in Clause 24.2 above, then either party may initiate mediation before a commercial mediator by serving a written demand for mediation. Mediation shall be conducted within 30 Business Days of written demand and be

administered by the Australian Disputes Centre (**ADC**). The mediation will be conducted in accordance with ADC Guidelines for Commercial Mediation which set out the procedures to be adopted, the process of selection of the mediator and the costs involved, and the terms of those Guidelines are incorporated in this document.

- 24.4 All negotiations and mediation shall be conducted in strict confidence. Those negotiations and mediation shall be without prejudice to the rights of the parties and shall not be used in evidence or referred to in any way without the prior written consent of both parties in any future court proceedings except in so far as necessary to enforce any compromise agreement entered into by the parties.
- 24.5 If the Dispute has not been resolved as a result of negotiations and mediation referred to in Clauses 24.2 and 24.3 then either party may pursue formal resolution of that dispute pursuant to Clause 41.
- 24.6 Nothing in this Clause 24 shall prevent any party from seeking injunctive or other emergency relief against the other at any time.

25. **Confidentiality**

- 25.1 The parties acknowledge that in the course of their performance of this Agreement (and the negotiation of it or any variation to it) each party ("**Discloser**") will disclose or make available to the other party (the "**Receiving Party**") information about or relating to its business including, without limitation, information relating to products, prices, work methods, organisation, business ideas, business strategies, practices, plans, forecasts handling, costs, markets, inventory information, customers, technology, and operational and administrative systems ("**Confidential Information**").
- 25.2 The Receiving Party will keep the Discloser's Confidential Information strictly confidential and not disclose any of it to any person save as permitted under this Clause 25. Nothing in this Clause 25 shall grant the Receiving Party any right or licence over any Confidential Information of the Discloser.
- 25.3 The Receiving Party will make available the Discloser's Confidential Information only to its relevant Representatives (including, in the case of NewCold, its employees, its direct and indirect shareholders and their respective employees, direct and indirect investors, auditors, consultants, advisors, bankers and prospective providers of finance or insurance) and the Customer Group or NewCold Group Companies (as the case may be) on a need to know basis and all persons to whom the Confidential Information is made available will be made aware of the strictly confidential nature of the Confidential Information and the restrictions imposed under this Clause on the use of it and will be bound by similar requirements not to disclose the Confidential Information. The Receiving Party will be and remains liable for any breach of this Clause by such persons.
- 25.4 Clauses 25.2 and 25.3 shall not apply to any Confidential Information for which the Receiving Party can prove by written records that it:
- (a) was lawfully in its possession prior to such disclosure and was not acquired under an obligation of confidence;
 - (b) was already in the public domain at the time of disclosure or is or becomes public knowledge through no fault of the Receiving Party;
 - (c) is information furnished to the Receiving Party without restriction by any third party having a bona fide right to do so;
 - (d) was developed wholly independently by the Receiving Party without reference to Confidential Information of the Discloser; or

- (e) is required (and only to the extent required) to be disclosed by the law, court or regulatory body of any relevant jurisdiction provided (to the extent legally permissible) prompt written notice of this is given to the Discloser so the Discloser can attempt to object to such disclosure.
- 25.5 All Confidential Information shall be returned to the Discloser or destroyed at its direction. The obligations of confidentiality set out in this Agreement shall survive the termination of this Agreement in whole or in part for 5 years except in relation to Confidential Information which is a trade secret, for which the obligations of confidentiality shall be indefinite.
- 26. **Termination**
- 26.1 The Customer shall, subject to Clause 30.1, have the right at any time during the Term to terminate this Agreement or all or any of the Services with immediate effect or at a later specified date by giving written notice to NewCold if an Insolvency Event occurs in relation to NewCold.
- 26.2 The Customer shall, subject to Clause 26.4, Clause 26.5 and Clause 30.1, be entitled to terminate this Agreement by written notice to NewCold if NewCold commits a material breach of this Agreement that substantially impacts NewCold's provision of Services and is not remedied within 20 Business Days of receipt of a written notice from the Customer specifying the breach; provided, however, if such breach cannot reasonably be remedied within 20 Business Days and NewCold has commenced and is reasonably proceeding to remedy the breach, then such period shall be extended for as long as is reasonably necessary for NewCold to cure the breach, such additional period not to exceed a further 60 Business Days.
- 26.3 From the end of the Initial Period, if the OLCOT Figure is below 92% for longer than two consecutive months or any three months in a Forecast Year due solely to fault on the part of NewCold, the Customer may notify NewCold in writing and NewCold shall have 60 days from the date of such notice to demonstrate to the Customer's reasonable satisfaction (acting reasonably and in good faith) that it is able to achieve an OLCOT Figure of at least 92%. If, solely due to fault on the part of NewCold, NewCold is unable to demonstrate to the Customer's reasonable satisfaction within such time period that it is able to achieve an OLCOT Figure of at least 92%, NewCold shall be deemed to be in material breach of this Agreement and the Customer shall be entitled to terminate the Agreement on not less than 90 days' prior written notice provided that the Customer delivers such termination notice within 120 days of the date on which such right arose.
- 26.4 NewCold shall be entitled to immediately suspend all or any services to be performed under this Agreement if (i) an Insolvency Event occurs in relation to the Customer or (ii) NewCold has given the Customer written notice of a failure by the Customer to pay undisputed sums to NewCold under this Agreement and the Customer fails to cure such payment default within 30 days after written demand from NewCold; provided, however, that no such grace period will be available should the Customer default twice in its payment obligations under this Agreement in the preceding 12 months (even if such payments were subsequently made during the grace period).
- 26.5 Without prejudice to any other right or remedy it may have, NewCold may terminate this Agreement with immediate effect or at a later specified date by giving written notice to the Customer if:
 - (a) an Insolvency Event occurs in relation to the Customer; or
 - (b) the Customer commits a material breach of this Agreement which is incapable of remedy or which is capable of remedy but is not remedied within 60 days of receipt of a written notice from NewCold specifying the breach;
 - (c) a Force Majeure Event causes or results in a partial or complete destruction of the Warehouse; or

- (d) the Customer fails to select a proposal for the continued provision of the Services in accordance with Clause 23.2 within a reasonable period (of not more than 20 Business Days) of such proposals being made to the Customer.

26.6 Each party shall use its reasonable endeavours to mitigate its Losses in the event of any breach by the other party of its obligations under this Agreement, even where such breach is the subject of an indemnity under this Agreement. Where, as a result of a breach of the Agreement by one of the parties to it, the non-defaulting party receives payment under its insurance cover for some or all of the Losses arising from the breach, such payment shall be taken into account in commensurately reducing the Losses for which the defaulting party is liable under this Agreement.

It shall not constitute a breach by any party hereto of any of its obligations under this Agreement (including but not limited to any breach giving rise to the termination rights under this Clause 26) to the extent such party's failure to perform its obligations arises as a result of any breach by another party hereto, or such other party's suppliers or contractors (or any Representative, sub-supplier or sub-contractor of any of them), of its obligations under this Agreement.

27. **Consequences of termination**

27.1 Termination of this Agreement or any of the Services:

- (a) will not affect any accrued rights or liabilities of either party at the date of termination and shall be without prejudice to any other rights or remedies that either party may have under this Agreement or at law; and
- (b) will not affect the continuance in force of any provision of this Agreement to the extent it is expressed or by implication intended to continue in force after termination, including, but not limited to, Clause 1 (*Definitions and interpretation*), Clause 7.9 (*Forecast and Minimum Annual Revenue*); Clause 19 (*Liability*); Clause 21.3 (*Service Credits*); Clause 23.1 (*Force Majeure*); Clause 24 (*Dispute Resolution*); Clause 25 (*Confidentiality*); Clause 27 (*Consequences of termination*); Clause 28 (*Invalidity*); Clause 29 (*Set-Off and Third Party Rights*); Clause 33 (*Language*); Clause 36 (*Entire Agreement*); Clause 37 (*Announcements*); Clause 38 (*Waiver*); and Clause 40 (*Governing Law and Jurisdiction*).

27.2 On termination or expiry of this Agreement for any reason:

- (a) each party shall return to the other, as soon as reasonably practicable, all physical and electronic copies of Confidential Information of the other, except to the extent the other party requests in writing that such physical or electronic copies be destroyed and/or deleted; and
- (b) at the reasonable request and at the cost of the Customer, NewCold shall co-operate in good faith and provide reasonable assistance and information required by a new third party supplier of services (substantially the same as the Services) to the Customer following the termination of this Agreement.

27.3 On termination of this Agreement by NewCold pursuant to Clause 26.5(a) or Clause 26.5(b), NewCold may refuse to deliver Products to the Customer until NewCold has been paid in full for all Charges then due to it (save for any Charges which are subject to a bona fide dispute between the parties).

28. **Invalidity**

If at any time any provision (or part of a provision) of this Agreement is or becomes illegal, invalid or unenforceable in any respect then that shall not affect the legality, validity or enforceability of any other provision of this Agreement (or the remainder of that provision).

29. **Set-Off and Third Party Rights**

- 29.1 All payments due under this Agreement shall be made in full without deduction, withholding or deferment in respect of any set-off or counterclaim.
- 29.2 The parties to this Agreement do not intend that there be any third party beneficiaries to this Agreement.

30. **Future Financing/Assignment of Rights**

- 30.1 During the Term, NewCold and/or any other NewCold Group Company may periodically elect to seek financing and/or refinancing (each a "**Financing**") from third party lenders (each a "**Lender**") using this Agreement, the Warehouse or other assets related to them (all such assets being collectively referred to as the "**Assets**") as collateral for any such Financing.
- 30.2 The Customer agrees to cooperate with NewCold and any of NewCold's Group Companies in connection with any such Financing (all parties acting reasonably and in good faith) at no out-of-pocket cost or expense to the Customer, including, amongst other things:
- (a) by promptly amending this Agreement in ways agreed between NewCold and the Customer, both acting reasonably, if requested by a Lender; and/or
 - (b) promptly entering into a tripartite agreement with, among others, NewCold, any NewCold Group Company and the relevant Lender under which the Customer agrees:
 - (i) not to terminate this Agreement whether as a result of an Insolvency Event of NewCold or any breach by NewCold of this Agreement without first giving the Lender notice and a period of at least 45 days to remedy the breach or assume NewCold's rights and obligations under this Agreement; and
 - (ii) to issue the Lender at the same time as NewCold copies of any notices served on NewCold under this Agreement;

provided, however, that the Customer shall not be required to amend any pricing terms or other provisions which have no reasonable relationship to the Financing. The parties hereby confirm that any assignment (in particular as collateral) of claims under or in connection with this Agreement is allowed under Applicable Law and permitted under this Agreement.

- 30.3 At any time, and from time to time, upon reasonable written request by NewCold, the Customer shall cooperate with NewCold to provide a certificate addressed to a third party acknowledging that the Agreement is in full force and effect and there are no defaults on the part of either party under the Agreement (provided this reflects the actual circumstances as at the date of the certificate).

31. **Transfer of the Agreement and Management Continuity**

- 31.1 Save as otherwise permitted by this Clause 31 neither party shall assign or otherwise dispose of any of its rights or obligations under this Agreement.
- 31.2 NewCold may assign, novate or sub-contract any of its rights and obligations under this Agreement (in whole or in part) to any other NewCold Group Company, provided that:
- (a) where such NewCold Group Company is not of a materially lesser financial standing than NewCold; and
 - (i) where NewCold assigns or novates any of its rights and obligations to a NewCold Group Company, NewCold shall notify the Customer in writing in advance of such assignment or novation (and provide the Customer with sufficient information about the relevant NewCold Group Company so that the

Customer can satisfy itself that it is not of a materially lesser financial standing than NewCold); and

- (ii) where NewCold sub-contracts any of its rights and obligations to a NewCold Group Company, NewCold shall remain liable for the acts and omissions of the sub-contractor as fully as if they were the acts and omissions of NewCold; or
 - (b) if such NewCold Group Company is of a materially lesser financial standing than NewCold, then NewCold shall either (at its option) obtain the prior consent of the Customer (such consent not to be unreasonably withheld, delayed or conditioned) or shall remain liable for the acts and omissions of the NewCold Group Company.
- 31.3 For the avoidance of doubt, where any of NewCold's rights and obligations are assigned, novated or sub-contracted to a NewCold Group Company, such NewCold Group Company will have the same rights as NewCold to assign, novate or sub-contract the Agreement as permitted by Clause 31.2 subject to the same conditions set out in Clause 31.2.
- 31.4 NewCold may:
 - (a) assign its rights (but not its obligations) under this Agreement (in whole or in part) to any third party which is not a NewCold Group Company or a Lender
 - (b) assign its rights (but not its obligations) under this Agreement (in whole or in part) to a Lender, provided that NewCold notifies the Customer in writing in advance of such assignment; and
 - (c) novate or sub-contract this Agreement (in whole or in part) to any third party which is not a NewCold Group Company provided that NewCold obtains the prior written consent of the Customer (such consent not to be unreasonably withheld, conditioned or delayed). If no written consent and no written objection is received by NewCold within 21 days of the request for consent, NewCold shall be entitled to issue a further request for consent and if no written objection is received by NewCold within 7 days of such further consent request, such consent shall be deemed to have been given in full.
- 31.5 Where NewCold seeks the Customer's consent under clause 31.2 or 31.4, NewCold must provide suitable information about the financial standing and business experience of the proposed party to the Customer, and must answer all reasonable questions and requests for information by the Customer in relation to the proposed new party.
- 31.6 The Customer may assign its rights under this Agreement to a company in the Customer Group by giving written notice to NewCold provided that:
 - (a) such assignment shall not relieve the Customer of its obligations under this Agreement and the Customer shall remain liable for the acts and omissions of the Customer Group member as fully as if they were the acts and omissions of the Customer; and
 - (b) if the assignee ceases to be a company in the Customer Group the Customer shall procure that the assignee immediately assign its rights under this Agreement back to the Customer or to another company within the Customer's Group.
- 31.7 Either party may novate its rights and obligations in connection with the sale of all or substantially all of its business provided that it receives the other party's prior written consent, which shall not be unreasonably withheld, conditioned or delayed after taking into account the competence, creditworthiness and solvency of the party to whom the rights and obligations will be novated (which, in the case of the novation of NewCold's rights and obligations, shall be no less than that of NewCold as at the Signature Date and, in either case, no less than is necessary to ensure the party to whom the rights and obligations will be novated is capable of meeting the relevant obligations under this Agreement).

32. **Sub-contracting**

- 32.1 NewCold is not, as a result of any sub-contracting arrangement, relieved from the performance of any obligation under this Agreement and will be responsible and liable for all acts and omissions of a sub-contractor.

33. **Language**

All notices and other communications relating to or in respect of this Agreement shall be in the English language.

34. **Notices**

All notices expressed to be given by any party to this Agreement shall be in writing and shall be deemed to have been validly given on the date of delivery to the address referred to below, if delivered by hand, by post or courier. Any notice which would otherwise be deemed to be given outside the times of 9.30 a.m. and 5.30 p.m. on a normal Business Day shall be deemed to be given or made at 9.30 a.m. on the next normal Business Day. Either party may change such details by giving the other notice in accordance with this Clause 34.

Addresses for notices:

NewCold: Abhy Maharaj
Global Chief Commercial Officer & Chief Operating Officer
NewCold Melbourne No. 2 Pty Ltd. 108 Agar Drive, Truganina, Victoria

Customer: Rob Galt
Global Category Leader, Business Services
Simplot Australia Pty. Ltd
Chifley Business Park, 2 Chifley Drive, Mentone, VIC 3194

35. **Further Assurance**

Each party shall at its own expense use commercially reasonable efforts to do or procure the doing of all things as may reasonably be required to give full effect to this Agreement including the execution of all deeds and documents.

36. **Entire Agreement**

This Agreement represents the whole and only agreement between the parties in relation to the subject matter of this Agreement and supersedes any previous agreement between the parties in respect of its subject matter. Neither party shall have any liability or remedy in respect of any representation, warranty or other statement (other than as set out in this Agreement) being false, inaccurate or incomplete unless it was made fraudulently. Each party acknowledges that in entering into this Agreement it has placed no reliance on, nor has any party given any, representation, warranty, statement or promise relating to the subject matter of this Agreement other than as set out in this Agreement. Each party irrevocably and unconditionally waives any right it may have to rescind this Agreement because of breach of any warranty or representation not contained in this Agreement unless such misrepresentation was made fraudulently.

37. **Announcements**

- 37.1 No press release or other public announcement or communication concerning this Agreement or any part of it or the parties' relationship shall be made by either party without prior written consent of the other. Variation
- 37.2 Subject to Schedule 1 Part 3 (*Charges Review Mechanism*) and Schedule 3 (*Service Change Procedure*), this Agreement may only be varied from time to time with the written agreement of the authorised representatives of each party. Any variations, supplements or amendments to this Agreement shall be invalid unless made in writing.

38. **Waiver**

No delay in exercising, non-exercise or partial exercise by any party of any of its rights, powers or remedies provided by law or under or in connection with this Agreement shall operate as a waiver or release of that right, power or remedy. Any waiver or release must be specifically granted in writing signed by the party granting it. The waiver or release shall only operate as a waiver or release of the particular breach specified and not of further breaches of the same or any other type, unless expressly stated otherwise.

39. **Independence**

NewCold is an independent contractor engaged by the Customer to supply the Services. Nothing in this Agreement shall make either party the legal representative or agent of the other nor shall either party have the right or authority to assume, create or incur any liability or obligation of any kind, express or implied, against, in the name of or on behalf of, the other party.

40. **Governing Law and Jurisdiction**

40.1 This Agreement and any dispute, claim or obligation (whether contractual or non-contractual) arising out of or in connection with it, its subject matter or formation shall be governed by the laws of the state of Victoria, Australia.

40.2 The parties each submit to the exclusive jurisdiction of the Courts of the state of Victoria, Australia and Courts competent to hear appeals from those Courts.

41. **Counterparts**

This Agreement may be executed in any number of counterparts and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute one and the same instrument.

42. **Participation of the Parties**

The parties acknowledge that this Agreement, and all matters contemplated herein, have been negotiated by the parties and that each party has participated in the drafting and preparation of this Agreement from the commencement of negotiations at all times through the execution hereof. If any provision of this Agreement requires judicial or other interpretation, it is agreed that the court interpreting or construing it shall not apply a presumption that the terms of this Agreement are to be more strictly construed against one party by reason of the rule of construction that a document is to be more strictly construed against a party who by itself or through its agents prepared the document, it being agreed that all parties to this Agreement participated in the preparation of this Agreement.

43. **Legal Fees and Costs**

43.1 Except as otherwise provided in this Agreement, each party shall be responsible for and shall bear its own costs, charges and expenses incurred in connection with the preparation, completion and maintenance of this Agreement.

Schedule 1

Part 1

(Standard Services Charges)

The Charges shall be invoiced in accordance with the table as set in out in Part 2 (Charges Table) of this Schedule.

The following terms and conditions apply for both Part 2 (Charges Table) and Part 3 (Charges Review Mechanism) of this Schedule:

- 1.1 Upon receipt of a Pallet at the Warehouse:
 - (a) for every Pallet, an inbound charge shall be invoiced (the "**Inbound Charge**");
 - (b) NewCold shall be entitled to charge a Pallet Reject Charge (as set out in the table below Part 2 (Charges Table)) for each Pallet Reject (a "**Pallet Reject**" being defined as a Pallet which does non-conform to all the Standard Product Characteristics as listed in Part 2 (Operating Specification), Schedule 2) provided always that NewCold shall not be entitled to charge for any Pallet Rejects within the following thresholds:
 - (i) during the Initial Period, the threshold shall be Pallet Rejects to the total of 5% of all processed Pallets;
 - (ii) after the Initial Period, the threshold shall be Pallet Rejects to the total of 1% of all processed Pallets;
 - (iii) the Pallet Reject Charge excludes the charges for any Additional Services to be provided to bring the Products back to the Standard Product Characteristics.
- 1.2 The Storage Charges payable for the preceding week will be based on the inventory of Products held by NewCold at 11.59 pm on whichever day of the relevant week that the volumes of Products were highest; except that, where the highest volumes in the week are more than 500 pallets greater than the mean average volumes for that week (with the volumes for each day being assessed at 11.59 pm), the Storage Charges are to be calculated based on the mean average volume for that week plus 500 Pallets (ie the excess pallets above the 500 Pallet threshold are not to be taken into account in calculating the Storage Charges);
- 1.3 Upon dispatch, an outbound tariff shall be invoiced for each Pallet (the "**Outbound Charge**");
- 1.4 A case picking tariff shall be applied to all cases picked (the "**Case Pick Charge**"). This charge includes the costs of stretch-wrap and label;
- 1.5 No Charges apply for routine intra-warehouse movements (e.g. replenishment to pick floor);
- 1.6 Charges shall be reviewed on an annual basis as described in Part 3 (Charges Review Mechanism);
- 1.7 Charges are rounded to 3 decimal places; and
- 1.8 Charges exclude GST.

Part 2
(Charges Table)

Logistic Services	Base Rate	Unit
Inbound Charge (inclusive of pallet slip sheet unloading)	\$4.50	p/Pallet
Pallet Reject Charge	\$4.50	p/Pallet
Outbound Charge	\$4.50	p/Pallet
Storage Charge		
Storage per week less than 25,001 pallets	\$4.25	p/Pallet
Storage per week greater than 25,000 pallets	\$3.99	p/Pallet
Case Picking Charge (includes wrapping and labelling to build rainbow pallets, layer, or sandwich pallets)	\$0.40	p/Case
Pallet Wrapping (does not apply to case picking)	\$2.00	p/Pallet
Pallet Labelling (does not apply to case picking)	\$0.60	p/SSCC label
Case Labelling (does not apply to case picking)	\$0.80	p/Case
Pallet Replacement/Inversion [cost includes pallet replacement, rewrapping and labelling]	\$15.00	p/Pallet
Pallet Capping	\$5.00	p/Pallet
Pallet Hire (storage and delay days)	\$0.04	p/Pallet/day
Auxiliary Services – Day Rate	Base Rate	Unit
Container Hand Stacked Load and Unload	20 ft - \$260* 40 ft - \$510*	p/20' or 40' Container
<p><i>*These rates are based on average loading and unloading of up to 2 hours. If the actual average loading and unloading time for a specific product type (for example, "shark containers") is greater than 2 hours, the Customer shall use reasonable endeavours to reduce the average loading and unloading time. If the average loading and unloading time is more than 2 hours when assessed across any 3 month period, despite NewCold performing the Services in accordance with Best Industry Standards, NewCold shall, from that point onwards, be entitled to increase the fees charged on a pro-rata basis for that specific product type.</i></p>		

Pallet Restacking**	\$25.00	p/Pallet
Contract Labour Standing Time	\$45.00	p/person/hour
Other Additional Services	By Agreement	
** includes wrapping and labelling		
Additional Loading for Auxiliary Services	Base Percentage	Unit
Afternoon 14:00 – 22:00	17.5%	p/Unit
Night 22:00 – 6:00	30.0%	p/Unit
Saturday	50.0%	p/Unit
Sunday	100.0%	p/Unit
Public Holiday	150.0%	p/Unit
All Charges are in strict accordance with the terms of the Operating Specification.		

- 1.1 The Charges are based on the assumption that the Customer, its Representatives, contractors and agents operate professionally and efficiently, to at least the same standard as that imposed on NewCold under this Agreement, fully cooperate with NewCold and adhere to the Operating Specification, the terms of this Agreement, each Forecast and the time schedules provided for various actions and activities (collectively, the "Operating Assumptions").
- 1.2 Subject to its duty to mitigate, any additional reasonable costs and expenses incurred by NewCold as a result of a material variances from the Customer's Information shall be borne by the Customer, where it was not reasonably practicable for NewCold to avoid those costs.

Part 3

Charges Review Mechanism

Charges

1. The Charges shall first be adjusted on 1 July 2023 (**Initial Charges Review Date**) and thereafter shall be adjusted on each anniversary of the Initial Charges Review Date (each such date, and the Initial Charges Review Date being a "**Charges Review Date**").
2. Without prejudice to paragraph 1 within 30 days following each Charges Review Date NewCold shall adjust the Charges according to the following principles:
 - (a) 10% of the Storage Charges shall be increased or decreased by

100% of the percentage increase or decrease in the Electricity Index as at the Charges Review Date since the previous Charges Review Date (or, for the Initial Charges Review Date only, since 1 July 2022) subject in each case to a cap on the increase or decrease of 2% per year.
 - (b) 90% of the Storage Charges shall be increased or decreased by 75% of:

the percentage increase or decrease, as at the Charges Review Date, in the Prices Index over the period since the previous Charges Review Date (or, for the Initial Charges Review Date only, since 1 July 2022) subject to a cap on the increase or decrease of 2%.

i.e. **New Storage Rate** = current storage charge + (current storage charge x 90% x 75% x (change in the Prices Index (with increase or decrease capped at 2%)) + (current storage charge x 10% x (Electricity indexation change with increase or decrease capped at 2%))

All other Charges shall be increased or decreased by 100% of the percentage increase or decrease in the Prices Index over the period since the previous Charges Review Date (or, for the Initial Charges Review Date only, since 1 July 2022) subject to a cap on the increase or decrease of 2%.
3. The parties shall jointly review and negotiate (acting reasonably) adjustments to the rates if there are exceptional or unforeseen material changes in the cost of providing the Services, such as property taxes, electricity, labour or insurance costs.
4. The parties shall discuss in good faith an increase in the Charges (or an alternative allocation of costs between the parties) to take account of any additional reasonable costs incurred by NewCold in connection with the performance of any services for Customer, to the extent that the costs arise as a result of changes in Applicable Law which affect both NewCold and the wider cold store industry in the State of Victoria Australia.

Part 4

(Information on Invoice)

1. Invoices submitted by NewCold shall detail the following:
 - (a) Customer contact details;
 - (b) NewCold contact details;

- (c) Period covered by the invoice;
 - (d) Due date of invoice;
 - (e) Description of services;
 - (f) Amounts charged, split by type of service;
 - (g) Payment terms;
 - (h) *GST tax* payable; and
 - (i) Other information reasonably requested by the Customer.
2. NewCold must provide an electronic Excel version of each invoice in the format agreed between the parties with transactions broken down by the Service invoiced, the quantity invoiced and the relevant charge rate.

Part 5

(Minimum Annual Storage Revenue)

1. **"Minimum Annual Storage Revenue"** means the minimum storage revenue calculated in accordance with paragraph 3 below.
2. From the expiry of the Initial Period until the date which is three months prior to the expiry of the Term, the Customer guarantees NewCold the Minimum Annual Storage Revenue. The "Minimum Annual Storage Revenue" is calculated in accordance with the following formula save that:
 - (a) during the first Forecast Year the Minimum Annual Storage Revenue shall be calculated by reference to the period from the expiry of the Initial Period to the expiry of the first Forecast Year and "W" in the formula below shall be adjusted accordingly on a pro rata basis); and
 - (b) during the final part-year of the Term, the "W" in the formula below shall be adjusted according to the number of weeks that remain after the last full Forecast Year:

$$M = C \times V \times W$$

Where:

M = Minimum Annual Storage Revenue;

C = the weekly Storage Charge (as adjusted in accordance with this Agreement) applicable in the relevant Forecast Year;

V = the Minimum Volume for each week during the applicable Forecast Year; and

W = 52 (being the number of weeks in a Forecast Year).

3. Where the total amount invoiced to the Customer by NewCold as Storage Charges in respect of a Quarter is less than the pro-rated Minimum Annual Storage Revenue for that Quarter, NewCold shall be entitled to issue an invoice (the **"Shortfall Storage Invoice"**) to the Customer for an amount equal to such shortfall (the **"Shortfall Storage Invoice Amount"**). In determining whether to raise the invoice, NewCold shall act reasonably and take into account the Customer's latest rolling forecasts. The Customer shall pay the Shortfall Storage Invoice Amount to NewCold within thirty (30) days of receipt of the Shortfall Storage Invoice.
4. At the end of each Forecast Year, the parties will determine whether, over the course of the Forecast Year, the Shortfall Storage Invoice Amounts amount paid by the Customer reflect the amount (if any) by which the Storage Charges paid by the Customer in respect of that Forecast Year are less than the Minimum Annual Storage Revenue for that Forecast Year. If that is not the case, the parties shall make the appropriate adjustment between themselves so that the Customer has only paid to NewCold that amount by which the Storage Charges paid by the Customer in respect of that Forecast Year are less than the Minimum Annual Storage Revenue for that Forecast Year.

Part 6

(Incentive Payment)

1. NewCold shall pay the Customer \$2,600,000 plus GST on the date falling 6 months after the Signature Date (the "**Storage Incentive**"). If the Agreement is terminated prior to the Services Commencement Date the Customer shall immediately repay the Storage Incentive to NewCold in full.
2. If on the third anniversary of the Services Commencement Date the mean average storage volume for each week during the preceding three years is:
 - (a) equal to or fewer than 42,750 Pallets, the Customer shall pay to NewCold the Balancing Payment within 30 days; or
 - (b) equal to or more than 47,250 Pallets, NewCold shall pay to the Customer the Balancing Payment within 30 days.

3. The Balancing Payment payable pursuant to paragraph 1.1 shall be calculated using the following formula:

$$\text{Balancing Payment} = ((A / B) \times \$2,600,000) - \$2,600,000$$

Where:

A = the mean average storage volume in Pallets for each week during the first three Forecast Years

B = 45,000

save that if the above formula produces a negative number it shall be multiplied by -1 to give the actual Balancing Payment.

4. If there is a Balancing Payment then, if the mean average storage volume for each week in Pallets for the fourth and fifth Forecast Years is less than the mean average storage volume in Pallets for each week during the first three Forecast Years by 10% or more, then the Customer shall pay to NewCold the "**Fifth Year Reconciliation**" within 30 days of the fifth anniversary of the Services Commencement Date. Where the Fifth Year Reconciliation is calculated using the following formula:

$$\text{Fifth Year Reconciliation} = ((C / D) \times Y) - Y$$

Where:

C = the mean average storage volume in Pallets for each week during the first three Forecast Years

D = the mean average storage volume in Pallets for each week during the fourth and fifth Forecast Years

Y = the Storage Incentive as adjusted by the payment of the Balancing Payment in accordance with paragraphs 1.1 and 2 above (if applicable).

5. NewCold shall pay the Customer \$100,000 plus GST not less than 30 days prior to the Intended Services Commencement date.

Schedule 2

Part 1

(Description of Services)

Activities related to Services are described in the following table, and specified in more detail in the Operating Specification, an initial outline of which is contained in Part 2 (Operating Specification) of this Schedule and will be developed by agreement between the parties following the Signature Date in accordance with Schedule 3 (*Service Change Procedure*).

It is the intention of the Customer and NewCold to implement automation in its processes in accordance with the terms of this Agreement. In the event it is not commercially feasible to implement automated processes for a certain scope of work, manual processes will be agreed upon.

The table below describes the standard processes anticipated to be implemented to provide the Standard Services. Exceptions and manual processes expected to be used for certain scope of activities are described in **Part 2** (*Operating Specification*) of this Schedule.

Service	NewCold Responsibilities	Customer Responsibilities
Handling Inbound from Port (International Container)	<ul style="list-style-type: none"> Order receipt in WMS via EDI from the Customer. Manage slot booking via providing online slot booking system, to be used by carriers and NewCold. Unloading palletized products from container, visual check of the products received, documents check, recording product information in WMS (including using Batch ID calculator for Batch ID entry into WMS receipt confirmation by EDI, deviation reporting, damaged cartons removed and placed on hold status. Includes hand unloading Put away Pallets to storage 	<ul style="list-style-type: none"> Send order (Advance Shipment Notification if available) via EDI to NewCold WMS. Management of transport partners conform with the Operating Specification. Send products conforming with the Operating Specification (e.g. maximum Pallet height, Pallet weight, Pallet label). Customs documentation.
Handling Inbound from Plant (Truck or container)	<ul style="list-style-type: none"> Order receipt in WMS via EDI from the Customer. Manage slot booking via providing online slot booking system, to be used by carriers and NewCold. 	<ul style="list-style-type: none"> Send order (Advance Shipment Notification) via EDI to NewCold WMS. Management of transport partners conform with the Operating Specification.

	<ul style="list-style-type: none"> • Unload slip-sheeted and palletized products from truck, documents check, recording product information in WMS (including using Batch ID calculator for Batch ID entry into WMS), receipt confirmation by EDI, deviation reporting, damaged cartons removed and placed on hold status. • Put away Pallets to storage (by automated system). 	<ul style="list-style-type: none"> • Send palletized products conforming with the Operating Specification (e.g. maximum Pallet height, Pallet weight, Pallet label).
Handling Outbound to Customer (Truck)	<ul style="list-style-type: none"> • Order receipt in WMS via EDI from the Customer. • Manage slot booking via providing online slot booking system, to be used by carriers and NewCold. • Retrieve Pallets from storage location and transport to loading area (by automated system). • Audit random loads for accuracy and condition of cartons. • Load palletized products into truck. • Generate documents, shipment confirmation by EDI, deviation reporting. 	<ul style="list-style-type: none"> • Send correct and complete order via EDI or email to NewCold WMS. • Management of transport partners conform with the Operating Specification. • Provide instructions regarding Customer specific activities in a timely manner in order to be included in WMS pick instructions.
Handling Outbound to Customer (Container)	<ul style="list-style-type: none"> • Order receipt in WMS via EDI from the Customer. • Manage slot booking via providing online slot booking system, to be used by carriers and NewCold. • Retrieve Pallets from storage location and transport to loading area (by automated system). • Load palletized products into truck. • Includes hand loading 	<ul style="list-style-type: none"> • Send correct and complete order via EDI to NewCold WMS. • Management of transport partners conform with the Operating Specification. • Provide instructions regarding Customer specific activities in a timely manner in order to be included in WMS pick instructions. • Customs documentation.

	<ul style="list-style-type: none"> • Generate documents, shipment confirmation by EDI, deviation reporting. 	
Storage	<ul style="list-style-type: none"> • Storage of Products at the Warehouse conform with the agreed conditions. • Timely and accurate stock reporting and reconciliation. 	<ul style="list-style-type: none"> • Timely reaction to stock reports and participation in stock reconciliation.
Case Picking	<ul style="list-style-type: none"> • Order receipt in WMS via EDI from the Customer. • Replenishment stock to pick area in the Warehouse. • Case picking activities related to outbound order resulting, wrapped and labelled Pallets for outbound orders. 	<ul style="list-style-type: none"> • Send order via EDI to NewCold. • Provide clear picking instructions in a timely manner, in order to be included in WMS pick instructions.

Part 2

(Operating Specification)

This Schedule provides a detailed description of the key components of the operating specifications related to Standard and Additional Services. This Schedule provides a framework and key requirements of the Customer and NewCold, which the parties will develop into the Operating Specification, IT Systems and EDI Solution. For the avoidance of doubt, if there is any conflict or discrepancy between the provisions of this Operating Specification and any other provision of this Agreement, the provisions of the remainder of this Agreement shall prevail.

The policies below, as currently drafted, are designed for a manual warehouse and require modification for an automated warehouse. Accordingly, the parties will together update the policies and the updated policies, once agreed, will form part of the Operating Specification.

- (a) Simplot Operating_Procedures_for_Logistics 2020
- (b) Operating_Procedures_for_Logistics _Inventory Info 2020
- (c) Operating_Procedures_for_Logistics _International Info 2020
- (d) Operating_Procedures_for_Inbound Hot Loads 2020
- (e) Operating_Procedures_for_Logistics _Outbound Retail Audit Check Sheet
- (f) the Australian Food and Grocery Council Australian Cold Chain Guidelines; and
- (g) GFSI (Global Foods Safety Initiative)
- (h) Quality Assurance Standards

2. **Standard Product Characteristics**

- (a) Number of SKU's: 2172 total, 632 actively used.
- (b) Number of SKUs for picking: 370 average and 406 maximum.
- (c) Production batch size: varying from 10 Pallets, average to 735 Pallets per batch, average of 205 Pallets per batch
- (d) Best before date per batch: Locally produced use Best Before Date (DD/MM/YY) and imported products use DDMMYY
- (e) Different BBDs within batches: No
- (f) Pallet type: Australian Standard 1165 x 1165
- (g) Maximum Pallet height: 1400 mm (4 SKUs low volume at 1590mm). If excluding Seafood Trading products, maximum 1242 mm and 90% at 1225mm.
- (h) A Maximum Pallet weight: 907 kg and average of 748 kg for 90% of the products.
- (i) **Overhang: no boxes stacked outside Pallet footprint, load tilt max 50 mm left + 50 mm right / 50 mm front + 50 mm back.**
- (j) Average number of cases per Pallet: 72

- (k) Storage temperature: between -18°C to -23°C
- (l) **Temperature of product delivered to Warehouse: minus 10°C to minus 20°C of storage temperature**
- (m) Hot load includes:
 - (i) All potato frozen products received at a temperature warmer than minus 10°C.
 - (ii) All other frozen products including imported product received at a temperature warmer than minus 15°C.

3. **Inbound characteristics**

- (a) Total anticipated requirement of inbound Pallets: 294,376 Pallets/year (approximate peak 2,223 Pallets/day)
- (b) Inbound from Tasmania with Slip Sheets: Approximately 146 containers unloaded every 3 weeks, where the top pallets are slip sheeted and required to be palletized.
- (c) Inbound via other sources: 13,830 Pallets/year (approximate peak 265 Pallets/week) 3 x 20" containers per week and 6 x 40" per week

4. **Outbound characteristics**

- (a) Total anticipated requirements of outbound Pallets: 329,347 Pallets/year
 - (i) Outbound to retail: 36%
 - (ii) Outbound to food service: 56%
 - (iii) Outbound to food service export: 1.5%
 - (iv) Transfer and others: 6.5%
- (b) Total anticipated peak per day: 1,697 Pallets

5. **Value-added Logistics**

Picking

- (a) Total anticipated requirement of cases picked: 1,544,500 cases/year
 - (i) Mixed Pallets shipped: 2,342 Pallets/week
 - (ii) Rainbow Pallets shipped: 1,587 Pallets/week
 - (iii) Layer Pick Pallets shipped: 755 Pallets/week
- (b) **Maximum cases picked per day: 21,061 cases**

6. **Master Data Management**

- (a) Master data and changes are managed by the Customer, and recorded by NewCold in the WMS.
- (b) The Customer and NewCold use the same unit of measures for the master data.
- (c) Changes to the master data will be timely communicated by the Customer to NewCold.

- (d) A standard set of master data per item, supplier, and customer will be agreed upon.

7. Handling Inbound from International Port (Containers) & Handling Inbound from Domestic Plants (Trucks or Containers)

- (a) A process flow diagram and corresponding description will be made to describe the step-by-step processes (including exceptions management) related to Handling Inbound from Port (International Container).
- (b) The Customer is responsible for its transport management.
- (c) A weekly planning of inbound shipments will be shared by the Customer with NewCold the week before, or as soon as the information is available at the Customer.
- (d) Minimum order lead time: A→B (today order received and transport unloading slot booked before agreed order cut-off times, for unloading tomorrow). A formal order cut-off time will be agreed upon, not being later than 4:30 PM on day A (in order to have time left for the teams to solve operational issues during office hours). In the future the order cut-off time may be changed, taking into account that the Warehouse operation will have enough time to fulfil the orders.
- (e) Warehouse opening hours: 24 hours/day, 7 days/week.
- (f) An online slot booking system will be provided by NewCold to the transporters to reserve their unloading slot, along with manual entries by NewCold where needed. Procedures will be agreed upon related to cut-off times for slot bookings, early and late arrival, and number of unloading slots per hour.
- (g) A timely arrival of the transporters is important for a reliable and efficient operation of the Warehouse. Timely is defined as within 30 minutes of scheduled arrival time. In case of late arrivals, NewCold may reschedule the delivery to the next available slot. NewCold will unload late vehicles as soon as possible in case this does not interfere with the operation of the Warehouse.
- (h) In case drop containers are used, the costs related to these drop containers are born by the Customer or its transport partners.
- (i) In case the transporter is not present during unloading, a timely pick-up of unloaded containers is important for the reliable and efficient operation of the Warehouse.
- (j) Correct order and product information to be received on-time and complete is important for NewCold to have a reliable and efficient operation of the Warehouse. In case such information is not available, product may not be able to be received until such information is available.
- (k) It is important that the Products have to be in-line with agreed standard product characteristics. Non-compliance may result in NewCold not being able to receive the Products and may require corrective actions to be taken.
- (l) At peak days the spread of unloading activities over 24 hours/day is required. The parties will cooperate on implementing procedures to make this possible.
- (m) The standard way of communicating Inbound order information will be via EDI. The parties acknowledge that by exception inbound order information may not be complete (noting that shipments inbound from international port will not have an ASN). NewCold will record missing information at inbound receipt, and confirm the receipt of goods via EDI to the Customer. All inbound loads must be confirmed and updated in WMS via EDI as per Schedule 4 Part 1, Clause 1(e)

- (n) Missing product information will be retrievable by scanning the barcodes of Pallets or cases. Exceptionally product information will be recoded manually at receipt, and Pallet labels will be applied by NewCold.
- (o) In order to deal with inefficiencies resulting from non-compliance to agreed standard operating procedures, Additional Services may be required as corrective actions, and costs related to these activities shall be invoiced to the Customer. NewCold will put effort in avoiding additional services and mitigate costs where reasonably possible.
- (p) Examples of Additional Services (corrective and value added logistics) at Handling Inbound from Port may include but are not limited to: replacing broken Pallets, handling damaged products, printing and attaching new labels, additional product handling, removal of containers.
- (q) There will be no Pallet exchange process. Pallets in the Warehouse will be registered in the WMS. Reports will be provided in relation to the handling and storage of rental Pallets.
- (r) Customs documentation is created by the Customer's freight forwarding company, where applicable at inbound.

8. Handling Outbound to Plants (Trucks & Containers) & Handling Outbound to Customers (Trucks & Containers)

- (a) A process flow diagram and corresponding description will be made to describe the step-by-step processes (including exceptions management) related to Handling Outbound to Plants (Trucks).
- (b) The Customer is responsible for its transport management.
- (c) Warehouse opening hours: 24 hours/day, 7 days/week.
- (d) The standard way of communicating Outbound Orders will be via EDI, containing information needed for a fluent order preparation process by NewCold.
- (e) Procedures will be implemented to deal with additional information outside EDI in case this is technically not feasible (e.g. export related exceptional information requirements).
- (f) An online slot booking system will be provided by NewCold to the transporters, to reserve their loading slot along with manual entries by NewCold when needed. Procedures will be agreed upon related to cut-off times for slot bookings, early and late arrival, number of loading slots per hour
- (g) Minimum order lead time: A→B (today order received and transport loading slot booked before agreed order cut-off times, for loading tomorrow). A formal order cut-off time will be agreed upon, not being later than 4:30 PM day A (in order to have time left for the teams to solve operational issues during office hours). In the future the order cut-off time may be changed, taking into account that the Warehouse operation will have enough time to fulfil the orders.
- (h) Orders will be fulfilled with products available on stock at the order cut-off time, day A. An exception process will be implemented to be able to include stock arriving on the day of loading in outbound orders (A→A). The parties acknowledge that these processes are exceptions, may result in additional services, and may have impact on the Minimum Performance Targets and Charges (e.g. truck waiting for stock to be added).

- (i) Standard order allocation rules will be applied by NewCold WMS based on FEFO. Exceptionally non-FEFO order allocation will be used, for which the parties will agree on operating procedures.
- (j) The Customer and NewCold will implement procedures to assist NewCold to prepare orders in advance of the formal day A→B order cut-off time, in case these orders will not be impacted by order changes.
- (k) Procedures for order changes after the cut of time will be agreed upon. The parties understand that order changes after the cut of time might require additional services and might have impact on the Minimum Performance Targets and Charges (e.g. last minute cancelled order → take from truck → delay truck departure and delivery other orders in truck).
- (l) The standard order allocation strategy will be FEFO (first expired, first out). Procedures will be agreed to deal with other order allocations as an exception.
- (m) **A timely arrival of the transporters is important for a reliable and efficient operation of the warehouse. In case of late arrivals (late defined as more than 30 minutes), NewCold may reschedule the shipment to the next available slot, and may be required to remove orders from the loading area to make place for other orders to be loaded on time. NewCold will unload late vehicles as soon as possible in case this does not interfere with the operation of the Warehouse.**
- (n) In case drop trailers are used, the costs related to these drop trailers are born by the Customer or its transport partners.
- (o) In case the transporter is not present during loading, a timely pick-up of loaded trailers is important for the reliable and efficient operation of the warehouse.
- (p) At peak days the spread of loading activities over 24 hours/day may be required. The parties will cooperate on implementing procedures to make this possible.
- (q) NewCold will confirm the shipment of goods via EDI to the Customer.
- (r) In order to deal with inefficiencies resulting from non-compliance to agreed standard operating procedures, Additional Services may be required as corrective actions, and costs related to these activities shall be invoiced to the Customer. NewCold will put effort in avoiding additional services and mitigate costs where reasonably possible.
- (s) An order management procedure will be agreed upon for stock allocation in case of stock shortages and optimal order fulfilment (e.g. allocating remaining stock at multiple orders).
- (t) **There will be no Pallet exchange process. Pallets in the Warehouse will be registered in the WMS. Reports will be provided in relation to the handling and storage of rental Pallets.**

9. Storage & Inventory Management

- (a) the Customer Products will be stored by NewCold in the Warehouse at an agreed temperature of -23°C.
- (b) **All deliveries received in line with the standard operating procedures will be available in stock latest 6 hours after receipt, and confirmed by EDI. NewCold must use best endeavours to ensure all deliveries are recorded in the WMS by end of the day on which they are received.**

- (c) In case products cannot be receipted in the WMS, they will be stored in an area at the correct temperature, waiting for corrective actions to be agreed by the Customer and NewCold.
 - (d) NewCold will use cycle counting procedures to maintain high levels of stock accuracy. NewCold will support the Customer in at least one inventory stocktake per year. A system based approach will be used as much as possible. A detailed stock count schedule shall be set out at a later stage. In cases where additional physical Pallet handling activities are required, additional service charges shall apply. **Case Picking**
 - (e) A process flow diagram and corresponding description will be made to describe the step-by-step processes (including exceptions management) related to Case Picking.
 - (f) Outbound Orders will be exchanged via EDI, containing information needed for a fluent order preparation process by NewCold.
 - (g) All customer specific requirements will be shared by the Customer and integrated in case picking procedures driven by NewCold WMS.
 - (h) Customer specific requirements may lead to additional services and charges, which will be agreed in accordance with Clause 5.6. Examples of additional services during case picking may be, but are not limited to: using expensive customer specific materials, additional product labelling or stamping.
10. Any reasonable and evidenced additional costs incurred by NewCold (subject always to its duty to mitigate) as a result of the Customer's or its Representatives' failure to comply with the Operating Specification shall be borne by the Customer

11. **Additional Services**

- (a) Additional Services may be carried out as corrective actions by NewCold to deal with non-conformity of the agreed standard operating procedures.
 - (i) Examples of these Corrective Additional Services include, but are not limited to: Replacing damaged Pallets, handling products damaged during transport.
 - (ii) NewCold will put effort in avoiding to use Additional Services for corrective actions, and mitigate additional costs where reasonably possible.
 - (iii) NewCold will keep a clear registration of the costs associated with the corrective additional services.
 - (iv) Procedures will be implemented for efficient approval processes related to these Additional Services.
- (b) Additional Services may be carried out as value added logistic services, based on an agreed scope of work and prior approval by the Customer
 - (i) Examples of the Additional value added logistics Services may be, but are not limited to: re-boxing, labelling, goods return, inspections, sample shipments.
 - (ii) the Customer and NewCold will implement clear procedures and guidelines for the execution of the additional value added logistic services.
 - (iii) NewCold will develop a Value Added Logistics area for these additional services. The Customer's specifications for these areas will be taken into account where commercially feasible.
 - (iv) NewCold will be contacted first by Customer for Additional value added logistic Services to be executed related to stock stored at the Warehouse.

Part 3

(IT Landscape and EDI Solution)

1. NewCold will use Davanti's WMS to manage its warehouse processes.
2. EDI messages related to warehouse activities are to be implemented as outlined in the Simplot Warehouse Implementation Guide subject to the Simplot Warehouse Implementation Guide being approved by NewCold.
3. Other systems to be used;
 - (a) Online Dock Booking System for booking pick-up and delivery times for shipments by the Customer's transport partners
 - (b) Customer Portal for file sharing of others reports and shipment documents
4. Both parties carry their own costs of implementing the IT Landscape and EDI solution.
5. Standard Pallet labels will be used in line with GS1 standards.
6. Any changes to the IT Landscape and EDI solution must be made in accordance with the Service Change Procedure in Schedule 3.

Schedule 3

(Service Change Procedure)

1. Change request

1.1 For the purposes of this Agreement a "Change Request" is:

- (a) a request to change or add to the Services or a request to change the manner in which the Services are performed;
- (b) a request to amend any terms of this Agreement or any document attached to or referred to in this Agreement (including any specification); or
- (c) a request to address any matter which causes or is likely to cause either party to incur costs or charges outside the scope of the Charges.

1.2 Subject to paragraph 2.2 of this Schedule no Change Request shall be binding on the parties unless it is agreed in writing and signed by the authorised representatives of both parties.

1.3 Subject to paragraph 2.2 of this Schedule the parties shall, until such time as a Change Request is formally agreed to by both parties, continue to perform their respective obligations without taking account of the Change Request.

1.4 Change Requests may be originated either by the Customer or by NewCold or may be originated by the parties jointly.

1.5 Where the Change Request is originated by NewCold, NewCold shall include in the Change Request full details of the changes which it is seeking to make to the Services, the Minimum Performance Targets, the Charges and any other effects of the proposed change, which must be reasonable and demonstrable.

1.6 In the case of any Change Request originated by the Customer, NewCold shall within 10 Business Days of receipt of that Change Request supply to the Customer either:

- (a) a Change Request report with full details of all consequential changes which will be required to the Services, the Minimum Performance Targets, the Charges and all other effects of the proposed change which must be reasonable and demonstrable; or
- (b) written confirmation that there will be no such consequential changes or effects.

2. Change request report

2.1 If NewCold gives notice to the Customer within 5 Business Days of receipt of a Change Request that it cannot provide the Change Request report within a 10 Business Day period, the parties shall agree a suitable period within which NewCold shall be required to provide the Change Request report.

2.2 The parties shall, subject to paragraph 2.5, use their reasonable endeavours to agree a Change Request within 10 Business Days of receipt of the Change Request report by the Customer. If they are unable to reach agreement, the following provisions shall apply:

- (a) if a Change Request originated by NewCold would in the Customer's reasonable opinion have an adverse impact on NewCold's ability to perform the Services in accordance with the Minimum Performance Targets, the Customer shall be entitled to refuse that Change Request;

- (b) if NewCold can demonstrate to the Customer's reasonable satisfaction that a Change Request originated by the Customer would require any consequential changes as set out in paragraph 1.4 (including reasonable changes to the Charges), the Customer shall be entitled to require NewCold to comply with that Change Request subject to the Customer agreeing to such consequential changes; and
 - (c) if NewCold fails to demonstrate to the Customer's reasonable satisfaction that any consequential changes as set out in paragraph 1.4 are required to accommodate a Change Request originated by the Customer, NewCold shall agree to comply with that Change Request; and
 - (d) if NewCold provides reasonable evidence that the consequential changes set out in paragraph 1.4 are required in connection with a Change Request originated by the Customer, the Customer shall agree to comply with that Change Request.
- 2.3 As soon as NewCold or the Customer becomes aware of any change that should be made to the Services to ensure that the Services and the performance of them conform to any change of legislation, Best Industry Standards or new legal or regulatory requirements which affect the Services, NewCold or the Customer shall notify the other party of the change and, where the parties so agree, NewCold shall carry out the change as part of the Services. The allocation of the costs of implementing changes shall be agreed between the parties (acting reasonably).
- 2.4 On signature of a Change Request by the authorised representatives of each party, this Agreement shall be deemed amended in accordance with the provisions of that Change Request.
- 2.5 A party shall not be under any obligation to accept a Change Request but must act reasonably in considering each Change Request.
- 3. Content of a Change Request**
- 3.1 Each Change Request prepared by the party requesting the change pursuant to paragraph 1.1 of this Schedule shall be allocated a sequential number by NewCold and shall contain:
- (a) the title of the change;
 - (b) the originator and date of the request for the change;
 - (c) full details of the change;
 - (d) costs;
 - (e) a timetable for implementation together with any proposals for acceptance of the change;
 - (f) a schedule of payments if appropriate;
 - (g) details of likely impact, if any, of the change on other aspects of the Services to be provided including, but not limited to:
 - (i) the terms of the Agreement;
 - (ii) the Minimum Performance Targets;
 - (iii) the Charges;
 - (iv) working arrangements; and
 - (v) other contractual issues;

- (h) the date that the validity of the Change Request expires; and
- (i) provision for signature by NewCold and the Customer.

Schedule 4

Part 1

(Standard KPIs)

1. All Standard KPIs shall be measured on a monthly basis.
 - (a) **On Time:** 98.00%
 - (i) Definition: *"the percentage of orders available for loading at the pre-booked pick-up time over total number of orders requested for dispatch in any given period (provided agreed order lead times have been met), excluding Products that are not available or released in the Warehouse".*
 - (b) **Order Quality (Orders Complete):** 99.90% of cases
 - (i) Definition: *"the percentage of cases ordered included in the order file and available in stock at the Warehouse (free stock) that have been correctly picked (meaning correct product reference, correct quantity and part of the correct order), excluding Products that are not available or released in the Warehouse".*
 - (c) **Inventory Accuracy:** 99.95%
 - (i) Definition: *"the percentage of loads that are physically located on the location indicated in the WMS. Load meaning per location the identification of the product (product reference), lot code and quantity (in line with the SSCC label). Location can be a location in the bulk storage or in the order picking zone."*
 - (d) **Stock Loss Threshold:** 0.01%
 - (i) Definition: "volume percentage of Stock Losses per month over throughput of cartons"
 - (e) **Goods receipt on time – ext. source:** 98.0%
 - (i) Definition: "All products (**excluding Products requiring material re-work**) to be entered into Simplot's ERP no later than **2 hours after the Product has been received in the Warehouse**"
 - (ii) Incoming deliveries are announced and planned for reception in mutual agreement between the parties (reception planning). The incoming other Products will be unloaded and all relevant administrative tasks (transport documents) need to be finalized within two (2) hours of the arrival of the delivery if the delivery has arrived on time. The delivery is confirmed via EDI with a receipt confirmation message. Excludes Product with poor quality issues and hot loads.
 - (f) **Vehicle Turnaround Time:** 95.0%
 - (i) Definition: *"Unloading and Loading of Vehicles within agreed time (provided time slots are adhered to by carriers)"*
 - (ii) Trucks arriving within the agreed time schedule will be loaded and the necessary administrative procedures finalized within 60 minutes (Rigid, Single, ridged track) or 90 minutes (B-Double) after arrival of the truck. Loads with more than 6 orders or loads with more than 75 pallets will be loaded within 150 minutes. "Arrival on time" means the planned time up to 30 minutes after the planned exact time. Trucks that arrive more than 30 minutes late will be loaded as soon as a next loading slot is available.

(g) **OLCOT Figure:** $95\% \times 99.90\% = 94.90\%$

(i) This is the combination of the Standard KPIs, Orders Loaded On Time and Order Quality.

(ii) $\text{OLCOT Figure} = \text{Vehicle Turnaround Time} \times \text{Order Quality}.$

2. If 10% or more of outbound vehicles are greater than 30 minutes late from the scheduled arrival booking time, then OLCOT is deemed to be 100% for the day.

Part 2
(Initial KPIs)

During the Initial Period, the following Initial KPIs will apply:

(a)	On-time	96.50%
(b)	Order Quality (Orders Complete):	96.50%
(c)	Inventory Accuracy:	98.00%
(d)	Stock Loss Threshold:	00.10% (on the total 6 month volume)
(e)	Goods receipt on-time:	96.50%
(f)	Vehicle Turnaround time	93%
(g)	OLCOT Figure:	90.00%

Part 3

(Service Credits)

Service credits shall be calculated solely on the basis of the OLCOT Figure performance. If the performance level for the month after the Initial Period is below the OLCOT Figure a service credit will be payable based on the indicative table below.

Service credit level	OLCOT Figure Performance						
From:	94.90%	93.70%	92.50%	91.30%	90.10%	88.90%	87.70%
To:	93.70%	92.50%	91.30%	90.10%	88.90%	87.70%	0%
Service credit (AUD x 1,000)	5	7	9	11	12	15	15+

If the performance level for any month after the Initial 6 month Period is below the minimum performance level for OLCOT Figure of 94.90%, a service credit will be payable up to a maximum service credit of AU\$ 50,000 per month.

If the performance level for any month after the Initial Period is below the minimum performance level for OLCOT Figure of 87.70%, a service credit will be payable of \$15,000 per month + \$5,000 per 1% that it is below such minimum performance level, up to a maximum service credit of AU\$ 50,000 per month.

A Standard KPI is not achieved if the Services do not meet or exceed the standard level as in Schedule 4 Part 1 (*Standard KPIs*), except to the extent that the failure to meet the Standard KPI was caused by or contributed to by:

- (a) an act or omission of the Customer or its Representative;
- (b) NewCold acting in accordance with the direction of the Customer;
- (c) a Force Majeure Event; or
- (d) circumstances outside of NewCold's control.

If a Standard KPI is not achieved then:

- (a) where the Standard KPI is capable of remedy, NewCold shall use reasonable endeavours to rectify the failure to meet the particular Standard KPI; or
- (b) where the Standard KPI is not capable of remedy, NewCold shall use reasonable endeavours to implement changes to ensure that the particular Standard KPI is achieved in the future.

The service credits shall be Customer's sole remedy in respect of Losses suffered by the Customer as a result of such failures.

Schedule 5

(Contract Management)

1. Contract management

1.1 The Customer shall appoint a representative ("**Customer Representative**") and inform NewCold of the identity and contact details of such person and any changes made to such contact details or replacement of such person from time to time. NewCold shall appoint a senior employee as its representative ("**NewCold Representative**") who will be the Customer's contact at NewCold and responsible for the performance of the Services and who will have the authority to liaise with and receive instructions from the Customer. The Customer Representative shall have authority to liaise with NewCold's Representative in connection with the Services to be performed under this Agreement and the Customer Representative shall give instructions or directions to and shall liaise exclusively with NewCold's Representative or such other persons advised to it by NewCold's Representative from time to time for that purpose under paragraph 1.1. NewCold may rely on the email, text or other written instructions or direction of the Customer Representative. NewCold shall keep the Customer notified of the contact details of NewCold's Representative.

1.2 NewCold shall:

- (a) on request from the Customer, during the term of this Agreement, supply the Customer from time to time with such information and reports (including copies of such documents and other material) as the Customer reasonably requires in relation to the provision of the Services, including but not restricted to daily stock on hand reports, **weekly KPI reports, monthly actual and forecast reporting and reconciliation, part Pallet reports, short shelf life reports, damages and reasons for damages;**
- (b) monitor performance of the Services against the Minimum Performance Targets and provide the Customer with a report as soon as reasonably practicable (**but in any event within two days of the end of each month**) specifying the Minimum Performance Targets, NewCold's performance that month against each of the Minimum Performance Targets including full details of any failure to meet the Minimum Performance Targets; and
- (c) **prepare 4 weeks before the end of each calendar year (and update at the year-end) an annual report setting out details of the Services performed in that year and, if and when reasonably requested in writing by the Customer, reports on particular topics in amplification of the annual report.**

2. Information & reporting

2.1 The parties agree throughout the term of this Agreement to coordinate the program meetings noted in this paragraph 2.2(a) to (e) at times, dates and locations to be agreed between the parties. It assumes that the representatives nominated by both parties have the authority to make the decisions for which the meeting is designed. The parties will further define ways of working, content of meetings, representatives and reporting.

2.2 The parties will conduct the following meetings. The Customer Representative and NewCold Representative (or a person nominated by the relevant representative to take their place in the event of illness, leave etc.) must attend each meeting, and may invite others to join each meeting:

- (a) **a daily conference call / meeting to discuss immediate operational requirements;**

- (b) a conference call / weekly meeting (extension of the daily conference call / meeting not an additional meeting) to discuss the previous week's performance and business issues;
- (c) a monthly meeting to discuss the previous month's performance, monthly trends, progress on gain share activities and key business issues;
- (d) a quarterly meeting to discuss the previous quarter's performance, innovation, quarterly trends, key business issues, gain share proposals and the forthcoming quarter's business plan; and
- (e) a strategic development meeting to review the business direction (minimum once a year).

Schedule 6

Part 1

(Annual Stock Count)

- a) The parties agree that the stock held within a fully automated Warehouse cannot be fully counted by conventional means, without incurring significant costs and / or disruption to day-to-day operations (especially in the high-bay operation). As a result, the parties agree that annual stock audits shall be performed as follows:
- b) NewCold will perform stock counts for audit purposes on an annual basis ("**Annual Stock Count**"). The exact date shall be agreed between both parties, but will take place during the weekend to minimize interruption to customer deliveries. The Annual Stock Count be carried out by NewCold's employees (the "**Employee**") under supervision of the Customer's representatives and / or (external) audit staff.
 - (f) The Annual Stock Count includes the Employee retrieving Products from the high-bay storage at random, or if preferred by the Customer according to a specified list, up to a maximum of 0.3% of the Customer's Products in storage in the Warehouse at that moment (the "**First Round Count**"). Prior to the First Round Count, all Products in- and out movements between both parties are completed and the WMS and the Customer's ERP shall be reconciled such that opening systems stock match. The retrieved Pallets should be checked against the data (Product, quantity, best before date, SSCC label, or the "**System Records**") as recorded in the WMS.
 - (g) Should the discrepancy during the First Round Count exceed the threshold of 99%, a further random sample of 0.1% of the Pallets in storage in the Warehouse at that moment shall be checked against the System Records (the "**Second Round Count**").
 - (h) In case of failure on the Second Round Count, the stock record shall be considered to be 'unproven', and measures and / or actions have to be taken accordingly.
 - (i) Upon request by the Customer NewCold will also perform a sample weekly count by retrieving Products from the high-bay at random, or if preferred by the customer according to a specified list. The sample size to be mutually agreed by the parties but not to exceed 50 pallets.
 - (j) On an annual basis, a wall-to-wall count on the pick floor shall be conducted as at the request of the Customer as follows:
 - (i) The first round of counting shall be conducted by an Employee (the Customer's representatives may attend, but not necessarily) by use of RF terminals. The Employee shall scan the racking label and the Pallet label for each Pallet. The case quantity shall be entered manually on the RF terminal. After the first round, the WMS opening stock shall be compared to the data recorded on the RF terminals. A list shall be generated, including the (possible) differences found.
 - (ii) The second round of counting shall be conducted by an Employee (the Customer's representatives may attend, but not necessarily) by use of RF terminals, yet this will be limited to the locations where (possible) mismatches were found. The method of counting shall be similar to the first round. After the second round, a list from the WMS shall be generated including the opening stock, and results of the first and second round counting. This list shall serve as a basis for the third round.
 - (iii) The third round of counting shall be conducted by the Customer's employees and / or representatives. For this round, a randomly populated list shall be obtained from the WMS, including the racking positions of specific Products, and vice versa the Pallet ID for which the racking position has to be confirmed. The scope will be a minimum of 10% of all the Customer's pick facings.

- (k) Upon completion of the Annual Stock Count, a summary (hardcopy) will be printed from WMS with opening and closing data, and it shall be signed by NewCold and the Customer representatives.

Part 2

(Daily & Weekly Stock Count)

1. NewCold will provide the stock levels as recorded in its WMS to the Customer on a daily basis. Any discrepancies between the WMS and the Customer's ERP system should be communicated in writing to the Customer as soon as practically possible. If there are significant discrepancies (as defined below), then the Customer shall be entitled to further inspection of certain SKUs or Pallet positions within the Warehouse, which shall be undertaken in the presence of the Customer's representatives.
2. During daily picking operations: when the Pallet on the pick facing is picked to zero, the WMS requires the Employee to confirm that there are indeed no cases left for that specific pick facing. If according to the WMS the Pallet is empty, but there are still cases on the Pallet, a surplus exists ("**Surplus**"). Conversely, if there are no cases left but the WMS displays otherwise, a shortage exists ("**Shortage**").
 - (a) In case of a Surplus or Shortage, the Employee shall inform the shift leader and specify which racking location has a Surplus or Shortage. In both cases, the shift leader shall obtain a list from the WMS showing Pallets that have Products on them which have been picked recently, and physically check these Pallets. If the error is found, a correction in the WMS shall be recorded. Otherwise, a Surplus or Shortage shall be recorded in the WMS.
 - (b) The stock record shall be assumed to be accurate where the number of mismatches is less than 10 Pallets per 10,000 Pallet movements, or 0.10% (the "**Threshold**"). If the figure exceeds the Threshold, a stock count should be carried out on the basis that a sample of 0.1% of the Pallets currently stored in the Warehouse should be requested at random. The retrieved Pallets should be checked against the System Records (Product, quantity, best before date, SSCC label).
 - (c) Any failure in that initial batch will require a further sample of stored Pallets to be requested at random. The sample size will be mutually agreed between the parties
3. On a weekly basis, a wall-to-wall count on the pick floor shall be conducted as at the request of the Customer.

Schedule 7

(Disaster Recovery Plan)

1. **Disaster recovery plan**

- 1.1 In the event that circumstances at the Warehouse prevent the provision of the Services then NewCold shall use commercially reasonable efforts to implement changes such that the shortfall in performance (as measured by the Minimum Performance Targets) is addressed and performance returns to acceptable levels.
- 1.2 The following sections cover the key points and principles that are to be included in a Disaster Recovery Plan (the "**Disaster Recovery Plan**") that will be fully defined by the Full Services Commencement Date.
- 1.3 The Disaster Recovery Plan will include (but not be limited to) the following information:
 - (a) A management team will be identified that will be responsible for managing a situation where the Disaster Recovery Plan is required. These will be named people that are thought to be appropriate for managing most situations impacting on Services, or quality of the Products. One representative from the Customer, and one from NewCold will be nominated to coordinate the activities. The source of the problem will determine which of these individuals takes overall control (i.e. a problem created by the Customer or its suppliers, would determine that the Customer representative took overall control, and vice versa);
 - (b) The immediate communications that are required in the event that business continuity is at risk. This will detail who is to be contacted (likely the management team plus other senior officers of both companies), the information that needs to be available to be included in the communication, the timing of the communication, and what to do if key personnel are not contactable. Contact details will be recorded as part of the plan, and updated by NewCold (with cooperation from the Customer) as required to keep an accurate record;
 - (c) Definitions that describe when the business continuity is deemed to be at risk. This includes descriptions of the Minimum Performance Targets that independently, or together constitute a sufficient risk to trigger the immediate communications;
 - (d) The responses expected as a consequence of triggering the immediate communications i.e. what action needs to be taken by those being communicated to. This would include availability for emergency meetings, onward communications to other parties related to the Services, and clear responsibilities for actions required;
 - (e) Confidentiality expectations. It is probable that triggering of the Disaster Recovery Plan is driven by an unexpected problem with providing Services. In this event it is essential that there is strict control over what is said and to whom. The Disaster Recovery Plan will include several pre prepared written communications that are pre- approved for use by the managing team. There will be communications for general release, and communications specifically for the customers of the Customer. These are expected to be "holding statements" designed to give the managing team time to respond more specifically;
 - (f) A description of predictable situations that would put service or product quality at risk. As a minimum these will include the following:

- (i) Loss of power
- (ii) Flooding
- (iii) Lightning strike
- (iv) Industrial action by NewCold employees
- (v) Industrial action by the Customer employees
- (vi) Industrial action by others
- (vii) Fuel shortage
- (viii) Major equipment failures
- (ix) Supply of Raw Materials including Pallet supply
- (x) Severe damage to the Warehouse
- (xi) Loss of software systems
- (xii) Epidemic
- (xiii) Exceptional weather conditions
- (xiv) Fire
- (xv) Explosion(s)
- (xvi) Gas leaks (i.e. ammonia)
- (g) For each predictable situation there will be a planned response, this response to include:
 - (i) How to keep the product safe
 - (ii) How to keep personnel safe
 - (iii) Reciprocal agreements with other suppliers
 - (iv) Emergency administration required (including software if available)
 - (v) Specific responsibility for actions, with timings
 - (vi) Review meeting schedule for the managing team
 - (vii) External help available with lead times for mobilisation
 - (viii) Emergency manual procedures that require H&S procedures approved
 - (ix) Programme of testing and validating the responses to a predictable event
- (h) For non-predictable events there will be a similar response plan, that would move quickly to a review and planning session for the managing team. The managing team would be responsible for determining the most appropriate action, and may well call upon a combination of the activities identified in the predictable situations plans.

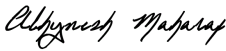
- 1.4 The Disaster Recovery Plan will be developed through time, however the first effective version will be agreed no later than the Services Commencement Date. This document will be approved by both parties as the procedure that will be used in the event that the Disaster Recovery Plan is required.

Schedule 8
Term Forecast


	ANNUAL VOLUME / AVERAGE STOCK LEVEL (Flat over 10 year term)
Pallets Storage	45,168
TOTAL STORAGE Avg	45,168
Handling - IN and OUT, inclusive)	
Handling - IN pallets	321,898
Handling - OUT pallets	321,898
Carton Picking	1,659,701
Shrink Wrap per pallet	277,852
SSCC Labels per label	265,282
Container Loading - 20 ft	1,325
Container Loading - 40 ft	209
TOTAL HANDLING pa	

Executed as an Agreement

Executed by
NewCold Melbourne No.2 Pty Ltd)


DocuSigned by:

0040CA5A18GB4G9.....
Company Secretary/Director

Abhynesh Maharaj
.....
Name of Company Secretary/Director (print)


DocuSigned by:

5CB984BP58E04F4...
Director

Abraham Hage
.....
Name of Director (print)

Executed by
Simplot Australia Pty Limited)

DocuSigned by:

258190AA4D3F402.....
Company Secretary/Director

Andrew Murray
.....
Name of Company Secretary/Director (print)

DocuSigned by:

0297A16AFEEF4D7...
Director

Graham Dugdale
.....
Name of Director (print)