

Warehousing Agreement

by and among

McCain Foods USA, Inc.,

NewCold Burley, LLC,

and

NewCold Burley Operations, LLC

Dated: February 6, 2018

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WAREHOUSING AGREEMENT

This Warehousing Agreement is made and entered into as of February 6, 2018, by and among McCain Foods USA, Inc., a Maine corporation ("**McCain**"), NewCold Burley, LLC, a company registered under the laws of Idaho (the "**Owner**"), and NewCold Burley Operations, LLC, a company registered under the laws of Idaho (the "**Operator**").

Background:

- (A) McCain is engaged in the manufacture, marketing, sale and distribution of food products, including the Products (as hereinafter defined).
- (B) McCain has expanded the McCain Facility to significantly increase production and has requested that the Owner and/or its Affiliates develop the Warehouse (as hereinafter defined), refurbish specific parts of the McCain Facility to facilitate automated loading ("**Automated Loading Refurbishment**") and provide, or cause the provision of, the Services, all in accordance with the terms of this Agreement.
- (C) The Owner has agreed to develop the Warehouse, refurbish specific parts of the McCain Facility and provide, or cause the provision of, the Services in accordance with, and subject to, the terms of this Agreement. The Owner and the Operator shall enter into a services agreement (the "**OpCo Services Agreement**") pursuant to which the Owner will engage the Operator to perform all the operational services required of the Owner under this Agreement.

IT IS AGREED THAT:

1. Interpretation

Defined terms and expressions used in this Agreement have the meanings set out below:

"Additional Service KPIs"	the key performance indicators (if any) agreed to in writing by the parties for the Additional Services (if any);
"Additional Services"	any other services which are not Standard Services and which are to be provided by the Operator pursuant to Clause 5.7;
"Affected Party"	has the meaning set out in clause 20.2;
"Affiliate"	any person that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a party to this Agreement. A person will be deemed to control another person for the purposes of this definition, if the first person possesses, directly or indirectly, the power to appoint a majority of the directors of the second person, or to otherwise direct or cause the direction of the management or policies of the second person, whether through the ownership of voting securities, by contract or otherwise;
"Agreement"	this agreement including its Schedules and Appendices (if any), as amended from time to time in accordance with clause 35;
"Ancillary Services"	the Shuttling Services, Case Picking Services and any Additional Services;

"Applicable Laws"	any of the following in force from time to time: any legislation including any treaty, regulation, directive, decision, by-law, circular, code, order, notice, demand, decree, injunction, resolution, common law, statute, statutory instrument or judgment relating to any of the parties or the Services or any lawful requirement or demand of any governmental authority which has jurisdiction with regard to any of the parties or the Services or the Warehouse or to matters dependent on or affected by the Services or Warehouse;
"Assets"	has the meaning set out in clause 28.1;
"Automated Loading Refurbishment"	has the meaning given to it in the recitals, as further detailed in clause 3.9;
"Automated Truck Loading System"	the automated truck loading solution to be installed at the McCain Facility by means of the Automated Loading Refurbishment;
"AWA Agreement"	the Warehousing Services Agreement dated April 1, 2016, by and between McCain and Americold Logistics, LLC;
"AWA Annual Measurement Period"	has the meaning set out in clause 6.9(b);
"AWA Annual Shuttling and Case Picking Refund"	has the meaning set out in clause 6.10(c);
"AWA Annual Shuttling and Case Picking Shortfall"	has the meaning set out in clause 6.10(b)
"AWA Annual Storage and Handling Refund"	has the meaning set out in clause 6.9(c);
"AWA Annual Storage and Handling Shortfall"	has the meaning set out in clause 6.9(b);
"AWA Mid-Year Measurement Period"	has the meaning set out in clause 6.9(a);
"AWA Mid-Year Shuttling and Case Picking Shortfall"	has the meaning set out in clause 6.10;
"AWA Mid-Year Storage and Handling Shortfall"	has the meaning set out in clause 6.10(a);
"AWA Period"	has the meaning set out in clause 6.9(a);
"Back-up Operator"	each and any of the alternative providers of storage and handling services designated by McCain;
"Bespoke Services Employee"	any of the Operator's Representatives who are engaged only in the provision of Additional Services which are commissioned to specifications which are particular and unique to McCain;
"Business Day"	any day other than a Saturday, Sunday, or public holiday in the State of Idaho or Chicago, Illinois;

"Case Picking Charge"	the charge for Case Picking Services at the Warehouse set out in paragraph 1(f)(i) of Part 1 of Schedule 1;
"Case Picking Services"	the case picking services set out in Schedule 1;
"Change of Control"	shall mean, with respect to the Operator, the Owner or McCain (as the case may be), any of the following transactions (i) a merger or consolidation with another entity, as a result of which the equity holders of the Operator, the Owner or McCain (as the case may be) as of the date hereof collectively own less than a majority of the equity securities of the surviving entity or collectively do not have the right to elect a majority of the directors, or other governing body, of the surviving entity immediately after that transaction, (ii) a sale or transfer of more than a majority of the outstanding equity securities of the Operator, the Owner or McCain (as the case may be) in any transaction or series of related transactions to any person or group that is not an Affiliate who owns less than ten percent (10%) of the outstanding equity securities of the Operator, the Owner or McCain (as the case may be) immediately prior to that transaction or series of related transactions, or (iii) the sale or other transfer of all or substantially all of the assets of the Operator, the Owner or McCain (as the case may be) in any transaction or series of related transactions except for, in the case of the Owner, a Sale-Leaseback;
"Charges"	each of the Charges for the Standard Services as set out in Schedule 1, Part 2;
"Charges Review Date"	has the meaning set out in paragraph 1 of Part 4 of Schedule 1;
"Commencement Date"	the date of signature of this Agreement, as stated at the top of page one of this Agreement;
"Competitor"	shall mean any person or entity in the business of manufacturing, marketing, selling or distributing food products that are similar to the Products or any other product manufactured, marketed, sold or distributed by McCain;
"Completion Estimate"	has the meaning set out in clause 20.7;
"Confidential Information"	has the meaning set out in clause 23.1;
"Delay Period"	has the meaning set out in clause 3.6;
"Delivered into the Operator's Custody"	has the meaning set out in clause 13.2;
"Delivered out of the Operator's Custody"	has the meaning set out in clause 13.3;
"Disaster"	has the meaning set out in clause 19.2;

“Disaster Recovery Plan”	has the meaning set out in clause 19.1;
“Discloser”	has the meaning set out in clause 23.1;
"Dispute"	any dispute or difference between or among the parties arising out of or in connection with this Agreement;
"Dispute Resolution Procedure"	the procedure for resolving disputes set out in clause 22;
"Electricity Index"	the effective change in rates as invoiced by Idaho Power Company or any alternative electricity supplier used by the Owner or its Affiliate for the supply of electricity to the Warehouse;
“Event”	an act, event, omission or circumstance;
“Expert”	has the meaning set out in clause 10.6;
“Extension Period”	has the meaning set out in clause 3.9;
“Extension Term”	has the meaning set out in clause 4.2;
“Financing”	has the meaning set out in clause 28.1;
"Force Majeure Event"	<p>any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under this Agreement but only to the extent that the delay or failure was caused by an event beyond such party's reasonable control, without such party's fault or negligence and that by its nature could not have been reasonably foreseen by such party or, if it could have been reasonably foreseen, was unavoidable, which events may include:</p> <ul style="list-style-type: none">a) acts of God, including but not limited to fire, flood, earthquake, windstorm or other natural disaster;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) any organized labor dispute, including but not limited to strikes, industrial action or lockouts affecting the cold storage industry or the Warehouse (other than where any such organized labour dispute, strike, industrial action or lockout relates solely to the employees of the party seeking to claim force majeure relief under clause 20);e) fire, explosion or other accidental damage; and

- f) interruption or failure of utility service, including but not limited to internet, telephone, electric power, gas or water,

but shall not include financial difficulties of McCain or any of the following in relation to the Operator and the Owner:

- a) financial difficulties of the Operator, the Owner or their Affiliates; or
- b) intentional damage or acts of sabotage by any of the Operator's employees;

"Forecast"

has the meaning given to it in clause 6.2(b);

"Fuel Surcharge"

the index-based fuel surcharge used by the Owner and adjusted monthly as further detailed in Schedule 1, Part 4;

"Fundamental Construction Defect"

has the meaning given to it in clause 21.2;

"Good Industry Standards"

standards, practices, methods and procedures in accordance with the degree of skill, care, efficiency and timeliness as would be expected from a well-managed cold-store warehousing and logistics provider, performing services substantially similar to the Services in the United States of America;

"Government Official"

has the meaning set out in clause 10.4;

"Handling Charge"

the charge for the Handling Services at the Warehouse, consisting of the Inbound Charge and the Outbound Charge set out in Part 2 of Schedule 1;

"Handling Services"

the inbound and outbound handling services set out in Schedule 2;

"Inbound Charge"

has the meaning set out in paragraph 1(b) Part 1 of Schedule 1;

"Indemnified Party"

has the meaning set out in clause 16.6;

"Indemnifying Party"

has the meaning set out in clause 16.1;

"Index"

the Consumer Price Index – WEST region, All Items, for West Urban Wage Earner and Clerical Workers (CPI – W), as published by the Bureau of Labor Statistics from time to time;

"Initial KPI"

each of the key performance indicators applicable to the supply of the Services during the Initial Period, as set out in Schedule xx, Part xx;

"Initial Period"

the period of six (6) months after the Services Commencement Date;

"Initial Term"	has the meaning set out in clause 4.1;
"Initial Term Forecast"	has the meaning set out in clause 6.1;
"Initial Year Forecast"	has the meaning set out in clause 6.2(a);
"Insolvency Event"	<p>each and any of the following events:</p> <ul style="list-style-type: none">(a) that party passing a resolution for its winding up, or a court of competent jurisdiction making an order for it to be wound up or dissolved, or that party being otherwise dissolved; or(b) the appointment of an administrator of, or the making of an administration order in relation to, that party, or the appointment of a receiver or administrative receiver of, or an encumbrancer taking possession of or selling, the whole or any part of that party's undertaking, assets, rights or revenue; or(c) that party entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them, or taking steps to obtain a moratorium, or making an application to a court of competent jurisdiction for protection from its creditors; or(d) that party entering into any arrangement, compromise or composition in satisfaction of its debts with its creditors; or(e) any event similar to any of the above events occurring in respect of that party in any other jurisdiction, <p>Any event that takes place as part of a solvent reconstruction, amalgamation, merger, or consolidation, on terms approved in writing by the other party beforehand and in compliance with those terms is excluded from this definition;</p>
"Intended Services Commencement Date"	April 1, 2019;
"KPIs"	the Standard KPIs and Additional Service KPIs;
"Lease"	a lease of the Warehouse and all ancillary equipment reasonably owned by the Owner required for the operation of warehousing and related services at the Warehouse, such lease to be agreed by the parties in accordance with Schedule 9, and in the form and with the content to be set out (following agreement in writing) at Schedule 9, Appendix 1;
"Lender"	has the meaning set out in clause 28.1;

“Liability”	all liability arising out of or in connection with this Agreement, whether in contract, tort, misrepresentation, restitution, regulatory fines and consequences of regulatory action, under statute or otherwise, including without limitation, under an indemnity contained in this Agreement and/or arising from a breach of, or a failure to perform or defect or delay in performance of, any of a party's obligations under this Agreement, in each case howsoever caused including, without limitation, if caused by negligence;
“Load”	Products placed or transported on a System Pallet, a Pallet or a Slip Sheet, or a combination of these carriers;
"Load Reject"	has the meaning has the meaning set out in the table in paragraph 1(c) of Part 1 of Schedule 1;
“Load Reject Charge”	has the meaning set out in the table in Part 2 of Schedule 1;
“Long Stop Date”	the first anniversary of the Intended Services Commencement Date or the Revised Intended Services Commencement Date (as applicable);
"Losses"	in respect of any matter, event or circumstance includes all losses, claims, demands, actions, proceedings, damages and other payments, charges, expenses and other liabilities of any kind, including reasonable attorney's fees;
"Management Fee"	a payment equivalent to 5% of the undisputed Open Book Costs validly invoiced to the Owner by McCain in the relevant month;
“Maximum Storage Capacity”	has the meaning set out in clause 6.7;
“McCain”	has the meaning set out in the preamble;
"McCain Facility"	McCain's factory in Burley, Idaho, as expanded, modified or replaced from time to time;
"McCain Group"	McCain 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 50.1% of the issued capital stock, or controlling directly or indirectly the appointment of a majority of the board of directors, and references to a member of the McCain Group shall be construed accordingly;

"McCain IPR"	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 McCain 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;
"Milestone"	means a milestone as specified in clause 2.5;
"Minimum Annual Case Picking Revenue"	the minimum annual case picking revenue payable to the Operator as calculated in accordance with clause 6.6;
"Minimum Annual Handling Revenue"	the minimum annual handling revenue payable to the Owner as calculated in accordance with clause 6.4;
"Minimum Annual Revenue"	the Minimum Annual Handling Revenue plus the Minimum Annual Storage Revenue plus the Minimum Annual Shuttling Revenue plus the Minimum Annual Case Picking Revenue;
"Minimum Annual Shuttling Revenue"	the minimum annual shuttling revenue payable to the Operator as calculated in accordance with clause 6.5;
"Minimum Annual Storage Revenue"	the minimum storage revenue calculated in accordance with clause 6.3;
"Non Affected Party"	has the meaning set out in clause 20.2;
"OLCOT Figure"	the percentage figure for the combined Standard KPI's of (1) 'Orders loaded on time' and (2) 'Order quality' as set out in Schedule 5, Part 1;
"OpCo Services Agreement"	has the meaning given to it in paragraph (C) of the background section on page 1 of this Agreement;
"Open Book Costs"	the direct out-of-pocket costs (assessed on an open book basis) reasonably and properly incurred by McCain in procuring, or procuring the provision by a third party of, the personnel and equipment required to operate the Warehouse in accordance with the OpCo Services Agreement following the exercise by McCain of its right of step-in under clause 21.7;
"Operator"	has the meaning set out in the preamble;
"Operating Specification"	the specification set out in Schedule 3, Part 1 setting out the procedures and standards to be adhered to by the Operator in its performance of the Services, as may be amended from time to time in accordance with the procedure set out in clause 8 and Schedule 4 (Service Change Procedure) of this Agreement;

“Outbound Charge”	has the meaning set out in paragraph 1(f) of Part 1 of Schedule 1;
"Owner"	has the meaning set out in the preamble;
“Pallet”	a US standard size pallet as specified in Schedule 3 Part 1 containing the Products;
"Personal Data"	credit or debit card number, credit or debit cardholder data (including expiration date, track data, and security codes), social security number, EIN information, financial account number, driver's license numbers, government issued identification numbers, employee identification numbers, passport numbers, and medical information of McCain employees, customers, accounts, and vendors;
“Post-AWA Annual Measurement Period”	has the meaning set out in clause 6.9(d);
“Post-AWA Annual Storage and Handling Shortfall”	has the meaning set out in clause 6.9(d);
“Post-AWA Annual Shuttling and Case Picking Shortfall”	has the meaning set out in clause 6.10(d);
Post-AWA Period”	has the meaning set out in clause 6.9(d);
"Products"	all of the frozen food products sent by or on behalf of McCain to the Warehouse;
"Property Services"	has the meaning given to it in clause 21.7;
"Property Services Fee"	a sum equivalent to the higher of (i) the Charges payable for Storage Services and Handling Services and (ii) the Minimum Annual Storage Revenue plus the Minimum Annual Handling Revenue;
“Recipient”	has the meaning set out in clause 23.1;
“Reduction Notice”	has the meaning set out in clause 6.8;
“Refinancing Option”	has the meaning set out in clause 4.4;
"Related Body Corporate"	the Owner, the Operator and any Affiliate of either of them from time to time;
"Replacement Services"	services equivalent to the Services, which are to be performed at the Warehouse by or on behalf of McCain in place of the Operator pursuant to clause 21.7, such services being procured and performed in accordance with Good Industry Standards;
"Representatives"	the officers, directors, employees, agents and other representatives from time to time of the party concerned;

"Revised Intended Services Commencement Date"	has the meaning set out in clause 3.2;
"Sale Leaseback"	a sale-leaseback of the Warehouse where the Owner sells the Warehouse and enters into a leaseback lease with the purchaser of the Warehouse or its designee, or a sale of the Owner where the Operator enters into a leaseback lease with the purchaser of the Owner;
"Sales Tax"	any sales, use, excise, value-added tax or similar tax imposed by the State of Idaho, the United States of America, or any local or other governmental authority that is levied on of the supply goods or services;
"Service Change Procedure"	the service change procedure as set out in Schedule 4;
"Service Credit"	service credits payable by the Owner in accordance with Part 3 of Schedule 5;
"Services"	the Services set out in Schedule 2;
"Services Commencement Date"	the date on which provision of the Standard Services in fact begins;
"Shuttling Charge"	has the meaning set out in paragraph 1(e) of Part 1 of Schedule 1;
"Shuttling Services"	the provision of primary transportation by the Operator of Products from the McCain Facility to the Warehouse using shuttle trailers as further defined in Schedule 2;
"Slip Sheet"	a thin Pallet-sized cardboard sheet as specified in Schedule 3 Part 1;
"Standard KPI"	each of the key performance indicators applicable to the supply of the Standard Services from the end of the Initial Period, as set out in Schedule 5, Part 1;
"Standard Product Characteristics"	has the meaning set out in paragraph 1(c) of Part 1 of Schedule 1;
"Standard Services"	the Warehousing Services and Shuttling Services;
"Storage Services"	the storage services described in Schedule 2;
"Supply"	for the purpose of any applicable Sales Tax, a sale or supply includes a sale of goods or services;
"System Pallet"	the special designed, Pallet-sized carriers, as specified in Schedule 3 Part 1, used in the Warehouse for carrying Products;
"Third Party Claim"	has the meaning provided in clause 16.6;

"Term"	the Initial Term and any Extension Term applying to this Agreement pursuant to clause 4;
"Transitional Period"	the period from the Services Commencement Date until April 1, 2021;
"Transfer"	has the meaning provided in clause 29.2;
"Warehouse"	the warehouse to be built in Burley, Idaho to be operated by the Operator and initially owned by the Owner;
"Warehousing Services"	the Storage Services and the Handling Services; and
"Year"	the period of twelve (12) months commencing on January 1st in each year.

2. **Appointment of the Owner and Operator**

- 2.1 McCain hereby appoints (i) the Owner, and the Owner hereby accepts appointment, as an independent contractor to provide, or procure the provision of, the Warehousing Services to McCain and (ii) the Operator, and the Operator hereby accepts appointment, as an independent contractor to provide the Ancillary Services, each with effect from the Services Commencement Date, subject to the terms and conditions of this Agreement. The parties acknowledge that the Services to be performed by the Owner under this Agreement will, in whole or in part, be sub-contracted by the Owner to, and performed by, the Operator.
- 2.2 McCain appoints:
- (a) the Owner as its exclusive supplier of Warehousing Services; and
 - (b) the Operator as its exclusive supplier of Ancillary Services,
- for all frozen food products produced at the McCain Facility, subject to the exceptions listed in clause 2.3.
- 2.3 The exclusivity referred to in clause 2.2 shall not apply:
- (a) to frozen food products produced at the McCain Facility (which, for the avoidance of doubt, excludes any warehousing facility in the Burley area acquired by McCain from Americold Logistics) that are stored at existing warehousing operations that comprise part of a current manufacturing plant or a similar facility owned by McCain as of the date of this Agreement or to products delivered direct to a storage facility of a customer of McCain at the specific, unsolicited instruction of that customer;
 - (b) in the circumstances set out in clause 2.4;
 - (c) without prejudice to clauses 6.3, 6.4, 6.5 and 6.6, to services provided by Americold Logistics pursuant to the AWA Agreement prior to the April 1, 2021 or services reasonably required by McCain to address a fundamental strategic change to McCain's warehousing requirements resulting from macroeconomic factors within the frozen food market that have had a material adverse impact on McCain's business for a period of at least twelve (12) months, specifically with respect to the Product(s) produced at the McCain Facility.
- 2.4 The exclusivity provisions in clause 2.2 will cease to apply from the occurrence of any of the following events until the date that is one (1) month after the Owner and the Operator have fully resumed performance of the Services in accordance with the terms of this Agreement:
- (a) a Force Majeure Event or Disaster in which the Owner or Operator is the Affected Party or affected (as the case may be), in respect of Services which the Owner or the Operator is unable to provide due to such Force Majeure Event or Disaster;

- (b) a material breach of this Agreement by the Owner or the Operator, in respect of Services the performance of which is substantially impacted by such material breach by the Owner or Operator; and
- (c) subject to clause 5.6 and clause 6.7, the Owner's failure to make available capacity to store Products in the Warehouse, in respect of Products which the Owner does not have sufficient capacity to store in the Warehouse.

2.5 The parties acknowledge that the Intended Services Commencement Date may be delayed if one or more of the following requirements has not been met on or before April 1, 2018 (each a "**Milestone**"):

- (a) the Owner delivering to McCain written notice that a binding agreement for the purchase of the land on which the Warehouse is to be built has been signed by the Owner or one of its Affiliates and the owner of such land or one of its Affiliates;
- (b) the Owner providing reasonable evidence to McCain that the requisite permit approving construction of the foundations of the Warehouse has been issued; and
- (c) the Owner delivering to McCain a written notice that either (i) the Owner and its project lender have entered into a loan agreement on terms satisfactory to the Owner in an amount sufficient for the development, construction and fit-out of the Warehouse, and all related expenditures, with the project lender funding each loan draw as contemplated under the terms of the loan agreement, or (ii) the Owner 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.

2.6 If any of the Milestones is not met by March 1, 2018:

- (a) the parties shall work together to ensure that the relevant Milestone is met as soon as practicable, with McCain providing reasonable assistance, at the Owner's cost for third-party out of pocket costs and expenses incurred by McCain (provided that such costs have been approved in writing by the Owner, such approval not to be unreasonably withheld), to help facilitate achievement of the Milestone; and
- (b) the Intended Services Commencement Date shall be revised by a period of time equivalent to the period from March 1, 2018 to the date on which the relevant Milestone is met, or, if later, to the date below:
 - (i) June 1, 2019, for a delay in achieving the Milestone in clause 2.5(a) (land purchase) or clause 2.5(c) (financing); and
 - (ii) August 1, 2019, for a delay in achieving the Milestone in clause 2.5(b) (foundations permit).

2.7 For the avoidance of doubt, McCain shall not be entitled to any monetary relief as a result of any revision to the Intended Services Commencement Date pursuant to this clause 2.

2.8 If (i) the Milestones in clause 2.5(a) and clause 2.5(c) have not been met by June 1, 2019, or (ii) the Milestone in clause 2.5(b) has not been met by August 1, 2019, McCain shall be entitled to terminate this Agreement and neither party shall have any liability to the other with respect to such termination and neither party shall have any claim against the other for any monetary relief as a result of such termination.

3. **Services Commencement**

3.1 The Owner shall promptly provide McCain with advance written notice of any anticipated or actual delay to the construction of the Warehouse or the Intended Services Commencement Date which is not due to any of the Milestones specified in clause 2.5.

3.2 Not later than six (6) months prior to the Intended Services Commencement Date, the Owner, or the Operator on the Owner's behalf, shall be entitled, without penalty, to give McCain written notice that it anticipates that the Intended Services Commencement Date will not be achieved, specifying the date the Owner reasonably believes will be the Services Commencement Date (such new anticipated date being the "**Revised Intended Services Commencement Date**"), and including a program of (non-binding) key milestones and key milestone dates. After such a written notice, the Owner shall provide McCain with weekly written reports as to whether each milestone is achieved by the relevant milestone

date, to enable McCain to monitor the progress being made by the Owner. Unless approved by McCain in writing, such Revised Intended Services Commencement Date shall not be more than three (3) months later than the Intended Services Commencement Date.

- 3.3 If clause 3.1 applies and the Owner, acting reasonably, anticipates that the Revised Intended Services Commencement Date will not be achieved, it shall promptly notify McCain in writing and clause 3.5 shall apply.
- 3.4 If the Owner has not given McCain written notice before the date specified in clause 3.2 but, as a result of circumstances which subsequently arise, the Owner (acting reasonably) anticipates that the Intended Services Commencement Date will not be achieved, it shall promptly notify McCain in writing and the parties shall act reasonably in agreeing to a Revised Intended Services Commencement Date, which shall not be more than three (3) months later than the Intended Services Commencement Date, and clause 3.5 shall apply.
- 3.5 Where clause 3.3 or clause 3.4 is applicable and subject to clause 3.7, the Owner shall reimburse McCain for all reasonable (considering the circumstances) third party out of pocket direct costs and expenses incurred by McCain in (i) engaging a third party to provide services equivalent to the Warehousing Services, and (ii) engaging a third party to provide transport services in respect of the Products, in each case incurred during the period from the Revised Intended Services Commencement Date up to earlier of (a) the Services Commencement Date or (b) the Long Stop Date (the "**Delay Period**"), to the extent that such costs exceed the costs that would have been payable for the Warehousing Services, the Ancillary Services and the transport of Products from the Warehouse during the Delay Period and provided that:
- (a) McCain provides reasonable evidence to the Owner of such costs and expenses;
 - (b) the Owner's total Liability in respect of such costs and expenses is limited to \$300,000 per month for each month of delay during the Delay Period (\$150,000 per month for each of the first two months where the delay is due to a delay in meeting the Milestones specified in clause 2.5(a) and clause 2.5(c)), or such higher monthly cap as the parties may, acting reasonably, agree in writing provided always that the Owner's aggregate total Liability with respect to such costs and expenses shall not exceed \$4,000,000;
 - (c) the Owner's Liability pursuant to this clause 3 shall not exceed the amounts stated in this clause 3.5 and the Owner shall not be responsible or liable for any consequential, indirect, incidental or special damages of any type or nature and however arising, including without limitation exemplary damages, punitive damages, lost profits, lost revenues, loss of market share and business opportunities (including opportunities to enter into arrangements with third parties), depletion of goodwill, loss of reputation or diminution in value, whether or not the possibility of such damages has been disclosed in advance by McCain or could have been reasonably foreseen by McCain, and regardless of the failure of any agreed or other remedy of its essential purpose; and
 - (d) McCain acknowledges that the Operator has no Liability for any costs or expenses incurred by McCain during any Delay Period and that McCain's sole recourse is against the Owner, in accordance with the terms of this clause 3.5.
- 3.6 Subject to clause 3.7 and without prejudice to clause 3.5, if the Services are not being provided pursuant to the terms of this Agreement on or before the Long Stop Date and this is not as a result of the act or omission of McCain, then unless the parties (acting reasonably and in good faith) agree in writing that the Long Stop Date shall be extended, this Agreement shall terminate automatically and no party shall have any further Liability to the others, except for those obligations set forth in clause 3.5.
- 3.7 If Services are not being provided pursuant to this Agreement on or before the Long Stop Date as a result of a Force Majeure Event then provided the Owner has provided McCain notice in writing not less than ninety (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 such period as may be reasonable in all the circumstances (the "**Extension Period**") as specified in the written notice from the Owner but in any event, unless approved by McCain, shall not exceed twelve (12) months after the original Long Stop Date. The Owner shall be liable during the Extension Period for the costs referred to in clause 3.5, subject to the monthly and aggregate caps in clause 3.5.

- 3.8 The Owner shall, from the Commencement Date up until the date of completion of the Warehouse, keep McCain reasonably informed regarding the financing, construction and completion of the Warehouse. The Owner shall provide McCain with written monthly progress reports and otherwise keep McCain reasonably informed of material delays and the steps the Owner is taking to address the same, provided during the six (6) month period prior to the Intended Services Commencement Date or Revised Intended Services Commencement Date, as the case may be, the Owner shall provide McCain with written weekly progress reports and otherwise keep McCain reasonably informed of material delays and the steps the Owner is taking to address the same.
- 3.9 Subject to clause 24.6 and subject to McCain providing or procuring all necessary access and cooperation, the Owner shall, at the Owner's cost and expense and in accordance with the reasonable written instructions of McCain, refurbish the McCain Facility by installing an automated solution to facilitate the Shuttling of Products from the McCain Facility to the Warehouse, in accordance with the Specification set out at Schedule 2 Part 2, as subsequently amended by written agreement between the Parties (the "**Automated Loading Refurbishment**"). Such refurbishment shall include the buffer lanes and automatic loading unit to prepare the Loads for loading at the McCain Facility and the unloading of System Pallets at the McCain Facility. The parties shall work in good faith to agree to the details of such refurbishment and the Owner shall complete such installation prior to the Services Commencement Date. The Automated Truck Loading System shall be owned by the Owner, and maintained in good working order and repair at the cost and expense of the Owner, until the earlier of the expiration of the Initial Term or the termination of this Agreement for any reason at which time all right, title and interest thereto shall be deemed to be automatically transferred to McCain (subject to payment by McCain of the sums, if any, due in accordance with clause 24.6) and the Owner shall deliver all instruments of transfer reasonably requested by McCain to reflect the transfer of title thereto to McCain, and thereafter neither the Owner nor any of its Affiliates shall have any right, title or interest to the Automated Truck Loading System or any component thereof, except for (i) the right to payment in the circumstances set out in clause 24.6 and (ii) McCain shall not own any patents, design rights, copyright (including rights in computer software and databases), know-how, moral rights or other intellectual property rights in the Automated Loading Refurbishment or the Automated Truck Loading System. The Owner shall maintain the Automated Truck Loading System, at the Owner's cost and expense, while it is owned by the Owner and McCain shall maintain the Automated Truck Loading System, at McCain's cost and expense, while it is owned by McCain.
4. **Term**
- 4.1 This Agreement shall come into force on the Commencement Date and shall continue in force for an initial term of fifteen (15) years from April 1, 2021 (the "**Initial Term**") unless terminated at an earlier date in accordance with its terms or extended in accordance with clause 4.2.
- 4.2 Not less than twenty-four (24) months prior to the date of expiration of the Initial Term, any party hereto may provide written notice to the other if that party wishes for the Agreement to terminate upon the expiration of the Initial Term. Provided that the Owner has complied with clause 4.3, if no notice is provided by any party hereto under this clause 4.2, the term of the Agreement shall be deemed to be automatically renewed for an additional ten (10) years (the "**Extension Term**"), such term to commence immediately following the expiration of the Initial Term.
- 4.3 Not more than thirty-six (36) months, but not less than thirty (30) months, prior to the expiration of the Initial Term, the Owner shall notify McCain in writing of the existence and effect of clause 4.2, and offer to meet with McCain to discuss the upcoming extension of the Initial Term. If the Owner fails to provide such written notice to McCain, any party may terminate the Agreement, for any or no reason and without penalty, upon not less than twenty-four (24) months prior written notice to the other parties at any time during the Extension Term.
- 4.4 If the Owner, the Operator or any of their Affiliates carries out a Financing in respect of the Warehouse between the fourth anniversary and the eighth anniversary of the start of the Initial Term then, at the Owner's request, the Initial Term shall be extended by a period of two (2) years (the "**Refinancing Option**"). Notwithstanding the foregoing, if McCain exercises its option to extend the Initial Term for two (2) or more years pursuant to clause 4.5, the Owner shall not have the right to exercise the Refinancing Option, however, if McCain does not exercise its option to extend the Initial Term pursuant to clause 4.5, the Owner may exercise the Refinancing Option. If McCain exercises its option to extend the Initial Term pursuant to clause 4.5 for less than two (2) years, the Owner may exercise the

Refinancing Option and extend the Initial Term by a period equal to two (2) years less the extension period to the Initial Term elected by McCain pursuant to clause 4.5. The Owner and the Operator shall pass to McCain 50% of the benefit of any interest rate savings on lender financing, directly achieved as a result of the Financing to which the Refinancing Option relates, by means of a reduction in the Charges for Storage Services for the term of the new Financing. Except for changes to the Charges pursuant to the Charges Review Mechanism in Schedule 1, Part 4, the Charges for Storage Services shall be no higher than the Charges applicable immediately prior to the Financing.

4.5 McCain, may, if it so elects at its sole discretion, extend the Initial Term by a period of up to eight (8) years, by serving notice in writing on the Owner and Operator at any time prior to the fifth anniversary of the start of the Initial Term. Beyond the fifth anniversary of the start date and for the balance of the Initial Term, McCain may initiate an early extension pursuant to the Service Change Procedure.

4.6 If McCain exercises its option to extend the Initial Term pursuant to clause 4.5 prior to the Owner, the Operator or any of their Affiliates completing any Financing, then clause 4.4 shall cease to apply.

5. **Services to be provided by the Owner and Operator**

5.1 The parties acknowledge that in providing the Services neither the Owner nor the Operator is a buyer of, processor of or dealer in, the Products.

5.2 The Owner and the Operator shall provide their respective Services to McCain commencing on the Services Commencement Date in accordance with the Operating Specification, the applicable KPI's and the terms of this Agreement. The Operator shall provide the Standard Services in accordance with the Standard KPI's and the Additional Services in accordance with the Additional Service KPIs except that during the Initial Period, the Initial KPI's shall apply.

5.3 The Owner and the Operator shall carry out their respective Services in a professional and workmanlike manner and with a reasonable standard of care, skill and diligence in accordance with Good Industry Standards. Each of the Owner and the Operator shall ensure that it does not (and shall assure that none of its Representatives) take any action which is detrimental to the business or reputation of McCain or any member of the McCain Group. The Operator shall and shall ensure that its Representatives engaged in the provision of the Services, observe all health, safety and security rules and procedures applicable at the Warehouse or otherwise required under Applicable Laws or this Agreement.

5.4 The Owner shall throughout the Term accept delivery of Products which it has been notified by McCain in accordance with clause 6.2(b) (Forecasts) are to be stored at the Warehouse, provided that such Products are compatible with each other, comply with all Applicable Laws and do not exceed the number of pallet positions specified in the Forecast (as defined in clause 6.2(b)), subject to and in accordance with the provisions and limitations set out in this Agreement. The Owner shall provide weekly written reports to McCain (in digital format as set out in the Operating Specification) on the number of pallet positions available and remaining for use by McCain.

5.5 The Operator shall not provide the Services at, and the Owner shall not permit the movement of, any of the Products to, any site other than the Warehouse without the prior written consent of McCain.

5.6 Subject to Clause 6.7, the Owner shall be entitled to store third parties' goods at the Warehouse, provided that the Operator has sufficient personnel engaged at the Warehouse to manage such additional goods.

5.7 McCain may from time to time request that the Operator carry out Additional Services provided such Additional Services are commercially reasonable in the context of Operator's business and the Warehouse and are reasonably acceptable to the Operator. The charges, conditions and Additional Service KPIs in respect of such Additional Services, including any Bespoke Services Employee requirement (as referred to in clause 5.8), shall be notified by the Operator to McCain in writing and in advance of such Additional Services being performed, and Additional Services shall only be performed upon the written approval of a representative of McCain's management.

5.8 When the Additional Services require a Bespoke Services Employee, McCain and the Operator shall identify these and the obligations in clause 10.3 shall apply. The Operator shall consult with McCain as to the appointment of any Bespoke Services Employee, taking into account McCain's reasonable views as part of its recruitment process, and shall ensure that each such employee is suitably qualified for his/her role.

- 5.9 Following consultation with McCain, the Owner shall where necessary and commercially feasible develop and implement a continuous improvement plan, at the Owner's cost and expense, in relation to the Services, utilizing agreed evaluation processes and customer satisfaction surveys to ensure that, where necessary, the quality of the Services is improved and, together with McCain, shall review the KPIs to ensure that, where necessary, the performance of the Services is improved, in both cases such improvements to be made throughout the Term. Where opportunities are identified for improvement, they will be processed in accordance with clause 8 (Service Change Procedure).
- 5.10 The Owner shall in any event use (and ensure that the Operator uses) commercially reasonable efforts to introduce more effective methods of improving the Services where it is reasonable to do so, subject to its overriding obligation to carry out the Services in accordance with the KPIs and the Operating Specification. To support these improvements, teams will be formed on different operational and strategic levels with members both from the Operator and McCain. These teams will meet on a regular basis, but in any event quarterly and will report to the steering committee established under clause 5.11. The overall objective of these meetings is to achieve cost effectiveness and quality improvement for the combined operation with savings being shared between the parties as agreed during the relevant meeting. Where opportunities are identified for more effective methods of improving the Services, they will be processed in accordance with clause 8 (Service Change Procedure).
- 5.11 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 5.10. The steering committee will meet on a regular basis, but in any event at least annually. The steering committee may propose modifications to the Services and the KPI's. Such proposals shall be managed in accordance with the process set out in clause 8 (Service Change Procedure).

6. **Forecasts and Minimum Annual Revenue**

- 6.1 McCain has provided to the Owner and the Operator the forecast set forth in Schedule 3 for the period commencing on the Services Commencement Date and ending on the last day of the Initial Term covering the Services required by McCain ("**Initial Term Forecast**"). On the basis of the Initial Term Forecast, the Warehouse size has been configured and Owner has reserved pallet capacity for McCain and made operational arrangements to service McCain's requirements.
- 6.2 McCain shall provide to the Owner and the Operator:
- (a) not more than six (6) months after the Commencement Date, a written forecast of its storage volume requirements together with its expected Shuttling Service requirements and weekly infeed and outfeed from the Warehouse, for the period from the Services Commencement Date up to and including December 31 of such calendar year (the "**Initial Forecast Year**"); and
 - (b) at least 120 days before January 1 of the calendar year immediately following the Initial Forecast Year, and then at least 120 days before each subsequent January 1, a forecast of its expected month-by-month storage volume requirements together with its expected Shuttling Service requirements and weekly infeed and outfeed from the Warehouse for the following 24 months (each a "**Forecast**"). The Forecasts will be used by the Owner to enable it to make operational plans to accommodate McCain's requirements and to calculate the Minimum Annual Revenue in accordance with clause 6.3, clause 6.4, clause 6.5 and clause 6.6.
- 6.3 McCain guarantees the Owner a Minimum Annual Storage Revenue in each Year throughout the Term (except that for the period from the Services Commencement Date to the start of the next Year and for the period from the first day of the last year of this Agreement and the last day of this Agreement, such amount shall be pro-rated). For the purposes of this Agreement, "**Minimum Annual Storage Revenue**" shall be calculated in accordance with the following formula:

$$M = C \times V \times D$$

Where:

M = Minimum Annual Storage Revenue;

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

V = the higher of: (i) the minimum average storage volume for each day during the applicable Year as indicated in the table below and (ii) 90% of the average storage volume of Loads for each day in the first 12 months set out in the Forecast provided pursuant to clause 6.2(b) (prior to any subsequent revision to such Forecast), and

D = 365 (being the number of days in a Year, except that where any applicable year is a leap year, D = 366 and where any period is pro-rated in accordance with this provision, D = the number of days remaining in that Year).

Year	2019	2020	2021	2022	2023 and further
Minimum average daily storage volume	42,500	42,500	62,000	64,000	64,000

For illustrative purposes only, an example of the calculation of the Minimum Annual Storage Revenue is shown in Appendix 1 to this Agreement.

- 6.4 McCain guarantees the Owner a Minimum Annual Handling Revenue in each Year throughout the Term (except that for the period from the Services Commencement Date to the start of the next Year and for the period from the first day of the last year of this Agreement and the last day of the date of this Agreement, such amount shall be pro-rated). For the purposes of this Agreement, "**Minimum Annual Handling Revenue**" shall be calculated in accordance with the following formula:

$$M = (C1 \times V1) + (C2 \times V2) + (C3 \times V3) + (C4 \times V4)$$

Where:

M = Minimum Annual Handling Revenue;

C1 = the Handling Charge for Loads in from the McCain Facility (as adjusted in accordance with this Agreement) applicable in the relevant Year;

V1 = the higher of: (i) the minimum annual handling volume for Loads from the McCain Facility during the applicable Year as indicated in the table below and (ii) 90% of the annual handling volume for Loads from the McCain Facility set out in the Forecast for the applicable Year provided pursuant to clause 6.2(b)(prior to any subsequent revision to such Forecast),

C2 = the Handling Charge for Loads in by truck (as adjusted in accordance with this Agreement) applicable in the relevant Year;

V2 = the higher of: (i) the minimum annual handling volume for Loads in by truck during the applicable Year as indicated in the table below and (ii) 90% of the annual handling volume for Loads in by truck set out in the Forecast for the applicable Year provided pursuant to clause 6.2(b)(prior to any subsequent revision to such Forecast),

C3 = the Handling Charge for Loads out by truck (as adjusted in accordance with this Agreement) applicable in the relevant Year;

V3 = the higher of: (i) the minimum annual handling volume for Loads out by truck during the applicable Year as indicated in the table below and (ii) 90% of the annual handling volume for Loads out by truck set out in the Forecast for the applicable Year provided pursuant to clause 6.2(b)(prior to any subsequent revision to such Forecast),

C4 = the Handling Charge for Loads out by rail car (as adjusted in accordance with this Agreement) applicable in the relevant Year;

V4 = the higher of: (i) the minimum annual handling volume for Loads out by rail car during the applicable Year as indicated in the table below and (ii) 90% of the annual handling volume for Loads out by rail car set out in the Forecast for the applicable Year provided pursuant to clause 6.2(b)(prior to any subsequent revision to such Forecast),

Year	2019	2020	2021	2022	2023 and each subsequent Year
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Annual Handling volume for Loads from the McCain Facility (V1)	320,000	320,000	480,000	495,000	495,000
Annual Handling volume for Loads in by truck (V2)	50,000	50,000	65,000	66,000	67,000
Annual Handling volume for Loads out by truck (V3)	298,000	298,000	435,000	452,000	453,000
Annual Handling volume for Loads out by rail car (V4)	72,000	72,000	108,000	109,000	109,000

For illustrative purposes only, an example of the calculation of the Minimum Annual Handling Revenue is shown in Appendix 1 to this Agreement.

- 6.5 McCain guarantees the Operator a Minimum Annual Shuttling Revenue in each Year throughout the Term (except that for the period from the Services Commencement Date to the start of the next Year and for the period from the first day of the last year of this Agreement and the last day of the date of this Agreement, such amount shall be pro-rated). For the purposes of this Agreement, "**Minimum Annual Shuttling Revenue**" shall be calculated in accordance with the following formula:

$$M = C \times V \times D$$

Where:

M = Minimum Annual Shuttling Revenue;

C = the Shuttling Charge for Loads in by shuttle from the McCain Facility (as adjusted in accordance with this Agreement) applicable in the relevant Year;

V = the higher of: (i) the minimum shuttling volume for Loads from the McCain Facility for each day during the applicable Year as indicated in the table below and (ii) 90% of the shuttling volume for Loads from the McCain Facility per day set out in the Forecast for the applicable Year provided pursuant to clause 6.2(b) (prior to any subsequent revision to such Forecast),

D = 365 (being the number of days in a Year, except that where any applicable year is a leap year, D = 366 and where any period is pro-rated in accordance with this provision, D = the number of days remaining in that Year).

Year	2019	2020	2021	2022	2023 and further
Annual Shuttling Services requirement	320,000	320,000	480,000	495,000	495,000

For illustrative purposes only, an example of the calculation of the Minimum Annual Storage Revenue is shown in Appendix 1 to this Agreement.

- 6.6 McCain guarantees the Operator a Minimum Annual Case Picking Revenue in each Year throughout the Term (except that for the period from the Services Commencement Date to the start of the next Year and for the period from the first day of the last year of this Agreement and the last day of this Agreement, such amount shall be pro-rated). For the purposes of this Agreement, "**Minimum Annual Case Picking Revenue**" shall be calculated in accordance with the following formula:

$$M = C \times V \times D$$

Where:

M = Minimum Annual Case Picking Revenue;

C = the Case Picking Charge (as adjusted in accordance with this Agreement) applicable in the relevant Year;

V = the higher of: (i) the minimum average Case Picking Services volume for each day during the applicable Year as indicated in the table below and (ii) 90% of the average Case Picking Services volume for each day set out in the Forecast for the applicable Year provided pursuant to clause 6.2(b)(prior to any subsequent revision to such Forecast), and

D = 365 (being the number of days in a Year, except that where any applicable year is a leap year, D = 366 and where any period is pro-rated in accordance with this provision, D = the number of days remaining in that Year).

Year	2019	2020	2021	2022	2023 and further
Annual Case Picking Services requirement	3,100,000	3,100,000	4,500,000	4,500,000	4,500,000

For illustrative purposes only, an example of the calculation of the Minimum Annual Case Picking Revenue is shown in Appendix 1 to this Agreement.

- 6.7 The Owner shall ensure that sufficient pallet space is reserved at the Warehouse to meet each annual Forecast plus 3% of the Forecast, provided that neither the Forecast nor the combined pallet space in the Forecast, plus the further 3%, exceeds a maximum storage capacity of 80,000 pallets or such lower storage capacity as applies from time to time pursuant to clause 6.13 (“**Maximum Storage Capacity**”).
- 6.8 If McCain provides written notice (“**Reduction Notice**”) to the Owner that it permanently requires less pallet capacity in the Warehouse than the amount set forth in the Initial Term Forecast and details the amount of the pallet capacity it no longer requires, then, from the date such Reduction Notice is received by the Owner, the Owner shall no longer be required to reserve the unwanted pallet capacity for McCain and the Owner and the Operator shall use commercially reasonable efforts to secure additional storage volumes for the Warehouse that is a good fit for the Warehouse operations and is acceptable to the Owner, in the exercise of its reasonable discretion. Without prejudice to the Owner’s obligations to mitigate its Losses, where pallet capacity exists within the Warehouse which is in excess of the amount set out in the Initial Term Forecast, the Owner may seek to contract with other customers to use such capacity prior to offering those customers the additional pallet capacity which becomes available following McCain’s submission of the Reduction Notice. If the Owner contracts with other customers to provide storage and related services using the capacity specified by McCain in its Reduction Notice, then the Owner shall credit against the Minimum Annual Revenue for each applicable Year, an amount equal to the positive difference, if any, between (i) the Minimum Annual Revenue due from McCain for such Year and (ii) the amount received by the Owner from other customers during such Year for providing storage and handling services using the capacity specified by McCain in its Reduction Notice. Where the Owner contracts with other customers to provide storage and handling services for capacity other than that intended to be used by McCain as at the date of this Agreement, any amounts received from any such customers in respect of that capacity shall not reduce the Minimum Annual Revenue due from McCain.
- 6.9
- (a) Subject to clause 6.11 and clause 20, with respect to the period commencing on the Services Commencement Date and ending on April 1, 2021 (the “**AWA Period**”), if, during the period commencing on the Services Commencement Date, or commencing on any anniversary thereof during the AWA Period (as applicable), and ending six (6) months thereafter (except if the final reconciliation period of the AWA Period is less than six (6) months, in which case such

final reconciliation period shall end on the last day of the AWA Period) (in each case, the “**AWA Mid-Year Measurement Period**”), the amount invoiced to McCain by the Owner as Storage Charges and Handling Charges during such AWA Mid-Year Measurement Period is less than the pro-rated Minimum Annual Storage Revenue and pro-rated Minimum Annual Handling Revenue for such AWA Mid-Year Measurement Period, then the Owner shall be entitled, acting reasonably and taking into account McCain's latest rolling forecasts, to issue an invoice to McCain within sixty (60) days after the end of that AWA Mid-Year Measurement Period for an amount equal to such shortfall (the “**AWA Mid-Year Storage and Handling Shortfall**”), which invoice shall include a calculation of such AWA Mid-Year Storage and Handling Shortfall, and McCain shall pay the amount of such AWA Mid-Year Storage and Handling Shortfall to the Owner within sixty (60) days of receipt of the Owner's invoice.

- (b) Subject to clause 6.11 and clause 20, if, during the period commencing on the Services Commencement Date, or commencing on any anniversary thereof during the AWA Period (as applicable), and ending twelve (12) months thereafter (except if the final reconciliation period of the AWA Period is greater than six (6) months but less than twelve (12) months, in which case such final reconciliation period shall end on the last day of the AWA Period) (in each case, the “**AWA Annual Measurement Period**”), the amount invoiced to McCain by the Owner as Storage Charges and Handling Charges during such AWA Annual Measurement Period plus any amount paid by McCain as an AWA Mid-Year Storage and Handling Shortfall during such AWA Annual Measurement Period is less than the Minimum Annual Storage Revenue and the Minimum Annual Handling Revenue for such AWA Annual Measurement Period (except if the final reconciliation period of the AWA Period is greater than six (6) months but less than twelve (12) months, in which case the Minimum Annual Storage Revenue and Minimum Annual Handling Revenue shall be pro-rated), then the Owner shall be entitled, acting reasonably and taking into account McCain's latest rolling forecasts, to issue an invoice to McCain within sixty (60) days after the end of such AWA Annual Measurement Period for an amount equal to such shortfall (the “**AWA Annual Storage and Handling Shortfall**”), which invoice shall include a calculation of such AWA Annual Storage and Handling Shortfall, and McCain shall pay the amount of such AWA Annual Storage and Handling Shortfall to the Owner within sixty (60) days of receipt of the Owner's invoice.
- (c) Subject to clause 6.11 and clause 20, if, during any AWA Annual Measurement Period, the amount paid to the Owner as Storage Charges and Handling Charges plus the amount paid by McCain as an AWA Mid-Year Storage and Handling Shortfall (if applicable) in such AWA Annual Measurement Period is more than the Minimum Annual Storage Revenue and the Minimum Annual Handling Revenue for that AWA Annual Measurement Period (except if the final reconciliation period of the AWA Period is more than six (6) months but less than twelve (12) months, in which case the Minimum Annual Storage Revenue and Minimum Annual Handling Revenue shall be pro-rated), then the Owner shall pay McCain the amount of such excess less any amount invoiced to McCain by the Owner as Storage Charges and Handling Charges in respect of the volume for which the Storage Services and Handling Services were provided above that required to achieve the Minimum Annual Storage Revenue and Minimum Annual Handling Revenue for that AWA Annual Measurement Period (the “**AWA Annual Storage and Handling Refund**”) within sixty (60) days after the end of such AWA Annual Measurement Period, following receipt of an invoice from McCain for that amount; provided, however, the maximum AWA Annual Storage and Handling Refund that is payable to McCain with respect to any AWA Annual Measurement Period shall in no event exceed the amount of the AWA Mid-Year Storage and Handling Shortfall with respect to such AWA Annual Measurement Period and shall further be capped at an amount required to ensure that the Owner received the Minimum Annual Storage Revenue and Minimum Annual Handling Revenue for that AWA Annual Measurement Period, and such payment shall include a calculation of such AWA Annual Storage and Handling Refund.

Example 1:

- (a) Minimum Annual Storage Revenue and Minimum Annual Handling Revenue = 100 (50 in the first 6 months of the AWA Period ("P1") and 50 in the second 6 months of the AWA Period ("P2"));

- (b) P1 revenue = 40, which results in an AWA Mid-Year Storage and Handling Shortfall payment of 10 following the AWA Mid-Year Measurement Period in accordance with clause 6.9(a);
- (c) P2 revenue = 55;
- (d) Overall volume in respect of which Storage Services and Handling Services were provided = 95;
- (e) Overall payment over the AWA Annual Measurement Period: P1 + P2 + AWA Mid-Year Storage and Handling Shortfall = 105;
- (f) An AWA Annual Storage and Handling Refund is due – this will be capped at an amount required to ensure that the Owner receives the Minimum Annual Storage Revenue and Minimum Annual Handling Revenue for that AWA Annual Measurement Period = i.e. a refund of 5 is due.

Example 2:

- (a) Minimum Annual Storage Revenue and Minimum Annual Handling Revenue = 100 (50 in P1 and 50 in P2);
 - (b) P1 revenue = 45, which results in an AWA Mid-Year Storage and Handling Shortfall payment of 5 following the AWA Mid-Year Measurement Period in accordance with clause 6.9(a);
 - (c) P2 revenue = 70;
 - (d) Overall volume in respect of which Storage Services and Handling Services were provided = 115;
 - (e) Overall payment over the AWA Annual Measurement Period: P1 + P2 + AWA Mid-Year Storage and Handling Shortfall = 120;
 - (f) An AWA Annual Storage and Handling Refund is due – this will be the amount of the excess (i.e. 20) less the volume for which Storage Services and Handling Services were provided above that required to provide the Minimum Annual Storage Revenue and Minimum Annual Handling Revenue (i.e. 15) = i.e. a refund of 5 is due.
- (d) Subject to clause 6.11 and clause 20, with respect to any period of time after the AWA Period (the “**Post-AWA Period**”), if, during any period commencing on the day after the AWA Period, or commencing on any anniversary thereof, and ending twelve (12) months thereafter (except if the final reconciliation period ends on the last day of the Term of this Agreement, and such period is less than twelve (12) months, in which case such final reconciliation period shall end on the last day of the Term of this Agreement) (in each case, the “**Post-AWA Annual Measurement Period**”), the amount invoiced to McCain by the Owner as Storage Charges and Handling Charges during such Post-AWA Annual Measurement Period is less than the Minimum Annual Storage Revenue and the Minimum Annual Handling Revenue for such Post-AWA Annual Measurement Period (except if the final Post-AWA Annual Measurement Period is less than twelve (12) months, in which case the Minimum Annual Storage Revenue and Minimum Annual Handling Revenue shall be pro-rated), then the Owner shall be entitled, acting reasonably and taking into account McCain's latest rolling forecasts, to issue an invoice to McCain within sixty (60) days after the end of such Post-AWA Annual Measurement Period for an amount equal to such shortfall (the “**Post-AWA Annual Storage and Handling Shortfall**”), which invoice shall include a calculation of such Post-AWA Annual Storage and Handling Shortfall, and McCain shall pay the amount of such Post-AWA Annual Storage and Handling Shortfall to the Owner within sixty (60) days of receipt of the Owner's invoice.

6.10

- (a) Subject to clause 6.11 and clause 20, if, during any AWA Mid-Year Measurement Period, the amount invoiced to McCain by the Operator as Shuttling Charges and Case Picking Charges during such AWA Mid-Year Measurement Period is less than the pro-rated Minimum Annual Shuttling Revenue and pro-rated Minimum Annual Case Picking Revenue for such AWA Mid-

Year Measurement Period, then the Operator shall be entitled, acting reasonably and taking into account McCain's latest rolling forecasts, to issue an invoice to McCain within sixty (60) days after the end of that AWA Mid-Year Measurement Period for an amount equal to such shortfall (the "**AWA Mid-Year Shuttling and Case Picking Shortfall**"), which invoice shall include a calculation of such AWA Mid-Year Shuttling and Case Picking Shortfall, and McCain shall pay the amount of such AWA Mid-Year Shuttling and Case Picking Shortfall to the Operator within sixty (60) days of receipt of the Operator's invoice.

- (b) Subject to clause 6.11 and clause 20, if, during any AWA Annual Measurement Period, the amount invoiced to McCain by the Operator as Shuttling Charges and Case Picking Charges during such AWA Measurement Period plus any amount paid by McCain as an AWA Mid-Year Shuttling and Case Picking Shortfall during such AWA Annual Measurement Period is less than the Minimum Annual Shuttling Revenue and the Minimum Annual Case Picking Revenue for such AWA Annual Measurement Period (except if the final reconciliation period of the AWA Period is greater than six (6) months but less than twelve (12) months, in which case such the Minimum Annual Shuttling Revenue and the Minimum Annual Case Picking Revenue shall be pro-rated), then the Operator shall be entitled, acting reasonably and taking into account McCain's latest rolling forecasts, to issue an invoice to McCain within sixty (60) days after the end of such AWA Annual Measurement Period for an amount equal to such shortfall (the "**AWA Annual Shuttling and Case Picking Shortfall**"), which invoice shall include a calculation of such AWA Annual Shuttling and Case Picking Shortfall, and McCain shall pay the amount of such AWA Annual Shuttling and Case Picking Shortfall to the Operator within sixty (60) days of receipt of the Operator's invoice.
- (c) Subject to clause 6.11 and clause 20, if, during any AWA Annual Measurement Period, the amount paid by McCain to the Operator as Shuttling Charges and Case Picking Charges plus the amount paid by McCain as an AWA Mid-Year Shuttling and Case Picking Shortfall (if applicable) in such AWA Annual Measurement Period is more than the Minimum Annual Shuttling Revenue and the Minimum Annual Case Picking Revenue for that AWA Annual Measurement Period (except if the final reconciliation period of the AWA Period is greater than six (6) months but less than twelve (12) months, in which case the Minimum Annual Shuttling Revenue and Minimum Annual Case Picking Revenue shall be pro-rated), then the Operator shall pay McCain the amount of such excess less any amount invoiced to McCain by the Operator as Shuttling Charges and Case Picking Charges in respect of the volume for which the Shuttling Services and Case Picking Services were provided above that required to achieve the Minimum Annual Shuttling Revenue and the Minimum Annual Case Picking Revenue for that AWA Annual Measurement Period (the "**AWA Annual Shuttling and Case Picking Refund**") within sixty (60) days after the end of such AWA Annual Measurement Period; provided, however, the maximum AWA Annual Shuttling and Case Picking Refund that is payable to McCain with respect to any AWA Annual Measurement Period shall in no event exceed the amount of the AWA Mid-Year Shuttling and Case Picking Shortfall with respect to such AWA Annual Measurement Period and shall further be capped at an amount required to ensure that the Operator receives the Minimum Annual Shuttling Revenue and the Minimum Annual Case Picking Revenue for that AWA Annual Measurement Period, and such payment shall include a calculation of such AWA Annual Shuttling and Case Picking Refund.
- (d) Subject to clause 6.11 and clause 20, if, during any Post-AWA Annual Measurement Period, the amount invoiced to McCain by the Operator as Shuttling Charges and Case Picking Charges during such Post-AWA Annual Measurement Period is less than the Minimum Annual Shuttling Revenue and the Minimum Annual Case Picking Revenue for such Post-AWA Annual Measurement Period (except if the final Post-AWA Annual Measurement Period is less than twelve (12) months, in which case the Minimum Annual Shuttling Revenue and Minimum Annual Case Picking Revenue shall be pro-rated), then the Operator shall be entitled, acting reasonably and taking into account McCain's latest rolling forecasts, to issue an invoice to McCain within sixty (60) days after the end of such Post-AWA Annual Measurement Period for an amount equal to such shortfall (the "**Post-AWA Annual Shuttling and Case Picking Shortfall**"), which invoice shall include a calculation of such Post-AWA Annual Shuttling and Case Picking Shortfall, and McCain shall pay the amount of such Post-AWA Annual Shuttling and Case Picking Shortfall to the Operator within sixty (60) days of receipt of the Operator's invoice.

- 6.11 Where, and for so long as, McCain is affected by a Force Majeure Event or other material disruption to its business which has a significant impact on its ability to perform its obligations under this Agreement, the reconciliations specified in clause 6.9 and clause 6.10 shall be performed on a quarterly basis and those clauses shall be deemed amended accordingly for the duration of such Force Majeure Event or material disruption.
- 6.12 The Owner shall have the right to refuse to accept delivery of any Products tendered by McCain that constitute an unacceptable hazard or that are reasonably likely to cause contamination or are on poor quality Pallets. The Owner is entitled to refuse to accept any Products which are classified as hazardous materials under any Applicable Law.
- 6.13 If at any time the Owner is requested by a third party customer to provide warehousing services for that customer's products at the Warehouse, the Owner shall notify McCain in writing of the volumes that such customer wishes to store at the Warehouse, the levels of handling and case picking required and the duration of the proposed arrangements. McCain shall have a right of first refusal with regard to the capacity specified in that notice, exercisable by written confirmation by McCain to the Owner within twenty (20) Business Days from McCain's receipt of the aforementioned written notice from the Owner, such that if McCain commits to match those volumes and levels of handling and case picking, and guarantees to pay the Charges payable for the same (whether or not the additional reserved capacity is used by McCain), the Owner will reserve the relevant capacity at the Warehouse for use by McCain rather than for use by that customer for the duration of the proposed arrangement. Where McCain elects not to exercise its right of first refusal, the Maximum Storage Capacity which the Owner may be required to make available to McCain shall be reduced to an amount equal to the maximum storage capacity of the Warehouse of 84,000 pallet locations minus the volumes that the third party customer wishes to store at the Warehouse (as notified to McCain pursuant to this clause), for the duration of the agreement between the Owner and that third party customer.

Example:

Mccain's Forecast for 2021 = 71,000 Loads

Reservation by Owner = 73,130 pallet locations.

Maximum available free storage locations = 84,000 – 73,130 = 10,870 pallet locations

Request from third party customer = 8,000 pallets

Right of first refusal waived by McCain: revised Maximum Storage Capacity for the duration of the third party customer agreement = 76,000 pallets

7. **Payment**

- 7.1 In consideration of the provision by the Owner through the Operator of the Warehousing Services, McCain shall pay to the Owner the Charges for Warehousing Services set out in Schedule 1, Part 2, subject to any adjustment to which McCain is entitled as set out in Schedule 1, Part 4, paragraph 8, Schedule 4, Part 1, paragraph 4.1(b)(ii)(E), clause 7.9 or clause 18 hereof. In consideration of the provision by the Operator of the Ancillary Services, McCain shall pay to the Operator the Charges for Ancillary Services set out in Schedule 1, Part 2. In consideration of the provision by the Operator of any Additional Services, McCain shall pay to the Operator the charges agreed in accordance with clause 5.7 for such Additional Services. The Charges shall be payable in accordance with the terms of this clause 7. Invoices submitted by the Owner and by the Operator shall contain the information set out in Schedule 1, Part 5. Any Additional Services referred to in clause 5.7 shall be invoiced separately and contain the information set out in Schedule 1, Part 5. The Charges shall be subject to the provisions of Schedule 1, Part 4.
- 7.2 The Owner shall present to McCain, within five (5) Business Days of the end of each week, two invoices for the Charges incurred in the preceding week. One invoice will be for the Storage Charge (as set out in the table in Part 2 of Schedule 1), together with details (in a form reasonably specified by McCain from time to time) of all the Products stored at the Warehouse during the preceding week. The second invoice will be for the Inbound Charge (as set out in the table in Part 2 of Schedule 1) and the Outbound Charge (as set out in the table in Part 2 of Schedule 1).
- 7.3 The Operator shall present McCain, within five (5) Business Days of the end of each week, three invoices for the Charges incurred in the preceding week. One invoice will be for the Inbound Charge (as set out in the table in Part 2 of Schedule 1), the Shuttling Charge (as set out in the table in Part 2

of Schedule 1) and the Outbound Charge (as set out in the table in Part 2 of Schedule 1). The second invoice will be for the Case Picking Charge (as set out in the table in Part 2 of Schedule 1) and any Additional Services performed by the Operator. The third invoice will be for Charges for any Load Reject Charge (as set out in the table in Part 2 of Schedule 1), together with details (in a form reasonably specified by McCain from time to time) and any other Additional Services, performed by the Operator pursuant to clause 5.7. The detailed calculation of Charges pursuant to this clause 7.3, based on the activities provided in a given week and information necessary for any Service Credit calculation, shall be attached to the invoices. The detailed calculation of Charges pursuant to this clause 7.3, based on the activities provided in a given week and information necessary for any Service Credit calculation, shall be attached to the invoices.

- 7.4 Subject to clause 7.5, McCain shall pay each invoice no later than the expiration of a sixty (60) day period from the date of the receipt of the invoice.
- 7.5 If there is a bona fide disagreement regarding any invoice, McCain shall notify the Owner and the Operator in writing within fifteen (15) Business Days of receipt of such invoice and McCain shall not be liable for and shall be under no obligation to pay the amount which is disputed until the resolution of the disagreement. The entity which issued the invoice may, at its choice, send a credit note for the disputed invoice and resend two new invoices, one for the undisputed part and one for the disputed part, both with the original invoice date. McCain shall be entitled to dispute an invoice more than fifteen (15) Business Days after receipt of the invoice (but no later than 12 months after the date of the invoice), in which event McCain shall pay the invoice in full and any validly disputed amount shall be credited to McCain on a subsequent invoice.
- 7.6 The Charges shall be reviewed on the Services Commencement Date and thereafter on 31 December following the Services Commencement Date, and each subsequent 31 December in accordance with Schedule 1, Part 4.
- 7.7 The Charges and any other payments due to the Owner and the Operator are to be in US Dollars (\$) and are exclusive of Sales Tax and any other government imposed tax or levy. Any Sales Tax or other government imposed tax or levy payable shall be added if appropriate at the rate prevailing at the relevant tax point, or paid in addition to the sum due.
- 7.8 If any party hereto defaults on a payment when due of any sum payable under this Agreement (whether payable by agreement, by an order of a court or otherwise), other than the payment that is subject to a bona fide dispute, the Liability of that party shall be increased to include interest on that sum which interest shall accrue from the date when such payment was due until the date of actual payment at three percent (3%) per annum above the Federal Funds Rate published by the Federal Reserve. Such interest shall accrue from day to day and shall be compounded annually.
- 7.9 If the Owner and/or the Operator fails to make any payment to McCain within one hundred twenty (120) days of when such sum is payable under this Agreement, other than any payment that is subject to a bona fide dispute, McCain shall be entitled to set off such amount from any invoice(s) presented to McCain by the Owner and/or Operator.

8. **Service Change Procedure**

- 8.1 The parties shall comply with the service change procedure in Schedule 4.

9. **Representations and Warranties**

- 9.1 Each of the Owner and Operator represents and warrants to McCain that:
 - (a) it has and shall have throughout the Term the necessary skill, experience, knowledge, personnel, facilities and equipment to perform the Services in accordance with the Operating Specification and the terms of this Agreement;
 - (b) it shall regularly and promptly maintain and replace all facilities and equipment used in the provision of the Services so as to ensure that they are in good working order, and condition, and efficient and in compliance with Applicable Laws;
 - (c) from the Services Commencement Date and throughout the Term it shall perform the Services in accordance with all Applicable Laws and shall at all times possess and comply with all licences, permits and authorizations required under such Applicable Laws or other

governmental or official approvals required for the Warehouse and the provision of the Services;

- (d) this Agreement constitutes valid and binding obligations on it and that it has full power to enter into and perform its obligations under this Agreement and has taken all necessary corporate and other actions to approve and authorize 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;

and in addition the Owner warrants that:

- (e) it shall clearly store the Products away from the goods and products of third parties and anything which may damage or contaminate the Products and shall store the Products in such a way to ensure that they are clearly identifiable as McCain's property;
- (f) it shall keep the Warehouse clean, dry and free from rodents;
- (g) it shall have sufficient fire-retardant measures in place at the Warehouse, but in any event at least in compliance with all Applicable Laws;
- (h) it shall have a power solution in place to provide back-up power to the Warehouse within twenty-four (24) hours of a loss of power and maintain a temperature level compliant with the requirements set out in the Operating Specification for all Products during such twenty-four (24) hour period;
- (i) it shall store the Products at the Warehouse at all times at a temperature range compliant with the requirements set out in the Operating Specification; and
- (j) it shall take reasonable measures to prevent theft of or damage to any Products from the Warehouse,

except for the representations and warranties set forth in this clause 9.1, the Owner and Operator disclaim all other warranties either express or implied, including disclaiming the warranty of merchantability and the warranty of fitness for a particular purpose.

9.2 McCain represents and warrants to the Owner and the Operator that:

- (a) this Agreement constitutes valid and binding obligations on McCain and that McCain has full power to enter into and perform its obligations under this Agreement and has taken all necessary corporate and other actions to approve and authorize 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 and packaged in accordance with all Applicable Laws and further warrants that so long as the Operator causes such Products to be stored in accordance with Good Industry Standards, none of the Products constitute unacceptable hazards or may cause contamination or damage to the Warehouse or other products that may be stored at the Warehouse;
- (c) all financial information supplied by or on behalf of McCain in connection with this Agreement is true, complete and accurate in all material respects and all forecasts and opinions contained in such information were honestly made on reasonable grounds after due and careful enquiry; and
- (d) it will give the Owner and the Operator written details of the manner in which the Products are to be handled and stored, which will be consistent with the operating parameters of the Warehouse and the Operating Specification, including protecting against cross-contamination.

9.3 McCain shall at all times (and shall ensure that its Representatives shall at all times) in good faith and co-operatively work together with the Owner and the Operator in order to enable the Operator to perform the Services in accordance with this Agreement.

9.4 Subject always to the duty to mitigate pursuant to clause 24.9, any additional reasonable costs and expenses incurred by the Owner or Operator as a result of McCain's failure to comply with the

Operating Specification or its other obligations under this Agreement shall be passed through to McCain and paid by McCain, provided that the Owner or the Operator (as the case may be) provide reasonable evidence of all such costs and expenses incurred and provided further, for the avoidance of doubt, that nothing in this clause 9.4 is to be construed as entitling the Owner or the Operator to increase the Charges. Where a service request issued by McCain is cancelled with sufficient notice to enable the Owner or the Operator to avoid the additional costs and expenses that such service request would have entailed, no additional costs and expenses shall be payable by McCain in respect of that cancelled service request.

10. **Operator's Personnel and CSR**

- 10.1 The Operator shall engage all personnel necessary to properly carry out the Services, as determined by the Operator. The Operator 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 Operator's Representatives or any of its employees, including but not limited to:
- (a) any amounts due upon the termination or suspension of their employment;
 - (b) for the selection and implementation of appropriate safety measures; and
 - (c) for the payment of any compensation or other amounts due in respect of accident or injury or occupational disease.
- 10.2 Subject to clause 10.3, in the event that the Agreement is terminated, or is modified in accordance with clause 8 (Service Change Procedure), McCain shall incur no liability in relation to any claims for redundancy made by the Operator's Representatives arising out of such termination or modification.
- 10.3 Where the Agreement is terminated as the result of an Insolvency Event related to McCain or pursuant to clause 24.4 or 24.5, or is modified in accordance with clause 8 (Service Change Procedure), McCain shall indemnify the Owner and Operator against all Losses which the Owner or Operator incurs in relation to any claims for redundancy made by any Bespoke Services Employee arising out of such termination or modification. The Owner and Operator shall each use commercially reasonable efforts to mitigate any Losses which they may incur and for which McCain may be liable.
- 10.4 Neither the Owner nor the Operator will offer or pay, directly or indirectly, money or anything of value for or on behalf of McCain to a Government Official for the purpose of illegally obtaining or retaining McCain business or obtaining a business advantage for McCain or to assist McCain in directing business to any person. For the purposes of this clause 10.4, "**Government Official**" includes officials or employees of government, state-owned businesses, international organizations, or political parties, political candidates, or any person otherwise acting in an official capacity for or on behalf of a government entity or international organization.
- 10.5 Neither the Owner nor the Operator will offer or pay, directly or indirectly, money or anything of value for or on behalf of McCain to any other person or legal entity for any illegal purpose.
- 10.6 If McCain believes that either the Owner or the Operator has breached any covenant in clause 10.4 or clause 10.5, the matter shall be referred, at the request of any of the Owner, the Operator or McCain, to be reviewed by an independent expert ("**Expert**") appointed by agreement between the parties for determination. The Expert shall act as an expert and not as an arbitrator. The parties shall each have the right to make presentations to the Expert, but only if the other party is present in person or by telephone or other means of communication. The decision of the Expert shall, in the absence of manifest error, be final and binding on the parties and non-appealable. All costs incurred by the Expert shall be borne equally between the parties unless the Expert determines otherwise. The parties shall continue to comply with their respective obligations under this Agreement pending the Expert's determination. If the Expert determines that the Owner or Operator has materially breached the covenants in clause 10.4 or clause 10.5, then McCain may terminate this Agreement, without penalty, immediately upon written notice to the Owner, such notice to be served within sixty (60) days after the Expert determines that the Owner or Operator has materially breached the covenants or the termination right shall be deemed waived. The Operator shall, within ninety (90) days of the Commencement Date, provide McCain with an employee organization chart in relation to the operation of the Warehouse.
- 10.7 Without prejudice to McCain's rights under clause 10.8, McCain may audit any of the Owner's facilities and records related to this Agreement on reasonable written notice to evaluate the Owner's and Operator's compliance with clause 10.4, clause 10.5, clause 10.9 and with any Applicable Law dealing

with bribery and/or the corruption of public officials applicable to McCain. McCain may conduct these audits itself or through any Representatives, or McCain may require the Owner to select an auditor from McCain's then-current list of approved third-party auditors for McCain's CSR Policies. The Owner will not request that McCain or any auditor selected by McCain sign an additional agreement in order to conduct the audit, and McCain will protect all Confidential Information it learns during the audit in accordance with its obligations of confidentiality under clause 23 and shall ensure that any third party including, without limitation, the auditor does the same. McCain may also require that the Owner complete a questionnaire either in lieu of or in advance of an audit, or that the Operator register with and provide information to a third-party that McCain has selected to manage audit information. McCain will bear all audit costs (including without limitation those of the third-party auditors). If such audit reveals any material breaches of the Owner's or Operator's obligations under clause 10.4, 10.5 or 10.9, the Owner shall pay or reimburse all of McCain's reasonable costs and expenses arising out of or in connection with the audit, including the costs of the third-party auditors, and will promptly take all corrective action that McCain reasonably requires. If such breach is not remedied by the Owner or Operator within thirty (30) Business Days, McCain may withhold such proportion of the Charges as is reasonable in the circumstances, until the breach is remedied, and such withheld Charges shall be reviewed and authorized for payment by McCain within five (5) Business Days of the breach being remedied. McCain will not audit more frequently than once per year unless McCain is ensuring that previously identified breaches have been corrected.

10.8 Subject to confidentiality obligations that the Owner or Operator may have under other agreements and without prejudice to McCain's rights under clause 10.7, McCain may audit any of the Owner's or Operator's records solely to the extent necessary to verify the Owner's or Operator's compliance with the terms of this Agreement (including but not limited to ensuring that that pricing, pass-through costs, reimbursable expenses, or other financial provisions conform to this Agreement). McCain may conduct these audits itself and/or through its Representatives. Neither the Operator nor the Owner will request that McCain or the auditor sign an additional agreement in order to conduct the audit, and McCain will protect all Confidential Information it learns during the audit in accordance with its obligations of confidentiality under clause 23 and shall ensure that any Representative does the same. McCain will bear all costs of such audit, unless McCain learns of any material breaches of the Owner's or Operator's obligations under this Agreement, in which case the Owner will promptly pay any overcharges and reimburse McCain's reasonable audit costs and expenses. If the Owner or Operator has not remedied such breach within thirty (30) Business Days, McCain may withhold such proportion of the Charges as is reasonable in the circumstances, until the breach is remedied, and such withheld Charges shall be reviewed and authorized for payment by McCain within five (5) Business Days of the breach being remedied. McCain will not audit more frequently than once per year unless McCain is ensuring that previously identified breaches have been corrected.

10.9 In the course of performing its obligations under this Agreement, the Operator:

- (a) will not use any forced labor, which means any work or service performed involuntarily under threat of physical or other penalty. The Operator shall respect the freedom of movement of its workers and not restrict their movement by controlling identity papers, holding money deposits, or taking any other action to prevent workers from terminating their employment. If workers enter into employment agreements with the Operator, workers should do so voluntarily;
- (b) will not knowingly and intentionally directly (or indirectly through the use of its subcontractors) employ any children under the age of 18 years of age;
- (c) will comply with all applicable minimum employment age laws;
- (d) upon reasonable request by McCain, must provide reasonable substantiation to show McCain that the Operator's employees are not exposed to undue physical risks that can harm physical, mental, or emotional development;
- (e) will hire, compensate, promote, discipline, and provide other conditions of employment based solely on an individual's performance and ability to do the job (except as required under collective bargaining agreements);
- (f) will not discriminate based on a person's race, sex, age, nationality, marital status, ethnic origin, or any legally protected status;

- (g) will provide a workplace free from harassment, which can take many forms, including sexual, verbal, physical or visual behaviour that creates an offensive, hostile, or intimidating environment;
- (h) will (i) provide safe working conditions, (ii) provide its employees with appropriate protection from exposure to hazardous materials, and (iii) provide its employees with access to potable water and clean sanitation facilities;
- (i) will respect the decision of its employees to join and support a union as well as their decision to refrain from doing so where legally permitted;
- (j) within the bounds of normal seasonal and other fluctuations in business requirements, will (i) maintain a reasonable overall pattern of required working hours and days off for its employees so that total work hours per week do not regularly exceed industry norms; (ii) in accordance with reasonable business practices, pay fair and timely compensation, including any required premium payments for overtime work; and (iii) advise new employees at the time of hiring if mandatory overtime is a condition of employment;
- (k) will not use corporal punishment or other forms of mental or physical coercion as a form of discipline;
- (l) will promote honesty and integrity in its business conduct by raising ethical awareness among its employees and providing direction and education on ethical issues. Further, the Operator will not: pay or accept bribes, arrange or accept illegal kickbacks, or participate in illegal inducements in business or government relationships;
- (m) will use its commercially reasonable efforts in working to continuously improve its environmental performance by setting and then working toward quantifiable goals that reduce the environmental impact of its activities; and
- (n) upon the request of McCain, shall provide an officer's certificate annually declaring compliance with this clause 10.9 and shall undertake to promptly update any material changes in the declaration as and when applicable.

10.10 McCain may only make requests for evidence of the Operator's compliance with the provisions of clause 10.9 once in any six (6) month period unless McCain is ensuring that previously identified breaches of the Operator's obligations under that clause have been corrected.

11. **Data Protection**

11.1 The Parties do not intend, nor do the Services provided by the Owner, or by the Operator on the Owner's behalf, require, access to or storage, processing, transmittal, transfer, handling, or sharing of any Personal Data in connection with the performance of this Agreement. However, if any Personal Data is transferred from McCain to the Owner or the Operator, the provisions of this clause 11 shall apply.

11.2 Without prejudice to the Owner's and the Operator's other obligations in respect of information security, the Owner and the Operator shall:

- (a) having regard to the state of technological development and the cost of implementing any measures, provide, implement and maintain reasonable administrative, physical and technical safeguards of the Personal Data; and
- (b) notify McCain in writing as soon as reasonably practicable of an actual, probable 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

the Operator shall take reasonable steps to ensure the reliability of the Operator's personnel who have access to the Personal Data.

11.3 McCain shall not provide, transmit, transfer, or share any Personal Data to the Owner or Operator in connection with the Services until the parties have agreed and executed a written amendment to this Agreement setting forth each Party's respective obligations with respect to the access, storage, processing, transmittal, transfer, handling or sharing of such Personal Data.

- 11.4 If, notwithstanding the foregoing, at any time any Party discovers that Personal Data has been or is inadvertently accessed, stored, processed, transmitted, transferred, handled, or shared, such Party shall promptly notify the other Parties in writing of the facts and circumstances relating to such event and the Owner and Operator agree to follow McCain's reasonable instructions for returning or destroying such Personal Data.

12. **McCain IPR**

- 12.1 Neither the Owner nor the Operator shall (and shall ensure that none of its respective Representatives shall), without the prior written consent of McCain, utilize any McCain IPR or apply or display any McCain IPR at the Warehouse or on any plant, vehicles, premises or equipment. If such written consent is given by McCain, the McCain IPR in question shall only be used for the specific purpose set out by McCain in its written consent.
- 12.2 The Owner and the Operator each acknowledge that McCain IPR is owned by members of the McCain Group and that neither the Owner nor the Operator has, and does not by virtue of this Agreement obtain, any proprietary rights in or to McCain IPR and the Owner and the Operator each undertake that it will make no claim to any such rights.
- 12.3 The Owner and the Operator shall not (and shall ensure that none of its Representatives) commit or omit any act or pursue any course of conduct which might damage or dilute the value and strength of any McCain IPR.
- 12.4 The Owner and the Operator shall not (and shall ensure that none of its Representatives), without the prior written consent of McCain, 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.

13. **Delivery**

- 13.1 Subject always to clause 16.5, risk of loss shall transfer to the Owner when the Products are Delivered into the Owner's Custody (as such term is defined in clause 13.2) and will remain with Owner until the Products are Delivered out of the Owner's Custody (as such term is defined in clause 13.3). The Owner shall (subject to clause 16.5) be liable for the loss of or damage occurring to the Products from the point such Products are Delivered into the Owner's Custody until those Products are Delivered out of the Owner's Custody except to the extent the loss or damage has been caused by McCain or any of its Representatives. The Owner shall not be authorized or obligated to open sealed collective packs of Products. The Owner shall not be liable for an incorrect number of units in a collective pack not opened by the Owner, or for defects of Products or packaging to the extent not caused by the Owner or Operator, which cannot be identified immediately by sight upon the receipt of Products. The Owner (or the Operator on behalf of the Owner) shall promptly (and in any event within seventy-two (72) hours) notify McCain of the receipt of any Products Delivered into the Owner's Custody that appear damaged in any way.
- 13.2 Products are deemed "**Delivered into the Operator's Custody**" as bailee when (i) a Load has entered the Automated Truck Loading System at the McCain Facility, or (ii) if Loads are delivered by McCain at the Warehouse using other means than the shuttling trailer, when the delivery driver's documentation have 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.
- 13.3 Products are deemed "**Delivered out of the Operator's Custody**" when the Loads, secured for transportation, are loaded on to the delivery vehicle or into a rail car at the Warehouse and the relevant paperwork accompanying such Loads has been signed by the carrier. The driver of the collection vehicle has the right of inspection during the loading process provided that he/she does not hinder the loading process and adheres to the Warehouse rules. If the carrier is not present during loading and the Loads are loaded into a drop trailer and parked in the Warehouse yard, the Products are deemed "**Delivered out of the Operator's Custody**" when the drop trailer is picked up and the relevant paperwork accompanying such Loads has been signed by the carrier.
- 13.4 Regarding outbound deliveries, the Operator shall be solely responsible for making sure that prior to loading onto a delivery vehicle the Products are securely and safely bundled so that in the normal and proper course of distribution:
- (a) no death or personal injury will be caused to any Person; and

- (b) no damage to or loss of any property (including the Products themselves or packaging) will be caused.

14. Management of Products and Products Losses

- 14.1 The Operator in providing the Services is acting as a provider of services and not as a principal supplying goods. All Products stored by the Owner at the Warehouse shall remain the property of McCain and title to the Products shall not pass to the Owner at any time. Accordingly, the Owner shall not issue warehouse receipts or documents of title for the Products.
- 14.2 After an order is entered by McCain into the order system with respect to the Warehouse, thereafter the Owner shall make available the Products subject to such order on a 24/7 basis, on reasonable notice and in accordance with the processes set out in the Operating Specification, at the relevant Charges applicable to the Standard Services. If the Owner fails to do so McCain shall have the right forthwith to enter the Warehouse or any other premises of the Owner or its Representatives where the Products are held and repossess the Products at the Owner's expense. The Owner shall not encumber, lien, sell, lease, transfer or otherwise dispose of any of McCain's rights, title or interest in and to the Products. The Owner will properly designate the Products at all times as belonging to McCain. The Owner will execute and deliver to McCain any document reasonably requested by McCain necessary to protect its title to the Products and the proceeds thereof.
- 14.3 All Products stored at the Warehouse shall be managed by the Owner in accordance with the Operating Specification and the terms of this Agreement.
- 14.4 The Owner 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 the terms of this Agreement.
- 14.5 If at any time any 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 while at the Warehouse or otherwise in the Owner's custody, that party shall notify the other party in writing that such Products appear to have been so lost or damaged. Products which are not in a condition to be delivered to McCain's customers because the Owner has failed to comply with some or all of the requirements set out in the Operating Specification shall be treated as if they were lost or damaged for the purposes of this clause 14.
- 14.6 Upon receipt of a written notice from McCain requesting an investigation, the Owner shall investigate (as quickly as reasonably possible) the circumstances surrounding any apparent loss or damage of Products in order to ascertain whether such apparent loss or damage may be accounted for and shall forthwith notify McCain in writing regarding the reason for such loss or damage. If there are any differences between the Owner's records and McCain's records, the parties shall use commercially reasonable efforts to reconcile any differences between such records.
- 14.7 Unless within one (1) month of the Owner receiving any written notice from McCain pursuant to clause 14.6 or sending any written notice to McCain pursuant to clause 14.5, the Owner has provided McCain with reasonable evidence to show that the actual loss or damage to which the notice relates has not occurred, or if it has occurred was due to the fault or negligence of McCain or any of McCain's Representatives, suppliers (other than the Owner) or contractors or a Representative, supplier or contractor of any of them, the Owner shall be liable for the loss or damage to which the notice relates in accordance with clause 14.9.
- 14.8 If McCain (acting reasonably) is of the opinion that the evidence provided by the Owner pursuant to clause 14.7 is not sufficient, McCain may object to such evidence. Any party hereto may thereafter activate the Dispute Resolution Procedure.
- 14.9 All agreed losses during the course of each Year shall be noted in the Owner's records and the cumulative loss (which shall be offset against any gains) for such Year shall be determined following a full physical inventory taken at the end of that Year (but in no event more than forty-five (45) days after the end of such Year on a date mutually agreeable to the Owner and McCain), which shall be carried out in accordance with Part 1 of Schedule 7 (**Annual Stock Count**), as may be amended by the Owner during the Term but only for the purpose of improving accuracy or efficiency, provided the Owner promptly notifies McCain in writing of any such amendment(s). The Owner shall compensate McCain for the manufacturing cost of all Products lost or damaged over 0.01% of the total volume of Products

delivered to the Warehouse in the relevant Year within sixty (60) days of the completion of the full physical inventory, where such loss or damage is not directly caused by the fault or negligence of McCain or any of McCain's Representatives, suppliers (other than the Owner) or contractors or a Representative, supplier or contractor of any of them.

- 14.10 The Owner will visually check the quantity and condition of all Products upon the arrival of the Products at the Warehouse according to documented McCain procedures, and shall obtain the relevant delivery/consignment notes for all Products from the carrier. The Owner 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.
- 14.11 If the Owner disputes the completeness or content of any Products or any seals have been broken or tampered with on any Products which are Delivered into the Owner's Custody (as such term is defined in clause 13.2), the Owner 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 the Owner shall have no liability in relation to any Products which have been so set aside. The Owner shall send McCain as soon as reasonably practicable (and in any event within three (3) Business Days of accepting delivery) a written incident report in the form specified in the Operating Specification in relation to such disputed Products and McCain shall arrange for such Products to be collected promptly from the Warehouse at its own cost.
- 15. **Access to Premises and Records**
- 15.1 The Owner shall provide McCain and its Representatives and invitees reasonable access to the Warehouse as necessary or desirable for the purpose of their work consisting of among others Product related quality assurance, inspections (including by customers, authorities, and certifying bodies) and for such other purposes as McCain may reasonably require.
- 15.2 The Owner shall arrange and undergo an annual third-party food safety audit, the reasonable costs of which shall be borne by the Owner, by an auditor selected by McCain (acting reasonably) and notified to the Owner in writing within a reasonable time prior to the performance of the audit. McCain shall on request provide a copy of the audit report to each of the Owner and the Operator within five (5) days of receipt such audit report. Any material change to the Services or Operating Specification identified in, and required by, the audit report shall be managed in accordance with the process set out in clause 8 (Service Change Procedure), with McCain issuing the initial Change Request and bearing the reasonable costs incurred in implementing the change, provided, however, the Owner shall promptly correct any deficiencies at the Owner's cost and expense that are required in order for the Owner and Operator to comply with the Operating Specifications and the terms of this Agreement.
- 15.3 Formal auditing visits (including any visits or audits pursuant to clause 15.1) will take place between 9am and 5pm local time during a Business Day, and notified in writing not less than five (5) Business Days in advance except in the case of an emergency or a material breach of this Agreement which materially impacts the provision of the Services. Where McCain requests that a formal auditing body visits the Warehouse: (a) such requests shall only be made as often as reasonably necessary for the purposes of this Agreement or as required by McCain's customers pursuant to any contract, the terms of which must be notified to the Owner at least ten (10) Business Days prior to any corresponding audit visit; (b) such visits will take place during normal business hours; and (c) McCain will notify the Owner of such visit in writing not less than twenty-four (24) hours in advance of such visit except in the case of any emergency or material breach of this Agreement which materially impacts the provision of the Services, in which case McCain will notify the Owner as soon as reasonably practicable prior to the visit. McCain shall share the results of the audits with the Owner. The Owner shall exercise commercially reasonable efforts to promptly comply with all written requests from McCain to correct deficiencies identified by McCain's Representative, at the Owner's cost and expense, provided that McCain shall bear all costs required to be incurred to meet any standards that exceed those of Applicable Law and the standards required by this Agreement.
- 15.4 McCain shall ensure that its Representatives, when visiting the Warehouse, comply with the Owner's reasonable security and safety procedures and rules in place at the Warehouse, provided that such security and safety procedures have been provided in advance to McCain in writing.

- 15.5 The Owner shall ensure that 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 and that all such records are kept for a minimum period of ten (10) years from (as the case may be) such Products being Delivered Out of the Owner's Custody or such Charges being invoiced. The Owner shall make such documentation available for examination and copying by McCain to the extent the same relate exclusively to the Services and its Representatives at any time during such period on reasonable written notice.
- 15.6 Throughout the Term, within one (1) month of each anniversary of the Services Commencement Date, the Owner shall, or shall use commercially reasonable efforts to ensure that its suppliers shall, conduct a performance-related audit of the automated equipment and operating systems within the Warehouse, and the Automated Truck Loading System, at the Owner's cost and expense (the "**Operating Systems**") and provide to McCain a written report as to the performance and condition of those Operating Systems within ten (10) Business days of the later of (a) the completion of any such audit or (b) the receipt of any written audit report from such a supplier. If an audit report identifies a defect in the Operating Systems which has a material adverse effect on their operational performance or efficiency, the Owner shall ensure that the defect is rectified within a reasonable time at the Owner's cost and expense, and a written confirmation as to the satisfactory performance and condition of the applicable Operating Systems subsequently provided to McCain as soon as reasonably practicable.
- 15.7 Nothing in this clause 15 shall give McCain access to any records of the Owner to the extent that they concern third party goods or products stored at the Warehouse.
16. **Liability and Indemnity**
- 16.1 Nothing in this Agreement shall be deemed to limit or exclude the liability of a party (the "**Indemnifying Party**") for:
- (a) death or personal injury caused by the Indemnifying Party's negligence or the negligence of a person for whom the Indemnifying Party is vicariously liable;
 - (b) fraud or fraudulent misrepresentation of the Indemnifying Party or the fraud or fraudulent misrepresentation by a person for whom the Indemnifying Party is vicariously liable;
 - (c) any liability for which it is not permitted by Applicable Law to exclude or limit, or attempt to exclude or limit; or
 - (d) a wilful breach of this Agreement.
- 16.2 Subject to clause 16.1, clause 16.4, clause 16.5 and clause 16.12, the Owner and the Operator shall jointly and severally indemnify and hold harmless McCain and its Representatives against all direct and foreseeable Losses incurred by such party, to the extent not caused by McCain or any of its Representatives, arising out of or resulting from:
- (a) any breach of this Agreement or negligence by the Owner or the Operator or any of their respective Representatives;
 - (b) any injury or death to any person caused by the Owner or the Operator or any of their respective Representatives;
 - (c) any damage to any property (other than the Products) caused by the Owner, the Operator or any of their respective Representatives, other than any property damage arising in connection with the Automated Loading Refurbishment, which the parties acknowledge shall be the subject of a separate agreement between the parties and for which the Owner and the Operator exclude all liability under this Agreement to the fullest extent permissible by Applicable Laws;
 - (d) loss or damage to any Products caused by the negligence or breach of this Agreement by the Owner, the Operator or any of their respective Representatives; and
 - (e) any action, decision or direction made by a judicial, arbitral, governmental or regulatory authority in respect of the Warehouse, except for those specified in clause 16.3(e), and any action, decision or direction made by a governmental or regulatory authority in respect of the Products, to the extent directly caused by any breach of this Agreement, negligence or breach of statutory duty on the part of the Owner, the Operator or any of their respective Representatives,

provided always that McCain shall use all commercially reasonable efforts to mitigate any Losses which it or its Representatives may incur and for which the Owner and the Operator may be liable.

16.3 Subject to clause 16.1, clause 16.4, clause 16.5 and clause 16.12, McCain shall indemnify and hold harmless the Owner and the Operator and their respective Representatives against all direct and foreseeable Losses incurred by any such party, to the extent not caused by the Owner, the Operator or any of their respective Representatives, arising out of or resulting from:

- (a) any breach of this Agreement or negligence by McCain or any of its respective Representatives;
- (b) any injury or death to any person caused by McCain or any of its Representatives;
- (c) any damage to any property (other than the Products) caused by McCain or any of its Representatives;
- (d) loss or damage to any Products (except where caused by the negligence or breach of this Agreement by the Owner, the Operator or any of their respective Representatives, as referred to in clause 16.2(d)); and
- (e) any action, decision or direction made by a judicial, arbitral, governmental or regulatory authority in respect of the Products, except for those specified in clause 16.2(e), and any action, decision or direction made by a governmental or regulatory authority in respect of the Warehouse, to the extent directly caused by any breach of this Agreement, negligence or breach of statutory duty on the part of McCain or any of its Representatives,

provided always that the Owner and Operator shall use all commercially reasonable efforts to mitigate any Losses which it or any of its respective Representatives may incur and for which McCain may be liable.

16.4 Subject to clause 16.1 and subject to the specific categories of liability and respective caps on liability set forth in clause 16.5 and except for any sums or payments due pursuant to clauses 6.3 (Minimum Annual Storage Revenue), 6.4 (Minimum Annual Handling Revenue), 6.5 (Minimum Shuttling Revenue), clause 6.6 (Minimum Annual Case Picking Revenue), 6.9 (Shortfall in Storage Charges and/or Handling Charges), 6.10 (Shortfall in Shuttling Charges and/or Case Picking Charges), 7.8 (Late Payments), 16.5(b) (lost profit and revenue and liquidated damages) and 25.2 (Minimum Annual Revenue), no party shall have any Liability to the other parties for any indirect, consequential, incidental, or special damages of any type or nature and however arising, including without limitation:

- (a) exemplary damages and punitive damages,
- (b) lost profits and lost revenues,
- (c) loss of market share and business opportunities, including opportunities to enter into arrangements with third parties,
- (d) depletion of goodwill or loss of reputation;
- (e) loss of actual or anticipated savings; or
- (f) diminution in value,

whether or not the possibility of such damages has been disclosed in advance by a party or could have reasonably foreseen by a party, and regardless of the failure of any agreed or other remedy of its essential purpose.

Neither the Owner nor the Operator shall be liable for any damage or loss of Product under the KPI figure for stock loss as set out in Schedule 5, Part 1 paragraph 4.

If for any reason all or any part of this clause 16.4 is or becomes invalid or unenforceable, (i) the aggregate liability of the Owner and Operator for the indirect, consequential, incidental or special damages referred to and waived in this clause 16.4 shall not exceed \$1,000,000 in the aggregate for the Term and (ii) McCain's liability for the indirect, consequential, incidental or special damages referred to and waived in this clause 16.4 shall not exceed \$1,000,000 in the aggregate for the Term.

- 16.5 Except for Liabilities under clause 7.8, clause 16.1, clause 16.4 and clause 16.12, the maximum aggregate (i) joint and several Liability of the Owner and Operator (as a combined total) under this Agreement, and Liability of (ii) McCain under this Agreement, shall be limited to:
- (a) with respect to the Owner and the Operator, in the case of loss, destruction or damage to Products, the manufacturing cost of such Products, up to a maximum of \$6 million per event or series of connected events;
 - (b) with respect to the Owner and the Operator, in the case of failure to comply with the KPIs, including but not limited to (i) the Service Credits calculated in accordance with Schedule 5, Part 3, plus (ii) the reasonable out-of-pocket direct costs incurred by McCain in re-shipping Product which was mis-shipped due to such failure to comply with the KPIs, up to \$1 million in aggregate per Year;
 - (c) with respect to the Owner and the Operator, in respect of liability arising under clause 19.4(b) (Disasters) and clause 20.7 (Force Majeure Event), \$2 million in the aggregate per Year (except where such liability is covered under an insurance policy required to be taken out and maintained by the Owner or Operator pursuant to clause 17.1, in which event the maximum aggregate joint and several liability of the Owner and Operator shall be an amount equal to the greater of (i) \$2 million in the aggregate per Year or (ii) the amount recovered under such insurance policy related to McCain's losses for which the Owner or Operator is liable under this Agreement);
 - (d) with respect to the combined, aggregated Liability of the Owner and the Operator arising under this Agreement, except in relation to any Liability of the Owner or the Operator arising under clause 3.5(b) (delay damages), clause 7.8 (default interest) or clause 16.5(a) (Products) or the amount of any Unforeseeable Decrease calculated in accordance with Schedule 4, Part 1, paragraph 4 (Failure to Agree), the sum of \$2 million in the aggregate per Year (except where such liability is covered under an insurance policy required to be taken out and maintained by the Owner or Operator pursuant to clause 17.1, in which event the maximum aggregate joint and several liability of the Owner and Operator shall be an amount equal to the greater of (i) \$2 million in the aggregate per Year or (ii) the amount recovered under such insurance policy related to McCain's losses for which the Owner or Operator is liable under this Agreement); and
 - (e) with respect to McCain, except in relation to any Liability of McCain arising under clauses 6.3 (Minimum Annual Storage Revenue), 6.4 (Minimum Annual Handling Revenue), 6.5 (Minimum Annual Shuttling Revenue), 6.6 (Minimum Annual Case Picking Revenue), 6.9 (Shortfall in Storage Charges and/or Handling Charges), 6.10 (Shortfall in Shuttling Charges and/or Case Picking Charges), clause 7.8 (default interest), 25.2 (Minimum Annual Revenue), or in respect of repair or replacement of the Automated Truck Loading System during the Initial Term (in each case where such repair or replacement is required as a result of any breach of this Agreement or negligence on the part of McCain), or the amount of any Unforeseeable Increase calculated in accordance with Schedule 4, Part 1, paragraph 4 (Failure to Agree), or otherwise in respect of the Minimum Annual Revenue or the Charges for Services provided to McCain in accordance with the terms of this Agreement, the sum of \$2,000,000 in the aggregate per Year (except where such liability is covered under an insurance policy required to be taken out and maintained by McCain pursuant to clause 17.2, in which event the maximum liability of McCain shall be an amount equal to the greater of (i) \$2 million in the aggregate per Year or (ii) the amount recovered under such insurance policy related to the Owner's and Operator's losses for which McCain is liable under this Agreement).
- 16.6 Promptly after receipt by a party hereto of notice of the commencement of any action, claim or proceeding against it by a third party ("**Third Party Claim**"), such party (the "**Indemnified Party**") will, if a claim is to be made against the Indemnifying Party pursuant to clause 16.2, give prompt written notice to the Indemnifying Party of the commencement of such Third Party Claim, but the failure to promptly notify the Indemnifying Party will not relieve the Indemnifying Party of any liability that it may have to the Indemnified Party, except to the extent that the Indemnifying Party demonstrates that the defense of such Third Party Claim is actually prejudiced by the Indemnified Party's failure to give such prompt written notice. Any such written notice shall include copies of all notices and documents (including pleadings) received by the Indemnified Party relating to such Third Party Claim, shall

describe in reasonable detail the material facts known to the Indemnified Party giving rise to the alleged basis for the Third Party Claim and include an estimate of the amount of Losses relating to such Third Party Claim if such an estimate is reasonably practicable under the circumstances.

- 16.7 If any Third Party Claim is brought against an Indemnified Party and it gives written notice to the Indemnifying Party of the commencement of such Third Party Claim, the Indemnifying Party will be entitled to participate in such Third Party Claim and, to the extent that it wishes (unless (i) the Indemnifying Party is also a party to such Third Party Claim and the Indemnified Party determines in good faith that joint representation would be inappropriate, or (ii) the Indemnifying Party fails to provide reasonable assurance to the Indemnified Party of its financial capacity to defend such Third Party Claim and provide indemnification with respect to such Third Party Claim), to assume the defense of such Third Party Claim with counsel reasonably satisfactory to the Indemnified Party.
- 16.8 After written notice from the Indemnifying Party to the Indemnified Party of its election to assume the defense of such Third Party Claim, the Indemnifying Party will not, as long as it diligently conducts such defense, be liable to the Indemnified Party under this clause 16 for any fees of other counsel or any other expenses with respect to the defense of such Third Party Claim, in each case subsequently incurred by the Indemnified Party in connection with the defense of such Third Party Claim, other than reasonable costs of investigation incurred prior the Indemnifying Party's assumption of the defense of such Third Party Claim.
- 16.9 If the Indemnifying Party assumes the defense of a Third Party Claim, (i) it will be conclusively established for purposes of this Agreement that the Third Party Claim is within the scope of and subject to indemnification; (ii) no compromise or settlement of such Third Party Claim may be effected by the Indemnifying Party without the Indemnified Party's consent unless (A) there is no finding or admission of any violation of Applicable Law or any violation of the rights of any person and no effect on any other Third Party Claims that may be made against the Indemnified Party, and (B) the sole relief provided is monetary damages that are paid in full by the Indemnifying Party.
- 16.10 If written notice is given to an Indemnifying Party of the commencement of any Third Party Claim and the Indemnifying Party does not, within ten (10) days after the Indemnified Party's written notice is given, give written notice to the Indemnified Party of its election to assume the defense of such Third Party Claim, the Indemnifying Party will be bound by any determination made in such Third Party Claim or any compromise or settlement effected by the Indemnified Party; *provided, however*, that in no event will the Indemnified Party consent to the entry of a judgment or enter into a settlement with respect to a Third Party Claim without the prior written consent of the Indemnifying Party (provided the Indemnifying Party is liable for such Third Party Claim hereunder), which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, if an Indemnified Party determines in good faith that there is a reasonable probability that a Third Party Claim is reasonably likely to have a material adverse effect on the Indemnified Party or any of its Affiliates other than as a result of monetary damages for which it would be entitled to indemnification under this Agreement, the Indemnified Party may, by written notice to the Indemnifying Party, assume the exclusive right to defend, compromise, or settle such Third Party Claim, but the Indemnifying Party will not be bound by any determination of a Third Party Claim so defended or any compromise or settlement effected without its prior written consent (which may not be unreasonably withheld, conditioned or delayed).
- 16.11 A claim by McCain under any of the sub-clauses to clause 16.5 shall not preclude a claim under any other sub-clause to clause 16.5 in respect of the same Event, except to the extent expressly excluded by the terms of this Agreement. No party shall be entitled to recover (by way of indemnity or otherwise) the same loss or damage more than once under this Agreement.
- 16.12 Without prejudice to clause 16.1 and except as set forth in clause 16.4, nothing in this Agreement will operate to exclude or restrict the Owner's or the Operator's or McCain's Liability:
 - (a) for any breach of clause 11 (Data Protection); or
 - (b) for any breach of clause 23 (Confidentiality).
- 16.13 McCain acknowledges that the Charges are predicated on the exclusions and limitations of liability set out in this clause 16.

17. Insurance

- 17.1 The Owner or the Operator (as they may determine between them at their sole discretion) shall, at its sole cost and expense, take out and maintain throughout the Term adequate and proper insurance with reputable insurers (which complies with all Applicable Laws) in such form and with such insurer reasonably acceptable to McCain in respect of:
- (a) employer's liability for all of its personnel who perform any obligations of the Operator under this Agreement of not less than \$1,000,000 per event;
 - (b) workers' compensation insurance in compliance with Applicable Laws;
 - (c) commercial general liability insurance with a limit of not less than \$5,000,000 per occurrence and \$10,000,000 in aggregate per Year;
 - (d) commercial business automobile coverage with a limit of not less than \$5,000,000 per accident; and
 - (e) warehousemen's legal liability insurance with a limit of not less than \$6,000,000 per occurrence.
- 17.2 McCain, at its sole cost and expense, shall take out and maintain throughout the Term adequate and proper insurance with reputable insurers (which complies with all Applicable Laws) in such form and with such insurer reasonably acceptable to the Owner and the Operator in respect of:
- (a) Products, all perils property loss coverage insuring all Products;
 - (b) any McCain employee working at the Warehouse, employer's liability of not less than \$1,000,000 per event;
 - (c) any McCain employee working at the Warehouse, workers' compensation insurance in compliance with Applicable Laws;
 - (d) the McCain Facility and the Automated Truck Loading System; and
 - (e) commercial business automobile coverage with a limit of not less than \$5,000,000 per accident.
- 17.3 All policies with respect to the aforementioned insurance shall waive any right of subrogation of the insurers hereunder against McCain, the Owner or the Operator and its Affiliates, as the case may be, and the Representatives of each of them, and any right of the insurers to any setoff or counterclaim or any other deduction in respect of any liability of such person insured under such policy.
- 17.4 Coverage taken out pursuant to this clause 17 shall:
- (a) include "Additional Insured" endorsement, adding McCain (in the case of insurance taken out by the Owner or the Operator) as additional insured in the amounts set forth in this Agreement and set forth on a certificate of insurance or other document, or adding the Owner and the Operator (in the case of insurance taken out by McCain) as additional insured in the amounts set forth in this Agreement and set forth on a certificate of insurance or other document; and
 - (b) be endorsed to specify that the insurance is primary and that any insurance or self-insurance maintained by the additional insured party shall not contribute with it; and
 - (c) if notification of cancellation of any insurance is received by any party hereto, such insurance shall be promptly replaced by alternative insurance which meets the requirements of this clause 17.
- 17.5 Each party shall inform the other promptly in writing of the occurrence of any event connected with the Services which could give rise to an insurance claim under any insurance policy required to be carried by such party under this Agreement but the failure to promptly notify the other party will not relieve the other party of any liability that it may have, except to the extent that such party demonstrates that such insurance claim was actually prejudiced by the failure to give such prompt written notice. If a party is claiming under any insurance policy of the other, the claiming party shall provide such assistance as the other party may reasonably require to progress the claim. The parties shall keep each other regularly informed of the progress of any such claim. Where a party suffers a loss as a result of an event occurring which is covered by insurance taken out by any of the parties pursuant to this clause

17, the party responsible for maintaining that insurance shall use all reasonable commercial efforts to make and pursue a claim under that insurance and, where it receives payment from the insurer pursuant to that claim in respect of the loss suffered by the other party, shall promptly remit that payment to the party which suffered the loss.

17.6 On receipt of a reasonable written request from time to time, the primary insured party shall promptly provide to the additional insured party:

- (a) written details of the insurance policies it is required to maintain pursuant to clause 17.1 or 17.2 (as the case may be),
- (b) in the case where the Operator is the primary insured party, copies of the insurance policies the Operator is required to maintain pursuant to clause 17.1, it being understood and agreed that McCain shall have no obligation to provide the Owner or the Operator with copies of its insurance policies it is required to maintain pursuant to clause 17.2; and
- (c) written evidence, reasonably satisfactory to the requesting party, 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.

18. **Service Credits**

18.1 The Owner and the Operator each warrant to McCain that (except during the Initial Period and subject to clause 20) throughout the duration of the Agreement and subject to the terms of this Agreement, the Services and Additional Services (if any) will be provided so as to satisfy all the relevant KPIs.

18.2 A KPI is not achieved if the Services or Additional Services (as the case may be) do not meet or exceed the percentage for each KPI, except to the extent that the failure to meet the KPI was caused by or contributed to by:

- (a) an act or omission of McCain or its Representative or any third-party that is not, or is not controlled by, the Owner, the Operator or any of their respective Representatives,
- (b) the Owner or the Operator acting in accordance with the written direction of McCain, or
- (c) a Force Majeure Event.

18.3 If a KPI is not achieved, then:

- (a) where the failure is capable of remedy, the Owner and the Operator must use all reasonable efforts to rectify the failure to meet the relevant KPI as soon as reasonably practical; or
- (b) where the failure is not capable of remedy, the Owner and the Operator must implement changes to ensure that the relevant KPI is achieved in the next month; and
- (c) Service Credits shall be payable in accordance with clause 18.4.

18.4 Failure by the Owner or the Operator to comply with the KPIs shall give rise to Service Credits in accordance with Schedule 5, Part 3. The Service Credits are McCain's sole remedy for any failure by the Owner or the Operator to meet the KPIs. Notwithstanding the aforesaid, the Service Credits shall not prejudice any claim by McCain in respect of loss of or damage to Products suffered by McCain or other Losses arising from the default or negligence of the Owner or the Operator, subject always to the limitations of liability in clause 16.

18.5 The parties acknowledge that the Service Credits referred to in clause 18.4 are a reasonable estimate of the actual Losses that may be suffered by McCain as a result of the Owner's or the Operator's failure to meet the KPIs and not a penalty.

19. **Disaster Recovery and Business Continuity**

19.1 The Owner and the Operator shall at all times have in place a customary and commercially reasonable plan of the recovery arrangements and procedures to be followed by the Owner and the Operator in the event of a Disaster (as such term is defined in clause 19.2 below) ("**Disaster Recovery Plan**") which meets any reasonable requirement set by McCain and is approved by McCain within thirty (30) days of the Services Commencement Date or such later date as may be agreed (such approval not to be unreasonably withheld, conditioned or delayed) so as to ensure that as far as reasonably practicable

despite any Disaster or Force Majeure Event, the Services and Additional Services (if any) continue to be performed without interruption or derogation and in accordance with this Agreement.

- 19.2 If the Owner or the Operator becomes aware of any event or circumstances (other than a Force Majeure Event) which has or may lead to circumstances likely to affect the Owner's or the Operator's ability to provide all or part of the Services (which is likely to have a material impact for McCain) in accordance with this Agreement (a "**Disaster**"), it shall immediately notify McCain in writing of the event or circumstance, the expected effect on the Warehouse and/or the Services and Additional Services (if any) and indicate the expected duration of such effect.
- 19.3 If McCain receives a written notice in accordance with clause 19.2 and the Owner or the Operator cannot implement the Disaster Recovery Plan, McCain may take over control of the provision and supply of the affected Services and Additional Services (if any) itself or appoint an alternative third party supplier to do so; provided that any affected Services and Additional Services (if any) provided by McCain or a third party under this clause will be terminated upon delivery by the Owner or the Operator to McCain of written notice of its intent to return Services and Additional Services (if any) not earlier than thirty (30) days after the date of such notice and demonstration to McCain's satisfaction (McCain acting reasonably and in good faith) that the Owner and the Operator can supply the Services and Additional Services (if any) in accordance with the Agreement. The Owner shall, or shall ensure that the Operator shall, if McCain requests, reasonably assist McCain in procuring an alternative third party supplier.
- 19.4 To the extent that any Disaster arises as a result of:
- (a) a breach by the Owner or the Operator of the terms of this Agreement or any negligence on the part of the Owner or Operator or any of their respective Representatives, any reasonable and necessary increased rates for transport, storage and handling incurred by McCain in obtaining these services from a new supplier shall be borne by the Owner, subject to clause 24.9;
 - (b) a breach by McCain of the terms of this Agreement or any negligence on the part of McCain or any of its Representatives, any reasonable and necessary increased rates for transport, storage and handling incurred by McCain in obtaining these services from a new supplier shall be borne by McCain, and without prejudice to any other right or remedy to which it is entitled under this Agreement, the Owner and the Operator shall each be entitled to payment for the reasonable costs incurred by it in providing assistance to McCain in procuring an alternative third party supplier, subject to clause 24.9,

and in either such situation the limitations of liability described in clause 16 shall apply accordingly.

- 19.5 Any invoice to be submitted by the applicable party under clause 19.4 may only be submitted following resumption of the affected Services by the Operator, or following termination of this Agreement, and the party receiving such invoice shall make such payment of all undisputed sums within thirty (30) days of the receipt of that invoice.
- 19.6 At the request of McCain, the Owner and the Operator shall also reasonably co-operate in good faith and provide all assistance and information reasonably required by McCain or the third party supplier for such purpose (including the necessary know-how and access to the Products and the applicable Representatives and records of the Owner and the Operator) to ensure the satisfactory provision of the Services and Additional Services (if any).
- 19.7 The obligations on the Owner and the Operator under clause 19.3 shall not prejudice any other claim which McCain may have against the Owner or the Operator under this Agreement for failing to provide the Services in accordance with this Agreement.
- 19.8 The Owner and the Operator shall develop a business continuity plan in accordance with the provisions of Schedule 8.
20. **Force Majeure**
- 20.1 Except as provided in clause 20.7 and clause 20.8, the Affected Party (as hereinafter defined) will not be liable to any other party hereto for any delay, hindrance or failure to comply with all or any of such Affected Party's obligations under this Agreement (except for an obligation to pay money) to the extent that such delay, hindrance or failure is attributable to a Force Majeure Event.

- 20.2 The party affected by and claiming a Force Majeure Event (the "**Affected Party**") will as soon as reasonably possible notify the other party (the "**Non Affected Party**") in writing of the Force Majeure Event and 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.
- 20.3 The Affected Party shall use all commercially reasonable efforts to mitigate the effect of the Force Majeure Event on the performance of its obligations under this Agreement and ensure the continuity of the performance of the Services.
- 20.4 The Owner or Operator, as the case may be, shall within forty-eight (48) hours of notifying McCain of a Force Majeure Event in accordance with clause 20.2, put forward reasonable proposals to McCain for alternative arrangements for performing its obligations under this Agreement. Following consideration of each proposal made by the Owner or the Operator together with any reasonable proposals of its own (which may include allowing a third party to perform the relevant Service on the Owner's or the Operator's behalf), McCain shall select the proposal which is, in its reasonable opinion, the most suitable for its requirements. The Owner or the Operator (as the case may be) shall, if reasonably required by McCain, be obliged to implement such proposal as soon as reasonably practicable following its selection by McCain.
- 20.5 During the continuation of the Force Majeure Event in which the Owner or the Operator is the Affected Party, McCain shall be entitled to a proportional reduction in the Charges and the applicable Minimum Annual Revenues for the Services affected by the Force Majeure Event, such that proportionally reduced Charges and Minimum Annual Revenues shall remain payable for Services and Additional Services (if any) which the Owner or Operator continues to provide in accordance with the terms of this Agreement (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 or Additional Services (if any) to the extent that, due to the Force Majeure Event, they are not provided in accordance with the terms of this Agreement or procured in compliance with the terms of this Agreement.
- 20.6 As soon as reasonably practicable and in any event within three (3) 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 within twenty one (21) Business Days after the cessation of the Force Majeure Event.
- 20.7 In the event a Force Majeure Event causes or results in a partial or complete destruction of the Warehouse, the Owner and its Affiliates will have the option to rebuild or repair the Warehouse and to engage a Back-Up Operator, approved by McCain, which approval will not be unreasonably withheld, conditioned or delayed, for the Products provided that: (a) all reasonable and necessary incremental transport, storage and handling costs/expenses incurred by McCain associated with the Back-Up Operator (other than the payment of Charges by McCain in accordance with this Agreement) shall be borne by the Owner; (b) the repaired or rebuilt Warehouse shall be completed and the full Services restored within eighteen (18) months of the Owner's and its Affiliates' access to Warehouse site following the start of the Force Majeure Event; and (c) the Owner has provided McCain with sufficient evidence demonstrating the ability (including financial ability) and commitment of the Owner to complete the repair or rebuild within eighteen (18) months of the Owner's and its Affiliates' access to the Warehouse site following the start of the Force Majeure Event, which shall include, but not be limited to, a written estimate of the cost and timing of the repairs or rebuild, as nearly as practicable to the character of the Warehouse existing immediately prior to the Force Majeure Event, prepared by the Owner's architect or contractor (the "**Completion Estimate**"), and such Completion Estimate is delivered to McCain within three (3) months of the Owner's and its Affiliates' access to the Warehouse site following the start of the Force Majeure Event. Any party hereto shall have the right to terminate this Agreement upon written notice to the other if (i) a Completion Estimate is not delivered to McCain within three (3) months of the Owner's and its Affiliates' access to the Warehouse site following the start of the Force Majeure Event, or (ii) the Completion Estimate indicates the Warehouse cannot be completed and full Services cannot be restored within eighteen (18) months of the Owner's and its Affiliates' access to the Warehouse site following the start of the Force Majeure Event, or (iii) the Warehouse is not completed and full Services are not restored within eighteen (18) months of the Owner's and its Affiliates' access to the Warehouse site following the Force Majeure Event. The Owner shall place orders for the racking and cranes required for the replacement Warehouse as soon as

access to the Warehouse site resumes following the start of the Force Majeure Event. If the supplier's leadtime for the racking is longer than four (4) months or the supplier's leadtime for the cranes is longer than ten (10) months, the eighteen (18) month period referred to in this clause 20.7 shall be extended by the lesser of (a) the amount of time equal to the amount of additional leadtime required for obtaining such racking or cranes (as the case may be), or (b) four (4) additional months (in respect of the racking) and four (4) additional months (in respect of the cranes).

- 20.8 In no event shall a Force Majeure Event where McCain is the Affected Party relieve McCain of its obligations to make payments in accordance with this Agreement, including without limitation McCain's obligation to make the Minimum Annual Revenue payments even if McCain is unable to supply Products to the Warehouse due to a Force Majeure Event. Nor shall a Force Majeure Event where the Owner or the Operator is the Affected Party relieve the Owner or the Operator from financial responsibility for failing to provide Services or Additional Services (if any) or otherwise perform its obligations under this Agreement.

21. **Step-in option**

Step in option for insolvency of Operator

- 21.1 If, following the Services Commencement Date the Operator experiences an Insolvency Event, then McCain shall be entitled to notify the Owner within thirty (30) Business Days of McCain's actual notice of such Insolvency Event that it wishes to enter into the Lease with the Owner and shall, within five (5) Business Days of receipt by the Owner of such notice, deliver three (3) fully executed originals of such Lease to the Owner. Where McCain enters into the Lease, the Owner shall use commercially reasonable efforts (i) to procure in favor of McCain a royalty free, non-exclusive licence (co-terminous with the Lease) to use the warehouse management software deployed at the Warehouse solely for the purposes of performing the Replacement Services and (ii) to procure the continued availability for a reasonable period of time of the key personnel who were engaged by the Operator in the provision of the Services, to assist with the transition of the Services from the Owner and the Operator to McCain.
- 21.2 If, when McCain exercises its option under clause 21.1, there is a fundamental and, as yet, unremedied defect in the construction of the Warehouse ("**Fundamental Construction Defect**") that has substantially impacted the Operator's ability to perform the Services or Additional Services (if any), the Owner shall rectify such defects at the Owner's own cost and expense.
- 21.3 Where the parties have entered into a tripartite agreement in accordance with clause 28.2 then if the Operator experiences an Insolvency Event, the thirty (30) Business Day period referred to in clause 21.1 will not start until the expiration of the ten (10) day period granted to the Lender in accordance with clause 28.2. If, in accordance with clause 28.2, the Lender elects to assume the Operator's rights and obligations under this Agreement within the ten (10) day period granted to the Lender in that clause, then McCain shall no longer be entitled to enter into the Lease.
- 21.4 Upon McCain entering into the Lease:
- (a) notwithstanding any other term in any existing lease, if any, in place between the Owner and the Operator in respect of the Warehouse, such existing lease shall immediately terminate, and the parties shall enter into any necessary documentation to record such termination; and
 - (b) this Agreement shall immediately terminate, subject always to clause 25.
- 21.5 If at any time the Owner transfers its interest in the Warehouse as permitted under this Agreement, the Owner shall procure from the transferee and deliver to McCain a covenant in favor of McCain that the transferee shall, from the date that such transfer takes effect, perform (or ensure the performance of) the obligations of the Owner set out in this Agreement, provided that McCain covenants to the transferee to comply with its obligations in favour of the Owner as set out in this Agreement.

Step-in for operational default by the Operator

- 21.6 If the Operator or the Owner is in default in the manner specified in clause 24.3(a), clause 24.3(b), clause 24.3(c) or clause 24.3(d), McCain shall be entitled by notice in writing delivered to the Owner and the Operator (such notice to be served within sixty (60) Business Days of the date of the default) to terminate the obligations of the Operator and the Owner under this Agreement to provide the Services and/or Additional Services (if any).

- 21.7 If McCain serves notice to terminate this Agreement pursuant to Clause 21.6, then with effect from the date when such termination takes effect:
- (a) McCain shall itself carry out, or procure the provision by a third party of, the Replacement Services, until expiration of the Initial Term, as such term may have been extended pursuant to this Agreement and the Operator shall novate to McCain, and McCain shall assume, all its rights and obligations under the OpCo Services Agreement with effect from the date of such termination; and
 - (b) the Owner shall:
 - (i) grant McCain, and any third party provider of the Replacement Services appointed by McCain, access to the Warehouse solely for the purpose of performing or procuring performance of the Replacement Services pursuant to a licence assignable by either party on the terms regarding assignment set out in clause 29; and
 - (ii) use commercially reasonable efforts to procure in favor of McCain, and any third party provider of the Replacement Services appointed by McCain, a non-exclusive licence (terminable on termination of this Agreement) to use the warehouse management software deployed at the Warehouse solely for the purposes of performing the Replacement Services, (together the "**Property Services**").
- 21.8 In consideration of receipt of the Property Services from the Owner pursuant to clause 21.7, McCain shall pay the Property Services Fee, each such fee to be invoiced monthly in arrears by the Owner. McCain shall pay each invoice within a sixty (60) day period from the date of invoice.
- 21.9 Where McCain is carrying out, or procuring the provision by a third party of, the Replacement Services, McCain shall be entitled to invoice the Owner on a monthly basis in arrears for the Open Book Costs (which McCain shall be responsible for paying on a timely basis), together with the Management Fee applicable for that month. The amounts invoiced by McCain in any month shall not exceed 110% of the costs (assessed on an open book basis) that were incurred by the Operator in supporting the Storage Service and the Handling Services calculated as a monthly average over the three (3) months immediately prior to the notice of termination, excluding any exceptional, one-off items of expenditure or savings. McCain shall maintain full records of the costs incurred by it in carrying out, or procuring the provision by a third party of, the Replacement Services and the Owner shall be entitled at any time to audit the records. Any dispute as to the costs shall be referred to an independent expert appointed by the Owner for determination. The Owner shall pay each undisputed invoice raised pursuant to this clause within sixty (60) days of the date of invoice.
- 21.10 In carrying out, or procuring the provision of, the Replacement Services McCain shall ensure that the Replacement Services are performed in accordance with the OpCo Services Agreement and Good Industry Standards, and shall use commercially reasonable efforts to mitigate the costs incurred, including, without limitation, by taking over employees and equipment of the Operator previously deployed in the provision of the Services.
22. **Dispute Resolution**
- 22.1 Any Dispute under this Agreement shall be treated in accordance with the provisions of this clause 22.
- 22.2 McCain, the Owner and the Operator undertake that upon a Dispute arising a senior representative of each of McCain, the Owner and the Operator (and where required, the sub-contractor), who shall each have authority to settle the Dispute, meet in person or by telephone in good faith as soon as reasonably practicable and in any event no later than ten (10) Business Days after a written request from any party to the others, and use commercially reasonable efforts to resolve the Dispute.
- 22.3 All negotiations shall be conducted in strict confidence. Those negotiations 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 the parties to the Dispute) in any future court proceedings except in so far as necessary to enforce any compromise agreement entered into.
- 22.4 If the Dispute has not been resolved as a result of negotiations referred to in clause 22.2 then any party hereto may pursue formal resolution of that Dispute pursuant to clause 38.
- 22.5 Nothing in this clause 22 shall prevent any party from seeking injunctive or other emergency relief against the other at any time.

23. Confidentiality

- 23.1 The parties acknowledge that in the course of their performance of this Agreement (or the negotiation of it or any addition or variation to it) each party ("**Discloser**") and its Affiliates and Representatives will disclose or make available to the other parties (the "**Recipients**") information about or relating to its business including information relating to products, prices, work methods, organisation, business ideas, business strategies, practices, plans, forecasts handling, costs, markets, inventory information, customers, operational and administrative systems ("**Confidential Information**").
- 23.2 The Recipients will keep the Discloser's Confidential Information strictly confidential and not disclose any of it to any person except as provided in clauses 23.3 and 23.4. The Recipients will not use any of the Confidential Information for any purpose other than the discharge of its obligations under this Agreement and will only use it during the Term. Nothing in this clause 23 shall grant a Recipient any right or licence over any Confidential Information of the Discloser.
- 23.3 The Recipients will make available the Discloser's Confidential Information only to its relevant Representatives (including in the case of the Owner and Operator, their shareholders (direct and indirect), auditors, consultants, advisors, bankers and prospective providers of finance or insurance) and its Affiliates 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 Recipients will be and remain liable for any breach of this clause by such persons.
- 23.4 Clauses 23.2 and 23.3 shall not apply to any Confidential Information for which a Recipient can prove by written records:
- (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 Recipient;
 - (c) is information furnished to the Recipient without restriction by any third party having a bona fide right to do so;
 - (d) was developed wholly independently by the Recipient 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.
- 23.5 All Confidential Information shall be returned to the Discloser or destroyed at the Discloser's direction. The obligations of confidentiality set out in this Agreement shall survive the termination of this Agreement in whole or in part for ten (10) years.

24. Termination

- 24.1 Any party hereto shall have the right at any time during the Term to terminate this Agreement or all or any of the Services and/or Additional Services with immediate effect or at a later specified date by giving written notice to the other parties if an Insolvency Event occurs in relation to the other party and such Insolvency Event is not remedied within thirty (30) days of the written notice from the other party.
- 24.2 Subject to Clause 24.4 and Clause 24.5, if:
- (a) on or after the Services Commencement Date, the Owner or the Operator commits a material breach of this Agreement that substantially impacts the provision of the Services and which is capable of remedy but is not remedied within sixty (60) days of receipt of a written notice from McCain specifying the breach, then McCain shall afford the Owner or the Operator (as applicable) a further sixty (60) days in which to remedy such material breach, unless the breach cannot reasonably be remedied within such sixty (60) day period and the Owner or the Operator (as applicable) reasonably commences the cure within such period and thereafter diligently prosecutes the cure to completion, in which case the cure period shall be extended for an additional sixty (60) days;

- (b) on or after the end of the Initial Period, the OLCOT Figure (as calculated in accordance with Schedule 5) is continuously below 97%, but higher than 96% per week for longer than six (6) consecutive weeks or ten (10) weeks accumulated in any twelve (12) month period due to any breach of this Agreement by the Owner or the Operator, then McCain shall afford the Owner or the Operator (as the case may be) a further sixty (60) days in which to demonstrate with a reasonable degree of certainty that it is able to achieve an OLCOT Figure of at least 97%; or
- (c) on or after the end of the Initial Period, the OLCOT Figure (as calculated in accordance with Schedule 5) is continuously below 96% per week for longer than six (6) consecutive weeks or ten (10) weeks accumulated in any twelve (12) month period due any breach of this Agreement by the Owner or the Operator, then McCain shall afford the Owner or the Operator (as the case may be) a further thirty (30) days in which to demonstrate with a reasonable degree of certainty that it is able to achieve an OLCOT Figure of at least 96%.

24.3 If:

- (a) the Owner or Operator commits a material breach of this Agreement that substantially impacts the Owner's or the Operator's provision of the Services under this Agreement which is not capable of remedy, McCain shall be entitled to exercise its rights under clause 21.6 on not less than fifteen (15) days' prior written notice to the Owner or Operator (as the case may be); or
- (b) the Owner or Operator commits a material breach of its confidentiality obligations in clause 23, which is not capable of remedy or which, if capable of remedy, is not remedied within the time period specified in clause 24.2(a), McCain shall be entitled to terminate the Agreement on not less than fifteen (15) days' prior written notice to the Owner or Operator (as the case may be); or
- (c) the Owner or Operator fails, within the sixty (60) day period, as such period may be extended, set out in clause 24.2(b), to remedy the relevant breach or (as the case may be) demonstrate that it is able to achieve an OLCOT Figure of at least 97%, except where not due to any negligence or breach of this Agreement by the Owner or Operator (as the case may be), McCain shall be entitled to exercise its rights under clause 21.6; or
- (d) the Owner or Operator fails, within the thirty (30) day period set out in clause 24.2(c), to remedy the relevant breach or (as the case may be) demonstrate that it is able to achieve an OLCOT Figure of at least 96%, except where not due to any negligence or breach of this Agreement by the Owner or Operator (as the case may be), McCain shall be entitled to exercise its rights under clause 21.6.

24.4 The Owner and the Operator are each entitled to immediately suspend all or any Services to be performed under this Agreement if either of them has given McCain written notice of a failure by McCain to pay undisputed sums due to either of them by McCain under this Agreement and McCain fails to cure such payment default within thirty (30) days after written demand, provided that no such grace period will apply if McCain defaults more than twice in its payment obligations under this Agreement in any twelve (12) month period in respect of undisputed sums (even if such payments are subsequently made during the grace period).

24.5 Without prejudice to any other right or remedy it may have, the Owner or the Operator may terminate this Agreement with immediate effect or at a later specified date by giving written notice to McCain if McCain commits a material breach of this Agreement which is incapable of remedy or which is capable of remedy but is not remedied within sixty (60) days of receipt of a written notice from the Owner or the Operator specifying the breach, unless the breach cannot reasonably be remedied within such sixty (60) day period and McCain reasonably commences the cure within such period and thereafter diligently prosecutes the cure to completion, in which case the cure period shall be extended for an additional sixty (60) days, provided that no such extension period may apply to a breach by McCain of any of its payment obligations which are provided for in clause 24.4.

24.6 Without prejudice to any other right or remedy which it may have, on any termination of this Agreement prior to expiry of the Initial Term, McCain shall pay to the Owner on the effective date of termination a sum equivalent to the amounts expended by the Owner under clause 3.9 which have not been recovered through the Charges at such date as calculated in accordance with the depreciation schedule set forth at Schedule 10.

- 24.7 If McCain terminates this Agreement pursuant to clause 24, the Owner and Operator each acknowledges that McCain shall be entitled to claim such damages in respect of such termination as may be properly assessed by a court of competent jurisdiction, subject always to the limitations of liability and other terms set forth in this Agreement.
- 24.8 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 24) if 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.
- 24.9 Each party shall use its commercially reasonable efforts to mitigate its costs and 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.
25. **Consequences of termination**
- 25.1 Termination or expiration of this Agreement or all or any of the Services and/or Additional Services (if any):
- (a) will not affect any accrued rights or liabilities of any party hereto at the date of termination or expiration and shall be without prejudice to any other rights or remedies that any party hereto may have under this Agreement or Applicable Laws;
 - (b) the following provisions will continue in force: Clause 1 (Interpretation), Clause 3.6 (termination on Long Stop Date), Clause 10.2 and 10.3 (Post termination redundancy indemnities), Clause 12 (McCain IPR), Clause 16 (Liability and Indemnity), Clause 18.4 (Service Credits), Clause 20.1 (Force Majeure), Clause 21 (step-in), Clause 22 (Dispute Resolution), Clause 23 (Confidentiality), Clause 24.5, Clause 24.6, Clause 24.7 and Clause 24.9 (post-termination), Clause 25 (Consequences of termination), Clause 26 (Invalidity), Clause 27 (Set-Off and Third Party Rights), Clause 30 (Language), Clause 31 (Notices), Clause 32 (Further Assurances), Clause 33 (Entire Agreement), Clause 34 (Announcements), Clause 36 (Waiver) and Clause 38 (Governing Law and Jurisdiction), together with any other provisions which expressly or impliedly continue to have effect after expiration or termination of this Agreement;
 - (c) 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
 - (d) at the reasonable request and at the cost of McCain (which costs shall be limited to direct and reasonable costs), the Owner and the Operator 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 McCain following the termination of this Agreement and permit McCain or any of its Representatives or any such third party supplier of services to remove Product from the Warehouse and the Owner and the Operator will reasonably cooperate with such parties concerning the same.
- 25.2 Subject to clause 24.9, on termination of this Agreement by the Owner or the Operator in accordance with clause 24.1 or clause 24.5 during the Initial Term, McCain shall, for the period from the date of termination until the last day of the Initial Term, pay to the Owner in equal quarterly (March 31, June 30, September 30 and December 31) payments each Year such sum as shall fully compensate the Owner for the Minimum Annual Revenue that would have been payable with respect to such quarter if this Agreement had not terminated. Such quarterly payments shall be paid to the Owner within sixty (60) days of the end of each calendar quarter for the period from the date of termination until the last day of the Initial Term. The Owner shall use commercially reasonable efforts to mitigate its losses in respect of any such termination and the Minimum Annual Revenue shall be reduced by the amount of any storage revenue paid by another customer using storage space at the Warehouse that was intended by the Owner to be used for the Products, whether that customer is procured by McCain pursuant to clause 29.5 or is sourced by the Owner.

26. **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).

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

27.1 Except for the specific deductions as provided in clause 18, all payments due under this Agreement shall be made in full without deduction, withholding or deferment in respect of any set-off or counterclaim.

27.2 Except as provided in clause 16, the parties to this Agreement do not intend that there be any intended or incidental third party beneficiaries to this Agreement.

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

28.1 Subject to clause 28.2, during the Term, the Owner, the Operator and/or any of their Affiliates may periodically elect to seek financing and/or refinancing including, without limitation, a Sale-Leaseback (each a "**Financing**") from third party lenders or investors (each a "**Lender**") utilizing 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.

28.2 McCain agrees to cooperate with the Owner and/or the Operator (as applicable) (all parties acting reasonably and in good faith) in connection with any such Financing, at no out-of-pocket cost or expense to McCain (it being understood and agreed that all reasonable attorneys' fees and costs incurred by McCain in connection therewith shall be borne by the Owner and Operator). This may include, among other things:

- (a) making amendments to this Agreement if requested by a Lender that are reasonably acceptable to McCain; and
- (b) entering into a tripartite deed with the Operator and any Lender under which McCain agrees not to terminate this Agreement as a result of an Insolvency Event in relation to the Operator or any breach by the Operator of this Agreement without first giving the Lender at least ten (10) days to remedy the breach or assume the Operator's rights and obligations under this Agreement,

provided, however, that McCain shall not be required to amend any pricing terms or service-related terms of this Agreement (including, without limitation, any amendments to any KPI's), the remedy and notice periods in clause 24, the Term or other provisions which have no reasonable relationship to the Financing or that increase the obligations of McCain to the Operator or the Owner or decrease the obligations of the Operator or the Owner to McCain. In consideration for McCain's cooperation as provided in this clause 28.2, the Owner shall use commercially reasonable efforts to ensure that the Lender shall agree that it will honor this Agreement and not disturb McCain's rights hereunder as long as McCain is not in breach of this Agreement.

28.3 At any time, and from time to time, upon reasonable written request by the Owner, McCain shall cooperate with the Owner and the Operator to provide (i) a certificate in favor of a third party acknowledging that the Agreement is in full force and effect and there are no defaults on the part of any party hereto under the Agreement and (ii) such financial information relating to McCain as the Owner or the Operator may reasonably request for disclosure to its lenders and financiers and for its own internal review processes.

29. **Assignment, Novation and Sub-contracting by the Owner and Operator and Management Continuity on Change of Control**

29.1 McCain hereby agrees that each of the Owner and the Operator may assign its rights, or novate its respective rights and obligations, under this Agreement (pursuant to a Change of Control or otherwise) or sub-contract performance of the Services and Additional Services (if any) as follows:

- (a) Related Body Corporate Assignment, Sub-contracting and Novation by Owner and Operator: each of the Owner and the Operator may each assign its respective rights, or novate its respective rights and obligations, under this Agreement (pursuant to a Change of Control or otherwise) or sub-contract performance of the Services to any Related Body Corporate of the

Owner or the Operator, without the prior written consent of McCain but upon at least (30) days' prior written notice to McCain. Any such transferee shall have the same rights as the Owner or Operator (as the case may be) hereunder provided that:

- (i) the Owner or Operator shall notify McCain in writing at least thirty (30) days in advance of such assignment or sub-contracting;
 - (ii) in the case of an assignment or sub-contracting, the Owner or Operator (as the case may be) shall be liable for the acts and omissions of that transferee as fully as if they were the acts and omissions of the Owner or Operator;
 - (iii) in the case of a novation, the transferee has financial standing adequate to fulfil the obligations of, the Owner or Operator (as the case may be);
 - (iv) in the case of a novation, the transferee is capable of meeting the Owner's obligations, or the Operator's obligations (as the case may be) under this Agreement and providing the Services and Additional Services (if any) in accordance with the terms of this Agreement; and
 - (v) the Related Body Corporate of the Owner or the Operator (as the case may be) is not a Competitor of McCain.
- (b) Non-Related Body Corporate Assignment, Sub-contracting and Novation by Owner and Operator: the Owner and the Operator may each novate its respective rights and obligations under this Agreement to any third party or assign its rights under this Agreement (pursuant to a Change of Control or otherwise) or sub-contract performance of the Services and Additional Services (if any) to any Non-Related Body Corporate of the Owner or Operator provided that:
- (i) such third party is not a Competitor of McCain; and
 - (ii) the Owner or the Operator obtains the written consent of McCain (such consent not to be unreasonably withheld, conditioned or delayed) and provided that the transferee has financial standing adequate to fulfil the obligations of, the Owner or Operator (as the case may be), and is capable of meeting the Owner's obligations, or the Operator's obligations (as the case may be), under this Agreement and providing the Services and Additional Services (if any) in accordance with the terms of this Agreement.
- (c) Any novation, assignment or sub-contracting pursuant to sub-clause 29.1(a) shall take effect on such date as the Owner or Operator may reasonably specify in its written notice to McCain. Any novation, assignment or sub-contracting pursuant to sub-clause 29.1(b) above shall take effect on the date that McCain grants its written consent or such later date as the Owner or Operator may reasonably specify if consented to in writing by McCain. Upon a novation becoming effective, the Owner or Operator (as the case may be) shall cease to be a party to this Agreement and the transferee shall step into all rights, benefits and future obligations of the Owner or Operator (as the case may be) under this Agreement. The Owner or Operator (as the case may be) shall not be discharged from any obligations or liabilities arising prior to the date of the novation (but shall be discharged from all obligations and liabilities after the date of the novation). Following such a novation all references to the Owner or the Operator (as the case may be) in this Agreement shall be construed as references to the transferee.

- 29.2 The Owner shall not sell, lease or transfer (directly or indirectly) all or a material portion of the Warehouse (in each case, a "**Transfer**") to a Competitor without the consent of McCain (which consent McCain may, at its sole discretion, withhold, condition or delay). Except for the restriction on a Transfer set forth in this clause 29.2 and subject to clause 29.1, the Owner can make a Transfer without the consent of McCain provided that the transferee has financial standing adequate to fulfil the obligations of, the Owner (as the case may be), and is capable of meeting the Owner's obligations, or the Operator's obligations (as the case may be), under this Agreement and providing the Services and Additional Services (if any are to be provided by the Owner) in accordance with the terms of this Agreement. Subject to clause 29.1, if at any time or from time to time, the Owner enters into a lease with the Operator or any third party with respect to the Warehouse with the intent that the Operator or the third party provide the Services, the parties shall make such amendments to this Agreement as are necessary to accommodate such structure, including changes necessary to provide for the Operator or third party (as the case may be) to provide all Services and for the Owner to have no further

obligations to McCain under this Agreement. In such case, the provisions of clauses 21.7 to 21.9 (inclusive) shall continue to apply, except that the Operator or third party shall enter into the OpCo Services Agreement with McCain, the Operator or third party shall be liable to McCain for the Open Book Costs and McCain shall continue to make payments as required under this Agreement to the Operator or third party.

- 29.3 If a bank or any other financial investor exercises its rights in respect of any asset of the Owner that is connected to the provision of the Services (including the Warehouse), the Owner shall use commercially reasonable efforts to ensure that the key Personnel engaged by the Operator in managing the provision of the Services are not changed for a reasonable period following that entity exercising its rights.

McCain – Assignment and Subcontracting

- 29.4 Subject to Applicable Laws and subject to clause 29.5, McCain shall not directly or indirectly assign or otherwise dispose (by means of a Change of Control or otherwise) of any of its rights or obligations under this Agreement to any other person without the prior written consent of the Owner or the Operator, except that McCain may assign its rights and obligations under this Agreement in connection with a Change of Control provided McCain receives the Owner and Operator's prior written consent, which may only be withheld if the creditworthiness and solvency of McCain's assignee is materially less than that of McCain as at the date of this Agreement. McCain shall not be discharged from any obligations or liabilities arising prior to the date of any such assignment or other disposition but shall be discharged from all obligations and liabilities arising pursuant to this Agreement on or after the date of such assignment or other disposition.

- 29.5 Subject to Applicable Laws, McCain may subcontract to a third party with the prior written consent of the Owner or the Operator all or part of its obligation to provide pallets for storage at the Warehouse for the sole purpose of generating the Minimum Annual Revenue in accordance with clause 6.3, clause 6.4, clause 6.5 and clause 6.6 provided always that:

- (a) McCain shall at all times remain fully liable to the Owner for the acts and omissions of any third party to whom it assigns or sub-contracts any of its rights or obligations, as well as for its own acts or omissions;
- (b) the third party is not a competitor of the Owner or the Operator, a logistics provider or an existing or prospective customer of the Owner or the Operator (a prospective customer being an entity with whom the Owner or the Operator is already in negotiations with a view to the Owner or the Operator providing warehousing or transport services to that entity at the Warehouse);
- (c) the aggregate liability of the Owner or the Operator shall be no greater as a result of such subcontracting by McCain and McCain shall indemnify the Owner and the Operator in respect of any liability that the Owner or the Operator incurs in respect of such third party subject to the limitations set forth in this Agreement, to the extent that such liability exceeds the liabilities which the Owner or the Operator would have incurred if the products had been McCain's own products; and
- (d) all provisions of this Agreement shall apply with respect to the Products which are the subject of the sub-contract and McCain shall ensure that all such Products are compatible with all other products stored by the Owner (and shall, for the avoidance of doubt, be frozen products which are compatible with the Operating Specification and the Warehouse).

30. **Language**

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

31. **Notices**

- 31.1 All notices given by any party to this Agreement shall be in writing and shall be delivered (i) by hand, (ii) by pre-paid registered or certified mail or (iii) by overnight courier to the address and representative referred to under the signature block below (with a copy being sent by McCain to the Operator, in the case of notices to the Owner; and with a copy being sent by McCain to the Owner, in the case of notices to the Operator).

31.2 Any party hereto may change such address and/or representative by giving the other notice in accordance with this clause 31.

31.3 Any notice given in accordance with clause 31.1 will be deemed to have been served in each case only upon receipt.

32. **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.

33. **Entire Agreement**

33.1 This Agreement represents the entire agreement between the parties in relation to the subject matter of this Agreement and supersedes any previous agreement between the parties in relation to the subject matter of this Agreement and:

- (a) no party hereto has entered into this Agreement in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement (whether made by the other party or any other person and whether made to the first party or any other person) which is not expressly set out in this Agreement;
- (b) the only remedies available for any misrepresentation or breach of any representation or statement which was made prior to entry into this Agreement and which is expressly set out in this Agreement will be for breach of contract; and
- (c) nothing in this clause 33 will be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.

34. **Announcements**

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 any party hereto without prior written consent of the other parties hereto.

35. **Variation**

Subject to clause 8, this Agreement may only be varied from time to time with the written agreement of the authorized Representatives of each party. Any variations, supplements or amendments to this Agreement shall be invalid unless made in writing.

36. **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.

37. **Independence**

The Owner and Operator each is an independent contractor engaged by McCain to supply the Services. Nothing in this Agreement shall make any party hereto the legal representative or agent of the other nor shall any party hereto 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.

38. **Governing Law and Jurisdiction**

38.1 This Agreement and any non-contractual obligations arising out of or in connection with it will be governed by the law of the State of Illinois, USA, without giving effect to any choice or conflict of law provision or rule.

38.2 Subject to clause 38.3, the federal and state courts located in Cook County of the State of Illinois, USA have exclusive jurisdiction and venue to determine any dispute arising out of or in connection with this Agreement (including without limitation in relation to any non-contractual obligations).

- 38.3 Any party may seek specific performance, interim or final injunctive relief or any other relief of similar nature or effect in any court of competent jurisdiction.

Each party (for itself and its successors and assigns) waives its right to a trial by jury of any claim or cause of action based upon, arising out of or related to this Agreement, or the transaction provided for herein, or any dispute between the parties in any legal action or proceeding of any type brought by any party to this Agreement against any other such party, whether arising in contract, tort or otherwise. Any such claim or cause of action shall be tried by a court sitting without a jury.

39. **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.

40. **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.

41. **Attorney Fees and Costs**

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 and incidental to the preparation, completion and maintenance of this Agreement. Notwithstanding, should any dispute arise between the parties to this Agreement concerning the terms of this Agreement, or any matters governed hereby, the prevailing party in such dispute shall be awarded its reasonable attorney fees and costs, including any such costs and expenses incurred in connection with any appeals.

In Witness Whereof, the parties hereto have caused this Warehousing Agreement to be executed as of the date first written above.

McCain:

McCain Foods USA, Inc.

DocuSigned by:

By: 

75DE83CC9664D6...

Name: Jeff Delapp

Title: Regional President, NA

DocuSigned by:

By: 

9FA8E7A069D94E0...

Name: Mark Farrell

Title: Vice President of Procurement, NA

Address of McCain for notices:

McCain Foods USA, Inc.

2275 Cabot Drive

Lisle, Illinois 60532-3653

Attention: Director, Freight and Logistics Procurement

With a copy to:

McCain Foods USA, Inc.

2275 Cabot Drive

Lisle, Illinois 60532-3653

Attention: General Counsel

Owner:

NewCold Burley, LLC

DocuSigned by:

By: 

B2CD42E106E247C...

Name: David Richardson

Title: Vice Chairman

DocuSigned by:

By: 

5CB964BF58E04F4...

Name: Bram Hage

Title: Founder, Executive Officer

Address of Owner for notices:

Gravinnen Van Naussau Blvd 105

5811 BN

Breda

The Netherlands

Attention: Bram Hage

With a copy to:

Gravinnen Van Naussau Blvd 105

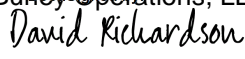
5811 BN

Breda

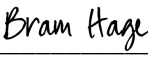
The Netherlands
Attention: Group Legal

Operator:

NewCold Burley Operations, LLC

By: 
Name: David Richardson

Title: Vice Chairman

By: 
Name: Bram Hage

Title: Founder, Executive Officer

Address of Operator for notices:

Gravinnen Van Naussau Blvd 105
5811 BN
Breda
The Netherlands
Attention: Bram Hage

With a copy to:
Gravinnen Van Naussau Blvd 105
5811 BN
Breda
The Netherlands
Attention: Group Legal

Schedule 1

Part 1

(Standard Services Charges)

1. The Charges shall be invoiced in accordance with the tables as set out in Part 2 and Part 3 of this Schedule. The following terms and conditions apply for both Part 2 and Part 3:
 - (a) Upon receipt of a Load at the Warehouse for every Load, a storage charge shall be invoiced as set out in the table below (Part 2 – Charges Table) (the "**Storage Charge**");
 - (b) for every Load, an inbound charge shall be invoiced as set out in the table below (Part 2 – Charges Table) (the "**Inbound Charge**");
 - (c) the Operator shall be entitled to charge a Load Reject Charge for each Load Reject as set out in the table below (Part 2 – Charges Table) (a "**Load Reject**" being defined as a Load which does not conform to all the standard Product characteristics listed in paragraph 1 of Part 1 - Operating Specification, Schedule 3 (the "**Standard Product Characteristics**") when checked upon arrival in the dispatch area), provided that:
 - (i) the Operator shall not be entitled to charge for any Load Rejects within a tolerance of 1% of all processed Loads in the relevant day; and
 - (ii) Loads coming from the McCain Facility by shuttle trailer shall be checked as part of the Load loading process at the McCain Facility and Load Rejects shall be handled by McCain at its own cost. All Loads finally sent to the Warehouse shall again be checked and Load Rejects shall be considered to be the result of the Shuttling Services, and therefore there shall be no cost to McCain unless the Operator can demonstrate otherwise;

The Load Reject Charge excludes the charges for any Additional Services to be provided to bring the Products back to the Standard Product Characteristics.
 - (d) To calculate the Storage Charges to be invoiced, a stock snapshot is taken every day at 01:00 am. Subsequently all McCain's Loads in the Warehouse are multiplied by the applicable Storage Charge.
 - (e) Upon loading of a Load into the Shuttling trailer, a shuttling charge shall be invoiced (as set out in the table below (Part 2 – Charges Table)) (the "**Shuttling Charge**"). No charges apply for System Pallets transported from the Warehouse to the McCain Facility using the shuttle trailers.
 - (f) Upon dispatch, an outbound tariff shall be invoiced (as set out in the table below (Part 2 – Charges Table) (the "**Outbound Charge**");
 - (g) A case picking tariff shall be applied to all cases picked (as set out in the table below (Part 2 – Charges Table) (the "**Case Pick Charge**"). This charge includes the costs of stretch-wrap and Load labels as reasonably required;
 - (h) No Charges apply for intra-warehouse movements related to the Standard Services (e.g. replenishment to pick floor);
 - (i) Charges shall be reviewed on an annual basis as described in Part 4 of this Schedule 1;
 - (j) Charges are rounded to 3 decimals;
 - (k) Charges exclude any applicable Sales Tax.

Part 2
(Charge table)

Service	Activity	Charge (in USD \$) *)	Unit **)
Warehousing Services	Inbound Charge (by Shuttle)	4.25	p/Load
	Inbound Charge (by truck)	5.50	p/Load
	Outbound Charge (by truck)	5.50	p/Load
	Outbound Charge (by rail)	11.00	p/Load
	Storage Charge (full or part day)	0.42	p/Load
Ancillary Services	Load Reject Charge	3.50	p/Load
	Case Picking Charge	0.25	p/case
	Shuttling Charge ***)	2.10	p/Load
	Additional Services	Direct Costs + 20%	

*) All amounts set out in this Schedule exclude Sales Tax.

**) Charge is per Load or part Load (with exception of case picking charge)

***) Shuttling Charge is based on the following key assumptions, and shall be amended (increased or decreased) where actual conditions differ from the assumptions below:

- 1) a Diesel price of \$ 2.50 per gallon (excluding taxes)
- 2) 24 Loads per Shuttling trip between the McCain Facility and the Warehouse,
- 3) 7 days per week manufacturing and normal planned production stops.
- 4) The ability to cover the year 3 full volume of Loads (being around 530,000 Loads a year), with two trucks doing an average of 33 trips per truck per day (24 hours).
- 5) The Shuttle process includes the automated shuttling and unloading at the McCain Facility of stacks of empty System Pallets, used at the McCain Facility for palletizing the Products. Assumes that a full trailer load of System Pallets can be unloaded at the same dock and as part of a normal shuttle round trip.
- 6) The Shuttling Charge includes coverage for the required investment in the Automated Loading Refurbishment, as specified in clause 3.9 of this Agreement.
- 7) If for any reason the Automated Truck Loading System is not in place or working at the Intended Services Commencement Date, a manual rate needs to be calculated and charged
- 8) The shuttle rate for years 1 and 2 after the Services Commencement Date are to be evaluated against (i) the ramp up schedule implemented, (ii) variability of production volumes and (iii) against the set year 3 full volume assumption under point 4 here above. In year 1 and 2 after the Services Commencement Date it is assumed that 1 shuttle truck driver can perform the shuttling services. If costs are incurred for a second shuttle truck driver, these will be compensated in full by McCain.

Any proposed amendment to the Shuttling Charge shall be addressed in the manner provided in Schedule 4.

Part 3

(Additional Services)

McCain can request the Operator to perform Additional Services in accordance with Clause 5.7 of the Agreement (the "**Additional Services**").

Additional Services will be performed by Operator according to the procedures set-out in Schedule 3: Operating Specifications.

Parties will cooperate to determine rates for frequently recurring Additional Services by following the process described below. The same process will be followed to determine rates for Services provided on a one-off basis.

- 1) Describe the scope of activities
- 2) Determine the activities of Operator to provide the Additional Service.
- 3) Determine cycle times for the activities based on best practices and physical testing in the Warehouse to determine the labour costs.
- 4) Determine the baseline costs of equipment, materials and other applicable direct costs related to the Additional Service.
- 5) Determine the rate by adding all costs related to labour, equipment, materials and others and multiplying these costs by a factor 1.20.
- 6) Additional Service Charges will be reviewed annually and re-determined according to the procedure set out in this schedule. Additional reviews and rate adjustments may be implemented more frequently in case a change in the underlying activities results in a deviation from the baseline costs of more than 5%, for a period of 2 months.

Part 4

(Charges Review Mechanism)

1. The Charges shall be adjusted on 31 December 2019 and each anniversary of that date (each such date a "Charges Review Date").
2. The Charges are partly determined by the electricity price paid by the Operator and are calculated at \$0.075 per kWh.
3. Without prejudice to paragraph 1, within thirty (30) days following each Charges Review Date the Operator shall adjust the Charges according to the following principles:
 - (a) 6% of the Charges (other than the Charges for Shuttling) shall be adjusted by a 100% of the percentage change in the Electricity Index since the previous Charges Review Date (or, for the first Charges Review Date only, since the Commencement Date).
 - (b) Parties have agreed that the Electricity Index will have no maximum or minimum threshold.
 - (c) 94% of the Charges (other than the Charges for Shuttling) shall be adjusted by 50% of the percentage change of the Index over the period since the previous Charges Review Date (or, for the first Charges Review Date only, since the Commencement Date).
 - (d) *By way of example only:*

Between 31 December 2018 and 31 December 2019:

- (i) The Outbound Charge by truck is \$ 5.50
- (ii) The change in the Electricity Price is +5%; and
- (iii) The change in Index is +2%

The following calculation shall apply on 31 December 2019:

$$(6\% \times 1.05) + (94\% \times 1.01) = 1.0124$$

$$\text{\$ } 5.50 \times 1.0124 = \text{\$ } 5.5682$$

The new Outbound Charge is therefore \$ 5.568

4. The parties shall co-operate in good faith to seek to identify, and where agreed, implement changes to reduce the Electricity Price, including for example seeking to negotiate lower electricity costs from third party electricity suppliers.
5. Without prejudice to paragraph 1, within thirty (30) days following each Charges Review Date the Operator shall adjust 98% of the Charges for Shuttling by 50% of the percentage change in the Index over the period since the previous Charges Review Date (or, for the first Charges Review Date only, since the Commencement Date). In addition, the Fuel Surcharge program triggers a US \$0.01 per mile surcharge for each US\$0.06 per gallon change in the cost of fuel, in accordance with the table set out in Schedule 11, using the U.S. On-Highway Diesel Fuel Prices for West coast less California (Diesel on Highway All Types), posted by the EIA. Adjustments will be made each first Monday of the month based on upon the EIA posted that day, and will be applied on all Loads loaded in the applicable month, until the next adjustment.
6. The parties shall discuss in good faith an increase or decrease, as the case may be, in the Charges (or an alternative allocation of costs between the parties) to take account of any additional reasonable costs incurred by the Owner and/or Operator, or any reduction in costs realized by the Owner and/or Operator, in connection with the development, construction and/or operation of the Warehouse or the performance of any other Services for McCain, to the extent that:
 - (a) the costs or savings, as the case may be, were not foreseen by the Owner at the date of execution of the Agreement due to McCain omitting information;
 - (b) the costs or savings, as the case may be, arise as a result of information provided by McCain being inaccurate or incomplete in any material respect;
 - (c) the costs or savings, as the case may be, arise as a result of the McCain changing any of its processes or procedures; or
 - (d) the costs or savings, as the case may be, arise as a result of changes in Applicable Laws or any other circumstance, change or event not contemplated by the parties as at the Signature Date.
7. Agreed Additional Storage Charges
 - (a) From the Services Commencement Date up to and including April 1, 2021, the Storage Charge will increase with \$0.01 load/day or part day.
 - (b) At the 5th anniversary of the Services Commencement Date, the Storage Charge will be increased by \$0.013 Load/day or part day.
 - (c) At the 6th anniversary of the Services Commencement Date, the Storage Charge will be increased by \$0.013 Load/day or part day.
 - (d) At the 7th anniversary of the Services Commencement Date, the Storage Charge will be increased by \$0.013 Load/day or part day.
8. Free Storage
 - (a) If, during the period from the Services Commencement Date to April 1, 2021, the Minimum Annual Revenue paid by McCain to the Owner and the Operator exceeds the actual Charges incurred by McCain for the Services in fact utilised by McCain, the Owner shall provide McCain with a proportion of the Storage Services at no Storage Charge for the remainder of the Initial Term, for storage of up to a maximum of **X** Loads stored at the Warehouse (where **X** is calculated in accordance with the formula below). Such free storage is applicable only for Loads that exceed the Minimum average daily storage volume specified in the table in Clause 6.3 of this Agreement, for the relevant Year.
 - (b) The free storage provided is based on the Minimum Annual Revenue from the Services Commencement Date until April 1, 2021 minus the Charges paid by McCain to Owner and Operator from the Services Commencement Date until April 1, 2021 (**=V**), with a maximum of \$2,130,000 per year.
 - (c) **X** is calculated as follows:

$$X = V / (14 \times 365 \times \$0.42)$$

Where:

X = maximum number of Loads with no Storage Charge in each Year;

V = The total amount to be compensated;

14 = remaining Years in the Initial Term;

\$0.42 = the daily Storage Charge

By way of example only:

$X = \$4,000,000 / (14 \times 365 \times \$0.42) = 1,864 \text{ Loads}$

Part 5

(Information on Invoice)

1. Invoices submitted by the Owner and Operator shall detail the following:
 - (a) McCain contact details;
 - (b) Owner or Operator 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, indicating the provider of the Service (Owner or Operator);
 - (g) Payment terms;
 - (h) Sales Tax payable (in case applicable); and
 - (i) Other information reasonably requested by McCain and/or Owner/Operator.

Schedule 2

Part 1

(Description of Services)

Activities related to the Services are described in the following table, and specified in more detail in the Operating Specification, an initial outline of which is contained in Schedule 3 – Part 1 - Operating Specification) and which will be developed by agreement between the parties following the Commencement Date in accordance with Schedule 4 (Service Change Procedure).

It is the intention of McCain, Owner, and Operator to implement automation in the processes in accordance with the terms of this Agreement. If 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 Schedule 3 – Part 1 – Operating Specification.

Service	Operator Responsibilities	McCain Responsibilities
Shuttling between McCain Facility and the Warehouse	<ul style="list-style-type: none"> Transport Products produced at the McCain Facility (in Burley) to the Warehouse by using transport equipment and the Automated Truck Loading System. Transport empty System Pallets from the Warehouse to the McCain Facility, loaded and unloaded via the Automated Truck Loading System and unloading systems installed at the McCain Facility and the Warehouse. Cooperate with McCain to create efficient Shuttling Services, by using detailed production forecasting schedules and translating these into shuttle operation schedules with enough capacity to transport Loads between the McCain Facility and the Warehouse. 	<ul style="list-style-type: none"> Palletize the Products produced at the McCain Facility on System Pallets. Load the shuttle trailers using the automated loading system installed in the McCain Facility. Handle and correct Products not conforming to the Standard Product Characteristics, at the McCain facility. Receive empty System Pallets at the McCain Facility via the Automated Truck Loading System, connected to the palletizers in the McCain Facility. Cooperate with Owner/Operator to create efficient Shuttling Services, by sharing detailed production forecasting schedules by day, including planned maintenance and holidays.
Service	Owner Responsibilities	McCain Responsibilities
Inbound Handling from the McCain Facility	<ul style="list-style-type: none"> Order receipt in WMS via EDI from McCain. Unloading Products from the automated shuttle trailer, automated check by the I-point, recording 	<ul style="list-style-type: none"> Send order (including Advance Shipment Notification) via EDI to Operator WMS. Send Products conforming with the Operating

	<p>Product information in WMS, receipt confirmation by EDI, deviation reporting.</p> <ul style="list-style-type: none"> • Put away Loads to storage. 	<p>Specification (including Standard Product Characteristics).</p> <ul style="list-style-type: none"> •
Inbound Handling from Other Locations than the McCain Facility	<ul style="list-style-type: none"> • Order receipt in WMS via EDI from McCain. • Manage slot booking via providing online slot booking system, to be used by carriers and Operator (and integrated with the new to be implemented McCain TMS). • Unloading Products from the trailer, visual check of the Products received, documents check, recording Product information in WMS, receipt confirmation by EDI, deviation reporting. • Put away Loads to storage. 	<ul style="list-style-type: none"> • Send order (including Advance Shipment Notification) via EDI to Operator WMS. • Management of transport partners conform the Operating Specification. • Ship Products on GMA grade 1 (conveyable) pallets with a Slip Sheet between the pallets and the stack of Products, and Products on a Slip Sheet only. • Send Products conforming with the Operating Specification (including Standard Product Characteristics).
Outbound Handling by Truck	<ul style="list-style-type: none"> • Order receipt in WMS via EDI from McCain. • Retrieve System Pallets with Products from storage location and transport to loading area. • Exchanging the Product stack from a System Pallet to the required outbound carrier (GMA, heat treated, CHEP pallet, or slip sheet). • Manage slot booking via providing online slot booking system, to be used by carriers and Operator (and integrated with the new to be implemented McCain TMS). • Loading Products into the truck. • Generate documents, shipment confirmation by EDI, deviation reporting. 	<ul style="list-style-type: none"> • Send correct and complete order via EDI to Operator WMS. • Management of transport partners conform the Operating Specification. • Provide instructions regarding McCain customer specific activities in a timely manner to be included in Operator WMS instructions.
Outbound Handling by Rail	<ul style="list-style-type: none"> • Order receipt in WMS via EDI from McCain. 	<ul style="list-style-type: none"> • Send correct and complete order via EDI to Operator WMS.

	<ul style="list-style-type: none"> • Coordinate and/or manage rail car spotting with McCain's rail partners. • Retrieve System Pallets with Products from storage location and transport to loading area. • Exchanging the Product stack from a System Pallet to a slip sheet. • Loading Products into the rail car on slip sheet. • Generate documents, shipment confirmation by EDI, deviation reporting. 	<ul style="list-style-type: none"> • Management of rail partners conform the Operating Specification, enabling Operator to have an efficient and effective rail loading operation. • Provide instructions regarding rail loading and McCain customer specific activities in a timely manner to be included in Operator Standard Operating Procedures.
Storage	<p>Storage of Products at the Warehouse conform the agreed conditions.</p> <p>Timely and accurate stock reporting and reconciliation.</p>	Timely reaction to stock reports and participation in stock reconciliation.
Service	Operator Obligations	McCain obligations
Case Picking	<ul style="list-style-type: none"> • Order receipt in WMS via EDI from McCain. • Replenishment stock to pick area in the Warehouse. • Case picking activities related to outbound order resulting, wrapped and labelled Loads for outbound orders. 	<ul style="list-style-type: none"> • Send order via EDI to Operator. • Provide clear picking instructions in a timely manner, in order to be included in WMS pick instructions.
Additional Services	<ul style="list-style-type: none"> • Provide Additional Services at the request of McCain to deal with non-conformity to agreed Operating Specifications (including Standard Product Characteristics) • Perform the Additional Services in line with the Operating Specifications and guidelines agreed with McCain. • Accurate registration of associated direct costs of the Additional Services. 	<ul style="list-style-type: none"> • Examples of Additional Services are described in Schedule 3. Provide clear operating guidelines in a timely manner, as far as these guidelines are not specified in the Operating Specifications of this Agreement.

Part 2

(Description of Shuttling)

This Part provides a detailed description of the Shuttling Services.

1. **Automated Truck Loading System**

Operator will install at the McCain Facility two (2) buffer lane systems each capable of buffering 48 Loads in two rows, short side leading. The buffer lane systems are positioned behind 2 docks suitable for automated shuttle trailers.

The Automated Truck Loading System is installed complete with an infeed conveyor section to interface with a conveyor system from McCain. Between the infeed section and the buffer lane system there is a Load gauge gate where the Loads are identified, weighed and checked on maximum measurements (Standard Product Characteristics). Furthermore, a System Pallet unloading conveyor will be installed.

Note that the System Pallets used by the McCain Facility and the Warehouse are designed to be handled automatically, and that manual handling in case of emergencies may result in System Pallet damage.

Where any Load does not conform to all the Standard Product Characteristics as listed in paragraph 1 Schedule 3 – Part 1 – Operating Specification, the Load shall be rejected. McCain shall deal with or resolve any issues with any rejected Load at its own cost before the Loads are loaded into the automated shuttle trailer.

Daily cleaning and small interventions (e.g. align a photo cell) of the Automated Truck Loading System is the responsibility of McCain. The Operator will provide the maintenance of the Automated Truck Loading System in accordance with Clause 3.9 of this Agreement.

2. **Shuttling Trailers**

Operator will operate shuttling trailers to load all Loads produced (up to a maximum of 2,000 on a peak day and 80 on a peak hour) at the McCain Facility. The shuttling trailers are equipped with a built-in conveyor system specifically designed to interact with the Automated Truck Loading System at the McCain Facility and unloading systems (ATU) at the Warehouse. The shuttling trailer can carry 24 Loads in two rows of 12 Loads, short side leading.

3. **Contingency (manual operation)**

In case of a malfunction of the Automated Truck Loading System, McCain will keep 1 loading dock available for manual loading of the shuttling trailer. This dock is equipped with a power supply to connect the shuttling trailer allowing the chain conveyor system in the trailer to load the Loads in a step-by-step mode.

4. **Forecasted shuttle volumes**

The following shuttle volumes have been taken into account;

Year	2019	2020	2021	2022	2023 and further
Forecasted Shuttling Services Requirement (Loads)	320,000	320,000	530,000	550,000	550,000

Schedule 3

Part 1

(Operating Specification)

This schedule provides a detailed description of the Operating Specification related to the Standard Services and Ancillary Services. This schedule provides a framework and key requirements of McCain, the Owner and the Operator to be worked out in a detailed Operating Specification, IT Systems and EDI Solution.

The site is open 7 days per week, 24 hours per day except for national holidays indicated by McCain.

1. Standard Product Characteristics

- (a) Number of SKUs: 777
- (b) Number of SKUs for picking: 642
- (c) Production batch size produced in the McCain Facility: varying from 50 - 500 Loads.
- (d) Stock Transfer Order batch sizes will be varying from 1- 90 Loads per batch, with 3% of the batches being less than 3 Loads.
- (e) Batch Code: Daily
- (f) Different Production Dates within batches: No
- (g) Pallet type: US GMA grade 1 (40 x 48 inch) (Applicable for Products other than those produced in Burley, which are stacked on System Pallets)
- (h) Slip Sheet type: Cardboard, standard US type, based on 40 x 48 inch pallet size
- (i) Load Height (includes US GMA pallet and Products)
 - (i) Average: 84.25 inch
 - (ii) Height distribution (**%: percentile of volume stored**):

(A) < 84.67 inch	:	46.55 %
(B) 84.67 – 94.5 inch	:	46.76 %
(C) 94.5 – 102 inch	:	6.69 %
 - (iii) Maximum Load height: 102 inch (Tall pallet).
 - (iv) Operator will ensure that a minimum of 15,000 storage locations for 102 inch Loads will be available to McCain.
 - (v) Note that in the McCain Facility and The Warehouse, System Pallets will be used instead of GMA pallets for internal transport and storage of Products. System Pallets are 2 inch lower than GMA pallets. The Warehouse has been designed to store Products on System Pallets, instead of GMA pallets.
- (j) Load Weight
 - (i) Average Load weight: 1,954 lbs
 - (ii) Weight distribution:

(A) < 1,873 lbs	:	19.7 %
(B) 1,874 – 2,204 lbs	:	79.6 %
(C) 2,205 – 2,500 lbs	:	0.7 %
 - (iii) Maximum Load weight: 2,500 lbs

- (k) Margin around the Load: The Warehouse has been designed to handle and store Products stacked within a maximum margin of 2 inch at each side of the Load. This margin can be utilized by McCain by e.g. boxes stacked outside the pallet footprint, Product stack tilt, off-centre stacked Products, etc.
 - (i) Parties have agreed that Operator will perform Additional Services to correct Loads at receipt at the Warehouse that do not comply with this standard of maximum 2 inch margin around the pallet.
- (l) Temperature of Product delivered to Warehouse: plus 18°F to minus 0°F.
- (m) All Products have a barcoded Load label conform the GS1 standard, containing all necessary information to receive the Products in the Warehouse. Pallet labels will always be positioned on the top right corner of the short side of the Load, and sometimes a second Load label will be positioned on the long side of the Load. All cases contain a label with all relevant Product information for tracking and tracing. All Products, except for those Products palletized on System Pallets, are palletized on GMA grade 1, unused pallets, which are conveyable on roller conveyors.

2. Master Data, Storage and Inventory Management

- (a) A standard set of master data per item, supplier, and customer will be agreed upon, and will be recorded in Operator WMS. McCain and Operator use the same unit of measures for the master data.
- (b) Master data and changes are managed by McCain, and recorded by Operator in the WMS. Changes to the master data will be timely communicated by McCain to Operator (minimum of 48 hours before first use by Operator).
- (c) Products will be stored at a temperature of 0°F, plus or minus 2 °F
- (d) All deliveries received in line with the Operating Procedures will be available in stock latest 6 hours after receipt, and confirmed by EDI to McCain's ERP. If Products cannot be received, they will be stored in an area at the correct temperature, waiting for corrective actions to be agreed by McCain and Operator.
- (e) Standards and procedures related to stock status (adjustments) and stock reconciliation will be agreed upon in writing.
- (f) Operator will use cycle counting procedures at its pick floor to maintain high levels of stock accuracy throughout the Year. In addition to the cycle an annual stock count will be performed conform the procedures set out in Schedule 7.
- (g) 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 McCain owned and rental pallets. Costs for handling and administration of empty pallets will be charged to McCain in line with Schedule 1, Part 3; Additional Services.
- (h) Storage Volumes

The following forecasted storage volumes have been taken into account.

Year	2019	2020	2021	2022	2023 and further
Forecasted average daily storage volume	42,500	42,500	69,000	71,000	71,000

The Warehouse has a total of 89,488 gross storage locations, and an estimated 84,000 net available pallet locations.

3. Inbound Operation

(a) Inbound Volumes

The following forecasted Inbound Volumes are taken into account.

Year	2019	2020	2021	2022	2023 and each subsequent Year
Handling volume for Loads from the McCain Facility (V1)	320,000	320,000	530,000	550,000	550,000
Handling volume for Loads in by truck (V2)	50,000	50,000	72,000	73,000	75,000

(b) The Warehouse has been designed for handling the following peak volumes, taking into account the activities are spread over a 24-hour operating day.

- (i) Inbound via shuttle from the McCain Facility (Burley): 550,000 Loads / year
 - (A) Average per day: 1,700 Loads / day
 - (B) Peak per day: 2,000 Loads / day
- (ii) Inbound from other McCain Plants (STO): 75,000 Loads / year
 - (A) Average per day: 200 Loads / day
 - (B) Peak per day: 250 Loads / day
 - (C) Loads per truck: Maximum 30, average 24, minimum 1 Loads per truck.
- (iii) Total anticipated inbound peak per day: 2,250 Loads
- (iv) Operator facilitates a maximum of 15 unloading slots per day for STO shipments, during a 24-hour time window, or more when capacity is available at the Warehouse.

(c) Inbound Operating Procedures

- (i) McCain is responsible for its inbound transport management.
- (ii) A weekly planning of estimated inbound shipments from the McCain Facility and other locations (STO) will be shared by McCain with Operator the week before, or as soon as the information is available at McCain.
- (iii) The standard way of communicating Inbound order information will be via EDI.
- (iv) A minimum inbound order lead time for STO of 48 hours is applicable; in which both the inbound order and the inbound slot booking by the transport company is finalized. A formal order cut-off time will be agreed upon.
- (v) McCain and Operator will agree on a standard operating procedure for shuttling Products and empty System Pallets between the McCain Facility and Warehouse, enabling Operator to run an efficient shuttling operation and providing McCain a reliable Service.
- (vi) Warehouse opening hours: 24 hours/day, 7 days/week. Warehouse activity will be spread over 7 days.
- (vii) An online slot booking system will be provided by Operator to the transporters to reserve their unloading slot. Procedures will be agreed upon related to cut-off times

for slot bookings, standing appointments, early and late arrival, number of unloading slots per hour.

- (viii) A timely arrival of the transporters is important for a reliable and efficient operation of the Warehouse. Timely is defined as within 0 minutes of scheduled arrival time. In case of late arrivals, Operator may reschedule the delivery to the next available slot. Operator will unload late vehicles as soon as possible in case this does not interfere with the operation of the Warehouse.
- (ix) At signing of the Agreement, McCain and Operator have not finalized the drop trailer operation requirements and commercials. It is the ambition of both Parties to work together in operating a drop trailer operation at the Warehouse. In case a drop trailers operation is used, Operator will be executing the drop trailer operation. Costs related of the drop trailer operation will be paid by McCain.
- (x) In case the transporter is not present during unloading, a timely pick-up of unloaded drop trailer (<24 hours after drop-off) is expected and important for a reliable and efficient operation of the Warehouse.
- (xi) Correct order and Product information received on-time and complete is important for Operator 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.
- (xii) It is important that Products have to be in-line with agreed standard Product characteristics. Non-compliance may result in not being able to receive the Products and may require corrective actions to be taken.
- (xiii) All Products from the McCain Facility will arrive on System Pallets.
- (xiv) More than 80% of the Products received at the Warehouse from other McCain locations (STO) will arrive on GMA grade 1 pallets, with slip sheet in between pallet and Product stack. Less than 20% of all STO Products received at the Warehouse will be received slip sheet only under the Products stack.
- (xv) At peak inbound days, the spread of unloading activities over 24 hours/day is required. Parties will cooperate on implementing procedures to make this possible.
- (xvi) 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 may be invoiced to McCain. Operator will put effort in avoiding Additional Services and mitigate costs where possible.
- (xvii) Examples of Additional Services (corrective and value-added logistics) at Inbound may include but are not limited to: handling damaged Products, printing and attaching new Load labels, recording missing Product and order information.

4. **Outbound Operation**

- (a) Outbound volumes:

The following forecasted Outbound Volumes are taken into account.

Year	2019	2020	2021	2022	2023 and each subsequent Year
Forecasted Handling volume for Loads out by truck (V3)	298,000	298,000	482,000	502,000	503,000

- (b) The Warehouse has been designed for handling the following peak Outbound volumes by truck, taking into account the activities are spread over a 24-hour operating day.
 - (i) Outbound by truck: 503,000 Loads / year
 - (A) Average per day: 1,400 Loads / day
 - (B) Peak per day: 2,000 Loads / day
 - (C) Loads per truck: Maximum 30, average 24, minimum 1 Loads per truck.
 - (ii) Operator facilitates maximum 108 loading slots per day; 4 loading slots per hour and an additional loading slot every other hour ($24 \times 4 + 12 \times 1 = 108$).
 - (iii) Parties acknowledge that on peak days more loading slots may be requested, and have agreed to jointly manage these peak requests (often occurring after national holidays) to spread these over multiple days, and e.g. using drop trailer programs.
- (c) Outbound Operating Procedures
 - (i) McCain is responsible for its outbound transport management.
 - (ii) A weekly planning of estimated outbound STO and McCain Customer orders to be shipped from the Warehouse with Operator the week before, or as soon as the information is available at McCain.
 - (iii) The standard way of communicating outbound order information will be via EDI.
 - (iv) A minimum outbound order lead time for all orders of 48 hours is applicable; in which both the outbound order and the outbound slot booking by the transport company is finalized. A formal order cut-off time will be agreed upon. McCain and Operator will implement procedures to assist Operator to prepare orders in advance of the 48-hour order cut-off time.
 - (v) Procedures for order changes after the cut of time will be agreed upon. Parties understand that order changes after the cut of time might require Additional Services and might have impact on the service levels.
 - (vi) Warehouse opening hours: 24 hours/day, 7 days/week. Warehouse activity will be spread over 7 days.
 - (vii) An online slot booking system will be provided by Operator to the transporters to reserve their loading slot. Procedures will be agreed upon related to cut-off times for slot bookings, standing appointments, early and late arrival, number of unloading slots per hour.
 - (viii) A timely arrival of the transporters is important for a reliable and efficient operation of the Warehouse. Timely is defined as within 0 minutes of scheduled arrival time. In case of late arrivals, Operator may reschedule the delivery to the next available slot. Operator will unload late vehicles as soon as possible in case this does not interfere with the operation of the Warehouse.
 - (ix) At signing of the Agreement, McCain and Operator have not finalized the drop trailer operation requirements and commercials. It is the ambition of both Parties to work together in operating a drop trailer operation at the Warehouse. In case a drop trailers operation is used, Operator will be executing the drop trailer operation. Costs related of the drop trailer operation will be paid by McCain.
 - (x) In case the transporter is not present during loading, a timely pick-up of a loaded drop trailer (<24 hours after drop-off) is expected and important for a reliable and efficient operation of the Warehouse.
 - (xi) Correct order and Product information received on-time and complete is important for Operator to have a reliable and efficient operation of the Warehouse. In case such information is not available, Product may not be able to be shipped until such information is available.
 - (xii) Orders will be fulfilled with Products available on stock at the order cut-off time.

- (xiii) Standard order allocation rules will be applied by the Operator WMS based on FEFO. Exceptionally non-FEFO order allocation will be used, for which the Parties will agree on operating procedures, provided these allocation strategies can be executed by the WMS and the automated Warehouse. An exception 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), in case this is not handled via the implementation of McCain's new TMS.
- (xiv) More than 95% of the Products shipped from the Warehouse by truck will be shipped on GMA grade 1, GMA grade 1 heat treated or CHEP pallets, with a slip sheet in between pallet and Product stack. Less than 5% of the Products shipped by truck from the Warehouse will be shipped on slip sheet only under the Products stack.
- (xv) At peak outbound days, the spread of loading activities over 24 hours/day is required. Parties will cooperate on implementing procedures to make this possible.
- (xvi) 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 may be invoiced to McCain. Operator will put effort in avoiding Additional Services and mitigate costs where possible.
- (xvii) Examples of Additional Services (corrective and value-added logistics) at outbound may include but are not limited to: unloading cancelled orders after the cut-off time and putting the Products back in storage, attaching shipment labels, customer placards, other McCain customer requirements.

5. Rail Car Loading

(a) Rail Volumes

The following forecasted Outbound Rail Volumes are taken into account.

Year	2019	2020	2021	2022	2023 and each subsequent Year
Forecasted Handling volume for Loads out by rail car (V4)	72,000	72,000	120,000	121,000	122,000

- (b) The rail outbound rail volumes to be shipped at the Warehouse are expected to grow during the Term, potentially higher than the forecasted volumes. The increase in the outbound rail car volume will be offset by a decrease in outbound volume by truck. The overall outbound volume will be the sum of the forecasted volumes for both trucks and rail cars.
- (c) The Warehouse has been designed to handle Outbound Rail volumes in the range of the following minimum and maximum volumes;
 - (i) Minimum 60,000 Loads / year and 700 Rail Cars per year
 - (A) Minimum 266 Loads / day and 3 Rail Cars per day
 - (ii) Maximum 244,000 Loads / year and 2,800 Rail Cars per year
 - (A) Maximum 1,080 Loads / day and 12 Rail Cars per day
 - (iii) Loads per Rail Car: Maximum 90, Minimum 85.
 - (iv) STO rail car shipments = 50 - 75% of the rail car shipments, McCain Customer rail car shipments = 25 - 50% of rail car shipments.

- (d) No inbound rail volumes are foreseen by McCain. Operator is capable to handle inbound rail volumes in the Warehouse. McCain will compensate Operator for the costs of the inbound rail handling activities in line with Schedule 1, Part X; Additional Services.
- (e) Rail Operating Procedures
 - (i) Outbound Orders by rail will be exchanged via EDI, containing information needed for a fluent rail fulfilment process by Operator.
 - (ii) A weekly planning of estimated rail orders from the McCain Facility and other locations (STO) will be shared by McCain with Operator the week before, or as soon as the information is available at McCain.
 - (iii) McCain is responsible for the management of its rail partners, consisting of among others, but not limited to: class 1 rail road, local short line, rail car leasing company, in such way Operator can operate an efficient rail car loading operation.
 - (iv) Operator is responsible for the daily coordination with McCain's rail partners, to execute the rail car loading operation, including coordinate rail car spotting by McCain's rail partners.
 - (v) McCain will provide instructions regarding rail car loading in a timely manner to be included in Operator standard operating procedures and where possible in Operator WMS.
 - (vi) The rail car loading operation for STO rail car shipments involves the handling of full Load quantities (on slip sheets), and handling layers of Products to create less new Load quantities (on slip sheets), handling of Products.
 - (vii) McCain Customer rail car shipments involves the handling of full pallet quantities (on slip sheets), handling layers of Products to create less new pallet quantities (on slip sheets), handling of Products, and handling of columns of cases to fill up the remaining space in the rail cars.
 - (viii) Clamping of the Products is allowed in the rail car loading operation.

6. Case Picking

(a) Case Picking Volumes

The following forecasted Case Picking volumes are taken into account.

Year	2019	2020	2021	2022	2023 and further
Forecasted Case Picking Services Requirement	3,100,000	3,100,000	5,000,000	5,000,000	5,000,000

- (b) The Warehouse has been designed for handling the following peak picking volumes, taking into account the activities are spread over a 24-hour operating day.
 - (i) Picking: 5,000,000 cases / year
 - (A) Average per day: 20,000 cases / day
 - (B) Peak per day: 25,000 cases / day
- (c) Case Picking Operating Procedures
 - (i) Outbound Orders will be exchanged via EDI, containing information needed for a fluent case picking process by Operator.
 - (ii) Case picking activities, executed on the case pick floor include the creation of mixed SKU Loads, with wrapping around the Products and a Load label conform GS1 standards.

- (iii) The following average case pick profile is expected to be operated: 80 cases per pick Load, 2.6 order lines per pick Load.
- (iv) All customer specific requirements will be shared by McCain and integrated in case picking procedures driven by the Operator WMS.
- (v) Customer specific requirements may lead to Additional Services. Examples of Additional Services (corrective and value-added logistics) at case picking may include but are not limited to: attaching case labels to 'white boxes' before customer order fulfilment, building promotions.

7. Truck Parking

(a) Truck and Trailer Parking at the Warehouse

Operator will develop a minimum of 50 truck and trailer parking spots at the yard of the Warehouse to support McCain inbound and outbound truck transport flows.

(b) Drop Trailer Parking

- (i) At signing of the Agreement, McCain and Operator have not finalized the drop trailer operation requirements and commercials. It is the ambition of both Parties to work together in operating a drop trailer operation at the Warehouse. In case a drop trailers operation is used, Operator will be executing the drop trailer operation. Costs related of the drop trailer operation will be paid by McCain.
- (ii) As part of the to be agreed upon drop trailer solution, Operator may invest in 20 – 70 additional parking spots for drop trailers, including power plugs to run the refrigerating unit of the trailer.
- (iii) McCain and Operator have the ambition to work out an agreement on the drop trailer operation executed by Operator at the yard of the Warehouse within 3 months after the Commencement Date, allowing Operator to develop additional parking and power plug facilities as part of the Warehouse construction process.

8. Additional Services

(a) Additional Services may be carried out as corrective actions by Operator to deal with non-conformity of the agreed standard operating procedures.

- (i) Examples of these corrective Additional Services may be, but are not limited to: Replacing damaged pallets, handling Products damaged during transport, correcting Products outside the agreed 2 inch margin around the pallet, replace a Load label, etc.
- (ii) Operator will use reasonable commercial endeavors (but without incurring additional expenditure) to avoid the use of Additional Services for corrective actions, and to mitigate additional costs where reasonably practicable.
- (iii) Operator 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 McCain

- (i) Additional Services include, but are not limited to; labelling of Loads or cases, repalletizing, pallet replacement, applying wrapping, applying customer specific labels, labeling cases of 'Bright Stock', handling and administrating empty pallets, System Pallet replacement as result of damage caused by McCain, purchasing materials on behalf of McCain (e.g. temperature recorders, seals, pallets, Slip Sheets, rail car ballast, knock down cases for re-casing and other packaging materials, etc.), returns handling, sampling, segregation of multi batch Products on 1 pallet etc.

- (ii) Cost price calculation for Additional Services are described in Schedule 1.
- (iii) McCain and Operator will implement clear procedures and guidelines for the execution of the additional value added logistic Services.
- (c) McCain and Operator anticipate all Additional Services to be efficiently executed in the Warehouse at temperatures of 0F.

9. IT Landscape and EDI Solution

- (a) McCain uses SAP as its ERP to manage its core processes.
- (b) McCain is in the process of implementing a TMS.
- (c) Operator will procure the WMS to manage its Warehouse processes.
- (d) Communication between McCain's ERP and Operator's WMS will be executed by EDI with the following messages.
 - (i) McCain ERP to Operator WMS
 - (A) EDI X12 943 Warehouse Stock Transfer Shipment Advice / Return
 - (B) EDI X12 940 Warehouse Shipping Order
 - (ii) Operator WMS to McCain ERP
 - (A) EDI X12 944 Warehouse Stock Transfer Receipt Advice
 - (B) EDI X12 945 Warehouse Shipping Advice
 - (C) EDI X12 947 Warehouse Inventory Adjustment Advice
 - (D) EDI X12 846 Inventory Inquiry / Advice
 - (E) EDI X12 997 Functional Acknowledgement
 - (F) Potentially: EDI X12 214 'Transport On-Time' Message
- (e) Data transport of messages between the McCain ERP and Operator WMS will be executed via AS2.
- (f) McCain and Operator will investigate the implementation of EDI messages of efficient and reliable stock status changes (e.g. hold codes), initiated in the ERP system of McCain.
- (g) The following information will be communicated via standardized .csv-file sent via e-mail in case a EDI message cannot be implemented:
 - (i) SKU information
 - (ii) Customers information
- (h) Other systems to be used;
 - (i) Truck dock booking system provided by Operator. This system will potentially be interfaced with the new McCain TMS.
 - (ii) McCain Portal for file sharing of others reports and shipment documents
 - (iii) Business Intelligence Tool supported by Operator WMS for reporting of KPI's and among others McCain stock information.
- (i) Each party is to carry its own costs of implementing the IT Landscape and EDI solution.

Schedule 4

Part 1

(Service Change Notice)

1. Change Request

- 1.1 At any time during the Term, any party (the "**Originator**") may submit a Change Request in writing to the other (the "**Receiver**"). For the purposes of this Agreement a "**Change Request**" is a request:
 - (a) to change or add to the Services, or to change the manner in which the Services are performed;
 - (b) to amend any terms of this Agreement or any document attached to or referred to in this Agreement (including any Operating Specification);
 - (c) to address any matter which causes or is likely to cause either party to incur costs or charges outside the scope of the Charges; or
 - (d) to amend the Shutting Charges if any of the key assumptions set forth in Schedule 1, Part 2 are not accurate.
- 1.2 Subject to paragraph 4.1 of this Schedule, no Change Request shall be binding on the parties until the Change Request (as may be amended pursuant to this Schedule) is agreed in writing and signed by the authorised representatives of both parties (at which point it shall be deemed "**Accepted**", and "**Acceptance**" shall be construed accordingly). Once Accepted, each Change Request shall be deemed incorporated into the Agreement or the Services on the effective date specified within that Change Request and liability for the costs associated with that Change Request shall be allocated in accordance with paragraph 4.1 of this Schedule 4.
- 1.3 Subject to paragraph 4.1 of this Schedule, the parties shall, until such time as a Change Request is Accepted, continue to perform their respective obligations without taking account of the Change Request.
- 1.4 Change Requests may be originated either by McCain or by the Operator or by the Owner, or may be originated by two or more of the parties jointly. Where a Change Request is originated jointly, the parties shall agree a reasonable apportionment of the associated costs and paragraph 4.1 of this Schedule 4 shall not apply.
- 1.5 Each Change Request prepared by the Originator shall be allocated a sequential number by the Originator and shall contain:
 - (a) the title of the change;
 - (b) the Originator(s);
 - (c) the date of the Change Request and the intended date(s) or period for implementation of the change;
 - (d) full details of the change (including an express statement if that change is to address a Change in Law of any kind, in accordance with paragraph 4.1 of this Schedule 4);
 - (e) the estimated costs of implementing the change;
 - (f) a timetable for implementation together with any proposals for Acceptance of the change;
 - (g) a schedule of milestones and payments (if appropriate);
 - (h) details of the likely impact, if any, of the change, including on, but not limited to:
 - (i) the Services,
 - (ii) the terms of the Agreement;
 - (iii) the KPIs;
 - (iv) working arrangements; and
 - (v) other contractual issues;
 - (i) the date that the validity of the Change Request expires; and

- (j) provision for signature by the parties.

2. **Change Report**

2.1 Subject to paragraph 4.1 of this Schedule 4, the Receiver shall, within ten (10) Business Days of receipt of a Change Request supply to the Originator either:

- (a) a detailed response to the Change Request, indicating:
 - (i) which elements of that Change Request the Receiver (acting reasonably) accepts and which it does not accept; and/or
 - (ii) as appropriate, all consequential changes which the Receiver (acting reasonably) considers will be required to the Services, the KPIs, this Agreement and any other effects of the proposed change,

in each case, accompanied by sufficient evidence so as to reasonably demonstrate each element to the Originator (the "**Change Report**"); or

- (b) written confirmation that there will be no additional consequential changes or effects other than those set out in the Change Request and a signed version of that Change Request, at which point the Change Request shall be deemed Accepted.

2.2 If the Receiver gives notice to the Originator within five (5) Business Days of receipt of a Change Request that it cannot provide the Change Report within ten (10) Business Days from receipt of that Change Request, the parties shall agree a suitable time within which that Change Report should be provided.

3. **Change Review Notice**

3.1 Following receipt of a Change Report, the Originator shall consider its contents and, within five (5) Business Days of receipt, shall either:

- (a) notify the Receiver that it accepts the Change Report, and provide a signed Change Request, in which case the Change Request shall be amended so as to reflect the Change Report and deemed Accepted; or
- (b) notify the Receiver that it does not accept the Change Report, in whole or in part, specifying those parts of the Change Report which it does not accept, providing sufficient reasons and supporting evidence (a "**Change Review Notice**").

3.2 No later than five (5) Business Days following receipt of a Change Review Notice, the parties' authorised representatives shall meet to discuss the relevant Change Request (the "**Change Review Meeting**") and shall use commercially reasonable efforts to agree suitable amendments to the Change Request (taking into account the Change Report and the Change Review Notice) so that the Change Request is capable of being Accepted at, or within a reasonable time after, that Change Review Meeting.

4. **Failure to agree**

4.1 If the parties are unable to reach agreement on the whole, or a material part, of the Change Request at, or a reasonable time after, the Change Meeting:

- (a) the Originator may withdraw the Change Request, and shall notify the Receiver of the withdrawal in writing; or
- (b) if the Originator wishes to continue with the Change Request, the Change Request shall be determined as follows:

- (i) where:

- (A) the changes specified in the Change Request arise directly from a material change in the costs of performing the Services, either negatively or positively that (a) was not reasonably foreseeable nor quantifiable as at this date of this Agreement, (b) except in the case of a Change Request pursuant to paragraph 1.1(d) of Part 1 of this Schedule 4, impacts other third-party cold store providers in the Idaho region except for items that relate to an individual cold store, such as property taxes or insurance and (c) is due to circumstances outside the

reasonable control of the Owner or the Operator other than due to a Force Majeure Event ("**Unforeseeable Change**"); and

- (B) the Unforeseeable Change is reasonably anticipated to result in a permanent (or at minimum a 12-month), identifiable increase or decrease to the costs to Owner or Operator of furnishing all or any of the Warehousing Services, the Ancillary Services or any other services provided for hereunder (such increase in costs, an "**Unforeseeable Increase**"; and such decrease in costs an "**Unforeseeable Decrease**")

then,

- (ii) in the case of an Unforeseeable Increase:

- (A) Owner, Operator and McCain shall take commercially reasonable efforts to mitigate such Unforeseeable Increase by implementing improvement processes and other commercially reasonable efficiencies; and
- (B) to the extent that such Unforeseeable Increase cannot be mitigated in accordance with (A) above, Owner and Operator shall notify McCain of the unmitigated portion of the Unforeseeable Increase and the costs of any mitigation measures made pursuant to (A) above with the approval of McCain ("**Unmitigated Cost**") and provide reasonable documentation evidencing such increase and Owner and Operator's mitigation efforts (together with the costs of such efforts) in the form and substance reasonably requested by McCain; and
- (C) upon receipt of such notice and documentation, subject to McCain's rights to dispute such increase under Clause 22 of the Agreement and further subject to McCain's rights under paragraph 4.2 below, McCain shall accept a Change Request for the Unmitigated Cost in an annual amount that will be annually calculated as follows ("**McCain Increased Cost**"):

$$IC = (UC \times OP) / T$$

Where:

IC = McCain Increased Cost per year

UC = Unmitigated Cost

OP = Occupancy Percentage

T = the depreciation period in accordance with applicable accounting rules

Occupancy Percentage: means the percentage of the Warehouse that is used to provide services to McCain under this Agreement (which is estimated at 80% as of the date of this Agreement). If the Unmitigated Cost arises from a Change Request made by the Owner and/or Operator pursuant to paragraph 1.1(d) of Part 1 of this Schedule 4 or by McCain then OP shall equal one (1)

If the Unmitigated Cost is a recurring charge (versus a one-time capital expense), T shall equal one (1);

- (D) Provided, that should McCain exercise its rights under Clause 22 of the Agreement or paragraph 4.2 below, the McCain Increased Cost shall only become payable on receipt of the notice and documentation referred to in sub-paragraph (B) above.
- (E) If, and only to the extent, the dispute (in accordance with Clause 22, if any) or third party valuation (in accordance with paragraph 4.2 below, if any), results in a final non-appealable decision in McCain's favour, then Owner and/or Operator shall issue a credit note for the amount of the overpayment as determined by such valuation or decision, which credit

may be applied by McCain against any invoice(s) in McCain's sole discretion.

(iii) In the case of an Unforeseeable Decrease:

- (A) Owner and Operator shall notify McCain of such Unforeseeable Decrease within thirty (30) days of the occurrence of such decrease in cost and provide reasonable documentation evidencing such decrease; and
- (B) Upon receipt of such notice, McCain shall accept a Change Request for the Unforeseeable Decrease based on the percentage of the Warehouse that is used to provide services to McCain under this Agreement (which is estimated at 80% as at the date of this Agreement), except in the case of a Change Request pursuant to paragraph 1.1(d) of Part 1 of this Schedule 4, in which case McCain shall be entitled to 100% of such Unforeseeable Decrease.

For the avoidance of doubt and by way of example:

- (i) increased repair and maintenance costs for the Owner and/or the Operator would be considered foreseeable and within the reasonable control of Owner or Operator and not entitle Owner or Operator to a Change Request
- (ii) a material change in the costs may be caused by key customers of McCain requiring e.g. a -5°F cold chain (negative cost impact) or a 7°F (positive cost impact) would, if a party so wishes, be handled by means of a Change Request raised which the Receiver may agree or reject pursuant to the processes set out in this Schedule 4, Part 4; and
- (iii) a material change in the cost for the Owner and/or the Operator that arises from a change request made by another customer of the Owner/Operator using the Warehouse, would not entitle Owner or Operator to a Change Request, even where McCain benefits from that change.

4.2 If the parties fail to reach an agreement with respect to all of the matters set forth in sub-paragraph 4.1(b), then any amounts remaining in dispute ("**Disputed Amounts**") shall be submitted for resolution to the office of an impartial nationally recognized firm of independent certified public accountants mutually agreed upon by both parties ("**Independent Accountants**") who, acting as experts and not arbitrators, shall resolve the Disputed Amounts only and make any adjustments to the Disputed Amount and (ii) the Change Request shall be delayed until resolution of such Disputed Amounts in accordance with the terms hereof. The Independent Accountants shall only decide the specific items under dispute by the Parties under sub- paragraph 4.1(b). The fees and expenses of the Independent Accountants shall be borne equally by each party.

4.3 Where the Owner and/or Operator does not meet all the requirements specified in paragraph 4.1(b) above within a reasonable period, McCain shall be entitled to reject the Change Request; and in all other circumstances, the Receiver shall be entitled to reject the Change Request.

Schedule 5

Part 1

(Standard KPIs)

All Standard KPIs shall be measured on a monthly basis. Circumstances outside of the Operator's control that negatively impact the Standard KPI's, including without limitation late arriving trucks, McCain pallets of poor quality, or stock shortages, are excluded in the calculation unless Operator meets the Standard KPI level despite these factors.

1. Orders Loaded On Time: 98.70%

(a) Definition: *"the percentage of orders that are loaded on to vehicles on or before the agreed loading time (assuming the vehicles are on site at the agreed time)".*

(b) Trucks arriving within the agreed time schedule will be loaded and the necessary administrative procedures finalized within two (2) hours after arrival of the truck ("Loading Time").

Arrival of the truck is defined as the moment when the driver reports at the driver's office.

"Arrival on time" means the planned time up to zero (0) minutes after the planned exact time. Trucks that arrive more than thirty (30) minutes late will be loaded as soon as a next loading slot is available. When more than 20% of the trucks are late on a day, then all orders loaded on that day are excluded from the calculation, unless an order was loaded on or before the agreed loading time.

(c) Defect: an order not loaded within two (2) hours of arrival of a truck, given the truck has arrived on time.

(d) Standard KPI = $\frac{\text{N}^\circ \text{ of orders} - \text{N}^\circ \text{ of orders loaded too late}}{\text{N}^\circ \text{ of orders}} \times 100$

2. Order Quality (Orders Complete): 99.80% of cases

(a) 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)".*

(b) Defect: a case ordered for a Product for which free stock is available not included in the correct order.

(c) Standard KPI = $\frac{\text{N}^\circ \text{ of cases ordered} - \text{N}^\circ \text{ of cases missing}}{\text{N}^\circ \text{ of cases ordered}} \times 100$

3. Inventory Accuracy: 99.95%

(a) 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."*

(b) Defect: a pallet location for which the Product identification or quantity are not correctly registered in the WMS.

(c) Standard KPI = $\frac{\text{N}^\circ \text{ of Loads in stock} - \text{N}^\circ \text{ of Warehouse physical locations for which Product identification or quantity are not correct in the WMS}}{\text{N}^\circ \text{ of Loads in stock}} \times 100$

4. Stock Loss Threshold: 0.01%

5. Goods Receipt On Time – via shuttle: 99.0%

(a) Definition: *"A delivery arrives on time if it arrives within zero (0) minutes of the agreed arrival time."*

(b) McCain's factory at Burley (ID) has minimum of two (2) automatic loading docks installed. Loads ready for collection will be buffered on dock "A" until buffer is full. As from that moment dock "B" will be used for buffering until full. The next Load will need to be routed again to dock "A", thus the Loads that were on this dock "A" should have been collected before the dock needs to be used again.

(c) Defect: a shuttle truck is late if a Load is produced and should be buffered on one of the automatic loading docks while both automatic loading docks are full.

(d) Standard KPI = $\frac{\text{N}^\circ \text{ of shuttles} - \text{N}^\circ \text{ of shuttles that are late}}{\text{N}^\circ \text{ of shuttles}} \times 100$

6. **Goods receipt on time – ext. source: 99.0%**

(a) Definition: "A delivery arrives on time if it arrives within zero (0) minutes of the agreed arrival time."

(b) 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.

(c) Defect: a delivery takes longer than two (2) hours to be finalized after arrival on time.

(d) Standard KPI = $\frac{\text{N}^\circ \text{ of deliveries that arrived on time} - \text{N}^\circ \text{ of deliveries that arrived on time but were not received within 2 hrs}}{\text{N}^\circ \text{ of deliveries that arrived on time}} \times 100$

7. **OLCOT Figure: 98.7% x 99.8% = 98.50%**

(a) This Standard KPI is the combination of Orders Loaded On Time and Order Quality (Orders Loaded Complete On Time).

(b) Standard KPI = Orders Loaded On Time x Order Quality

Part 2

(Initial KPIs)

1. **During the Initial Period, the following Initial KPIs will apply:**

- (a) Orders Loaded On Time: 96.7%
- (b) Order Quality (Orders Complete): 96.5%
- (c) Inventory Accuracy: 98%
- (d) OLCOT: 93.32%

Part 3

(Service Credits)

1. Service Credits shall be calculated solely on the basis of the OLCOT Standard KPI performance. If the performance level for the month is below the Standard KPI a Service Credit will be payable based on the table below.

Service Credit level	OLCOT KPI Performance						
From:	98.50%	97.10%	95.70%	94.30%	92.90%	91.50%	90.25%
To:	97.10%	95.70%	94.30%	92.90%	91.50%	90.25%	0%
Service Credit (\$ x 1,000)	1	2	3	5	8	10	10+

2. If the performance level for any month is below the minimum performance level for OLCOT of 90.25%, a Service Credit will be payable of \$10,000 per month + \$500 per 0.1% that it is below such minimum performance level, up to a maximum Service Credit of \$25,000 per month.

Schedule 6

Part 1

(Contract Management)

1. Contract management

- (a) McCain shall appoint a McCain representative and inform the Operator 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 (the "**McCain Representative**"). The McCain Representative shall have authority to liaise with the Operator Representative (defined below) in connection with the Services to be performed under this Agreement and such McCain Representative shall give instructions or directions to and shall liaise exclusively with the Operator Representative or such other persons advised to it by the Operator Representative from time to time for that purpose under this paragraph 1(a) of Schedule 6.
- (b) The Operator shall appoint a senior employee as its representative to be McCain's contact at the Operator to be responsible for the performance of the Services and who will have the authority to liaise with and receive instructions from McCain (the "**Operator Representative**"). McCain may rely on the oral, email, text or other written instructions or direction of the Operator Representative. The Operator shall keep McCain notified of the contact details of Operator Representative.
- (c) The Operator shall:
 - (i) on request from McCain, during the term of this Agreement, supply McCain from time to time with such information and reports (including copies of such documents and other material) as McCain reasonably requires in relation to the provision of the Services, including but not restricted to KPI reports, actual and forecast reporting and reconciliation, part Load reports, short shelf life reports, damages and reasons for damages;
 - (ii) monitor performance of the Services against the KPIs and provide McCain with a report as soon as reasonably practicable (but in any event within two (2) days of the end of each month) specifying the KPIs, Operator's performance that month against each of the KPIs, the raw data underlying the KPI's, including full details of any failure to meet the KPIs together with Operator's recommendations (if any) for any modifications to the Services and/or the KPIs; and
 - (iii) prepare four (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 McCain, reports on particular topics in amplification of the annual report.

2. Information & reporting

- (a) The parties agree that throughout the Term the following meetings shall take place 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 in the OPD:
 - (i) a daily conference call / meeting to discuss immediate operational requirements at which the McCain Representative and Operator Representative will be present;
 - (ii) 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 at which the Operator Representative and the McCain Representative shall be present;
 - (iii) a monthly meeting to discuss the previous month's performance, monthly trends, progress on gain share activities and key business issues at which the Operator Representative and the McCain Representative shall be present;

- (iv) 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 at which the Operator Representative and the McCain representative shall be present; and
- (v) a strategic development meeting to review the business direction (minimum once a year).

Schedule 7

Part 1

(Annual Stock Count)

1. 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, parties agree that annual stock audits shall be performed as follows: The Operator 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 shall be carried out by the Operator's employees (the "Employee") under supervision of McCain's representatives and / or (external) audit staff.
 - (a) The Annual Stock Count includes retrieving Products from the high-bay storage by an Employee at random, or if preferred by McCain according to a specified list, up to a maximum of 0.3% of McCain's Products in storage in the Warehouse at that moment (the "**First Round Count**"). McCain shall pay the Operator's reasonable third-party out of pocket costs associated with the Annual Stock Count. Prior to the First Round Count, all Products in- and out movements between both parties are completed and the WMS and McCain's ERP shall be reconciled such that opening systems stock match. The retrieved Loads should be checked against the data (Product, quantity, best before date, SSCC label, or the "**System Records**") as recorded in the WMS.
 - (b) Should the discrepancy during the First Round Count exceed the threshold of 99%, a further random sample of 0.1% of the Loads in storage in the McCain Facility at that moment shall be checked against the System Records (the "**Second Round Count**").
 - (c) 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.
 - (d) On an annual basis, a wall-to-wall count on the pick floor shall be conducted at the request of McCain as follows:
 - (i) The first round of counting shall be conducted by an Employee (McCain'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 Load. 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 (McCain'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 McCain'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 Load ID for which the racking position has to be confirmed. The scope will be a minimum of 10% of all McCain's pick facings.
 - (e) 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 Operator and McCain representatives.

Part 2

(Daily Stock Count)

1. The Operator will provide the stock levels as recorded in its WMS to McCain on a daily basis. Any discrepancies between the WMS and McCain's ERP system should be communicated in writing to McCain as soon as practically possible. If there are significant discrepancies (as defined

below), then McCain shall be entitled to further inspection of certain SKUs or Load positions within the Warehouse, which shall be undertaken in the presence of McCain's representatives.

2. During daily picking operations: when the Load 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 Load is empty, but there are still cases on the Load, a surplus exists ("Surplus"). Contrary, 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 Loads that have Products on them which have been picked recently, and physically check these Loads. 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 Loads per 10,000 Load movements, or 0.1% (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 Loads currently stored in the McCain Facility should be requested at random. The retrieved Loads 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 10% of stored Loads to be requested at random.

Schedule 8

Part 1

(Business Continuity Plan)

1. In the event that circumstances at the Warehouse prevent the provision of the Services or Additional Services (as applicable) then Operator shall use commercially reasonable efforts to implement changes such that the shortfall in performance (as measured by the KPIs) is addressed and performance returns to acceptable levels.
2. The following paragraphs cover the key points and principles that are to be included in a Business Continuity Plan (the "**Business Continuity Plan**") that will be fully defined on or before the end of the Initial Period.
3. The Business Continuity Plan will include the following information:
 - (a) A management team will be identified that will be responsible for managing a situation where the Business Continuity 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 McCain, and one from Operator 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 McCain or its suppliers, would determine that the McCain 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 Operator (with cooperation from McCain) 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 KPIs 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 or Additional Services (as applicable), and clear responsibilities for actions required;
 - (e) Confidentiality expectations. It is probable that triggering of the Business Continuity Plan is driven by an unexpected problem with providing Services or Additional Services (as applicable). In this event it is essential that there is strict control over what is said and to whom. The Business Continuity 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 McCain. 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 Operator employees
 - (v) Industrial action by McCain 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 McCain Facility
 - (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.
4. The Business Continuity Plan will be developed through time, however the first effective version will be agreed no later than 2 months before the Services Commencement Date. This document will be approved by both parties as the procedure that will be used in the event that the Business Continuity Plan is required.

Schedule 9

Part 1

(Lease)

McCain and the Owner shall work together to agree the terms of the Lease within three (3) months of the Commencement Date. Once agreed in writing, the terms of the Lease shall be set out in this Schedule 9.

Schedule 10

Part 1

(Depreciation Schedule)

Once the full investment of the Automated Loading Refurbishment is known, Owner will finalize a Depreciation Schedule in a format as attached in this Schedule 10.



20171205 McCain
Burley Depreciation

Schedule 11**Part 1**

(Fuel Surcharge)

Shuttling Services Fuel Surcharge Program						
Mileage Computation: 3 miles for a round trip from Warehouse to Facility v.v.						
Fuel Surcharge: As per Schedule 1 , Part 4, section 5						
Application: This fuel program applies to the Shuttling Services. If diesel prices exceed current fuel schedule, Parties will agree upon an updated schedule.						
EIA website:						
https://www.eia.gov/dnav/pet/pet_pri_gnd_dcus_r5xca_w.htm						
Fuel Surcharge Schedule			Continued			
Fuel Price US\$/Gal		Surcharge	Fuel Price US\$/Gal		Surcharge	
From	To	US \$/Load	From	To	US \$/Load	
-	\$0,099	-\$0,031	\$3,640	\$3,699	\$0,025	
\$1,000	\$1,059	-\$0,030	\$4,200	\$4,259	\$0,026	
\$1,060	\$1,119	-\$0,029	\$4,260	\$4,319	\$0,028	
\$1,120	\$1,179	-\$0,028	\$4,320	\$4,379	\$0,029	
\$1,180	\$1,239	-\$0,026	\$4,380	\$4,439	\$0,030	
\$1,240	\$1,299	-\$0,025	\$4,440	\$4,499	\$0,031	
\$1,300	\$1,359	-\$0,024	\$4,500	\$4,559	\$0,033	
\$1,360	\$1,419	-\$0,023	\$4,560	\$4,619	\$0,034	
\$1,420	\$1,479	-\$0,021	\$4,620	\$4,679	\$0,035	
\$1,480	\$1,539	-\$0,020	\$4,680	\$4,739	\$0,036	
\$1,540	\$1,599	-\$0,019	\$4,740	\$4,799	\$0,038	
\$1,600	\$1,659	-\$0,018	\$4,800	\$4,859	\$0,039	
\$1,660	\$1,719	-\$0,016	\$4,860	\$4,919	\$0,040	
\$1,720	\$1,779	-\$0,015	\$4,920	\$4,979	\$0,041	
\$1,780	\$1,839	-\$0,014	\$4,980	\$5,039	\$0,043	
\$1,840	\$1,899	-\$0,013	\$5,040	\$5,099	\$0,044	
\$1,900	\$1,959	-\$0,011	\$5,100	\$5,159	\$0,045	
\$1,960	\$2,019	-\$0,010	\$5,160	\$5,219	\$0,046	
\$2,020	\$2,079	-\$0,009	\$5,220	\$5,279	\$0,048	
\$2,080	\$2,139	-\$0,008	\$5,280	\$5,339	\$0,049	
\$2,140	\$2,199	-\$0,006	\$5,340	\$5,399	\$0,050	
\$2,200	\$2,259	-\$0,005	\$5,400	\$5,459	\$0,051	
\$2,260	\$2,319	-\$0,004	\$5,460	\$5,519	\$0,053	
\$2,320	\$2,379	-\$0,003	\$5,520	\$5,579	\$0,054	
\$2,380	\$2,439	-\$0,001	\$5,580	\$5,639	\$0,055	
\$2,440	\$2,499	\$0,000	\$5,640	\$5,699	\$0,056	
\$2,500	\$2,559	\$0,001	\$5,700	\$5,759	\$0,058	
\$2,560	\$2,619	\$0,003	\$5,760	\$5,819	\$0,059	
\$2,620	\$2,679	\$0,004	\$5,820	\$5,879	\$0,060	
\$2,680	\$2,739	\$0,005	\$5,880	\$5,939	\$0,061	
\$2,740	\$2,799	\$0,006	\$5,940	\$5,999	\$0,063	
\$2,800	\$2,859	\$0,008	\$6,000	\$6,059	\$0,064	
\$2,860	\$2,919	\$0,009	\$6,060	\$6,119	\$0,065	
\$2,920	\$2,979	\$0,010	\$6,120	\$6,179	\$0,066	
\$2,980	\$3,039	\$0,011	\$6,180	\$6,239	\$0,068	
\$3,040	\$3,099	\$0,013	\$6,240	\$6,299	\$0,069	
\$3,100	\$3,159	\$0,014	\$6,300	\$6,359	\$0,070	
\$3,160	\$3,219	\$0,015	\$6,360	\$6,419	\$0,071	
\$3,220	\$3,279	\$0,016	\$6,420	\$6,479	\$0,073	
\$3,280	\$3,339	\$0,018	\$6,480	\$6,539	\$0,074	
\$3,340	\$3,399	\$0,019	\$6,540	\$6,599	\$0,075	
\$3,400	\$3,459	\$0,020	\$6,600	\$6,659	\$0,076	
\$3,460	\$3,519	\$0,021	\$6,660	\$6,719	\$0,078	
\$3,520	\$3,579	\$0,023	\$6,720	\$6,779	\$0,079	
\$3,580	\$3,639	\$0,024	\$6,780	\$6,839	\$0,080	