

Warehousing Agreement

by and among

- (1) Conagra Brands Inc
- (2) NewCold Atlanta, LLC and NewCold Atlanta Operations, LLC

Dated: June 30, 2022

Osborne Clarke LLP

2 Temple Back East
Temple Quay
Bristol
BS1 6EG
Telephone +44 117 917 3000

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This Warehousing Agreement is made on June, 30, 2022.

Between

- (1) **Conagra Brands Inc.**, a company registered under the laws of Illinois whose registered office is at Conagra Brands, Inc 222 Merchandise Mart Plz Chicago, IL ("**Customer**").
- (2) **NewCold Atlanta, LLC** a company registered under the laws of Delaware whose registered office is at 850 New Burton Road, Suite 201, Dover, Delaware 19904 (the "**Owner**"); and
- (3) **NewCold Atlanta Operations, LLC**, a company registered under the laws of Delaware whose registered office is at 850 New Burton Road, Suite 201, Dover, Delaware 19904 (the "**Operator**").

Background:

- (A) The Owner has agreed to develop the Warehouse and provide, or cause the provision of, the Services in accordance with, and subject to, the terms of this Agreement.
- (B) The Owner and the Operator shall enter into a services agreement pursuant to which the Owner will engage the Operator to perform all the operational services required of the Owner under this Agreement.
- (C) The parties agree and acknowledge that this Agreement is not a contract for the improvement of real estate in Georgia.

It is agreed that:

1. Definitions

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

"Additional Services" any other services which are not Storage Services and Handling Services or Case Picking 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 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, by-law, decree, injunction, statute or statutory instrument relating to any of the Services.

"Business Day" any day other than a Saturday, Sunday, or public holiday in the State of Georgia.

"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 2.

"Charges" each of the Charges for the Storage Services and Handling Services as set out in Schedule 1, Part 2, the Case Picking Services set out in Schedule 2, and any Additional Services.

"Charges Review " means a review of the Charges carried out in accordance with Part 3 of Schedule 1.

"Commencement Date" the date of signature of this Agreement, as stated at the top of page one of this Agreement.

"Condition Precedent" a condition precedent as specified in clause 2.4.

"Confidential Information" has the meaning set out in clause 22.1.

"Customer" has the meaning set out in the preamble.

"Customer Group" Customer and any company which it controls, is controlled by or is in common control with, where 'control' means directly or indirectly owning or controlling the voting rights attached to not less than 50.1% of the issued share capital/capital stock, or controlling directly or indirectly the appointment of a majority of the board of directors, and references to a member of the Customer Group shall be construed accordingly.

"Customer Information" has the meaning given to it in clause 9.4.

"Customer 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 Customer Group, in each case whether registered or unregistered and including applications for, and the right to apply for, the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world.

"Dedicated 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 Customer.

"Delivered into the Owner's Custody" has the meaning set out in clause 13.2.

"Delivered out of the Owner'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 22.1.

"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 21.

"Drop Yard Activities" the drop trailer activities referred to in paragraph 6 of Part 1 of Schedule 3.

"Electricity Index" the applicable published electricity rates of the power company supplying electricity to the Warehouse.

"Existing Lease" the lease under which Customer is tenant of the warehouse at 90 Deer Crossing, Vonore, TN 37885;

"Financing" has the meaning set out in clause 27.1.

"Force Majeure Event" 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 not reasonably avoidable and/or its impacts on a party's ability to perform its obligations under this Agreement could not reasonably be assessed or avoided as at the Commencement Date, including without limitation:

- (a) acts of God, including but not limited to pandemic (including without limitation COVID-19), epidemic, 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, cyber-attack, civil war, civil commotion or riots;
- (d) any state-wide labour shortage or organized labor dispute in Georgia, including but not limited to strikes, industrial action or lockouts affecting the cold storage industry (other than where any such organized labor dispute, strike, industrial action or lockout relates solely to the employees of the party seeking to claim force majeure relief under clause 20);

- (e) 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.

"Forecast" has the meaning given to it in clause 6.2(b).

"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 dry/ambient warehousing and logistics provider, performing services substantially similar to the Services in McDonough.

"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 Part 2 of Schedule 1.

"Indemnified Party" has the meaning set out in clause 16.10.

"Indemnifying Party" has the meaning set out in clause 16.9.

"Index" means an index consisting of 50% of the Consumer Price Index-U (Southeast Region), as published by the US Bureau of Labor Statistics or any successor body from time to time, plus 50% of the Consumer Price Index-U (National) as published by the US Bureau of Labor Statistics or any successor body 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 5, Part 2.

"Initial Period" the period from the Services Commencement Date to the later of: (i) the date falling 6 months after the Services Commencement Date; and (ii) the date of expiry of the Transitional Period.

"Initial Forecast Year" has the meaning set out in clause 6.2(a).

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

- (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,

provided that 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.

"Intended Services Commencement Date" the date falling 20 months after the Commencement Date.

"KPI's" means either the Initial KPIs or the Standard KPIs (as applicable).

"Lender" has the meaning set out in clause 27.1.

"Letter of Intent" the letter of intent entered into between NewCold USA III LLC and Conagra Foods Packaged Foods, LLC dated March 20 2020 (as amended by a First Amendment dated October 4th 2020 and a Second Amendment dated 20 June 2022).

"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.

"Long Stop Date" the first anniversary of the Intended Services Commencement Date or the Revised Intended Services Commencement Date (as applicable), as may be revised in accordance with clause 3.

"Losses" all losses, claims, demands, actions, proceedings, damages and other payments, charges, expenses and other liabilities of any kind, including reasonable legal fees.

"Maximum Storage Capacity" has the meaning set out in clause 6.4.

"Minimum Annual Case Picking Revenue" the minimum annual case picking revenue payable to the Operator as calculated in accordance with clause 6.3 and Schedule 1.

"Minimum Annual Drop Yard Revenue" the minimum drop yard revenue payable to the Operator as calculated in accordance with clause 6.3 and Schedule 1.

"Minimum Annual Handling Revenue" the minimum annual handling revenue payable to the Owner as calculated in accordance with clause 6.3 and Schedule 1.

"Minimum Annual Revenue" the Minimum Annual Handling Revenue plus the Minimum Annual Storage Revenue plus the Minimum Annual Case Picking Revenue plus the Minimum Annual Drop Yard Revenue.

"Minimum Annual Storage Revenue" the minimum storage revenue calculated in accordance with clause 6.3 and Schedule 1.

"Minimum Volume" has the meaning given to it in Paragraph 5.3(a) of Part 9 of Schedule 1,

"OLCOT Figure" the percentage figure for the combined Standard KPI's of (1) 'Shipments loaded on time' and (2) 'Order quality' as set out in Schedule 5, Part 1.

"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.

"Operator" has the meaning set out in the preamble.

"Outbound Charge" has the meaning set out in Paragraph 5 of Part 1 of Schedule 1.

"Owner" has the meaning set out in the preamble.

"Pallet" a standard size pallet as specified in Schedule 3 Part 1 with additional attributes as described in the product master data, containing of a stack of collectively wrapped cases of dry/ambient, individually identifiable by a pallet ID following the GS1 standard.

"Pallet Handling Unit" a unit consisting of 1 or 2 Pallets handled together at loading or unloading of trucks. At inbound unloading the 2 Pallets handled will be of the same SKU and by exception of 2 different SKU's. At outbound loading the 2 stacked pallet handling unit can consist of any 2 pallets that are physically stackable and stackable according to master data, while following the truck loading standard operating procedure as agreed between the Parties in writing.

"Pallet Position" a single position in the racking in the Warehouse used for storing a Pallet Handling Unit.

"Pallet Reject" has the meaning has the meaning set out in the table in paragraph 3 of Part 1 of Schedule 1.

"Pallet Reject Charge" has the meaning set out in the table in Part 2 of Schedule 11

"Products" all of the dry/ambient food products, together with their packaging, sent by or on behalf of Customer to the Warehouse.

"Quarter" each successive 3 month period of each calendar year during the Term (or, where the period from the Services Commencement Date to the end of the calendar year and/or the period from the start of the final quarter to the end of the Term is shorter than three months, such shorter period), save that where a different meaning of "Quarter" is agreed between the parties in respect of the Shortfall reconciliations pursuant to paragraph 6 of Schedule 1, Part 1, then that different meaning applies in relation to those Shortfall reconciliations.

"Recipient" has the meaning set out in clause 22.1.

"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 or any other similar transaction.

"Sales Tax" any sales, use, excise, value-added tax or similar tax imposed on of the supply goods or services under Applicable Law.

"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 Handling Services, Storage Services and Case Picking Services as set out in Schedule 2, and any agreed Additional Services.

"Services Commencement Date" the date on which provision of the Storage Services and Handling Services in fact begins.

"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 Storage Services and Handling 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 3 of Part 1 of Schedule 1.

"Standard Services" the Storage Services and the Handling 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.

"Term" the term of this Agreement as set out in clause 4.

"Term Forecast" has the meaning set out in clause 6.1.

"Third Party Claim" has the meaning provided in clause 16.8.

"Transfer" has the meaning provided in clause 28.6.

"Transitional Period" the period from the Services Commencement Date until the later of: (i) the date 6 months from the Services Commencement Date; and (ii) the date specified as the end of the transitional period in the Transitional Plan.

"Transitional Plan" means the plan for the ramp-up of storage, handling and case picking volumes at the Warehouse to achieve the volumes specified in the Forecast, to be agreed between the parties as soon as practicable following the Commencement Date.

"Ultimate Services Commencement Date" the date immediately following the last day of the Transitional Period.

"Warehouse" the warehouse to be built in McDonough, Georgia to be operated by the Operator and initially owned by the Owner.

"Year" the period of twelve (12) months commencing on the first Monday in June in each year, or (i) where the period from the Ultimate Services Commencement Date to the day before the next Monday in June is shorter than twelve months, such shorter period and (ii) where the period from the first Monday in June to the end of the Term is shorter than twelve months, such shorter period.

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

2.1 Customer hereby appoints:

- (a) the Owner, and the Owner hereby accepts appointment, as Customer's exclusive supplier to provide, or procure the provision of, the Storage Services (as set forth in Schedule 2) and the Handling Services (as set forth in Schedule 2) to Customer at the Warehouse, and
- (b) the Operator, and the Operator hereby accepts appointment, as Customer's exclusive supplier of the Case Picking Services (as set forth in Schedule 2) and any agreed Additional Services at the Warehouse (these being together referred to as 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 The exclusivity referred to in clause 2.1 applies for the volumes of Pallet Handling Units specified in the Term Forecast (defined in clause 6.1) and any additional volumes specified in any further Forecast (defined in 6.2(b)), subject to clause 2.3.

2.3 The exclusivity referred to in clause 2.1 will not apply during the Transitional Period or the period from the occurrence of a Force Majeure Event or Disaster, in respect of Services which the Owner or the Operator is unable to provide due to such Force Majeure Event or Disaster, 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.

2.4 The parties acknowledge that the Owner's and Operator's performance of their respective obligations under this Agreement is conditional on the fulfilment (or written waiver by the Owner) of the following conditions precedent (each a **"Condition Precedent"**) by the date specified in sub-clause 2.6:

- (a) the Owner delivering to Customer 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 Customer that the requisite permit approving construction of the foundations of the Warehouse has been issued;
- (c) all licences, permits and consents required for the development of the Warehouse having been validly obtained by the Owner or the Operator; and
- (d) the Owner delivering to Customer a written notice that either (i) the Owner and financiers 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, 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.

2.5 The following clauses are effective from the Commencement Date: Clause 1 (Definitions), Clause 2 (Appointment of the Owner and Operator), Clause 3 (Service commencement), Clause 4 (Term), Clause 6.1 (Term Forecast), Clause 9.1(d) (Owner and Operator authorisation to enter into this Agreement), Clause 9.2(a) (Customer warranties), Clause 16 (Liability and

indemnity), Clause 17 (Insurance), Clause 19 (Disaster recovery and business continuity), clause 21 (Dispute resolution) Clause 26 (Set off and third party rights), Clause 28.7 (Language), Clause 30 (Notices), Clause 31 (Further Assurance), Clause 32 (Entire Agreement), Clause 34 (Announcements), Clause 35 (Variation), Clause 36 (Waiver), Clause 37 (Independence), Clause 38 (Governing law and jurisdiction), Clause 39.1 (Counterparts), Clause 40 (Participation of the parties) and Clause 41 (Legal fees and costs). The remaining clauses of this Agreement come into effect on satisfaction or waiver of the Conditions Precedent.

2.6 If any of the Conditions Precedent is not met or waived in writing by the Owner by six months after the Commencement Date, the parties shall use their reasonable endeavours to mitigate the effect of the delay and shall work together in good faith to find workable solutions which minimise the impact of the delay on both parties. Any proposed solution that entails an adjustment to the Charges shall be agreed between the parties in accordance with the Service Change Procedure (set forth in Schedule 4). If the parties are unable to agree workable solutions within a further period of 12 months, this Agreement shall terminate automatically (unless the parties agree in writing to keep it in force), each party shall be responsible for any costs, expenses and lawyer fees that it has incurred, and neither party shall have any liability to the other in respect of that termination.

2.7 For the avoidance of doubt, neither Customer nor the Owner/Operator shall be entitled to any monetary relief, nor to any automatic extension of the Term, as a result of any revision to the Intended Services Commencement Date pursuant to this clause 2.

3. **Services Commencement**

3.1 The Owner shall promptly provide Customer with advance written notice of any anticipated or actual delay to the construction of the Warehouse or the Intended Services Commencement Date.

3.2 The Owner, or the Operator on the Owner's behalf, shall be entitled to give Customer 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 Customer with weekly written reports as to whether each milestone is achieved by the relevant milestone date, to enable Customer to monitor the progress being made by the Owner. Unless approved by Customer in writing, such Revised Intended Services Commencement Date shall not be more than twelve (12) months later than the Intended Services Commencement Date. The Owner will use best efforts to achieve the Revised Intended Services Commencement Date. If the Owner does not achieve this date, the remedies available to Customer are solely as set out in clause 3.

3.3 Where the Owner (or the Operator on behalf of the Owner) serves notice under clause 3.2, it shall reimburse Customer (as a lump sum compensation payment) for the reasonable and unmitigable direct costs incurred by Customer in either (i) extending its Existing Lease to a date on or after the Revised Intended Services Commencement Date or (ii) where Customer has used best efforts (acting reasonably and in good faith) to extend the Existing Lease on reasonable terms but it has not proved commercially viable to do so, in entering into a similar lease of alternative warehousing space to accommodate the products that were intended to be stored under this Agreement ("Replacement Lease"), such compensation not to exceed the maximum liability set out below:

- (a) where notice is served on or before June 1st 2023, a maximum liability of \$2,000,000; or
- (b) where notice is served after June 1st 2023 but before September 1 2023, a maximum liability of \$3,100,000.

3.4 If clause 3.2 applies and the Owner, acting reasonably, anticipates that the Revised Intended Services Commencement Date will not be achieved, it shall promptly (and no later than September 1 2024) notify Customer in writing of a second Revised Services Commencement Date, such date to be no later than 12 months after the first Revised Services Commencement Date notified under clause 3.2.

3.5 Where the Owner (or the Operator on behalf of the Owner) serves notice under clause 3.4, it shall, without affecting its obligations and liability under clause 3.3, reimburse Customer (as a

lump sum compensation payment) for the additional reasonable and unmitigable direct costs incurred by Customer in further extending its Existing Lease (or, where applicable, the Replacement Lease referred to in clause 3.3) to a date on or after the second Revised Intended Services Commencement Date, such compensation not to exceed the maximum liability set out below:

- (a) where the notice of the first Revised Services Commencement Date was served under clause 3.2 before June 1 2023, a maximum liability of \$2,600,000; or
- (b) where the notice of the first Revised Services Commencement Date was served under clause 3.2 after June 1 2023 but before September 1 2023, a maximum liability of \$1,400,000.

The maximum aggregate liability of Owner and Operator where notice is served under both clause 3.2 and clause 3.4 is \$4,600,000. An illustration of the notification process, timings and liability caps is set out in Schedule 9.

3.6 Where clause 3.2, clause 3.3, clause 3.4 and/or clause 3.5 are applicable and subject to clause 3.8:

- (a) the Owner's Liability pursuant to this clause 3 shall not exceed the amounts stated in this clause 3 and the Owner shall not be responsible or liable for any 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, loss of anticipated savings or diminution in value, or for any consequential, indirect, incidental or special damages of any type or nature and however arising, whether or not the possibility of such damages has been disclosed in advance by Customer or could have been reasonably foreseen by Customer, and regardless of the failure of any agreed or other remedy of its essential purpose; and
- (b) Customer acknowledges that the Operator has no Liability for any costs or expenses incurred by Customer during the period of any delay to the Services Commencement Date and that Customer's sole recourse is against the Owner, in accordance with the terms of this clause 3.

3.7 Subject to clause 3.8 and without prejudice to the rest of this clause 3, 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 Customer, 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 out in this clause 3.

3.8 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 promptly notified the Customer in writing of the Force Majeure Event, the Long Stop Date shall be extended by such period as may be reasonable in all the circumstances (the "**Extension Period**"). Unless approved by Customer, the Extension Period shall not exceed twenty four (24) months after the original Long Stop Date.

3.9 The Owner shall, from the Commencement Date up until the date of completion of the Warehouse, keep Customer reasonably informed regarding the construction and completion of the Warehouse, including progress against the Conditions Precedent. The Owner shall provide Customer with written monthly progress reports and otherwise keep Customer reasonably informed of material delays and the steps the Owner is taking to address the same.

4. **Term**

4.1 This Agreement shall come into force on the Commencement Date and shall continue in force for a term of ten (10) years from the Ultimate Services Commencement Date (the "**Term**") unless terminated at an earlier date in accordance with its terms, or extended in accordance with clause 20.7.

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

5.1 The parties acknowledge that in providing their respective 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 Customer commencing on the Services Commencement Date in accordance with the Operating Specification and the terms of this Agreement. The Owner shall use best efforts to provide the Storage Services and Handling Services in accordance with the Standard KPI's except that during the Initial Period, the Initial KPI's shall apply. Clause 16.7(b), clause 18 and clause 23 set forth the remedies available to Customer if the KPI's are not met.
- 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. The Operator shall observe all health, safety and security rules and procedures applicable at the Warehouse or otherwise required under Applicable Laws or this Agreement and shall ensure that its Representatives engaged in the provision of the Services do the same.
- 5.4 The Owner shall throughout the Term accept delivery of Products which it has been notified by Customer in accordance with clause 6.2(b) (Forecasts) are to be stored at the Warehouse (plus a buffer of 10% of the Pallet Positions in the Forecast, in accordance with clause 6.4), provided that such Products are compatible with each other, comply with all Applicable Laws and the requirements and specifications set out in the Schedules, 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 Customer (in digital format as set out in the Operating Specification) on the number of Pallet Positions available and remaining for use by Customer.
- 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 Customer (such consent not to be unreasonably withheld, delayed or conditioned). Customer shall be entitled, as a condition of its consent, to require that the alternative site meets the key Customer requirements set out in the Operating Specification. Customer acknowledges that it is responsible for arranging storage for any volumes that are 10% or more above the Forecast.
- 5.6 For the avoidance of doubt, the Owner shall be entitled to store third parties' goods at the Warehouse.
- 5.7 Customer 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 and conditions, including any Dedicated Services Employee requirement (as referred to in clause 5.9), shall be notified by the Operator to Customer in writing and in advance of such Additional Services being performed, and Additional Services shall only be performed once the charges, conditions and specification of the Additional Services have been agreed between the parties on a case by case basis. Unless otherwise agreed in accordance with the Service Change Procedure, charges for Additional Services will be calculated on a cost plus 10% basis.
- 5.8 Customer acknowledges that the charges, conditions and specification of the Additional Services are based on assumptions and information which may not be correct, or may cease to be correct over time as circumstances change. If the actual costs incurred by the Owner or the Operator in providing any Additional Services differ from the charges agreed pursuant to clause 5.7, then the Owner or the Operator shall be entitled to give Customer not less than 20 Business Days' notice in writing of any proposed change in the charges for any Additional Services, and the parties shall seek to agree the change to the charges in accordance with the procedure set out in Schedule 1 (Charges), each acting in good faith.
- 5.9 When the Additional Services require a Dedicated Services Employee, Customer and the Operator shall identify these and the obligations in clause 10.3 shall apply. The Operator shall consult with Customer regarding any proposed requirement for a Dedicated Services Employee, taking into account Customer's reasonable views as part of its recruitment process, and shall ensure that each such employee is suitably qualified for his/her role.
- 5.10 Following consultation with Customer, the Owner shall where necessary and commercially feasible develop and implement a continuous improvement plan in relation to the Services (including any Additional Services), to ensure that, where necessary, the quality of the Services is improved. Where opportunities are identified for improvement, they will be processed in accordance with clause 8 (Service Change Procedure).

5.11 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 (including any Additional 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 Customer. These teams will meet periodically and will report to the steering committee established under clause 5.12. 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 (and any Additional Services), they will be processed in accordance with clause 8 (Service Change Procedure).

5.12 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 5.11. 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 Standard 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 Customer has provided to the Owner and the Operator the forecast set out in Schedule 3 for the period commencing on the Services Commencement Date and ending on the last day of the Term covering the Services required by Customer ("**Term Forecast**"). On the basis of the Term Forecast, the Warehouse size has been configured, in conjunction with discussions with other potential customers as to their requirements for the storage of their products at the Warehouse and Owner has reserved weekly Pallet Positions for Customer and made operational arrangements to service Customer's requirements.

6.2 Customer shall provide to the Owner and the Operator:

- (a) not less than six (6) months before the Intended Services Commencement Date, a written forecast of its storage volume requirements and case picking requirements, together with its expected weekly infeed and outfeed from the Warehouse, and its weekly drop yard activities for the period from the Intended Services Commencement Date up to and including the next first Monday in June (the "**Initial Forecast Year**"); and
- (b) at least ninety (90) days before the first Monday in June of the calendar year immediately following the Initial Forecast Year, and then at least ninety (90) days before the first Monday in each subsequent June, a forecast of its expected month-by-month storage volume requirements, together with its weekly infeed and outfeed from the Warehouse, and its weekly drop yard activities for the following 12 months (each a "**Forecast**"); and
- (c) rolling fixed 13 week forecasts, on a monthly ongoing basis from the Intended Services Commencement Date.

6.3 The Term Forecast, Initial Forecast and subsequent Forecasts will be used by the Owner to enable it to make operational plans to accommodate Customer's requirements and to calculate the Minimum Annual Revenue payable by the Customer in accordance with Schedule 1.

6.4 The Owner shall ensure that sufficient Pallet Positions are reserved at the Warehouse to meet the storage requirement for each month as set out in each annual Forecast, to the extent that the Forecast does not exceed the Maximum Storage Capacity. In each month, the Owner shall also reserve additional Pallet Positions equal to 10% of the Forecast for that month, provided that the Forecast plus the 10% buffer of additional pallet spaces does not exceed the Maximum Storage Capacity. The "**Maximum Storage Capacity**" for any given month is the amount stated in the Term Forecast for that month, plus 10% of the Term Forecast for that month. The parties may (each at their sole discretion) agree in writing a temporary reduction in the Term Forecast for a period of up to twelve months in any Year, in which event the Maximum Storage Capacity shall be reduced pro rata to the reduction in the Term Forecast, for such period as the Term Forecast is reduced in that Year.

6.5 The Operator shall reserve capacity in its order pick module to provide case picking services to meet the case picking requirement as set out in the Term Forecast. In each month, the Operator

shall also reserve capacity in its order pick module to provide case picking services for additional volumes equal to 10% of the Term Forecast.

- 6.6 The Owner shall have the right to refuse to accept delivery of any Products tendered by Customer that constitute an unacceptable hazard or that are reasonably likely to cause contamination or otherwise do not meet the requirements set out in this Agreement. The Owner is entitled to refuse to accept any Products which are classified as hazardous materials under any Applicable Law, save to the extent (if any) set out in the Operating Specification.
- 6.7 If at any time the Owner is requested by a third party customer to provide Storage Services and Handling Services for that customer's products at the Warehouse using capacity that is not required to be reserved for Customer in accordance with the terms of this Agreement, the Owner shall notify Customer 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.
- 6.8 Where Customer receives a written notification pursuant to clause 6.7, Customer shall have a right of first refusal with regard to the capacity specified in that notice (such capacity being in addition to the Maximum Storage Capacity and/or Maximum Case Picking Capacity already reserved for the Customer in accordance with this clause 6). This right of first refusal is exercisable by written confirmation by Customer to the Owner within ten (10) Business Days from Customer's receipt of the aforementioned written notice from the Owner, such that if Customer commits to match those volumes and levels of handling and case picking, and guarantees to pay the charges that would have been payable by other customers for the same (whether or not the additional reserved capacity is used by Customer), the Owner will reserve the relevant capacity at the Warehouse for use by Customer rather than for use by that customer for the duration of the proposed arrangement. The right of first refusal set forth in this clause 6.8 will not apply in any Year in which Forecast volumes exceed 76,563 pallets.
- 6.9 NewCold acknowledges the Customer's wish to incorporate greater flexibility into its distribution network (other than the Warehouse) during the Term. Once NewCold is providing ambient warehousing services to Customer at more than one warehouse on terms similar to the terms of this Agreement, the parties shall work together in good faith to agree how this network flexibility can be achieved on terms that are reasonable and commercially viable for both parties, taking into account key operational factors such as the minimum lead times that will apply and the space constraints at the warehouses.

7. Payment

- 7.1 In consideration of the provision by the Owner through the Operator of the Storage Services and Handling Services, Customer shall pay to the Owner the Charges for Storage Services and Handling Services set out in Schedule 1, Part 2, subject to any adjustment to which Customer 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 (Customer Settlement) or clause 18 (Service Credits) hereof. In consideration of the provision by the Operator of the Case Picking Services, Customer shall pay to the Operator the Charges for Case Picking Services set out in Schedule 1, Part 2. In consideration of the provision by the Operator of any Additional Services, Customer shall pay to the Operator the charges agreed in accordance with clause 5.7 for such Additional Services. The Charges and any Minimum Annual Revenue 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 Customer, 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 Customer 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 Customer, within five (5) Business Days of the end of each week, two invoices for the Charges incurred in the preceding week. The first 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 second invoice will be for Charges for any Pallet Reject Charge (as set out in the table in Part 2 of Schedule 1), together with details (in a form reasonably specified by Customer 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, Customer shall pay each invoice presented to it under this Agreement no later than the expiration of a forty five (45) day period from the date of the receipt of the invoice.
- 7.5 If there is a bona fide disagreement regarding any invoice, Customer shall notify the Owner and the Operator in writing within ten (10) Business Days of receipt of such invoice and Customer shall not be liable for and shall be under no obligation to pay the amount which is disputed until the resolution of the disagreement. The entity which issued the invoice will 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. Customer shall be entitled to dispute an invoice more than ten (10) Business Days after receipt of the invoice (but no later than 12 months after the date of the invoice), in which event Customer shall pay the invoice in full and any validly disputed amount shall be credited to Customer on a subsequent invoice.
- 7.6 The Charges shall be reviewed on the Services Commencement Date and thereafter on the first Monday in June following the Services Commencement Date, and each subsequent first Monday in June 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\$ 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 an interest rate equal to one percent (1%) per month or, if less, the maximum rate of commercial interest permitted under the laws of Delaware. Such interest shall accrue from day to day and shall be compounded monthly.
- 7.9 If the Owner and/or the Operator fails to make any payment to Customer within forty five days of when such sum is payable under this Agreement, other than any payment that is subject to a bona fide Dispute, Customer shall be entitled to set off such amount from any invoice(s) presented to Customer 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. Warranties

- 9.1 Each of the Owner and Operator warrants to Customer that:
 - (a) it has and shall have throughout the Term the necessary skill, experience and knowledge to perform its respective 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 its respective Services so as to ensure that they are in good working order and condition;
 - (c) from the Services Commencement Date and throughout the Term it shall perform its respective 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;
 - (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 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 Customer'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;
- (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,

provided that, except for the warranties set out 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 Customer warrants to the Owner and the Operator that:

- (a) this Agreement constitutes valid and binding obligations on Customer and that Customer 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 dry/ambient food products (or materials used to manufacture food products) that have been manufactured, packaged and labelled 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. For the purposes of this clause, Owner and Operator confirm that cooking oils and similar food products (where packaged and labelled in accordance with Applicable Laws) do not constitute an "unacceptable hazard";
- (c) all financial information supplied by or on behalf of Customer 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, and that these will be sufficient to enable the Owner and the Operator to comply with all Applicable Laws concerning the storage, handling and transportation of the Products and will be consistent with the operating parameters of the Warehouse and the Operating Specification, including protecting against cross-contamination.

9.3 Customer 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 Customer acknowledges and agrees that Owner designed and developed the Warehouse, and Owner and Operator priced the Services, amongst other things, based on the information

provided to them by Customer and included in the Schedules (the "**Customer Information**"). Customer represents and warrants that the Customer's Information is true, accurate and complete. Owner or Operator shall notify Customer of any obvious errors that are immediately apparent to either of them on receipt of the Customer Information.

- 9.5 Subject always to the duty to mitigate pursuant to clause 23.8, any additional reasonable costs and expenses incurred by the Owner or Operator as a result of the failure of Customer (or its contractor, supplier or agent) to comply with the Operating Specification or its other obligations under this Agreement shall be passed through to Customer and paid by Customer, 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 9.5 is to be construed as entitling the Owner or the Operator to increase the Charges. Prior to performance of any Additional Services, the Operator will secure the Customer's consent. Once the Operator secures the Customer's consent then the costs will be considered approved. Customer may elect to cancel the Additional Services, but shall then be liable for any costs that are incurred.

10. Operator's personnel

- 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 and related taxes, benefits or other amounts due to or in respect of the Operator's Representatives or any of its employees.
- 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*), Customer shall incur no liability in relation to claims for termination of employment or termination of contract 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 Customer or pursuant to clause 23.4 (non-payment) or 23.5 (material breach), or is modified in accordance with clause 8 (*Service Change Procedure*), Customer shall indemnify the Owner and Operator against all Losses which the Owner or Operator incurs in relation to any claims for termination of employment or termination of contract made by any Dedicated 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 Customer may be liable.
- 10.4 Subject to confidentiality obligations that the Owner or Operator may have under other agreements, Customer may audit any of the Owner's or Operator's records relating to the Services 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). Customer may conduct these audits itself and/or through a third party (such third party not to be a competitor of the Owner or the Operator). The Owner and the Operator shall each be entitled to require such third party to enter into an agreement with them imposing confidentiality obligations on the third party. Customer shall protect all Confidential Information it learns during the audit in accordance with its obligations of confidentiality under clause 22 and shall ensure that any Representative does the same. The Owner or the Operator shall reimburse to Customer 50% of the reasonable and evidenced costs of up to two audits per Year If the audit identifies an undisputed material breach of the Owner's or Operator's obligations under this Agreement, and the Owner or Operator has not remedied such breach within thirty (30) Business Days, Customer 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 Customer within five (5) Business Days of the breach being remedied. Customer will not audit more frequently than twice per year save to the extent that Customer is ensuring that previously identified breaches have been corrected.

11. Not Used

12. Customer 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 Customer, utilize any Customer IPR

or apply or display any Customer IPR at the Warehouse or on any plant, vehicles, premises or equipment. If such written consent is given by Customer, the Customer IPR in question shall only be used for the specific purpose set out by Customer in its written consent.

12.2 The Owner and the Operator each acknowledge that Customer IPR is owned by members of the Customer 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 Customer 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), without the prior written consent of Customer, in any way alter the packaging or labelling of Products or alter, remove or tamper with any trade mark on any Products or affix any other trade mark or logo on any Products or any labels on, or on the packaging of, any Products, save as agreed in writing with Customer.

13. **Delivery**

13.1 Subject always to clause 16.7, 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) be liable for the loss of or damage occurring to the Products due to its negligence 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 Customer 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 Customer 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 Owner's Custody**" as bailee when the delivery driver's documentation has been signed and returned to the driver. In the event of an alleged discrepancy in the volumes delivered, the driver shall be given the opportunity to inspect the Products delivered.

13.3 Products are deemed "**Delivered out of the Owner's Custody**" when the Pallet Handling Units, secured for transportation, are loaded on to the delivery vehicle or into a rail car at the Warehouse and the relevant paperwork accompanying such Pallet Handling Units 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 Pallet Handling Units are loaded into a drop trailer and parked in the Warehouse yard, the Products are deemed "**Delivered out of the Owner's Custody**" when the drop trailer is picked up and the relevant paperwork accompanying such Pallet Handling Units has been signed by the carrier. The Operator may supply any dunnage, bracings, packaging materials and fastenings where it deems it appropriate, at Customer's cost.

13.4 Regarding outbound deliveries, the Operator shall be responsible for making sure that prior to loading onto a delivery vehicle the Products are securely and safely bundled for distribution.

14. **Management of products and products losses**

14.1 The Operator in providing the Ancillary 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 Customer 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 Customer 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 Storage Services and Handling Services. If the Owner fails to do so Customer shall have the right (provided it is not in default under this Agreement) to enter the Warehouse on reasonable notice to require the Owner to make available (in accordance

with the Operating Specification) the Products to Customer at the relevant Charges applicable to the Standard Services. If the Owner fails to do so Customer shall have the right forthwith to enter the Warehouse and repossess the Products at the Owner's expense. The Owner will properly designate the Products at all times as belonging to Customer. The Owner will execute and deliver to Customer any document reasonably requested by Customer 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. In the event of any conflict between the terms of clauses 1 to 41 of this Agreement, the Schedules and the Operating Specification, clauses 1 to 41 shall take priority, followed by the Schedules (other than the Operating Specification), then the Operating Specification, then any other documentation referred to in any of the Schedules (to the extent intended to be contractually binding).
- 14.4 The Owner shall ensure that proper systems and controls are maintained in respect of the 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 or by EDI that such Products appear to have been so lost or damaged. Products which are not in a condition to be delivered to Customer'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/EDI notice from Customer requesting an investigation, the Owner shall investigate (as quickly as reasonably possible and in any event within 7 days) 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 Customer in writing regarding the reason for such loss or damage. If there are any differences between the Owner's records and Customer's records, the parties shall use commercially reasonable efforts to reconcile any differences between such records, failing which the Owner's records shall prevail.
- 14.7 Where the Owner receives a written/EDI notice from Customer pursuant to clause 14.5, the Owner shall have a period of 12 months from receipt of that notice to provide Customer with reasonable evidence to show that the actual loss or damage to which the notice relates has not occurred, or if it has occurred, to show that it was due to the fault or negligence of Customer or any of Customer's Representatives, suppliers (other than the Owner) or contractors or a Representative, supplier or contractor of any of them. If the Owner is not able to provide such evidence within that 12 month period, the Owner shall be liable for the loss or damage to which the notice relates in accordance with clause 0.
- 14.8 If Customer (acting reasonably) is of the opinion that the evidence provided by the Owner pursuant to clause 14.7 is not sufficient, Customer may object to such evidence. Any party hereto may thereafter activate the Dispute Resolution Procedure.

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 an 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 Customer), which shall be carried out in accordance with Part 1 of

- 14.9 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 Customer in writing of any such amendment(s). The Owner shall compensate Customer 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 inventory, where such loss or damage is not caused by the fault or negligence of Customer or any of Customer'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 Customer procedures, but is not authorised or required to open sealed collective packs of Products. The Owner is not liable for an incorrect number of Products in a collective unopened pack nor for any defects in the Products which cannot be identified immediately by sight upon receipt of unopened packs of Products. The Owner 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). The Owner shall send Customer as soon as reasonably practicable (and in any event within 24 hours) a written incident report in the form specified in the Operating Specification in relation to such disputed Products and Customer shall arrange for such Products to be collected promptly from the Warehouse at its own cost or instruct the Owner to perform any Additional Services (in accordance with clause 5.7) that the Customer requires in respect of those Products.
- 14.12 Customer shall indemnify the Owner and the Operator against all reasonable claims, losses, costs and liabilities arising in connection with any alleged defect in the Products save to the extent arising directly from any breach of this Agreement by the Owner or the Operator. The Owner and the Operator shall provide assistance in product recall activities where requested by Customer and agreed between the parties in accordance with the Service Change Procedure.
15. **Access to Premises and Records**
- 15.1 The Owner shall provide Customer 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 Customer may reasonably require, subject always to duties of confidentiality owed by the Owner to third parties. Owner will provide Customer with prompt access to the Warehouse where reasonably required in the event of an emergency.
- 15.2 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 (or such shorter period as is reasonable in the event of an emergency). Where Customer requests to observe operations during alternate shifts, the Owner and/or the Operator will use best efforts to accommodate this request. Where Customer 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 Customer's customers pursuant to any contract, the terms of which must be notified to the Owner at least five (5) Business Days prior to any corresponding audit visit; (b) such visits will take place during normal business hours; and (c) Customer 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 Customer will notify the Owner as soon as reasonably practicable prior to the visit. Customer 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 Customer to correct deficiencies identified by the audit, at the Owner's cost and expense, provided that

Customer 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.

- 15.3 Customer 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 Customer in writing.
- 15.4 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 seven (7) 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 Customer and its Representatives to the extent the same relate exclusively to the Services at any time during such period on reasonable written notice. Subject to confidentiality obligations that the Owner or Operator may have under other agreements, Customer may audit any of the Owner's or Operator's records relating to the Services 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). Customer may conduct these audits itself and/or through a third party (such third party not to be a competitor of the Owner or the Operator). The Owner and the Operator shall each be entitled to require such third party to enter into an agreement with them imposing confidentiality obligations on the third party. Customer shall protect all Confidential Information it learns during the audit in accordance with its obligations of confidentiality under clause 22 and shall ensure that any such third party or Representative does the same. NewCold shall reimburse to Customer 50% of the reasonable and evidenced costs of up to two audits per Year. If the audit identifies an undisputed material breach of the Owner's or Operator's obligations under this Agreement, and the Owner or Operator has not remedied such breach within thirty (30) Business Days, Customer 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 Customer within five (5) Business Days of the breach being remedied. Customer will not audit more frequently than twice per year save to the extent that Customer is ensuring that previously identified breaches have been corrected.
- 15.5 Nothing in this clause 15 shall give Customer or any Representative or third party access to any records of the Owner to the extent that they concern third party goods or products stored at the Warehouse, or any Confidential Information of the Owner, the Operator or any third party.

16. Liability and Indemnity

Unlimited liabilities

- 16.1 Nothing in this Agreement shall be deemed to limit or exclude the liability of a party (the "**Defaulting Party**") for:
- (a) death or personal injury caused by the Defaulting Party's negligence;
 - (b) fraud or fraudulent misrepresentation of the Defaulting Party;
 - (c) any liability which it is not permitted by Applicable Law to exclude or limit, or attempt to exclude;
 - (d) wilful misconduct; or
 - (e) any liability which is the subject of the third party indemnity under clause 16.9.

Liability for Product loss or damage

- 16.2 The Owner and the Operator shall be liable for loss of or damage to Product to the extent caused by the negligence of the Owner, the Operator or their respective Representatives, subject to clause 16.1, clause 16.3, clause 16.4 and clause 16.5.
- 16.3 **Neither the Owner or the Operator shall have any liability for:**
- (a) any damage or loss of Product under the figure for stock loss as set out in Schedule 5, Part 1 paragraph 5;

- (b) any loss of or damage to Products for which it would otherwise have been liable unless it is advised in writing of such loss or damage by Customer within 20 Business Days of the date on which Customer was, or ought reasonably to have been, aware of that loss or damage; or
- (c) any shortfall of Products contained within sealed containers, within a Pallet, within a Pallet Handling Unit or within other packaging, which Owner or Operator collected from Customer or which were delivered to Owner or Operator and which have remained in such packaging without being tampered with or replaced.

Indirect and unforeseeable losses

16.4 Subject to clause 16.5 and clause 16.9, 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; or
- (e) loss of actual or anticipated savings

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.

16.5 The exclusions of liability set out in clause 16.4:

- (a) are subject to clause 16.1 and clause 16.6;
- (b) do not apply to any sums or payments due pursuant to paragraph 2 (Minimum Annual Storage Revenue), paragraph 3 (Minimum Annual Handling Revenue), paragraph 4 (Minimum Annual Case Picking Revenue), paragraph 5 (Minimum Annual Drop Yard Revenue), and paragraph 6 (Shortfall reconciliations) of Part 6 of Schedule 1, clause 7.8 (Late Payments), clause 24.3 (Minimum Annual Revenue) or clause 16.9 (Third Party Claims).

16.6 If for any reason all or any part of clause 16.4 is or becomes invalid or unenforceable, (i) the maximum aggregate joint and several liability of the Owner and Operator for the indirect, consequential, incidental or special damages referred to and waived in clause 16.4 shall not exceed \$500,000 in the aggregate for the Term and (ii) Customer's liability for the indirect, consequential, incidental or special damages referred to and waived in clause 16.4 shall not exceed \$500,000 in the aggregate for the Term.

Aggregate caps

16.7 Except for Liabilities under clause 7.8 (in respect of interest on late payments), clause 16.1 and clause 16.4, the maximum aggregate joint and several Liability of the Owner and Operator (as a combined total) under this Agreement shall be limited as set out in sub-clauses (a) to (c) below, and, separately, the maximum aggregate Liability of Customer under this Agreement shall be limited as set out in sub-clause (d) below:

- (a) with respect to the Owner and the Operator, in the case of loss, destruction or damage to Products, to (i) \$0.70 per pound of such Products in respect of the first 588,000 cases (that is, 5,880 Pallets with an average of 100 cases per Pallet) and (ii) thereafter to \$0.50 per pound of such Products, up to a maximum of \$5 million (such amount to be increased annually by reference to the increase in the Index, if any) in aggregate 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 Standard KPIs, (i) the Service Credits calculated in accordance with Schedule 5, Part 3, plus (ii) the reasonable out-of-pocket direct costs incurred by Customer in re-shipping Product which was mis-shipped due to such failure to comply with the KPIs, up to

\$500,000 in aggregate per Year provided that Customer has used all commercially reasonable efforts to mitigate these costs;

- (c) with respect to the combined, aggregated Liability of the Owner and the Operator arising under this Agreement, but without respect to any Liability of the Owner or the Operator arising under clause **Error! Reference source not found.** (*delay damages*), clause 7.8 (*default interest*) or clause 16.7(a) (*Products*), the sum of \$1,500,000 in the aggregate per Year; and
 - (d) with respect to Customer, but without respect to any Liability of Customer arising under clause 6 (*Forecasts and Minimum Annual Revenue*), clause 7.8 (*default interest*), 24.3 (*Minimum Annual Revenue*), paragraph 2 (*Minimum Annual Storage Revenue*), paragraph 3 (*Minimum Annual Handling Revenue*), paragraph 4 (*Minimum Annual Case Picking Revenue*), paragraph 5 (*Minimum Annual Drop Yard Revenue*), and paragraph 6 (*Shortfall reconciliations*) of Part 6 of Schedule 1 or otherwise in respect of the Minimum Annual Revenue or the Charges for Services provided to Customer in accordance with the terms of this Agreement (each of which are expressly excluded from this limitation of liability), the sum of \$1,500,000 in the aggregate per Year.
- 16.8 No legal proceedings may be brought against the Owner, the Operator or any of their respective Representatives whether by a claim, counterclaim or otherwise unless issued within nine (9) months of the event giving rise to the claim.

Third Party Claims

- 16.9 Each party (as "**Indemnifying Party**") shall defend, indemnify and hold harmless the other party, together with all assigns, directors, officers, agents and employees of such party (collectively the "**Indemnified Party**") from and against any and all third party claims, demands, actions, causes of action, proceedings, judgments and other liabilities, obligations, losses, damages, costs and expenses (including reasonable attorneys' fees and costs) of any nature (collectively, the "**Claims**") to the extent they are due to or arise from: (i) the material breach of any representation, warranty or obligation contained in this Agreement by the Indemnifying Party; or (ii) the negligence of the Indemnifying Party in connection with its performance hereunder. The foregoing indemnification obligations shall not apply to the extent the Claims are due to or arise from the negligence or intentional misconduct of the Indemnified Party. In the event a Claim is related to a Customer branded product, Customer shall control the defense and settlement of such Claim even if Owner or Operator is responsible or indemnifying Customer, and Owner or Operator may participate at its expense. If Owner or Operator is responsible to indemnify Customer for such a Claim, Customer will not settle any such Claim without the prior written consent of Owner or Operator which shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Customer may settle such Claims without Owner or Operator's prior written consent if such settlement does not require Owner or Operator to pay any compensation or to act or refrain from acting in a specified manner.
- 16.10 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**"), the Indemnified Party will, if a claim is to be made against the Indemnifying Party pursuant to clause 16.9, 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 defence 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.
- 16.11 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 defence of such Third Party Claim with counsel reasonably satisfactory to the Indemnified Party. Regardless of which of these options is exercised, a party remains liable for Claims in respect of which it is the Indemnifying Party.

- 16.12 After written notice from the Indemnifying Party to the Indemnified Party of its election to assume the defence of such Third Party Claim, the Indemnifying Party will not, as long as it diligently conducts such defence, be liable to the Indemnified Party under this clause 16 for any fees of other counsel or any other expenses with respect to the defence of such Third Party Claim, in each case subsequently incurred by the Indemnified Party in connection with the defence of such Third Party Claim, other than reasonable costs of investigation incurred prior the Indemnifying Party's assumption of the defence of such Third Party Claim.
- 16.13 If the Indemnifying Party assumes the defence 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.
- 16.14 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 defence 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).
- 16.15 No party shall be entitled to recover (by way of indemnity or otherwise) the same loss or damage more than once under this Agreement.
- 16.16 Customer 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 Customer 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;
 - (b) workers' compensation insurance in compliance with Applicable Laws;
 - (c) commercial general liability insurance with bodily injury and property damage and fire legal liability limits of not less than \$5,000,000 per occurrence and \$10,000,000 per Year and name Customer as additional insured solely in as far as relates to the Owner's and the Operator's liability to Customer under this Agreement;
 - (d) auto liability insurance with limits of not less than \$1,000,000 per occurrence;

- (e) warehousemen's legal liability insurance covering loss of product due to Owner's negligence with policy limits of not less than \$30,000,000 per occurrence; and
 - (f) employee theft and fidelity insurance covering employees, agents and contractors of Provider with limits of not less than One Million Dollars (\$1,000,000).
- 17.2 Customer, at its sole cost and expense except as set forth in clause 17.3, 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) all-risk property insurance covering the value of the Products stored within the Warehouse and the facilities at which the Products are manufactured;
 - (b) any Customer employee working at the Warehouse, employer's liability of not less than US\$1,000,000;
 - (c) any Customer employee working at the Warehouse, workers' compensation insurance in compliance with Applicable Laws; and
 - (d) commercial business automobile coverage with a limit of not less than \$1,000,000 per accident.
- 17.3 The Customer acknowledges that the Owner intends to install an oxygen reduction fire suppression system at the Warehouse. The Parties acknowledge that this is likely to substantially increase the premium for the Customer's insurance for the Products stored at the Warehouse. If that is the case, Customer may elect to take out a stand-alone all perils property loss coverage for Products stored at the Warehouse (the "**Stand-alone Policy**"). Where the Customer takes out a Stand-alone Policy, the cost of the premium will be split between the Customer and the Owner as set out in clause 17.5 provided that the Customer complies with its obligations under clause 17.4.
- 17.4 Each Year, the Customer shall:
 - (a) ensure that the deductible, product valuation and relevant terms and conditions of the Stand-alone Policy are equivalent to those of its general all-risk property insurance; the coverage within the Stand-alone Policy shall be consistent with the coverage provided by the Customer's master all-risk policy as it relates specifically to the Product stored at the Warehouse;
 - (b) provide to the Owner a certificate of insurance in a form satisfactory to the Owner (acting reasonably) showing that the Customer has taken out the Stand-alone Policy for which it is claiming a contribution to the premium, and the period during which the Stand-alone Policy applies;
 - (c) permit the Owner, its insurance broker and its other Representatives to audit the premium for the Stand-alone Policy and the premium for the master all-risk property insurance taken out by the Customer for its products. The Customer shall provide the deductible, all loss information in respect of the Products, the Product description, the inventory valuation clause and the blended total rate per \$100 of value for both the Stand-alone Policy and the master all-risk property policy in addition to the valuation used for the Stand-alone Policy. It is the parties' intention that this information will be sufficient to enable Owner and its insurance broker to verify the premium difference and that the proposed premium is reasonable. If Owner's insurance broker (acting reasonably) requires additional information to be provided, Customer shall promptly provide that additional information to Owner and its insurance broker. Owner shall ensure that its insurance broker is bound by terms of confidentiality equivalent to those set out in clause 22 in respect of the confidential information provided by the Customer. At the quarterly meetings as referred to in Schedule 3, section 11, the parties will discuss and review the outcome of the Owner's audit, the information shared pursuant to this sub-clause and any factors which may affect the insurance coverage or future premiums.
- 17.5 Where the premium for the Stand-alone Policy (as determined in accordance with clause 17.4) exceeds the premium for the Customer's general all perils product insurance policy and the difference in the premiums has been verified in accordance with clause 17.4 (the "**Net**

Difference"), the Net Difference shall be split between the Customer and the Owner as set forth below:

- (a) the first \$120,000 shall be borne by the Owner; and then
 - (b) if the total Net Difference exceeds \$120,000, Customer shall bear the proportion of the Net Difference between \$120,000 and \$250,000; and then
 - (c) if the Net Difference exceeds \$250,000, the proportion of the Net Difference between \$250,000 and \$350,000 will be split between the Customer and the Owner in equal shares, so that the Owner's maximum contribution to the Net Difference would be \$170,000, where the total Net Difference is \$350,000 or more.
- 17.6 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.
- 17.7 Each party shall, on receipt of a reasonable written request from another party hereto, provide a certificate of insurance verifying the existence of policies required to be maintained by it pursuant to this clause 17.
- 17.8 If at any time any insurance referred to in this clause 17 is not available at commercially reasonable rates, or is not available at all, then that party shall not be in breach of its obligations under this Agreement to the extent that it is unable to take out that insurance, and the parties shall discuss in good faith alternative solutions to manage the risks contemplated by this clause, and shall implement any changes to this Agreement that they agree pursuant to the Service Change Procedure. Notwithstanding the above, nothing in this clause shall affect the limitations of liability or indemnities set out in clause 16.
18. **Service Credits**
- 18.1 The Owner and the Operator each warrant to Customer 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 Standard KPIs.
- 18.2 A Standard KPI is not achieved if the Services do not meet or exceed the percentage for each Standard KPI, except to the extent that the failure to meet the Standard KPI was not attributable to fault on the part of the Owner or the Operator or was caused by or contributed to by:
- (a) an act or omission of Customer 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 any instruction of Customer or its Representative, or
 - (c) a Force Majeure Event.
- 18.3 If a Standard 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 Standard 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 Standard KPI is achieved in the next 30 days; 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 Standard KPIs shall give rise to Service Credits in accordance with Schedule 5, Part 3. The Service Credits are Customer's sole remedy for any failure by the Owner or the Operator to meet the Standard KPIs. Notwithstanding the aforesaid, the Service Credits shall not prejudice any claim by Customer in respect of loss of or damage to Products suffered by Customer 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 actual Losses that may be suffered by Customer as a result of the Owner's or the Operator's failure to meet the Standard KPIs are difficult to ascertain, calculate and foresee. As a result of that difficulty, the parties agree that if the Owner or the Operator fails

to meet the Standard KPIs, the Service Credits referred to in clause 18.4 shall be payable to the Customer. Such payment is not a penalty but is for liquidated damages sustained, it being mutually agreed that the Service Credits are reasonable as liquidated damages.

19. Disaster Recovery and Business Continuity

19.1 The Owner and the Operator shall, within 30 days of the Services Commencement Date, put 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**"). The Disaster Recovery Plan shall be such as to meet any reasonable requirement set by Customer and shall be designed 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 circumstance (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 Customer) in accordance with this Agreement (a "**Disaster**"), it shall (save where the event is a Force Majeure Event to which the notice provisions of clause 20 apply instead) notify Customer in writing as soon as reasonably practicable of the event or circumstance, the expected effect on the Warehouse and/or the Services and Additional Services (if any) and the expected duration of such effect.

19.3 If Customer receives a written notice in accordance with clause 19.2 and the Owner or the Operator cannot implement the Disaster Recovery Plan, Customer may appoint an alternative supplier to provide services in place of the affected Services and Additional Services; provided that any such alternative services provided by a third party under this clause will be terminated upon delivery by the Owner or the Operator to Customer of written notice of its intent to resume the Services and Additional Services (if any), such termination to take effect on the date notified by the Owner or Operator as being the date on which it will resume provision of the Services and any Additional Services. The Owner shall, or shall ensure that the Operator shall, if Customer requests, reasonably assist Customer 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 Customer in obtaining these services from a new supplier shall be borne by the Owner, subject to clause 23.8;
- (b) a breach by Customer of the terms of this Agreement or any negligence on the part of Customer or any of its Representatives, any reasonable and necessary increased rates for transport, storage and handling incurred by Customer in obtaining these services from a new supplier shall be borne by Customer, 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 Customer in procuring an alternative third party supplier, subject to clause 23.8,

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 forty five (45) days of the receipt of that invoice.

19.6 At the request of Customer, the Owner and the Operator shall also reasonably co-operate in good faith and provide all assistance and information reasonably required by Customer 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 Owner and the Operator shall develop a business continuity plan in accordance with the provisions of Schedule 8.

20. **Force Majeure**

20.1 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 to the extent that such delay, hindrance or failure is attributable to a Force Majeure Event. This clause 20.1 does not affect Customer's liability to pay Minimum Annual Revenues as set forth in clause 20.10, where Customer is the Affected Party.

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, to the extent practically possible.

20.4 The Owner or Operator, as the case may be, shall within a reasonable period of notifying Customer of a Force Majeure Event in accordance with clause 20.2, put forward reasonable proposals to Customer 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), Customer 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 Customer, be obliged to implement such proposal at its own cost (subject to payment of the Charges in accordance with clause 20.5 and payment of any charges due for Additional Services) as soon as reasonably practicable following its selection by Customer and approval (such approval not to be unreasonably withheld) by the Owner and the Operator.

20.5 During the continuation of the Force Majeure Event, Charges shall remain payable for Services which the Owner and the Operator continue to provide (or the provision of which it procures from a third party in accordance with the terms of this Agreement) but shall not be payable for Services (or any Additional Services) to the extent that, due to the Force Majeure Event, they are not provided or procured. The Minimum Annual Revenues payable by Customer in respect of the period during which the Services are affected by the Force Majeure Event where the Owner or the Operator are the Affected Party are to be reduced pro rata to the proportion of the Services that the Owner and the Operator are unable to provide (or procure the provision of by a third party).

20.6 As soon as reasonably practicable and in any event within five (5) Business Days after the cessation of the Force Majeure Event, the Affected Party shall notify the Non Affected Party in writing of the cessation of the Force Majeure Event. Each party shall resume performance of its suspended obligations under this Agreement as soon as possible and in no event later than ten (10) Business Days after the cessation of the Force Majeure Event, except as set out in clause 20.7.

20.7 This sub-clause 20.7 applies where either the Owner or the Operator is the Affected Party and the solution selected by the parties under clause 20.4 prevents the Customer from resuming use of the Services in respect of volumes at least equivalent to those specified in the Minimum Annual Revenue provisions set out in Part 6 of Schedule 1 within the ten (10) day period specified in clause 20.6, due to volume commitments that the Customer was required to enter into with the third party provider of alternative warehousing services, despite Customer using best efforts to avoid such commitments. In that situation, the Minimum Annual Revenue payable by the Customer shall be reduced pro rata to the proportion of the Services used by the Customer, until such time as the Customer is able to resume using the Services for the volumes specified in the Minimum Annual Revenue provisions set out in Part 6 of Schedule 1, provided that such pro rata reduction shall not apply for more than a maximum period of 12 months.

- 20.8 The Term of this Agreement shall be automatically extended by a period equivalent to the period of time during which the Customer is not making the full Minimum Annual Revenue payments, provided that:
- (a) the Term shall not be extended if the Force Majeure Event occurs during the final 12 months of the Term and the Owner and Operator are unable to resume provision of the Services to Customer at least 6 months before the scheduled end of the Term; and
 - (b) where the Services are only partially affected by the Force Majeure Event, the Term shall automatically extend only for such period as is necessary for the Owner and Operator to recoup the revenue lost due to the Force Majeure Event.
- 20.9 The parties shall work together at all times using best efforts to mitigate the effects of the Force Majeure Event and its impact on each party's ability to perform its obligations under this Agreement.
- 20.10 In no event shall a Force Majeure Event where Customer is the Affected Party relieve Customer of its obligations to make payments in accordance with this Agreement, including without limitation Customer's obligation to make the Minimum Annual Revenue payments even if Customer is unable to supply Products to the Warehouse due to a Force Majeure Event.
- 20.11 Nothing in this clause 20 overrides the rights of the parties to request changes pursuant to the Service Change Procedure if a Force Majeure Event occurs.

21. **Dispute resolution**

- 21.1 Any Dispute under this Agreement shall be treated in accordance with the provisions of this clause 21.
- 21.2 Customer, the Owner and the Operator undertake that upon a Dispute arising a senior representative of each of Customer, 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.
- 21.3 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.
- 21.4 If the Dispute has not been resolved as a result of negotiations referred to in clause 21.2 then any party hereto may pursue formal resolution of that Dispute pursuant to clause 38.
- 21.5 Nothing in this clause 21 shall prevent any party from seeking injunctive or other emergency relief against the other at any time.

22. **Confidentiality**

- 22.1 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**").
- 22.2 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 22.3 and 22.4. Nothing in this clause 22 shall grant a Recipient any right or licence over any Confidential Information of the Discloser.
- 22.3 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 employees, shareholders (direct and indirect) and their respective employees, auditors, consultants, advisors, bankers, direct and indirect investors, 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.

22.4 Clauses 22.2 and 22.3 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.

22.5 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.

23. Termination

23.1 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.

23.2 Subject to Clause 23.4 and Clause 23.5, if:

- (a) on or after the Services Commencement Date, the Owner or the Operator commits a material breach of this Agreement that due to fault solely on their part which 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 Customer specifying the breach, then Customer 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; or
- (b) on or after the end of the Initial Period, the OLCOT Figure (as calculated in accordance with Schedule 5) is continuously below 95% per week for longer than ten (10) consecutive weeks or thirteen (13) weeks accumulated in any twelve (12) month period due any breach of this Agreement by the Owner or the Operator, then Customer 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 95%.

23.3 If:

- (a) the Owner or the 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, Customer shall be entitled to terminate this Agreement on not less than ninety (90) days' prior written notice to the Owner or Operator (as the case may be) provided that the Customer delivers such termination notice within 120 days of the date on which such right arose; or

- (b) the Owner or Operator fails, within the time period, as such period may be extended, set out in clause **Error! Reference source not found.**, to remedy the relevant breach or (as the case may be) demonstrate that it is able to achieve an OLCOT Figure of at least 95%, except where not due to any negligence or breach of this Agreement by the Owner or Operator (as the case may be), Customer shall be entitled to terminate the Agreement on not less than 90 days' prior written notice provided that the Customer delivers such termination notice within 120 days of the date on which such right arose.
- 23.4 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 Customer written notice of a failure by Customer to pay undisputed sums due to either of them by Customer under this Agreement and Customer fails to cure such payment default within ten (10) days after written demand, provided that no such grace period will apply if Customer 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 ten (10) day grace period).
- 23.5 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 Customer if Customer 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 Customer 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 applies to a breach by Customer of any of its payment obligations which are provided for in clause 7.
- 23.6 If Customer terminates this Agreement pursuant to this clause 23, the Owner and Operator each acknowledge that Customer 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 out in this Agreement.
- 23.7 The Customer will not be in breach under this Agreement (including but not limited to any breach giving rise to termination rights under this clause 23) if the Customer's failure to perform its obligations arises as a result of any breach by the Owner or the Operator (or their Representatives, sub-suppliers or sub-contractors) of any of the Owner's or the Operator's obligations under this Agreement. The Owner and Operator party will not be in breach under this Agreement (including but not limited to any breach giving rise to termination rights under this clause 23 if the Owner's or the Operator's failure to perform its obligations arises as a result of any breach by the Customer (or the Customer's Representatives, sub-suppliers or sub-contractors) of any of the Customer's obligations under this Agreement.
- 23.8 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.
24. **Consequences of termination**
- 24.1 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; and
- (b) the following provisions will continue in force: Clause 1 (*Interpretation*), Clause 3.7 (*Termination on Long Stop Date*), Clauses 10.2 and 10.3 (*Post termination indemnities*), Clause 12 (*Customer IPR*), Clause 16 (*Liability and Indemnity*), Clause 18.4 (*Service Credits*), Clause 20 (*Force Majeure*), Clause 21 (*Dispute Resolution*), Clause 22 (*Confidentiality*), Clause 23.5, Clause 23.6 and Clause 23.8 (*post-termination*), Clause 24 (*Consequences of termination*), Clause 25 (*Invalidity*), Clause 26 (*Set-Off and Third*

Party Rights), Clause 29 (*Language*), Clause 30 (*Notices*), Clause 31 (*Further Assurances*), Clause 32 (*Anti-Reliance*) Clause below (*Entire Agreement*), Clause 34 (*Announcements*), Clause 36 (*Waiver*), Clause 38 (*Governing Law and Jurisdiction*) and Clause 39, together with any other provisions which expressly or impliedly continue to have effect after expiration or termination of this Agreement.

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

- (a) each party shall return to the other, as soon as reasonably practicable, all physical and electronic copies of Confidential Information of the other, except to the extent the other party requests in writing that such physical or electronic copies be destroyed and/or deleted; and
- (b) at the reasonable request and at the cost of Customer (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 Customer following the termination of this Agreement.

24.3 Subject to clause 23.8, on termination of this Agreement by the Owner or the Operator in accordance with clause 23.1 or clause 23.5 and during any period of suspension pursuant to clause 23.4 during the Term, Customer shall, for the period from the date of termination until the last day of the 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 or performance had not been suspended. 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 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. Where the Customer terminates this Agreement in accordance with clause 23.1 or clause 23.3, Customer shall have no liability to pay any Minimum Annual Revenue accruing after the date of termination of this Agreement. The parties acknowledge that the actual Losses that may be suffered by Owner as a result of the events or circumstances justifying termination of this Agreement by Owner or Operator in accordance with clause 23.1 or clause 23.5 and during any period of suspension pursuant to clause 23.4 are difficult to ascertain, calculate, and foresee (for example, because actual Product volumes may increase over the Term but that increase cannot be quantified by the parties as at the Commencement Date). The parties agree that, because of this difficulty, if the Owner or the Operator terminate this Agreement in accordance with clause 23.1 or clause 23.5 and during any period of suspension pursuant to clause 23.4, Customer will pay the Minimum Annual Revenue to Owner. Such payment is not a penalty but is liquidated damages for Losses sustained by Owner, it being mutually agreed that this sum is reasonable and proportionate as liquidated damages, being an estimate of the minimum loss that Owner would suffer in those circumstances.

24.4 Without prejudice to clause 24.3, on termination of this Agreement pursuant to clause 23.1 or clause 23.5, the Owner and the Operator may refuse to deliver the Products to Customer until they have been paid in full for all charges then due to them, regardless of the payment terms otherwise applicable to such charges.

25. **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).

26. **Set-off and third party rights**

26.1 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.

26.2 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.

27. **Future financing/assignment of rights**

27.1 Subject to clause 27.2, 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 and/or investors (each a "**Lender**") using this Agreement, the Warehouse or other assets related to them (all such assets being collectively referred to as the "**Assets**") as collateral for any such Financing.

27.2 Customer 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 Customer. This may include, among other things:

- (a) making amendments to this Agreement if requested by a Lender that are reasonably acceptable to Customer; and
- (b) entering into a multi-party agreement with the Operator and/or the Owner and any Lender under which Customer agrees (i) not to terminate this Agreement as a result of an Insolvency Event in relation to the Operator and/or the Owner or any breach by the Operator and/or the Owner of this Agreement without first giving the Lender at least forty five (45) days to remedy the breach or assume the Operator's and/or the Owner's rights and obligations under this Agreement and (ii) to issue the Lender at the same time as the Owner and the Operator copies of any notices served on the Owner and/or the Operator under this Agreement,

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

27.3 At any time, and from time to time, upon reasonable written request by the Owner, Customer shall cooperate with the Owner and the Operator to provide (i) a certificate in favour 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 Customer as the Owner or the Operator may reasonably request for disclosure to its lenders and financiers and for its own internal review processes.

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

28.1 Save as otherwise permitted by this Clause 28 neither party shall assign or otherwise dispose of any of its rights or obligations under this Agreement.

28.2 Each of the Owner and the Operator may assign its rights, or transfer its respective rights and obligations, under this Agreement or sub-contract performance of the Services and Additional Services (if any) to any of its Affiliates, provided that:

- (a) where the Owner or the Operator assigns or transfers any of its rights and obligations to an Affiliate, the Owner or the Operator (as applicable) shall notify Customer in writing in advance of such assignment or transfer; and
- (b) where the Owner or the Operator sub-contracts any of its rights and obligations to an Affiliate, the Owner or the Operator (as applicable) shall remain liable for the acts and omissions of the sub-contracted Affiliate as fully as if they were the acts and omissions of the Owner or the Operator unless Customer consents otherwise (such consent shall not be unreasonably withheld, delayed or conditioned).

28.3 For the avoidance of doubt, where any of the Owner's or the Operator's rights and obligations are assigned, transferred, or sub-contracted to an Affiliate, such Affiliate shall have the same rights as the Owner and the Operator to assign or sub-contract the Agreement as permitted by Clause 28.2.

28.4 The Owner and the Operator may each:

- (a) assign its rights under this Agreement (in whole or in part) to any third party which is not an Affiliate, provided that the Owner or the Operator (as applicable) notifies Customer in writing in advance of such assignment; and

- (b) transfer or sub-contract this Agreement (in whole or in part) to any third party, which is not an Affiliate, provided that the Owner or the Operator (as applicable) obtains the prior written consent of Customer (such consent not to be unreasonably withheld, conditioned or delayed and, in any event, such consent shall be deemed to have been given in full if no written objection is received by the Owner or the Operator within 28 days of its initial notice to Customer of its intention to assign or sub-contract, provided that the Owner or Operator have issued at least one further written notice requesting consent within that 28 day period).
- 28.5 Customer may assign its rights under this Agreement to a company in the Customer Group by giving written notice to the Owner and the Operator provided that:
 - (a) such assignment shall not relieve Customer of its obligations under this Agreement and Customer shall remain liable for the acts and omissions of the Customer Group member as fully as if they were the acts and omissions of Customer; and
 - (b) if the assignee ceases to be a company in the Customer Group it shall immediately assign its rights under this Agreement back to Customer or to another company within the Customer Group.
- 28.6 The Owner shall be entitled to sell, lease or transfer (directly or indirectly) all or material portion of the Warehouse (in each case, a "**Transfer**"), provided that the transferee has financial standing adequate to fulfil the obligations of the Owner and is capable of meeting the Owner's obligations 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.
- 28.7 The Customer may, as part of a divestment of some or all of its brands or sale or all or part of its business, transfer its rights and obligations under this Agreement (in whole or in part) to a third party which meets each of the criteria set out below (the "**Transfer Conditions**", and such transfer being a "**Customer Transfer**"), provided the Customer gives written notice thereof to Owner and Operator setting out sufficient details of the transaction to allow Owner and Operator to establish that each of the Transfer Conditions have been satisfied:
 - (a) the proposed transferee is of no lesser financial standing than the Customer as of the Commencement Date and has D&B Credit Scores that are no less than those of the Customer as of the Commencement Date, with a record of paying its suppliers on time and paying its other debts as they fall due;
 - (b) the proposed transferee is not a competitor (a competitor for this purpose being a party that provides public cold store warehousing services) of the Owner, the Operator or any of their Affiliates; and
 - (c) providing the Services to the proposed transferee would not, in the reasonable judgement of Owner and Operator, be likely to cause material reputational damage to either the Owner or the Operator.
- 28.8 The Customer shall promptly reimburse the reasonable, evidenced legal fees incurred by the Owner and Operator in connection with the Customer Transfer and any other reasonable, evidenced management and consultancy costs in connection with the Customer Transfer, up to a maximum of \$100,000.
- 28.9 Where the Customer sells part but not all of its business or brands and as a consequence the Customer Transfer relates to some but not all of this Agreement, the parties shall reduce the Minimum Annual Revenue (as calculated by reference to the Term Forecast and the Forecast for the previous Year) by an amount equal to the minimum annual revenue that transferee agrees in writing to be obligated to under the Customer Transfer.
- 28.10 The parties shall agree pursuant to the Service Change Procedure (i) the changes to be made to the terms of this Agreement to take account of the Customer Transfer and (ii) the allocation of any IT, implementation and transition costs to be incurred by Owner or Operator in connection with the Customer Transfer. Each party shall act in good faith and use reasonable efforts to mitigate the impact of the changes that are required.

29. **Language**

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

30. **Notices**

30.1 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 express courier to the address and representative referred to under the signature block below (with a copy being sent by Customer to the Operator, in the case of notices to the Owner; and with a copy being sent by Customer to the Owner, in the case of notices to the Operator).

30.2 Any party hereto may change such address and/or representative by giving the other notice in accordance with this clause 30.

30.3 Any notice given in accordance with clause 30.1 will be effective in each case only upon receipt.

31. **Further assurance**

Each party shall at its own expense (or, where a clause of this Agreement specifically states that the expense is to be borne by another party to this Agreement, then at the expense of that party) 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.

32. **Anti-Reliance**

32.1 Each party acknowledges that it has conducted to its satisfaction an independent investigation of the ability of the other parties to perform such parties' obligations under this Agreement. In making its determination to proceed with this Agreement, each party has relied on (a) the results of its own independent investigation and (b) the representations and warranties of the other parties expressly and specifically set forth in this Agreement, including the Schedules. **Such representations and warranties by the parties constitute the sole and exclusive representations and warranties of the parties to each other in connection with the subject matter of this Agreement. Each party understands, acknowledges, and agrees that all of the other parties' other representations and warranties of any kind or nature, express or implied, are specifically disclaimed by the other parties.**

33. **Entire Agreement**

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 (including, without limitation, the Letter of Intent, solely to the extent that it relates to the Warehouse).

34. **Announcements**

34.1 No press release or other public announcement or communication concerning this Agreement or any part of it or the parties' relationship shall be made by 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. **Independent contractor**

The Owner and Operator each is an independent contractor engaged by Customer 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 laws of Delaware, without giving effect to any choice or conflict of law provision or rule.

38.2 Any claims, controversies, disputes, or actions must be brought in federal court in Wilmington, New Castle, Delaware; provided that, if the federal court lacks jurisdiction, then such claims, controversies, disputes, or actions must be brought in state court in Wilmington, New Castle, Delaware. The parties consent to personal jurisdiction in Delaware for purposes of this Agreement only.

39. **Waiver of a Jury Trial**

39.1 Each party (for itself and its successors and assigns) irrevocably waives all rights it may have to demand a trial by jury of cause of action, proceeding, claim or counterclaim based upon, arising out of or in any way related to this Agreement, the transaction provided for herein, the relationship of the parties 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. This waiver extends to all rights to demand a trial by jury arising from any source, including but not limited to the Constitution of the United States, the Constitution of any state, common law, or any applicable statute or regulation. Each party hereby acknowledges that it is knowingly and voluntarily waiving the right to demand trial by jury. 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. If any provision of this Agreement requires judicial or other interpretation, it is agreed that the court interpreting or construing it shall not apply a presumption that the terms of this Agreement are to be more strictly construed against one party by reason of the rule of construction that a document is to be more strictly construed against a party who by itself or through its agents prepared the document, it being agreed that all parties to this Agreement participated in the preparation of this Agreement.

41. **Legal 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 legal 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.

Customer:

Signed by Deirdre Elter)

)

DocuSigned by:
Deirdre Elter
96DA6BC7913B422...

Address of Customer for notices:

Conagra Brands Inc

Attn: Legal Department

222 W. Merchandise Mart Plaza, Suite 1300

Chicago, IL 60654

Email: Legal.Notices@Conagra.com

With a copy to:

Conagra Brands, Inc.

Attn: Warehousing

9 Conagra Dr.

Omaha, NE 68102

Owner:

Signed by Jonas Swarttouw)

)

DocuSigned by:
Jonas Swarttouw
742D130BF00F402...

Signed by Trae Richardson)

)

DocuSigned by:
Trae Richardson
D6591FC972F4404...

for and on behalf of
NewCold Atlanta, LLC

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

and:

500 W. Madison St

Ste 3105

Chicago

IL 60661

Attention: Jonas Swarttouw

Operator

Signed by Jonas Swarttouw

)
)
)

DocuSigned by:
Jonas Swarttouw
742D130BF60F402...

Signed by Trae Richardson
for and on behalf of
NewCold Atlanta Operations, LLC

)
)
)

DocuSigned by:
Trae Richardson
D0591FC972F4464...

Address of Operator for notices:

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

With copies to:

Gravinnen Van Naussau Blvd 105
5811 BN
Breda
The Netherlands
Attention: Group Legal

and:

500 W. Madison St
Ste 3105
Chicago
IL 60661
Attention: Jonas Swarttouw

Schedule 1

Part 1

(Standard Services Charges)

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:

1. Upon receipt of a Pallet at the Warehouse, for every Pallet Handling Unit an initial storage charge shall be invoiced as set out in the table below (Part 2 – Charges Table) (the "**Storage Charge**").
2. For every Pallet Handling Unit, an inbound charge shall be invoiced as set out in the table below (Part 2 – Charges Table) (the "**Inbound Charge**").
3. The Operator shall be entitled to charge a Pallet Reject Charge for each Pallet Reject as set out in the table below (Part 2 – Charges Table) (a "**Pallet Reject**" being defined as a Pallet 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:
 - (a) the Operator shall not be entitled to charge for any Pallet Rejects within a tolerance of 2% of all processed Pallets in the relevant day;
 - (b) within the first six months of operation no Pallet Reject Charges will occur; and
 - (c) the Pallet Reject Charge excludes the charges for any Additional Services to be provided to bring the Products back to the Standard Product Characteristics.
4. To calculate the Storage Charges to be invoiced, a stock snapshot is taken every week at 01:00 am each Monday. Subsequently all Customer's Pallet Positions occupied in the Warehouse by Customer products are multiplied by the applicable Storage Charge.
5. Upon dispatch, an outbound Charge shall be invoiced for every Pallet Handling Unit (as set out in the table below (Part 2 – Charges Table) (the "**Outbound Charge**").
6. A case picking Charge 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 Pallet labels as reasonably required.
7. Charges shall be reviewed as described in Part 3 of this Schedule 1.
8. Charges are rounded to 3 decimals.
9. Charges exclude any applicable Sales Tax.

Part 2

(Charge table)

The Charges in the table below are applicable at the Intended Services Commencement Date

Service	Activity	Charge (in USD \$)	Unit
Warehousing Services	Inbound Charge (by truck)	7.534	p/Pallet Handling Unit *)
	Inbound Charge (by rail)	14.513	p/Pallet Handling Unit *)
	Outbound Charge (by truck)	7.534	p/Pallet Handling Unit *)
	Storage Charge (full or part week)	3.199	p/Pallet Position
	Pre-Pack Display Area Fixed Charge**	10.39	p/sq. ft./year

Ancillary Services	Case Picking Charge	0.212	p/case
	Additional Services	Costs + 10%	
	Pallet Reject Charge	1.556	p/Pallet Handling Unit *)
	Drop Trailer Charge	to be agreed in accordance with paragraph 9 of Schedule 3, Part 1	p/Dropped Trailer

*) Pallet Handling Unit

) (i) Should Customer wish to move Pre-Pack Display activities to the Warehouse and/or engage Operator to provide other Additional Services at the Warehouse using the 41,000 sq. ft. area dedicated to Pre-Pack Display activities and/or other Additional Services for Customer use (the "Pre-Pack Display Area**"), Customer will issue a Change Notice requesting this change. The parties will then agree, in accordance with the Service Change Procedure in Schedule 4, the scope of those activities, the applicable Charges for those activities, the start date for those activities, any applicable forecasts, any changes to the Pre-Pack Display operating procedures set out in Schedule 3 Part 7(c) and in Part 1 of Schedule 2 and/or any additional operating procedures, etc. Until the parties have agreed the terms on which such Pre Pack Display activities/Additional Services are to be provided, Customer will continue to pay the Pre-Pack Display Area Fixed Charge

(ii) Should Customer choose not to commit to compensating Operator for Pre Pack Display activities and/or other Additional Services as set out in paragraph (i) above, then compensation in line with Schedule 1, Part 2: Pre-Pack Display Area Fixed Charge set out in the table above will apply, save where (and for so long as) Owner has entered into a binding commitment with another customer in respect of the entire dedicated area.

10. The Parties have agreed to adjust the initial Charges set out in the Charge table above:

- (a) on the Services Commencement Date, to capture the changes in Index for the period between January 1st, 2023 and the Services Commencement Date and the change in the electricity price per kWh, in accordance with the charges review provisions in this Schedule 1, Part 3, Clause 1;
- (b) and subsequently on the first Monday in June following the Services Commencement Date, to capture the changes in Index and Electricity Index for the period between the Services Commencement Date and the following first Monday in June, in accordance with the charges review provisions in this Schedule 1, Part 3, Clause 2;
- (c) and subsequently for each of Years 1 through 7 inclusive, on the first Monday in June each Year, to capture the changes in Index and Electricity Index over the previous Year, in accordance with the charges review provisions in this Schedule 1, Part 3, Clause 3;
- (d) and subsequently for each of Years 8 through 10 inclusive, on the first Monday in June each Year, to capture the changes in Index and Electricity Index over the previous Year, in accordance with the charges review provisions in this Schedule 1, Part 3, Clause 4.

11. The Charges for Handling Services, Storage Services and Case Picking Services will increase by 3.25%, starting on the date 4 years after payment of the Transition Payment (as defined and detailed in Part 5 of this Schedule 1), for the remainder of the Term. For clarification, any additional services fees or value-added services will maintain at cost plus 10%.

Every time the Charges are adjusted, the new Charges become the baseline for the next charges review carried out in accordance with the provisions of Part 3 of this Schedule.

Part 3

(Charges Review Mechanism)

1. The Charges shall be adjusted on the Services Commencement Date in accordance with the following review mechanism:
 - (a) 5% of each Charge is multiplied by the change in the electricity price paid by the Operator; the reference price is calculated at \$0.0541 per kWh. and the actual price will be validated on the Services Commencement Date.
 - (b) 95% of each Charge is multiplied by the change in the Index with a pro-rated maximum increase of 2% per year for each year from the Intended Services Commencement Date to the Services Commencement Date.
 - (c) The sum of the calculations at a.) plus b.) above equals the total adjustment to the Charges for that charges review. This adjustment is added to the then current Charges, to give the revised Charges applicable for the following Year.

Calculation example 1.1:

- Assuming an Intended Services Commencement Date of February 28, 2024 (this being the date 20 months after an assumed Commencement Date (i.e. signature date of this Agreement) of June 28, 2022)
- *Services Commencement Date = 1 May 2024.*
- *The energy price = \$0.0561 per kWh. (= 3.5% higher) and the change in the Index since the Intended Services Commencement Date was 1.5%.*
- *The Charges will be adjusted by $(0.05 \times 1.035) + (0.95 \times 1.015) = 1.016$, thus the Charges will increase by 1.6 %.*

Calculation example 1.2:

- *Service Commencement Date = 1 May 2024.*
- *The energy price = \$0.0521 per kWh. (= 3.7% lower) and the change in the Index since the Commencement Date was 1%*
- *The Charges will be adjusted by $(0.05 \times 0.963) + (0.95 \times 1.01) = 1.00765$, thus the Charges will increase by 0.77%.*

2. The Charges shall be adjusted on the first Monday in June following the Services Commencement Date, in accordance with the following review mechanism:
 - (a) 5% of each Charge is adjusted by the change in the Electricity Index;
 - (b) 95% of each Charge is adjusted by +0.15% per month unless the Index is higher than +0.15% per month in which case an additional 50% of the excess part is passed through.

Calculation example 2.1:

- *Service Commencement Date = 1 May 2024, roughly 1 month prior to Charges Review on Monday 3 June 2024.*
- *Energy Index over the past month was 0.1% and Index over the past month was 0.15%.*
- *The Charges will be adjusted by $(0.05 \times 1.001) + (0.95 \times 1.0015) = 1.001$, thus the Charges will increase by 0.1%.*

3. The Charges shall be adjusted for each of Years 1 through 7 inclusive, on the first Monday in June each Year, in accordance with the following review mechanism:
 - (a) 5% of each Charge is adjusted by the change in the Electricity Index;

- (b) 95% of each Charge is adjusted by +1.8% unless the Index is higher than +1.8% in which case an additional 50% of the excess part is passed through.

Calculation example 3.1:

- *Energy Index over Year 4 was 3% and Index over Year 4 was 1%.*
- *The Charges will be adjusted by $(0.05 \times 1.03) + (0.95 \times 1.01) = 1.011$, thus the Charges will increase by 1.1%.*

Calculation example 3.2:

- *Energy Index over Year 5 was -2% and Index over Year 5 was 2%.*
- *The Charges will be adjusted by $(0.05 \times 0.98) + (0.95 \times 1.019) = 1.0171$, thus the Charges will increase by 1.71%.*

4. The Charges shall be adjusted for each of Years 8 through 10 inclusive, on the first Monday in June each Year, in accordance with the following review mechanism:

- (a) 5% of each Charge is adjusted by the change in the Electricity Index;
- (b) 95% of each Charge is adjusted by 50% of the Index.

Calculation example 4.1:

- *Energy Index over Year 8 was 2% and Index over Year 8 was 2%.*
- *The Charges will be adjusted by $(0.05 \times 1.02) + (0.95 \times 1.01) = 1.0105$, thus the Charges will increase by 1.05%.*

Part 4

(Increase or reduction in costs)

The parties shall discuss and agree in good faith consistent with the process set forth in Schedule 4, Part 1 an increase or decrease, as the case may be, in the Charges, Transition Payment and/or Index Compensation Payment (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 Customer, to the extent that:

1. 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 Customer omitting information;
2. the costs or savings, as the case may be, arise as a result of information provided by Customer being inaccurate or incomplete in any material respect;
3. the costs or savings, as the case may be, arise as a result of the Customer changing any of its processes or procedures; or
4. 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 Commencement Date.

Part 5

(Transition Payment)

1. The Owner will pay a transition payment of \$6,307,907 (the "**Transition Payment**") to the Customer when all the conditions precedent in clause 2.4 have been met or waived by the Owner and the Operator.
2. The intention of the payment of the Transition Payment by Owner to Customer is to provide Customer network transition value before the Warehouse is operational.
3. The Transition Payment has been calculated based on the mutually agreed method described in the Letter of Intent.

Part 6

(Index Compensation Payment)

1. The Owner shall pay an upfront Index Compensation Payment to Customer on the Services Commencement Date.
2. The intention of the payment of the Index Compensation Payment by Owner to Customer is to provide Customer the value of having a flat rate based on the historical CPI of 1.8%.
3. Subject to any reduction required to be made in accordance with Schedule 9, the Index Compensation Payment is an amount of \$2,309,625. Where the Service Commencement Date occurs at least one month earlier than the Intended Services Commencement, the Index Compensation Payment will be reduced as set out in Schedule 9.
4. The Index Compensation Payment has been calculated based on a mutually agreed method described in the Letter of Intent.

Part 7

(Additional Services)

Customer 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 compensation 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 building, equipment, materials, labor and other applicable direct, indirect and overhead 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 1.10.
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 2.5%, for a period of 2 months.

Part 8

(Information on Invoice)

Invoices submitted by the Owner and Operator shall detail the following:

1. Customer contact details;
2. Owner or Operator contact details;
3. Period covered by the invoice;
4. Due date of invoice;
5. Description of Services;
6. Amounts charged, split by type of Service, indicating the provider of the Service (Owner or Operator);
7. Payment terms;
8. Sales Tax payable (in case applicable) and
9. Other information reasonably requested by Customer and/or Owner/Operator.

Part 9

(Minimum Annual Revenues)

1. **Off-set mechanism**
 - 1.1 The parties acknowledge that Customer wishes to create flexibility in its warehouse network capacity in order to enable it to be agile in responding to market dynamics.
 - 1.2 Accordingly, the Owner and the Operator have given Customer flexibility around forecasting accuracy as set out in clause 6.4 and clause 6.5.
 - 1.3 In addition, the Owner and the Operator allow Customer the ability to offset increased revenues for one category of Services against shortfalls in revenues for another category of Services, up to a cap, as set out in this Part 9 of Schedule 1:
 - (a) Customer guarantees to Owner and Operator a Minimum Annual Revenue equal to the higher of 90% of the volumes in its Term Forecast and 90% of the annual Forecast provided pursuant to clause 6.2 (such higher figure being the "**Minimum Volume**"), in respect of handling inbound, storage, case picking, and handling outbound services (each of these being referred to in this schedule as a "**category of Services**"), such guarantee being as set forth in paragraph 6 below;
 - (b) If the actual total Charges payable by the Customer in any Year for a particular category of Services are between 80% and 90% of the Charges that would have been payable for the Minimum Volume for that category of Services, then Customer shall be entitled to offset any shortfall in Charges for that category of Services against Charges payable for another category of Services, to the extent that the Charges payable for that other category of Services exceed the Charges payable for 90% of the Minimum Volume for that category of Services. The value of the Charges set-off in this way cannot exceed 10% of the Charges payable for the Minimum Volume in the other category of Services. The same category of Services cannot be used to offset the shortfall in more than one other category of Services in the same Year, so, for example, where storage Services volumes are 100% of Forecast (creating an allowable offset of 10% in total), Customer cannot set off 8% of the surplus against a shortfall in case picking Services and also 2% against a shortfall in handling services;
 - (c) In addition to the right of set-off in paragraph (b) above (but subject to the same limit that the set-off cannot exceed 10% of the Charges payable for the Minimum Volume in the other category of Services), in the first 12 months from the Services Commencement Date, if the actual total Charges payable by the Customer for Case Picking Services are between 65% and 90% of the Charges that would have been payable for the Minimum Volume of Case Picking Services during that period, then Customer shall be entitled to

offset the shortfall in Charges for Case Picking Services against Charges payable for another category of Services, to the extent that the Charges payable for that other category of Services exceed the Charges payable for 90% of the Minimum Volume for that category of Services and have not already been offset against a shortfall in another category of Services.

2. **Minimum Annual Revenue**

- 2.1 Subject to the off-set mechanism in paragraph 1.3 above (the "**Offset Mechanism**"), Customer guarantees the Owner a Minimum Annual Storage Revenue in each Year throughout the Term (except that (i) 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 to the last day of this Agreement, such amount shall be pro-rated, and (ii) the pro-rated guaranteed Minimum Annual Storage Revenue applicable in the period of six months from the Services Commencement Date shall be reduced by 50%). For the purposes of this Agreement, "**Minimum Annual Storage Revenue**" shall be calculated in accordance with the following formula:

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

Where:

M = Minimum Annual Storage Revenue;

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

V = the higher of: (i) the minimum average storage volume for each week during the applicable Year as indicated in Schedule 3 and (ii) 90% of the average storage volume of Pallet Positions for each week set out in the Forecast for the applicable Year provided pursuant to clause 6.2(b) (prior to any subsequent revision to such Forecast);

W = (D / 7) where 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.).

- 2.2 Subject to the Offset Mechanism, Customer guarantees the Owner a Minimum Annual Handling Revenue in each Year throughout the Term (except that (i) 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 to the last day of the date of this Agreement, such amount shall be pro-rated and (ii) the pro-rated guaranteed Minimum Annual Handling Revenue applicable in the period of six months from the Services Commencement Date shall be reduced by 50%). For the purposes of this Agreement, "**Minimum Annual Handling Revenue**" shall be calculated in accordance with the following formula:

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

Where:

M = Minimum Annual Handling Revenue;

C1 = the Handling Charge for Pallet Handling Units in by truck (as adjusted in accordance with this Agreement) applicable in the relevant Forecast Year;

V1 = the higher of: (i) the minimum annual handling volume for pallets in by truck for during the applicable Year as indicated in the Term Forecast in Schedule 3 and (ii) 90% of the annual handling volume for pallets 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),

C2 = the Handling Charge for Pallet Handling Units in by rail (as adjusted in accordance with the Agreement) applicable in the relevant Forecast Year;

V2 = the higher of: (i) the minimum annual handling volume for Pallet Handling Units in by rail for during the applicable Year as indicated in the Term Forecast in Schedule 3 and (ii) 90% of the annual handling volume for Pallet Handling Units in by rail 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 Pallet Handling Units out by truck (as adjusted in accordance with this Agreement) applicable in the relevant Forecast Year;

V3 = the higher of: (i) the minimum annual handling volume for Pallet Handling Units out by truck for during the applicable Year as indicated in the Term Forecast in Schedule 3 and (ii) 90% of the annual handling volume for Pallet Handling Units 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),

- 2.3 Subject to the Offset Mechanism, Customer guarantees the Operator a Minimum Annual Case Picking Revenue in each Year throughout the Term (except that (i) 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 to the last day of this Agreement, such amount shall be pro-rated and (ii) the pro-rated guaranteed Minimum Annual Case Picking Revenue applicable in the period of six months from the Services Commencement Date shall be reduced by 50%). For the purposes of this Agreement, **"Minimum Annual Case Picking Revenue"** shall be calculated in accordance with the following formula:

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

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 week during the applicable Year as indicated in the Term Forecast in Schedule 3 and (ii) 90% of the average Case Picking Services volume for each week 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

W = (D / 7) where 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).

- 2.4 Customer guarantees the Operator a Minimum Drop Yard Activities Revenue in each Year throughout the Term (except that (i) 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 to the last day of this Agreement, such amount shall be pro-rated and (ii) the pro-rated guaranteed Minimum Annual Drop Yard Activities Revenue applicable in the period of six months from the Services Commencement Date shall be reduced by 50%). For the purposes of this Agreement, **"Minimum Drop Yard Activities Revenue"** shall be calculated in accordance with the following formula:

$$M = D \times V \times W$$

Where:

M = Minimum Drop Yard Activities Revenue;

D = the Drop Yard Activities Charge (as adjusted in accordance with this Agreement) applicable in the relevant Year;

V = the higher of: (i) the minimum average Drop Yard Activities volume for each week during the applicable Year as indicated in the Term Forecast in Schedule 3 and (ii) 90% of the average Drop Yard Activities volume for each week 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

W = (D / 7) where 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).

- 2.5 The Minimum Annual Drop Yard Revenue cannot be used to offset a shortfall in any category of Services.

3. **Shortfall reconciliations**

- 3.1 Throughout this paragraph 6, references to “Quarter” shall construed as references to quarters of the Customer’s fiscal year (which commences on the first Monday in June in each calendar year), where the parties so agree in writing.
- 3.2 This paragraph applies to the first Quarter in which the Services Commencement Date occurs and to each subsequent Quarter. Where, having applied the Offset Mechanism, the total amount invoiced to Customer by the Owner as Charges in a category of Services in respect of a Quarter is less than the pro-rated Minimum Annual Revenue for that category of Services for that Quarter, the Owner shall be entitled to issue an invoice (the “**Shortfall Invoice**”) to Customer for an amount equal to such shortfall (the “**Shortfall Invoice Amount**”). In determining whether to raise the invoice, the Owner shall act reasonably and consider Customer’s latest rolling forecasts. Customer shall pay the Shortfall Invoice Amount to the Owner within fifteen (15) days of receipt of the Shortfall Invoice.
- 3.3 This paragraph applies to the first Quarter in which the Services Commencement Date occurs and to each subsequent Quarter. Where, having applied the Offset Mechanism, the total amount invoiced to Customer by the Owner as Storage Charges in respect of a Quarter is less than the pro-rated Minimum Annual Storage Revenue for that Quarter, the Owner shall be entitled to issue an invoice (the “**Shortfall Storage Invoice**”) to Customer for an amount equal to such shortfall (the “**Shortfall Storage Invoice Amount**”). In determining whether to raise the invoice, the Owner shall act reasonably and take into account Customer’s latest rolling forecasts. Customer shall pay the Shortfall Storage Invoice Amount to the Owner within fifteen (15) days of receipt of the Shortfall Storage Invoice.
- 3.4 This paragraph applies to the first Quarter in which the Services Commencement Date occurs and to each subsequent Quarter. Where, having applied the Offset Mechanism, the total amount invoiced to Customer by the Owner as Handling Charges in respect of a Quarter is less than the pro-rated Minimum Annual Handling Revenue for that Quarter or the Modified Quarter, the Owner shall be entitled to issue an invoice (the “**Shortfall Handling Invoice**”) to Customer for an amount equal to such shortfall (the “**Shortfall Handling Invoice Amount**”). In determining whether to raise the invoice, the Owner shall act reasonably and take into account Customer’s latest rolling forecasts. Customer shall pay the Shortfall Handling Invoice Amount to the Owner within fifteen (15) days of receipt of the Shortfall Handling Invoice.
- 3.5 This paragraph applies to the first Quarter in which the Services Commencement Date occurs and to each subsequent Quarter. Where the total amount invoiced to Customer by the Operator as Case Picking Charges in respect of a Quarter is less than the pro-rated Minimum Annual Case Picking Revenue for that Quarter, the Operator shall be entitled to issue an invoice (the “**Shortfall Case Picking Invoice**”) to Customer for an amount equal to such shortfall (the “**Shortfall Case Picking Invoice Amount**”). In determining whether to raise the invoice, the Operator shall act reasonably and take into account Customer’s latest rolling forecasts. Customer shall pay the Shortfall Case Picking Invoice Amount to the Operator within fifteen (15) days of receipt of the Shortfall Case Picking Invoice.
- 3.6 This paragraph applies to the first Quarter in which the Services Commencement Date occurs and to each subsequent Quarter. Where the total amount invoiced to Customer by the Operator as Drop Yard Activities Charges in respect of a Quarter is less than the pro-rated Minimum Annual Drop Yard Activities Revenue for that Quarter, the Operator shall be entitled to issue an invoice (the “**Shortfall Drop Yard Activities Invoice**”) to Customer for an amount equal to such shortfall (the “**Shortfall Drop Yard Activities Invoice Amount**”). In determining whether to raise the invoice, the Operator shall act reasonably and take into account Customer’s latest rolling forecasts. Customer shall pay the Shortfall Case Picking Invoice Amount to the Operator within fifteen (15) days of receipt of the Shortfall Case Picking Invoice.

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 Customer, 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	Owner Responsibilities	Customer Responsibilities
Inbound Handling by Truck	<ul style="list-style-type: none">• Order receipt in warehouse management system ("WMS") via EDI from Customer.• Manage slot booking via providing online slot booking system, to be used by carriers and Operator (and integrated with the new to be implemented Customer 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 Pallet Handling Units to storage.	<ul style="list-style-type: none">• Send order (including Advance Shipment Notification) via EDI to Operator WMS.• Cooperation with transport partners to ensure they comply with the Operating Specification.• Ship Products on CHEP, slip or GMA grade 1 (conveyable) pallets.• Send Products conforming with the Operating Specification (including Standard Product Characteristics).
Inbound Handling by Rail	<ul style="list-style-type: none">• Order receipt in warehouse management system ("WMS") via EDI from Customer.• Coordinate with Customer rail partners to execute efficient rail car unloading, inclusive of rail car spotting with Customer rail partners• Unloading Products from the rail car, visual check of the Products received, documents check, recording Product information in WMS,	<ul style="list-style-type: none">• Send order (including Advance Shipment Notification) via EDI to Operator WMS.• Send Products conforming with the Operating Specification (including Standard Product Characteristics).• Contract and management of rail partners to ensure they comply with the Operating Specification, enabling Operator to have

	<p>receipt confirmation by EDI, deviation reporting.</p> <ul style="list-style-type: none"> Put away Pallet Handling Units to storage. 	<p>an efficient and effective rail unloading operation.</p>
Outbound Handling by Truck	<ul style="list-style-type: none"> Order receipt in WMS via EDI from Customer. Retrieve Pallets with Products from storage location and transport to Dispatch area. Manage slot booking via providing online slot booking system, to be used by carriers and Operator (and integrated with the new to be implemented Customer TMS). Loading Pallet Handling Units 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. Cooperation with transport partners to ensure they comply with the Operating Specification. Provide instructions regarding Customer's customer specific activities in a timely manner to be included in Operator WMS instructions.
Storage	<ul style="list-style-type: none"> Storage of Products at the Warehouse conform the agreed conditions. Timely and accurate stock reporting and reconciliation. 	<ul style="list-style-type: none"> Timely reaction to stock reports and participation in stock reconciliation.
Service	Operator Responsibilities	Customer Responsibilities
Case Picking	<ul style="list-style-type: none"> Order receipt in WMS via EDI from Customer. Replenishment stock to pick area in the Warehouse. Case picking activities related to outbound order resulting, wrapped to pallet and labelled Pallets for outbound orders. 	<ul style="list-style-type: none"> Send order via EDI to Operator. Provide clear picking instructions in a timely manner, to be included in WMS pick instructions.
Pre-Pack Display Activities (where parties agree, in accordance with the Change Procedure, that Operator is to provide these)	<p>Indicative responsibilities to be agreed upon:</p> <ul style="list-style-type: none"> Order receipt in WMS via EDI from Customer. Material & Product allocation Replenishment Products and materials to designated Pre-Packaging 	<p>Indicative responsibilities to be agreed upon:</p> <ul style="list-style-type: none"> Send order via EDI to Operator. Provide clear Pre-Pack Display instructions in a timely manner, including Bill of Material (BOM), SpecPack instructions,

	<p>Display area in the Warehouse.</p> <ul style="list-style-type: none"> • Perform physical pre-packaging display building activities. • Conduct Quality review • Process data (including batches and expiry dates for tracking and tracing) and communicate via EDI to Customer • Pre-Pack Display activities related to outbound order result in displays on a pallet able to be handled and stored in the Warehouse. 	<p>and Product placement requirements.</p> <ul style="list-style-type: none"> • Ensure all Products and materials are in stock at the Warehouse • Provide clear Quality instruction criteria, including shelf life and batch rules
Additional Services	<ul style="list-style-type: none"> • Provide Additional Services at the request of Customer to deal with non-conformity to agreed Operating Specifications (including Standard Product Characteristics) and fulfil specific customer requirements. • Perform the Additional Services in line with the Operating Specifications and guidelines agreed with Customer. • Accurate registration of associated direct, indirect and overhead 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.

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 Customer, the Owner and the Operator to be worked out in a detailed Operating Specification, IT Systems and EDI Solution.

Volumes of Services presented in this Schedule are based on data analysis by Customer, Owner and Operator, and are summarized in the document <add title> attached in Schedule 6.

1. Standard Product Characteristics

- (a) Number of SKUs: 2,361
- (b) Number of SKUs for picking: 2,140

- (c) Production batch size produced in the Customer Facility: varying from 1- 210 Pallets/batch, with an average of larger than 7 Handling Units.
- (d) Stock Transfer Order batch sizes will be varying form 1- 210 Pallets/batch, with an average of larger than 7 Handling Units.
- (e) Batch Code: Daily. In the future Customer may have twelve (12) hour batch sequence for some products or all products.
- (f) Different Production Dates within batches: No
- (g) Pallet type(s): US CHEP (40 x 48 inch), White Wood (40 x 48 inch)
- (h) Slip Sheet, if applicable: Cardboard, standard US type, based on 40 x 48 inch pallet size, maximum 3 inch sides
- (i) Pallet Handling Unit Height (includes US CHEP/White Wood pallet and Products)
 - (i) Heights will vary within ranges described in the data analysis attached in Schedule 6 and will not exceed Maximum Pallet height: 107 inch
 - (ii) Subject to clause 6 (Forecasting), Operator will ensure that a minimum of 29,729 storage locations for 107 inch Pallets will be available to Customer.
 - (iii) Note that in the Warehouse, System Pallets will be used for internal transport and storage of Products. The Warehouse has been designed to store CHEP Pallets on System Pallets. For clarification there are no incremental fees or charges to place inbound CHEP pallet with Product onto the System Pallets.
- (j) Pallet Handling Unit Weight (includes US CHEP/White Wood pallet and Products)
 - (i) Weights will vary ranges described in the data analysis attached in Schedule 6, and will not exceed Maximum Pallet Handling Unit: 3,000 lbs
 - (ii) Subject to clause 6 (Forecasting), Operator will ensure that a minimum of 4,955 storage locations for 3,000 lbs Pallets will be available to Customer.
- (k) Margin around the Pallet: The Warehouse has been designed to handle and store Products stacked within a maximum margin of 2.5 inch at each side of the Pallet. This margin can be utilized by Customer 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 Pallets at receipt at the Warehouse that do not comply with this standard of maximum 2.5 inch margin around the pallet.
- (l) **Temperature of Product delivered to Warehouse: 0 to 100°F.**
- (m) All Products have a barcoded Pallet label conform the GS1 standard, containing all necessary information to receive the Products in the Warehouse. Pallet labels will always be positioned on the short side of the Pallet allowing the label to be scanned at the Warehouse, and sometimes a second Pallet label will be positioned on the long side of the Pallet. All cases contain a label with all relevant Product information for tracking and tracing.

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. Customer and Operator use the same unit of measures for the master data.
- (b) Master data and changes are managed by Customer, and recorded by Operator in the WMS. Changes to the master data will be timely communicated by Customer to Operator by EDI (minimum of 48 hours before first use by Operator).
- (c) Products will be stored at a temperature of 0°F to 100°F.
- (d) All deliveries received in line with the standard agreed in this Operating Specification will be available in stock 8 hours after receipt and confirmed by EDI to Customer's ERP. If

Products cannot be received, they will be stored waiting for corrective actions to be agreed by Customer 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 Customer owned and rental pallets. Costs for handling, storage and administration of empty pallets over a reasonable amount of 1,080 pallets, will be charged to Customer in line with Part 7 of Schedule 1 (Additional Services).
- (h) Storage Volumes

The following forecasted storage volumes are the basis of this Agreement.

Customer Fiscal Year (commencing on the first Monday in June in each Year)	2023	2024	2025	2026 and further
Forecasted average weekly storage volume of Pallet Positions in the Warehouse	59,859	59,859	59,859	59,859

- (i) More details around the calculation of the Pallet Positions volumes are included in Schedule 6.
- (j) The Warehouse has a total of 84,240 gross Pallet Positions, and an estimated 65,845 net available Pallet Positions for Customer. Or a higher number of Pallet Positions if Parties mutually agree under this Agreement, pursuant to the Service Change Procedure.
- (k) The Warehouse will be BRC Certified.
- (l) The Warehouse is open 7 days per week, 24 hours per day except for national holidays indicated by Customer.

3. Inbound Operation

- (a) Inbound Volumes

The following forecasted Inbound Volumes are the basis of this Agreement.

Customer Fiscal Year (commencing on the first Monday in June in each Year)	2023	2024	2025	2026 and further
Forecasted handling for Pallet Handling	482,422	487,695	493,026	498,414

Units in by Truck				
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- (b) More details around the calculation of the inbound Pallet Handling volumes are included in Schedule 6.
- (c) The Warehouse has been designed for inbound handling peak volumes described in Schedule 6, taking into account the activities are spread over a 24-hour operating day.
- (d) Inbound Operating Procedures
 - (i) Customer is responsible for its inbound transport management.
 - (ii) A weekly planning of estimated inbound shipments by Customer will be shared by Customer with Operator the week before, or as soon as the information is available to the Customer.
 - (iii) The standard way of communicating Inbound order information will be via EDI, and can be used for a weekly rolling forecast report.
 - (iv) A minimum inbound order lead time for inbound orders of 48 hours is applicable. Inbound appointment booking by the carrier will be a minimum of 24 hours before the appointment time. A formal order cut-off time will be agreed upon. Parties will work together to manage exceptions to this procedure, e.g. for shuttle operations plant – Warehouse.
 - (v) Warehouse opening hours: 24 hours/day, 7 days/week. Warehouse activity will be spread over 7 days.
 - (vi) An online appointment booking system will be provided by Operator, and integrated with Customer's appointment booking system, to the carriers 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.
 - (vii) A timely arrival of the carriers 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.
 - (viii) If the carrier 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.
 - (ix) Correct order and Product information received on-time and complete is important for Operator to have a reliable and efficient operation of the Warehouse. If case such information is not available, Operator is not required to receive that Product until such information is available.
 - (x) It is important that Products must 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 at Customer's cost.
 - (xi) Products received at the Warehouse by truck will be in majority on pallets and minority on slip sheets. Exact percentages of both types are unknown as at the Commencement Date.
 - (xii) Additional Services will be provided to exchange the Products from slip sheet to a CHEP pallet, on which the Products will be stored in the Warehouse, as agreed between the parties in accordance with clause 5.7. Parties will agree on the best standard operating procedure to manage this exchange process, taking into account the truck unloading efficiency and effectiveness.

- (xiii) 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.
- (xiv) 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 Customer. Operator will put effort in avoiding Additional Services and mitigate costs where possible.
- (xv) 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 Pallet labels, recording missing Product and order information. .

4. Rail Car Unloading

(a) Rail Volumes

The following forecasted Inbound Volumes are the basis of this Agreement.

Customer Fiscal Year (commencing on the first Monday in June in each Year)	2023	2024	2025	2026 and further
Forecasted Handling volume for Pallets in by rail car	60,000	60,000	60,000	60,000
Forecasted Handling volume for Handling Units in by rail car	60,000	60,000	60,000	60,000

- (b) More details around the calculation of the inbound Pallet Handling volumes are included in Schedule 6.
 - (i) Parties acknowledge they will act in good faith to work together to implement best practices to safely handle stacked inbound rail pallets as a Handling Unit.
 - (ii) If the Operator is unable to handle stacked inbound rail pallets in a safe manner pallets will be offloaded as individual Pallet. In which case a Pallet will be charged as a Handling Unit.
- (c) The Warehouse has been designed for inbound handling peak volumes described in Schedule 6, on the assumption that the activities are spread over a 24-hour operating day.
- (d) Rail Operating Procedures
 - (i) Inbound 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 will be shared by Customer with Operator the week before, or as soon as the information is available.
 - (iii) Customer is responsible for the contracting and 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 a way Operator can operate an efficient rail car unloading operation.

- (iv) Operator is responsible for the daily coordination with Customer's rail partners, to execute rail car unloading operation, including coordinating rail car spotting by Customer's rail partners.
- (v) Warehouse opening hours: 24 hours/day, 7 days/week. Warehouse activity will be spread over 7 days.
- (vi) Customer will provide instructions regarding rail car unloading in a timely manner to be included in Operator standard operating procedures and where possible Operator WMS.
- (vii) Correct order and Product information received on-time and complete is important for Operator to have a reliable and efficient operation of the Warehouse. If such information is not available, Operator is not required to receive that Product until such information is available.
- (viii) It is important that Products must be in accordance with agreed standard Product characteristics. Non-compliance may result in Operator not being able to receive the Products and may require corrective actions to be taken at Customer's cost.
- (ix) Products received at the Warehouse by rail will be on slip sheets and pallets. Percentages of both types are unknown at the Commencement Date.
- (x) Additional Services will be provided to exchange the Products from slip sheet to a CHEP pallet on which the Products will be stored in the Warehouse, as agreed between the parties in accordance with clause 5.7. Parties will agree on the best standard operating procedure to manage this exchange process, taking into account the rail car unloading efficiency and effectiveness.
- (xi) 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.
- (xii) 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 Customer. Operator will put effort in avoiding Additional Services and mitigate costs where possible.
- (xiii) 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 Pallet labels, recording missing Product and order information, pallet exchange.

5. Outbound Operation

- (a) Outbound volumes:

The following forecasted Outbound Volumes are the basis of this Agreement.

Customer Fiscal Year (commencing on the first Monday in June in each Year)	2023	2024	2025	2026 and further
Forecasted handling for Pallet	612,275	618,398	624,582	630,828

Handling Units out by Truck				
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- (b) More details around the calculation of the outbound Pallet Handling volumes are included in Schedule 6.
- (c) The Warehouse has been designed for outbound handling peak volumes described in Schedule 6, on the assumption that the activities are spread over a 24-hour operating day.
- (d) Parties acknowledge that on peak days more loading slots may be requested than are available and have agreed to jointly manage these peaks to spread these over multiple days, and e.g. using drop trailer programs.
- (e) Outbound Operating Procedures
 - (i) Customer is responsible for its outbound transport management.
 - (ii) A rolling 13 week forecast of estimated outbound Customer orders to be shipped from the Warehouse will be shared with Operator on a monthly basis, or as soon as the information is available at Customer.
 - (iii) The standard way of communicating outbound order information will be via EDI.
 - (iv) An outbound order lead time for all orders of 48 hours is applicable. The order will be confirmed by Customer a minimum of 36 hours in advance of shipping. Outbound appointment booking by the carrier will be a minimum of 24 hours before the appointment time. A formal order cut-off time will be agreed upon. Customer and Operator will implement procedures to assist Operator to prepare orders in advance of the 48-hour order cut-off time, and Operator to assist Customer in shipping products with shorter lead times as exceptions.
 - (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. Before the Services Commencement Date, Parties will agree on scheduling 6 National holidays per year in which the Warehouse operation will be limited.
 - (vii) An online appointment booking system will be provided by Operator, and integrated with Customer's appointment booking system to the carriers 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 loading slots per hour.
 - (viii) A timely arrival of the carriers 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 load late vehicles as soon as possible in case this does not interfere with the operation of the Warehouse.
 - (ix) If the carrier is not present during loading, a timely pick-up of a loaded drop trailer (<24 hours after drop-off) is required and important for a reliable and efficient operation of the Warehouse.
 - (x) 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.
 - (xi) Orders will be fulfilled with Products available on stock at the order cut-off time.
 - (xii) Standard order allocation rules will be applied by the Operator WMS based on FEFO. Customer allows a 30 day allocation window versus the production date for order fulfilment. 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. LEFO, Allocation, Military, International orders), where it is assumed this is supported via Customer's TMS or ERP system.

- (xiii) Products shipped at the Warehouse by truck will be in majority on pallets and minority on slip sheets. Exact percentages of both types are unknown as at the Commencement Date.
- (xiv) Additional Services will be provided to exchange the Products from CHEP pallet to slip sheet or GMA grade 1 pallet, as agreed between the parties in accordance with clause 5.7. Parties will agree on the best standard operating procedure to manage this exchange process, taking into account the truck loading efficiency and effectiveness.
- (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 Customer. 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: unpicking and unloading cancelled orders, putting the Products back in storage, attaching shipment labels, customer placards, other Customer's customer requirements.

6. Case Picking

(a) Case Picking Volumes

The following forecasted Case Picking volumes are the basis of this Agreement.

Customer Fiscal Year (commencing on the first Monday in June in each Year)	2023	2024	2025	2026 and further
Forecasted Case Picking Services Requirement	17,173,894	17,345,632	17,519,089	17,694,280

- (b) Cases are picked and palletized using an automated case picking solution. Up to a maximum of 1% of the cases is expected not be able to be handled by the automated case picking solution.
- (c) More details around the calculation of the Case Picking volumes are included in Schedule 6.
- (d) The Warehouse has been designed for case picking peak volumes described in Schedule 6, taking into account the activities are spread over a 24-hour operating day.
- (e) 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 by Operator and includes the creation of mixed SKU Pallets, with wrapping around the Products and a Pallet label conform GS1 standards.
- (iii) Customer accepts loose case picked SKU to be stacked together on a layer picked pallet.
- (iv) Customer specific requirements will be shared by Customer and integrated in case picking procedures driven by the Operator WMS. Additional services may be applicable when fulfilling non-standard customer specific requirements.
- (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, building promotion displays, complex pallet stacking patterns.

7. **Pre-Pack Display**

(a) Pre-Pack Display Area Fixed Charge

- (i) Customer is reviewing its Pre-Pack Display program internally to determine optimal location for activities to take place in Customer network, determining the scope, scale, and optimal location of their Pre-Pack Display activities and other Additional Services at the Warehouse.
- (ii) Owner will include in the Warehouse a 41,000sq. ft. Pre-Pack Display Area dedicated to Pre-Pack Display activities and other Additional Services for Customer use.
- (iii) Customer will compensate Operator for the cost of the Pre-Pack Display Area in line with Schedule 1, Part 2: Pre-Pack Display Area Fixed Charge.
- (iv) Should Customer wish to move Pre-Pack Display activities to the Warehouse and/or use the Pre-Pack Display Area for Additional Services, it will issue a Change Notice requesting this change, The parties will then agree the scope of those activities, the applicable Charges for those activities, the start date for those activities, any applicable forecasts, any changes to the Pre-Pack Display operating procedures set out in Schedule 3 Part 7(c) and in Part 1 of Schedule 2 and/or any additional operating procedures, etc. . Until the parties have agreed the terms on which the Pre Pack Display activities and/or any Additional Services to be provided in the Pre-Pack Display Area are to be provided, Customer will continue to pay the Pre-Pack Display Area Fixed Charge.

(b) Pre-Pack Display Operating Procedures

- (i) Outbound Orders will be exchanged via EDI, containing clear information needed for a fluent Pre-Pack Display process by Operator. Master Data will be sent over via EDI with additional PPD attributes.
- (ii) Customer specific requirements will be shared by Customer and integrated in Pre-Pack Display procedures driven by the Operator WMS. Additional services may be applicable when fulfilling non-standard customer specific requirements.
- (iii) Exceptional customer specific requirements may lead to Additional Services. Examples of Additional Services (corrective and value-added logistics) may include but are not limited to: attaching case labels, building promotion displays, complex pallet stacking patterns.
- (iv) Pre-Pack Display activities, executed by Operator and including the creation of a promotional display
- (v) Inbound and outbound activities for materials and WIP goods will follow activities stated as above
 - (A) Customer set clear guidelines by SKU &/or order number for storage volumes of Products and allocation for outbound orders. Customer specific requirements on mixed lot codes and expiries will be set as rules for Finished Goods.

- (B) All set up including allocation will take place before the start of display building.
- (C) Completion of the display and depletion of material including damages and scrap will take place systematically and communicated via EDI to the customer for reconciliation.
- (vi) Pre-Pack Display activities executed by Operator will result in the creation of Pallets, with wrapping around the Products and/or displays with a Pallet label conform GS1 standards.

8. **Truck Parking**

(a) Truck and Trailer Parking at the Warehouse

Operator will make available a minimum of 42 truck and trailer parking spots at the yard of the Warehouse to support Customer inbound and outbound truck transport flows related to live loading.

Parties will work together on implementing a Fast Pass process, allowing selected transport partners efficient access to the yard via a highly automated check-in and check-out process.

9. **Drop Yard Activities**

(a) Drop Yard Activities

The following indicative Drop Yard Activity Volumes have formed the basis of the parties' discussions as to drop yard services prior to the Commencement Date.

Customer Fiscal Year (commencing on the first Monday in June in each Year)	2023	2024	2025	Year 2026 and further
Drop Yard Activities (annual number of Drop Trailers loaded and unloaded combined)	36,434	36,434	36,434	36,434
Reserved Drop Trailer Parking Positions	211	211	211	211

- (b) The parties intend to agree the terms on which Operator will provide drop yard services at the Warehouse. However, as at the Commencement Date, the Parties have not finalised the drop trailer operational requirements and forecast volumes, or the applicable charges. The Parties will work together to finalise the scope of the requirements and related volumes so that the applicable charges for the drop yard services can be agreed.
- (c) Operator and Customer will agree on detailed written operational procedures related to the Drop Yard Activities and the scope of each party's responsibilities in relation to the drop yard operations.

10. **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 2.5 inch margin around the pallet, replace a Pallet 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 Customer
 - (i) Additional Services include, but are not limited to; labelling of Pallets or cases, repalletizing, pallet replacement, applying wrapping, applying customer specific labels, handling and administrating empty pallets, purchasing materials on behalf of Customer (e.g. temperature recorders, seals, pallets, slip sheets, 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 and compensation for Additional Services are described in clause 5.7.
 - (iii) Customer and Operator will implement clear procedures and guidelines for the execution of the Additional Services.

11. **IT Landscape and EDI Solution**

- (a) Customer uses SAP as its ERP to manage its core processes.
- (b) Customer is in the process of upgrading their TMS.
- (c) Operator will procure the WMS to manage its Warehouse processes.
- (d) Communication between Customer's ERP and Operator's WMS will be executed by EDI with the following messages.
 - (i) Customer ERP to Operator WMS
 - (A) EDI X12 940 Warehouse Shipping Order
 - (B) EDI X12 943 Warehouse Stock Transfer Shipment Advice / Return
 - (C) EDI X12 947 Stock change advise SAP to WMS
 - (D) EDI X12 856 Ship Notice / Manifest (ASN)
 - (E) EDI X12 888 Master Data change
 - (ii) Operator WMS to Customer ERP
 - (A) EDI X12 944 Warehouse Stock Transfer Receipt Advice
 - (B) EDI X12 945 Warehouse Shipping Advice
 - (C) EDI X12 846 Inventory Inquiry / Advice
 - (D) EDI X12 947 Warehouse Inventory Adjustment Advice
 - (E) EDI X12 856 Ship Notice / Manifest (ASN)
 - (F) EDI X12 860 Purchase Order Change Request
 - (G) EDI X12 997 Functional Acknowledgement
 - (H) EDI X12 214 'Transport On-Time' Message

- (e) Data transport of messages between the Customer ERP and Operator WMS will be executed via AS2.
- (f) Other systems to be used;
 - (i) Appointment booking system provided by Operator. This system will potentially be interfaced with the new Customer TMS.
 - (ii) Operator's Customer Portal for file sharing of others reports and shipment documents provided by Operator, unless otherwise decided by the Parties.
 - (iii) Business Intelligence Tool supported by Operator WMS for reporting of KPI's and among others Customer stock information.
- (g) Each party is to carry its own costs of implementing the IT Landscape and EDI solution.

12. **Contract management**

- (a) Customer shall appoint a Customer 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 "**Customer Representative**"). The Customer 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 Customer 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 9 of Schedule 3.
- (b) The Operator shall appoint a senior employee as its representative to be Customer'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 Customer (the "**Operator Representative**"). Customer may rely on the oral, email, text or other written instructions or direction of the Operator Representative. The Operator shall keep Customer notified of the contact details of Operator Representative.
- (c) The Operator shall:
 - (i) on request from Customer, during the term of this Agreement, supply Customer from time to time with such information and reports (including copies of such documents and other material) as Customer reasonably requires in relation to the provision of the Services, including but not restricted to KPI reports, actual and forecast reporting and reconciliation, part Pallet reports, short shelf life reports, damages and reasons for damages;
 - (ii) monitor performance of the Services against the KPIs and provide Customer with a report as soon as reasonably practicable (but in any event within five (5) 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 Customer, reports on particular topics in amplification of the annual report.

13. **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. The representatives nominated by both parties shall 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 SOP's such as (without limitation):
 - (i) a daily conference call / meeting to discuss immediate operational requirements at which the Customer representatives and Operator representatives 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 representatives and the Customer representatives 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 Customer 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 and the outcomes of any audit conducted under clause 17.4 into the premium for any Stand-alone Policy at which the Operator Representative and the Customer Representative shall be present; and
- (v) a strategic development meeting to review the business direction (minimum once a year).

Schedule 4

Part 1

(Service Change Procedure)

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 the scope of the Services or the manner in which the Services are performed (other than a short-term, temporary change where the parties agree that the Service Change Procedure set forth in this Schedule is not required);
 - (b) to amend any terms of this Agreement or any document attached to or referred to in this Agreement (including the Operating Specification); or
 - (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.
- 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 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 Customer, 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) the working arrangements; and
 - (v) any 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, the terms of 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, in which case it 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) impacts other third-party cold store providers within a fifty mile radius of McDonough 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 Customer shall make 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 Customer of the unmitigated portion of the Unforeseeable Increase and the costs of any mitigation measures made pursuant to (A) above with the approval of Customer (“**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 Customer; and
- (C) upon receipt of such notice and documentation, subject to Customer’s rights to dispute such increase under Clause 21 (Dispute Resolution) of the Agreement and further subject to Customer’s rights under paragraph 4.2 below, Customer shall accept a Change Request for a proportion of the Unmitigated Cost, such proportion being determined in accordance with (D) and (E) below;
- (D) the proportion of the Unmitigated Cost which (subject to the further adjustment in (E) below) is attributable to the Customer will be annually calculated as follows (“**Customer Increased Cost**”):

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

Where:

IC = Customer 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 Customer under this Agreement (which is estimated at 71% as of the date of this Agreement).

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

- (E) the Customer shall bear the first \$50,000 of any one-off Customer Increased Cost. Where a one-off Customer Increased Cost exceeds \$50,000, the balance above \$50,000 shall be borne by the Owner and the Customer in equal shares. Where the Customer Increased Cost is expected to recur on an annual basis, the Customer shall bear the first \$25,000 of the recurring Customer Increased Cost each Year and the balance above \$25,000 shall be borne each Year by the Owner and the Customer in equal shares;
- (F) Provided that if Customer exercises its rights under Clause 21 (Dispute Resolution) of the Agreement or paragraph 4.2 below, the Customer

Increased Cost shall only become payable on receipt of the notice and documentation referred to in sub-paragraph (B) above

- (G) If, and only to the extent, that any dispute (in accordance with Clause 21 (Dispute Resolution)) or any third party valuation (in accordance with paragraph 4.2 below), results in a final non-appealable decision in Customer'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 Customer against any invoice(s) in Customer's sole discretion.
- (iii) In the case of an Unforeseeable Decrease:
 - (A) Owner and Operator shall notify Customer 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, Customer shall accept a Change Request for the Unforeseeable Decrease based on the percentage of the Warehouse that is used to provide services to Customer under this Agreement (which is estimated at 71% as at the date of this Agreement).

For the avoidance of doubt and by way of example:

- (iv) 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;
- (v) a material change in the costs may be caused by key customers of Customer 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
- (vi) 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 Customer 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 (i) 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, Customer 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, Customer pallets of poor quality, or stock shortages, are excluded in the calculation unless Operator meets the Standard KPI level despite these factors.

1. Shipments Loaded On Time Live: 98% of Shipments

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

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 or check-in kiosk.

"Arrival on time" means the planned time up to zero (0) minutes after the planned exact time unless the truck has been in line due to congestion at the site. Trucks that arrive more than 0 (zero) 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 may be excluded from the calculation, unless an order was loaded on or before the agreed loading time.

- (b) Defect: a shipment not loaded within two (2) hours of arrival of a truck, given the truck has arrived on time, such defect being a "shipment loaded too late", for the purposes of the formula in (c) below.
- (c) Standard KPI = $\frac{\text{N}^{\circ} \text{ of shipments} - \text{N}^{\circ} \text{ of shipments loaded too late}}{\text{N}^{\circ} \text{ of shipments}} \times 100$
- (d) The delivery is confirmed via EDI with a receipt issued confirmation message.
- (e) It is the intention of the Parties to load a truck in one (1) hour, provided the truck is on time. This time is calculated from the moment the truck docks and loading begins, until the last Pallet Handling Unit is placed on the trailer. Parties agree that the formal Loading On Time KPI measurement will be according to the method set out in clause 1(a), 1(b), 1(c) and 1(d) above.
- (f) There are times where the Customer and Operator will collaborate to prioritize shipments and an exception to the above rules will be granted upon mutual agreement of the parties.

2. Shipments Loaded On Time Drop: 98% of Shipments

- (a) Definition: *"the percentage of shipments that are loaded on to vehicles on or before the agreed Ready by Time (assuming the drop trailers are on site at the agreed time)"*.

- (b) Drop equipment will be placed in the yard a minimum of 24 to 36 hours prior to the Ready by Time. As long as trailers are on site, they will be loaded as necessary to meet the Ready by Time. The necessary administrative procedures will be finalized within two (2) hours after departure of the truck ("Appointment Time")

"Ready by Time" is defined as the agreed time the drop trailer is loaded and in the yard ready for pickup by the carrier.

- (c) Defect: a shipment not loaded by the Ready by Time, given the trailer has arrived on time, such defect being a "shipment loaded too late", for the purposes of the formula in (d) below.
- (d) Standard KPI = $\frac{\text{N}^{\circ} \text{ of shipments} - \text{N}^{\circ} \text{ of shipments loaded too late}}{\text{N}^{\circ} \text{ of shipments}} \times 100$
- (e) The delivery is confirmed via EDI with a receipt issued confirmation message.

- (f) There are times where the Customer and Operator will collaborate to prioritize shipments and an exception to the above rules will be granted.

3. Order Quality (Orders Complete): 99.75% 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) "Free Stock" is defined as Products physically in stock in the Warehouse, post the Available to Promise (ATP) process running, and available for order allocation when the orders are released.
- (c) Defect: a case ordered for a Product for which Free Stock is available not included in the correct order, such defect being "cases missing" for the purposes of the formula in (d) below.
- (d) Standard KPI =
$$\frac{\text{N}^\circ \text{ of cases ordered} - \text{N}^\circ \text{ of cases missing}}{\text{N}^\circ \text{ of cases ordered}} \times 100$$

4. Inventory Accuracy: 99.95%

- (a) Definition: *"the percentage of Pallets that are physically located on the location indicated in the WMS. Pallet 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 =
$$\frac{\text{N}^\circ \text{ of Pallets in stock} - \text{N}^\circ \text{ of Warehouse physical locations for which Product identification or quantity are not correct in the WMS}}{\text{N}^\circ \text{ of Pallets in stock}} \times 100$$

5. Stock Loss Threshold: 0.01% of annual throughput in cases

[•]

6. Goods Receipt On-Time Live: 98% of Shipments

- (a) Definition: *"A delivery arrives on time if it arrives within zero (0) minutes of the agreed arrival time unless the truck has been in line due to congestion at the site."*
- (b) Incoming deliveries are announced and planned for reception in mutual agreement between the parties (reception planning) and in line with the Operating Specification. In the case of a live inbound, the incoming 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.
- (c) Defect: a delivery takes longer than two (2) hours to be finalized after arrival on time, such defect being "deliveries that arrived on time but were not received within 2 hours" for the purposes of the formula in (d) below.
- (d) Standard KPI =
$$\frac{\text{N}^\circ \text{ of deliveries that arrived on time} - \text{N}^\circ \text{ of deliveries that arrived on time but were not received within 2 hrs}}{\text{N}^\circ \text{ of deliveries that arrived on time}} \times 100$$
- (e) The delivery is confirmed via EDI with a receipt issued confirmation message.
- (f) There are times where the Customer and Operator will collaborate to prioritize shipments and an exception to the above rules will be granted.

7. Goods Receipt On-Time Drop: 98% of Shipments

- (a) Definition: *"A delivery arrives on time if it arrives within zero (0) minutes of the agreed arrival time unless the truck has been in line due to congestion at the site."*
- (b) Incoming deliveries are announced and planned for reception in mutual agreement between the parties (reception planning) and in line with the Operating Specification. In the case of a drop inbound the Products will be unloaded and all relevant administrative tasks (transport documents) need to be finalized within forty-eight (48) of the planned arrival of the delivery.

- (c) Defect: a delivery takes longer than forty-eight (48) hours to be finalized after arrival on time.

$$(d) \text{ Standard KPI} = \frac{\text{N}^\circ \text{ of deliveries that arrived on time} - \text{N}^\circ \text{ of deliveries that arrived on time but were not received within 48 hrs}}{\text{N}^\circ \text{ of deliveries that arrived on time}} \times 100$$

- (e) The delivery is confirmed via EDI with a receipt issued confirmation message.
- (f) There are times where the Customer and Operator will collaborate to prioritize shipments and an exception to the above rules will be granted.

8. OLCOT Figure: Orders Loaded on Time % x Order Quality % = 97.76%

- (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.
- (c) For example only, the calculation of the OLCOT is: 98% x 99.75% => 97.76%

Part 2

(Initial KPIs)

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

- (a) Orders Loaded On Time: 96%
- (b) Order Quality (Orders Complete): 96.75%
- (c) Inventory Accuracy: 97.95%
- (d) OLCOT: 92.88%%

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:	97.76%	96.74%	95.49%	94.24%	92.99%	91.49%	89.99%
To:	96.75%	95.50%	94.25%	93.00%	91.50%	90.00%	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 89.99%, 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.

Part 4

(Other Reporting – not affecting Service Credit Calculations)

- 1.** Other operational KPI's will be tracked and reported on to measure the quality of the service, as agreed between the parties in writing. For the avoidance of doubt, none of these reported KPI's impact the OLCOT and Service Credit mechanisms.

- 2.** Examples of these KPI's are among others:

2.1 Detention and Demurrage

- (e) Definition: "Detention is when a driver's route is delayed at either the origin pick-up, or the destination delivery location for more than the agreed upon free time"

- (f) KPI = Detention Dollars Attributed to Warehouse Failures

2.2 **Over, Shorts, & Damage (OS&D)**

- (a) Definition: *"OS&D is a customer claim that an order has not been shipped in full or incorrect items have been placed on the order, or damage has occurred to product on the shipment."*
- (b) KPI = Dollar amount to be determined post stabilization and run rate mutually agreed upon by Customer and the Warehouse

2.3 **Gap Analysis Template**

- (a) Parties will use the Customer's standard GAP analysis Template in the monthly meetings.
- (b) Warehouse will be responsible for ensuring that for each KPI that is red for two (2) consecutive periods or the Year To Date is red that a gap analysis document will be completed with actions and results until the KPI is remedied.

Schedule 6

(Summary of Customer Data Analysis)

Parties have jointly executed a data analysis to determine the logistics requirements of Customer under this Agreement.

The results of this data analysis are summarized in the Excel document ; 2021-06-10_CAG_DRY ATL_SSOT throughput_data RvE_JK and attached to this Schedule 6.

Schedule 7

Part 1

(Annual Stock Count)

1. The parties agree that the stock held within a fully automated Warehouse cannot be fully counted by conventional means, without incurring significant costs and / or disruption to day-to-day operations (especially in the high-bay operation). As a result, 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 Customer's representatives and / or (external) audit staff.
 - (a) The Annual Stock Count includes the Employee retrieving Products from the high-bay storage at random, or if preferred by Customer according to a specified list, up to a maximum of 0.5% of Customer's Products in storage in the Warehouse at that moment (the "**First Round Count**"). Customer 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 Customer'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 0.3%, a further random sample of 0.1% of the Loads in storage in the Customer 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 Customer as follows:
 - (i) The first round of counting shall be conducted by an Employee (Customer's representatives may attend, but not necessarily) by use of RF terminals. The Employee shall scan the racking label and the Pallet label for each 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 (Customer's representatives may attend, but not necessarily) by use of RF terminals, yet this will be limited to the locations where (possible) mismatches were found. The method of counting shall be similar to the first round. After the second round, a list from the WMS shall be generated including the opening stock, and results of the first and second round counting. This list shall serve as a basis for the third round.
 - (iii) The third round of counting shall be conducted by Customer's employees and / or representatives. For this round, a randomly populated list shall be obtained from the WMS, including the racking positions of specific Products, and vice versa the Load ID for which the racking position has to be confirmed. The scope will be a minimum of 10% of all Customer'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 Customer representatives.

Part 2

(Daily Stock Count)

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

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

3. During daily picking operations: when the Pallet on the pick facing is picked to zero, the WMS requires the Employee to confirm that there are indeed no cases left for that specific pick facing. If according to the WMS the Pallet is empty, but there are still cases on the Pallet, a surplus exists ("**Surplus**"). Conversely, if there are no cases left but the WMS displays otherwise, a shortage exists ("**Shortage**").
 - (a) In case of a Surplus or Shortage, the Employee shall inform the shift leader and specify which racking location has a Surplus or Shortage. In both cases, the shift leader shall obtain a list from the WMS showing Pallets that have Products on them which have been picked recently, and physically check these Pallets. If the error is found, a correction in the WMS shall be recorded. Otherwise, a Surplus or Shortage shall be recorded in the WMS.
 - (b) The stock record shall be assumed to be accurate where the number of mismatches is less than 10 Pallets per 10,000 Pallet movements, or 0.1% (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 Pallets currently stored in the Customer Facility should be requested at random. The retrieved Pallets should be checked against the system records (Product, quantity, best before date, SSCC label).
 - (c) Any failure in that initial batch will require a further sample of 5% of stored Pallets 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 so 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 Customer, 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 Customer or its suppliers, would determine that the Customer representative took overall control, and vice versa);
 - (b) The immediate communications that are required in the event that business continuity is at risk. This will detail who is to be contacted (likely the management team plus other senior officers of both companies), the information that needs to be available to be included in the communication, the timing of the communication, and what to do if key personnel are not contactable. Contact details will be recorded as part of the plan, and updated by Operator (with cooperation from Customer) as required to keep an accurate record;
 - (c) Definitions that describe when the business continuity is deemed to be at risk. This includes descriptions of the 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. Any communication to Customer's customers must go through Customer's identified point of contact. 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 Customer employees
 - (vi) Industrial action by others
 - (vii) Fuel shortage

- (viii) Major equipment failures
 - (ix) Supply of Raw Materials including pallet supply
 - (x) Severe damage to the Customer 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 mobilization
 - (viii) Emergency manual procedures that require H&S procedures approved
 - (ix) Program 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
(Revised Service Commencement Date Payments)

	First Notification Date: 6/1/2023						This is activated only if G happens first		*notification periods are not additive						Second Notification Date: 9/1/2023*						This is activated only if P happens first
	Three Months Early	Two months Early	One Month Early	Intended Services Commencement Date	Revised Services Commencement Date		13 months Late			Three Months Early	Two months Early	One Month Early	Intended Services Commencement Date	Revised Services Commencement Date		13 months Late					
Projected Services Commencement Dates:	12/1/2023	1/1/2024	2/1/2024	3/1/2024	3/2/2024 or later		3/2/2025		Projected Services Commencement Dates:	12/1/2023	1/1/2024	2/1/2024	3/1/2024	3/2/2024 or later		3/2/2025					
Reduction of the Index Payment by:									Reduction of the Index Payment by:												
Reduction is taken on the Index Payment which is paid to CAG on First pallet in date	\$ (250,000)	\$ (175,000)	\$ (100,000)	\$ -					Reduction is taken on the Index Payment which is paid to CAG on First pallet in date	\$ (175,000)	\$ (125,000)	\$ (50,000)	\$ -								
Updated Index Payment	\$ 2,559,625	\$ 2,484,625	\$ 2,409,625						Updated Index Payment	\$ 2,484,625	\$ 2,434,625	\$ 2,359,625									
Penalty Paid: NewCold to CAG									Penalty Paid: NewCold to CAG												
Penalty to be Paid on 3/2/2024 (lump sum) - Covers NC for 1yr delay of project					\$ 2,000,000		\$ 2,600,000		Penalty to be Paid on 3/2/2024 (lump sum) - Covers NC for 1yr delay of project					\$ 3,100,000		\$ 1,400,000					
1																					
New assumed start up date	n/a	n/a	n/a	n/a	up to 3/1/2025	up to 3/1/2026			n/a	n/a	n/a	n/a	up to 3/1/2025	up to 3/1/2026							
Next notification date	9/1/2023	9/1/2023	9/1/2023	9/1/2023	9/1/2024	9/1/2025			12/1/2023	12/1/2023	12/1/2023	12/1/2023	9/1/2024	9/1/2025							