

Operational Services Agreement with Peters Ice Cream

- (1) Australasian Food Group Pty Limited, (trading as Peters Ice Cream)
- (2) NewCold Pty Ltd
- (3) R&R Ice Cream plc

Dated 13TH MAY 2016

Osborne Clarke

LFMB/1031152/O25563977.9/LFMB



Contents

1.	Definitions and interpretation	2
2.	Conditions precedent and duration	8
3.	Initial Duration	10
4.	Service Levels and KPIs	10
5.	Extension	10
6.	Provision of services	11
7.	Warranties	14
8.	Care of products	14
9.	Product Recalls	15
10.	Peters' obligations	16
11.	Health, environmental and safety hazards	16
12.	Intellectual property	16
13.	Facility and Sites	16
14.	Change request procedure and changes in law	17
15.	Rates	17
16.	Payment and GST	17
17.	Remedies for breach	18
18.	Indemnities and limitation of liability	19
19.	Insurance policies	21
20.	Confidentiality and publicity	22
21.	Contract management, information and reporting	22
22.	Privacy	22
23.	Remediation plan process	23
24.	Termination	23
25.	Consequences of termination	25
26.	Financial Statements	25
27.	Future financing / assignment of rights	25
28.	Assignment and Subcontracting	26
29.	Transfer of the agreement and management continuity on Change of Control	26
30.	Force majeure	27
31.	Notices	28
32.	General	29
33.	Dispute Resolution	30
34.	Governing law and jurisdiction	30
35.	Counterparts	30
36.	Attorney Fees and Costs	30
37.	Judicial Interpretation	31
38.	Peters Guarantee	31
	List of Schedules and Appendices	35
	Schedule 1 – Facility	36
	Schedule 2 – Services	39
	Schedule 3 – Service Levels	44
	Schedule 4 – Rates & Conditions	46
	Schedule 5 – Gain Share Mechanism	50
	Schedule 6 – Contract Management	51
	Schedule 7 – Amendments	53
	Schedule 8 – Business Continuity Plan	55
	Schedule 9 – WMS / IT	57
	Schedule 10 – Stock Count	59
	Schedule 11 – Depreciation Schedule	61
	Appendix 1 – Peters Information	65
	Appendix 2 – Pro Forma Balance Sheet	67
	Appendix 3 – Location of Peters' Warehouses	69

This Agreement is made on

2016

Between:

- (1) **Australasian Food Group Pty Limited**, (trading as Peters Ice Cream) registered in the State of Victoria (ACN 154 314 913) whose registered office is at 254-294 Wellington Road, Mulgrave, Victoria, Australia ("**Peters**");
- (2) **NewCold Pty Ltd**, registered in the State of Victoria (ACN 609 728 083) whose registered office is at c/o EMKC, Level 1, 140 Bourke Street, Melbourne, VIC 3000 ("**NC**"); and
- (3) **R&R Ice Cream plc**, registered in the United Kingdom (company number: 05777981) at Richmond House, Plews Way, Leeming Bar Industrial Estate, Northallerton, North Yorkshire, DL7 9UL, UK (the "**Guarantor**").

Background:

- (A) NC is engaged in the business of providing cold storage warehousing and associated transport and distribution services.
- (B) Peters is engaged in the business of the manufacture, marketing, sale and distribution of the Products. Peters wishes to engage NC to provide cold storage Facility Services relating to the Products to it for the benefit of Peters and members of the Peters Group.
- (C) Further to a Letter of Intent signed by both the parties, subject to the execution of this Agreement and subject to the terms hereof, NC has agreed to develop, for its own risk and account, the Facility and to refurbish Peters Warehouse 1 and Peters Warehouse 2 and, following completion of the Facility, to provide the Facility Services and Shuttling Services in accordance with the provisions of this Agreement.
- (D) The Guarantor has agreed to guarantee certain liabilities of Peters, as set out in clause 38.

It is agreed as follows:

1. Definitions and interpretation

- 1.1 In addition to terms defined elsewhere in this Agreement and unless the context requires otherwise, the following words, when commencing with a capital letter, have the following meanings:

"Agreement" means this Operational Services Agreement concluded between Peters and NC including the Schedules and such variations as shall be agreed in writing by the Parties in accordance with the provisions of clause 14.

"Applicable Law" means any Laws relevant to the provision of Services in accordance with this Agreement.

"Approval" means the permits, licences, consents, registrations and other authorisations issued by a Government Authority.

"Business Continuity Plan" means the plan prepared in accordance with clause 11.2 consistent with the principles set out in Schedule 8 (*Business Continuity Plan*).

"Business Day" means any day which is not a Saturday, a Sunday or a bank or public holiday in Victoria.

"Change Request" has the meaning given in Schedule 7 (*Amendments*).

"Commencement Date" means the date of this Agreement.

"Competitor(s)" means any person who, at the relevant time, is engaged in Australia in the manufacture, marketing or sale and/or distribution of some or all of the following: ice cream, ice confection, ice lollies, ice pops, frozen yoghurt, frozen desserts, gelato, or any similar or competing product. For the avoidance of doubt, an entity which is involved only in the transport and/or storage and/or handling of such products shall not be deemed to be a Competitor.

"Condition" has the meaning given in clause 2.1.

"Confidential Information" means the terms of this Agreement and all information provided under or in connection with this Agreement, and all information relating to a Party and its

businesses and affairs, in any form or medium which is not publicly available (either in its entirety or in the precise configuration or assembly of its components), together with any copies of that information in any form or medium or any part or parts of that information (including accounts, business plans, business methods, strategies and financial forecasts, tax records, correspondence, designs, drawings, manuals, specifications, customer, sales or supplier information, technical or commercial expertise, software, formulae, processes, methods, knowledge, know-how and trade secrets) whether disclosed orally or in writing to, or otherwise obtained by, the other Party before or after the Commencement Date, but does not include:

- (a) information that the Discloser has confirmed in writing is not Confidential Information;
- (b) information which is or becomes generally available to the public other than because of a breach of clause 20 or any other obligation of confidence;
- (c) information that a Party can demonstrate was generated by it completely independently of, without any reference to or reliance or dependency upon and other than in consequence of the acquisition by the Party of the Confidential Information or any part of it (whether direct or indirect).

"Control" means:

- (a) the ability to control a company whether through ownership of fifty per cent or more of the voting interests in the entity; or
- (b) the power to directly or indirectly:
 - (i) control the membership of the board of directors or other governing body of the entity; or
 - (ii) control the entity applying section 50AA of the Corporations Act; or
 - (iii) where the entity is trustee of a trust, to appoint, remove or replace the trustee or direct the trustee as to decisions to be made in relation to the trust; or
 - (iv) direct the management and policies of that entity, whether by means of trusts, agreements, arrangements, undertakings, practices, the ownership of any interest in shares or in any other way,

and a **"Change of Control"** occurs if a person who Controls any entity ceases to do so, or if another person acquires Control of it.

"Consequential Loss" means loss of profits, loss of revenues, loss of market share, loss of business opportunities (including opportunities to enter into arrangements with third parties), depletion of goodwill or loss of reputation, loss or damage in connection with claims against Peters by third parties, loss of actual or anticipated savings, and any indirect, incidental, punitive, special or consequential loss.

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

"CPI" means the Consumer Price Index – All Groups - Victoria, as published by the Australian Bureau of Statistics from time to time.

"Data" means Personal Information and Product Data.

"Dispute Resolution Procedure" means the procedure set out in clause 33.

"Electricity Price" means the price paid by NC per kilowatt hour for electricity at the Facility, as reasonably evidenced by NC.

"Exclusive Services" means services that are the same or are substantially the same as the Facility Services or the Shuttling Services being provided by NC in respect of the Products. For the avoidance of doubt, the Exclusive Services do not include the storage or transport of raw materials.

"Expected Condition Satisfaction Date" means, in respect of a given Condition, the date specified in the column entitled 'Expected Condition Satisfaction Date' in clause 2.1.

"Expiry Date" means the 10th anniversary of the Full Services Commencement Date.

"Extended Period" means a period of 48 months, as set out in clause 5, starting on the Expiry Date or starting on the expiry date of any Extended Period, as the case may be.

"Facility" means the warehouse owned by NC and located at 489 – 555 Robinsons Road, Truganina, Melbourne, Victoria, Australia.

"Facility Rules" means those reasonable rules relating to the Facility notified in writing to Peters by NC from time to time.

"Facility Services" means the Facility Services to be provided at the Facility, as described in more detail in Schedule 2 (Services).

"Force Majeure Event" has the meaning given to it in clause 30.

"Full Services Commencement Date" means 3 months after the Services Commencement Date.

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

"Government Authority" means any government or any governmental, semi-governmental, regulatory or judicial entity or authority. It also includes a self-regulatory organisation established under statute or a stock exchange.

"Group" means in relation to a Party that Party and every other company which is for the time being a Subsidiary or Holding Company of that Party or a Subsidiary of any such Holding Company (including, for the avoidance of doubt, any Related Body Corporate).

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

"GST Act Supplier" means the entity making the Supply.

"Holding Company" has the meaning given in the Corporations Act but on the basis that Subsidiary has the meaning given in this Agreement.

"Initial KPI's" means the key performance indicators for the Initial Period as set out in Schedule 3.

"Initial Period" means the period of 3 months between the Service Commencement Date and the Full Services Commencement Date.

"Insolvency Event" means each and any of the following events:

- (a) a party stops or suspends or threatens to stop or suspect payment of all or a class of its debts;
- (b) a controller (as defined in section 9 of the Corporations Act) or similar officer is appointed to the party, or over any of the property of the party;
- (c) the party is insolvent within the meaning of section 95A of the Corporations Act;
- (d) a party is presumed by a court to be insolvent by reason of an event set out in section 459C(2) of the Corporations Act;
- (e) the party fails to comply with a statutory demand under section 459F(1) of the Corporations Act;
- (f) has an administrator appointed or any step preliminary to the appointment of an administrator is taken;
- (g) the party ceases to carry on business for more than 30 days;
- (h) the party has proceedings commenced, a resolution passed or proposed in a notice of meeting, an application to, or order of, a court made or other steps taken against or in respect of it (other than frivolous or vexatious applications, proceedings, notices or steps) for its winding up, deregistration or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them; or

- (i) any event happens in Australia or any other country or territory in respect of a party that is similar to any of the events or circumstances referred to in this definition.

Any event that takes place as part of a solvent reconstruction, amalgamation, merger, consolidation, compromise or arrangement on terms approved in writing by the other Party beforehand (such approval not to be unreasonably denied, delayed or conditioned) and in compliance with those terms is excluded from this definition.

"Insurances" means the insurance policies described in clause 19.

"Intellectual Property" means any patent, invention, know-how, trade secret registered design, copyright (including rights in software), design right, database right, moral right, trade mark, service mark, business name, trade name, domain name, rights in confidential information and all similar property rights anywhere in the world in each case whether registered or not and including any application for registration of the foregoing.

"Law" means any statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, rule or subordinate legislation.

"Long Stop Date" means 1 July 2018, subject to any extension pursuant to clause 2.8.

"Manufacturing Facility" means the manufacturing facility owned or leased by Peters located at 254-294 Wellington Road, Mulgrave, VIC 3170 Australia, as more specifically shown in Appendix 3.

"Manufacturing Facility Warehouse" means the warehouse owned or leased by Peters which is part of the Manufacturing facility as more specifically shown in Appendix 3, and is used for the storage of dry goods.

"Maximum Pallet Volume" means the maximum number of Pallet spaces to be reserved by NC for use by Peters at the Facility at any time, calculated in accordance with paragraph 1.9 of Schedule 2.

"Minimum Annual Revenue" has the meaning given to it in paragraph 2 of Schedule 4.

"NC Representative" means the person to be appointed by NC as representative in accordance with Schedule 6 (*Contract Management*).

"OLCOT" has the meaning set out in Schedule 3 (*Service Levels*).

"Operational Procedures Document" or **"OPD"** means the document containing operating procedures agreed or to be agreed between the Parties separately pursuant to clause 6.9 of this Agreement, including, but not limited to, the "Warehousing Specifications for the storage of Peters Goods", "Ice Cream – The Cold Chain", "Health and Safety Systems" and "Procedures, Chain of Responsibility Standard".

"Pallets" means square hardwood pallets with a size of 1,165mm x 1,165mm, that are standard in Australia.

"Payment Default Notice" means a notice served in accordance with clause 24.5.

"Permitted Disclosee" has the meaning given to it in clause 20.1.

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

"Personnel" means any persons employed or engaged by NC (or any sub-contractors of NC) in providing the Services or in the case of partial Termination, in providing the relevant part of such Services including, without limitation, any key personnel identified in Schedule 6 (*Contract Management*) and NC Representative.

"Peters Representative" means Peters' authorised representative who shall have the authority to liaise with NC as notified to NC from time to time pursuant to Schedule 6 (*Contract Management*).

"Peters Information" means the information provided to NC by Peters specified in Appendix 1.

"Peters Systems" means the IT/software systems belonging to Peters and relevant to the provision of the Services and described in more detail in Schedule 2 (*Services*) and/or the OPD.

"Peters Warehouse 1" means the warehouse owned or leased by Peters and located at 254-294 Wellington Road, Mulgrave, Victoria, Australia, as more specifically shown in Appendix 3.

"Peters Warehouse 2" means the warehouse owned or leased by Peters and located at 254-294 Wellington Road, Mulgrave, Victoria, Australia, as more specifically shown in Appendix 3.

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

"Proceedings" means any application to court in the State of Victoria to obtain any injunctive relief, obtain any summary judgement, enforce any judgement by a court or arbitrator in any other jurisdiction, or recover any debt due under this Agreement or the Guarantee.

"Product Data" means all information in relation to transactions, controls, reconciliations and any other mechanics referred to in this Agreement and any underlying supporting data and the ambient conditions of the Facility and each of the Sites measured in relation to the Products while stored in the Facility or any Site in an electronic format which is reasonably readable by Peters and as stipulated from time to time in the OPD and if not, as otherwise reasonably required by Peters.

"Products" means the frozen products produced or prepared by or on behalf of Peters or any of its Group Companies, or distributed by Peters or any of its Group Companies.

"Rates" means the rates for the provision of the Facility Services set out in Schedule 4 (*Rates & Conditions*).

"Refurbishment Services" means the refurbishment of Peters Warehouse 1 and Peters Warehouse 2, as described in more detail in Schedule 2 (*Services*).

"Related Body Corporate" has the meaning given in section 50 of the Corporations Act.

"Remediation Plan" means a remediation plan agreed pursuant to clause 23.

"Replacement Value" means, in relation to a Product:

- (a) the manufacturing cost of that Product; and
- (b) the:
 - (i) handling-in fees;
 - (ii) storage fees; and
 - (iii) fees in respect of Shuttling Services,payable under this Agreement in respect of such Product.

"Service Credits" means the service credits payable in accordance with Schedule 3 (*Service Levels*).

"Services" means the Transition Services, Refurbishment Services, Shuttling Services, Transport Services and Facility Services, together with such other services as may be agreed in accordance with Schedule 7 (Amendments) and performance of NC's other obligations under this Agreement.

"Services Commencement Date" has the meaning given in clause 2.4.

"Services Equipment" means any equipment or assets (including computer hardware and software) used by NC for the purpose of carrying out the Services or otherwise complying with its obligations under this Agreement or components of such assets or equipment.

"Service Levels" means the standards of performance (including the Initial KPI's and Standard KPI's) to be met by NC in providing the Services, details of which are set out in Schedule 3 (*Service Levels*).

"Shuttling Services" means providing the primary transportation of Products from Peters Warehouse 1 to the Facility using shuttle trailers, as described in more detail in Schedule 2 (*Services*).

"Sites" means all premises from which the Services will be provided and from and to which Products will be collected and delivered, these being the Manufacturing Facility, the

Manufacturing Facility Warehouse, Peters Warehouse 1 and Peters Warehouse 2 but excluding the Facility.

"Specification" means the functionality for the Facility set out in Schedule 1 (*Facility*), and as further detailed in the Peters Information.

"Standard KPI's" means the key performance indicators applicable from the Full Services Commencement Date, as set out in Schedule 3 (*Service Levels*).

"Subsidiary" has the meaning given in the Corporations Act but so that:

- (a) an entity will also be considered to be a Subsidiary of a company if it is controlled by that company within the meaning of section 50AA of the Corporations Act;
- (b) a trust may be a Subsidiary, for the purposes of which a unit or other beneficial interest will be regarded as a share; and
- (c) a corporation or trust may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a corporation.

"Supplier Systems" means the IT/software systems belonging and/or to be operated by NC in the provision of the Services including the WMS and described in more detail in Schedule 2 (*Services*) and/or the OPD.

"Termination" means the expiry or termination of all or part of this Agreement in accordance with its terms.

"Termination Date" means the date on which the Termination takes effect.

"Transition Services" has the meaning given in clause 6.3.

"Transport Services" means the transport of Products by road (a) from the Facility to Peters Warehouse 1, and (b) from Peters Warehouse 2 to the Manufacturing Facility Warehouse, as described in more detail in Schedule 2 (*Services*).

"VSR Trucks" means the small, rigid trucks used by Peters to distribute Products in their impulse retail channel throughout the Victoria region.

"WMS" means the warehouse management system used for managing stocks and stock movements in the Facility, described in more detail in Schedule 9 (*WMS / IT*).

1.2 Interpretation

- (a) The headings to clauses, appendices and schedules are inserted for convenience only and shall not affect the interpretation or construction of this Agreement.
- (b) Words expressed in the singular shall include the plural and vice versa. Words referring to a particular gender include every gender. References to a person includes an individual, company, body corporate, unincorporated association, corporation, firm, partnership, joint venture, government, state or agency of state.
- (c) The words and phrases "other", "including" and "in particular" are illustrative and shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible.
- (d) References to any statute or statutory provision shall include: (i) any subordinate legislation made under it; (ii) any provision which it has modified or re-enacted (whether with or without modification); and (iii) any provision which subsequently supersedes it or re-enacts it (whether with or without modification), whether made before or after the Commencement Date.
- (e) All references in this Agreement to clauses and Schedules are to the clauses of and schedules to this Agreement unless otherwise stated.
- (f) Any reference to written or writing includes reference to any communication effected by email or facsimile or any comparable means.
- (g) A reference to dollars and \$ is to Australian currency.
- (h) A reference to time is to Australian Eastern Standard time.

(i) In the case of conflict or ambiguity the order of precedence for the Agreement and the documents attached or referred to in this Agreement, shall be as follows:

- (i) first clauses 1 to 38 (inclusive) of this Agreement;
- (ii) then second the Schedules; and
- (iii) then thirdly the Operational Procedures Document.

2. Conditions precedent and duration

Conditions

2.1 The terms and conditions of this Agreement (other than clauses 2, 6.1, 6.2, 11.1(b), 14, 20, 27, 29, 32.2, 32.3, 32.4, 32.5, 32.6, 32.7, 32.8, 32.9, 32.10, 32.11, 33, 35, 36, 37 and 38 which shall come into effect on the Commencement Date) are conditional on the fulfilment (or waiver) of the following conditions (the "**Conditions**"). Each Party must use commercially reasonable endeavours to procure, to the extent that it is within their respective control or influence, that:

- (a) each Condition against which the Party's name is stated in the column entitled 'Responsible' in this clause 2.1 is satisfied on or prior to the Expected Condition Satisfaction Date and in any event prior to the Long Stop Date; and
- (b) there is no occurrence that would prevent any of the Conditions being satisfied.

Item	Condition	Expected Condition Satisfaction Date	Responsible
1.	(Approvals) NC obtains all Approvals necessary for the operation and occupation of the Facility and the provision of the Services, including in respect of the oxygen reduction system to be implemented at the Facility	1 June 2017	NC
2.	(Acquisition of land and construction of Facility) NC, or a Related Body Corporate of NC, has: (a) acquired the land on which the Facility is to be built; and (b) procured all Approvals for the commencement of the construction of the Facility.	1 June 2017	NC
3.	(Completion of construction and fit out) The construction and fit out of the Facility is completed in all material respects in accordance with the Specifications and suitable for the performance of the Services.	1 March 2017	NC
4.	(Shuttle Services) NC can demonstrate, to the	1 June 2017	NC

Item	Condition	Expected Satisfaction Date	Responsible
	<p>reasonable satisfaction of Peters, that the Shuttling Services can be provided in accordance with Schedule 2 (Services), including:</p> <p>(a) that NC has the necessary trucks and trailers to provide the Shuttling Services;</p> <p>(b) that NC has installed, or procured the installation of, the necessary loading equipment in the Manufacturing Facility to provide the Shuttling Services; and</p> <p>(c) that NC has retained drivers to provide the Shuttling Services.</p>		
5.	(Systems Interface) NC can demonstrate, to the reasonable satisfaction of Peters, that the Supplier Systems are interfacing with the systems operated by Peters in accordance with the Operational Procedures Document.	1 June 2017	NC and Peters

- 2.2 Each Party must promptly notify the other Party on becoming aware of the satisfaction of any Condition, or of any Conditions becoming incapable of being satisfied (and where a Condition has been satisfied, provide such documents or other information evidencing the satisfaction of the Condition as the other Party reasonably requests).

Waiver of Conditions

- 2.3 Peters may at any time waive in whole or in part and conditionally or unconditionally the Conditions above by notice in writing to NC.

Services Commencement Date

- 2.4 Subject to clause 2.5 and clause 2.7, the Services Commencement Date shall be the later of:

- (a) 1 June 2017; and
- (b) the date being five Business Days following the satisfaction of the Conditions,
- or such other date (being no later than the Long Stop Date) agreed by the Parties in writing.

- 2.5 If the Services Commencement Date does not occur on or before 1 July 2017, both parties shall seek to find suitable alternative arrangements in respect of the storage and handling of the Products during the period from 1 July 2017 until the Services Commencement Date. Such alternatives may include (but are not limited to);

- (a) Peters continuing to use its current service provider for storage and handling of the Products. In this case, Peters will pay its current service provider's rates, using reasonable endeavours to accomplish rates not being higher than the rates paid in the previous 12 month period, for the continued storage and handling services for the Products by that provider to the same standards and service levels in force with that

provider on the relevant date for the period from 1 July 2017 until the Services Commencement Date; or

- (b) Peters entering into an arrangement with another service provider (other than the current service provider). In this case, Peters will pay this service provider's rates, using reasonable endeavours to accomplish rates not being higher than the rates paid in the previous 12 month period, for storage and handling services for the Products to the same standards and service levels for the Products on the relevant date for the period from 1 July 2017 until the Services Commencement Date; or
- (c) NC entering into an arrangement with a service provider for storage and handling services for the Products to the same standards and service levels. In this case, NC will pay this service provider's rates for the storage and handling services for the Products by that provider on the relevant date for the period from 1 July 2017 until the Services Commencement Date and Peters shall pay NC the Rates as if the services were being provided at the Facility.

For the avoidance of doubt, NC shall reimburse Peters for any additional out-of-pocket third party costs, expenses and other liabilities incurred by Peters as a direct result of such storage and handling services (which, in the case of paragraphs (a) and (b) above, includes any amounts payable by Peters in excess of the rates paid in the previous 12 month period), provided that:

- (a) such costs, expense or other liabilities are reasonable and, where relevant, substantiated by documentary evidence and shall be limited to actual damages and losses and shall under no circumstances include indirect, incidental, punitive, special or Consequential Loss; and
- (b) NC's total liability under this clause 2.5 shall not exceed AUD\$200,000 per month and AUD\$2,000,000 in the aggregate.

Termination if conditions not fulfilled

- 2.6 If the Conditions have not been satisfied (or, where Peters is entitled to waive them, waived by Peters) on or before the Long Stop Date, either Party may serve a notice on the other Party following ten (10) Business Days of the Long Stop Date, and the Parties must then consult in good faith with a view of determining whether:
 - (a) the arrangements contemplated in this Agreement can be implemented by way of alternative means or methods; or
 - (b) to extend the Long Stop Date.

- 2.7 If the Parties are unable to reach agreement under clause 2.6 within ten (10) Business Days after the delivery of the notice under clause 2.6 or neither Party serves a notice in accordance with clause 2.6, this Agreement shall terminate automatically and neither party shall have any further liability to the other.

Extension of Long Stop Date

- 2.8 If Condition 3 or Condition 4 is not satisfied on or before the Long Stop Date as a result of adverse ground conditions caused by severe weather, including flooding, which renders satisfaction of the Condition impractical or unduly hazardous, then provided NC has served notice in writing on or before 1 October 2016 requesting an extension to the Long Stop Date due to such adverse ground conditions, the Long Stop Date shall be extended by a period of up to two months (the "Extension Period") as specified in the written notice from NC.
- 2.9 When NC has successfully completed the construction of the Facility, NC shall give Peters written notice of that fact within 10 Business Days.

3. Initial Duration

- 3.1 Subject to clause 2.1, this Agreement shall come into full force and effect on the Services Commencement Date and (subject to earlier Termination or extension pursuant to clause 5 (Extension)) shall terminate on the Expiry Date.

4. Service Levels and KPIs

- 4.1 During the Initial Period, the Initial KPI's shall be as set out in paragraph 3 of Schedule 3.

- 4.2 As of the Full Services Commencement Date the Standard KPI's as set out in paragraph 3 of Schedule 3 are applicable.

5. **Extension**

Peters may, by giving NC not less than 12 months' written notice prior to the Expiry Date (or 6 months' written notice prior to the expiry of an Extended Period, as relevant), extend this Agreement in respect of the Services for one or more additional Extended Periods. Either party may terminate this Agreement on 18 months' prior written notice to the other at any time during an Extended Period, save that such Termination shall not be effective before the end of the first Extended Period.

6. **Provision of services**

Refurbishment Services

- 6.1 Prior to (or as soon as possible following) the Services Commencement Date (but no later than the Full Services Commencement Date) and provided

- (a) Conditions 1 and 2 have been satisfied or waived; and
- (b) Peters' has not terminated the Agreement or given indication of intent to terminate the Agreement,

NC shall, at its own cost and expense (but without prejudice to the cost recovery mechanism contained in clause 25.3), carry out the Refurbishment Services in accordance with this Agreement and the parties' agreed plan for such Refurbishment Services.

- 6.2 As soon as possible following completion of the Refurbishment Services, NC will provide Peters with a notice:

- (a) stating the costs and expenses incurred by NC in undertaking the Refurbishment Services; and
- (b) accompanied by documentary evidence substantiating the costs and expenses stated in accordance with clause 6.2(a).

Transition Services

- 6.3 During the month prior to the Services Commencement Date, as may be reasonably required by Peters, NC shall at its own cost and expense transfer all Products from Peters' existing warehouse provider (being, at the time of signing of this Agreement, Oxford Cold Storage), to the Facility (the "**Transition Services**"). For such Products (the anticipated volume of which is around 8,000 Pallets), NC will waive the rate applicable to inbound goods. Peters will be liable for the storage costs (as provided in Schedule 4 (*Rates*)) arising from the storage of any Products that are transferred to the Facility pursuant to this clause 6.3.

- 6.4 In providing the Transition Services, NC shall comply with all reasonable instructions given by Peters (including in respect of timing and phasing of such transfer) and shall co-operate with Peters and any third party engaged to provide services to Peters to ensure an orderly handover of services minimising the impact to Peters' business. Each party shall (acting reasonably and in good faith):

- (a) use reasonable endeavours to minimise the costs associated with such transfer of the Products; and
- (b) negotiate and agree an appropriate transition and risk management plan regarding such transfer of the Products and handover of the Services prior to such activities taking place.

Supply of Services

- 6.5 From the Service Commencement Date, NC shall:

- (a) provide the Services (other than the Refurbishment Services and Transition Services) from the Services Commencement Date;
- (b) perform its obligations under this Agreement in accordance with the Service Levels (subject to clause 4); and

- (c) following consultation with Peters and subject to clause 14, where necessary and commercially feasible, develop and implement a continuous improvement plan in relation to the Services, utilizing agreed evaluation processes and customer satisfaction surveys to ensure that the quality of the Services is improved and, together with Peters, shall review the Service Levels to ensure that the performance of the Services is improved, in both cases such improvements to be made throughout the term of this Agreement. Where opportunities are identified for improvement, they will be processed in accordance with clause 14 (*Change Request Procedure*).

6.6 NC shall reasonably co-operate with Peters and any third party engaged to provide services to Peters, so as to integrate (where reasonably required by Peters) other services, materials or equipment supplied by Peters or any third party with the Services. Such co-operation shall include, where appropriate and reasonable, the provision of information and provision of access to NC's operations and premises (subject to such access restrictions relating to security as NC may reasonably require) but excludes (unless expressly stated otherwise in this Agreement) Peters divulging information relating to NC's Confidential Information or such information that adversely affects NC's confidential position or proprietary business processes or procedures. Where there are costs of complying with this clause 6.6, then they shall be agreed prior to incurring such costs in accordance with clause 14 (*Change Request Procedure*).

6.7 NC undertakes throughout the term of the Agreement from (subject to clause 6.1) the Services Commencement Date onwards:

- (a) to provide the Services in accordance with Good Industry Practice, the Operational Procedures Documents, all Approvals and the provisions of this Agreement as is to be expected from a provider of services experienced in the provision of services of the scale, type, scope and complexity of the Services, as well as to meet best practice developments where commercially reasonable and feasible in cold-store warehousing throughout the duration of this Agreement;
- (b) to provide the Services Equipment and all other equipment, Personnel and materials (excluding Pallets) necessary to provide the Services;
- (c) to comply with and to ensure that the Personnel comply with:
 - (i) all Applicable Law and, to the extent that such regulations are advisory, the minimum compliance to be achieved by NC should be the best practice in the relevant industry; and
 - (ii) all safety and security standards, site procedures and codes of Peters and/or of the owner and operators of the Sites (in force from time to time), to the extent that such standards, procedures and codes have been brought to the attention of NC or provided to NC following reasonable enquiries by NC; and
 - (iii) any reasonable instructions and guidelines issued by the owner and operators of the Sites from time to time;
- (d) to maintain a quality management system as would be required to achieve standards of Australian Quarantine and Inspection Service (AQIS), ISO 9000, International Food Standard (IFS) and/or British Retail Consortium (BRC) for the Services and shall take all necessary steps to maintain such standard throughout the term of this Agreement;
- (e) where it processes Data on behalf of Peters, to:
 - (i) use the Data only on the lawful and reasonable instructions of Peters to perform its obligations under this Agreement;
 - (ii) keep the Data confidential and provide appropriate technical and organizational measures against unauthorized or unlawful processing, accidental loss or destruction of or damage to the Data;
 - (iii) except as required by Law for its own record keeping or quality assurance purposes, either return or destroy the Data (including all copies of it) immediately on Termination of this Agreement or any part of it, and at any time on the request of Peters;

- (f) in relation to Data, to comply with its obligations under any applicable data protection laws;
- (g) to identify, obtain and maintain all Approvals for the fulfilment of its obligations under this Agreement and notify Peters of any consents it becomes aware of that Peters needs to obtain relating to the Services;
- (h) to maintain a record of every incident relevant to health and safety as required by Applicable Law, whether or not the same results in personal injury or damage to property;
- (i) to use at all times all reasonable endeavours to ensure that no virus or other contamination is coded or otherwise introduced (whether directly or indirectly) to computer systems used by NC (including any interface or link from one computer system to another) in performing the Services and if a virus or contamination is found to have been introduced, to take all reasonable remedial action at its cost to eliminate the virus, to mitigate the losses and restore any data as necessary;
- (j) to ensure that it has the information resources (including hardware and software) as specified in Schedule 2 (Services) and/or the OPD; and
- (k) to grant on-line access to Peters to its stocks records (visualisation) in the Facility.

6.8 The Services shall be supplied in such a commercially reasonable manner so as to minimise disruption or interference with the operational activities of Peters as is reasonably practical. NC shall consult where reasonably practicable with Peters on any planned disruption or interference prior to carrying out the relevant activity.

Operational Procedures Document

6.9 As soon as possible following the Commencement Date, and in any event prior to 1 March 2017, the Parties will work together to produce the Operational Procedures Document which, among other things, must address the following:

- (a) the operational procedures relating to the provision of the Services;
- (b) the warehousing specifications for the storage of the Products;
- (c) the health and safety systems to be adhered to by NC;
- (d) the chain of responsibility standards; and
- (e) the quality assurance procedures to be implemented by NC.

6.10 Provided always that it has acted reasonably and in good faith in discharging its obligations under clause 6.9, neither party shall have any liability in relation to a failure by the parties to agree the contents of the Operational Procedures Document. Any disputes or differences between the parties regarding their obligations under clause 6.9 shall in the first instance be dealt with through the Dispute Resolution Procedure.

Exclusivity

6.11 Subject to clause 6.12, Peters shall not, from the Services Commencement Date, itself provide or appoint any third party to provide in Victoria the Exclusive Services save to the extent that NC expressly agrees otherwise in writing in respect of any particular services.

6.12 Clause 6.11 shall not apply, and nothing in this Agreement shall restrict Peters itself carrying out or appointing a third party to store Products or provide the Services (or services equivalent to or in replacement of the Services):

- (a) prior to the Services Commencement Date;
- (b) in any territory outside Victoria;
- (c) with regard to the Services, for so long as there is a material failure or partial failure by NC in the performance of any substantial part of the Services in each case which affects Peters' ability to substantially comply with any of its delivery schedules or other substantial obligations owed to its customers for so long as is required for Peters to meet the substantial obligations to its customers provided always that the obligations of Peters under clause 6.11 shall resume as soon as reasonably practicable after such failure is remedied;

- (d) where a notice to terminate this Agreement is properly given following notice of breach and lapse of all applicable cure periods by either party in accordance with the terms of this Agreement, from the date of such notice;
- (e) for so long as NC fails (in whole or in part) or delays to perform any of its material obligations under this Agreement due to a Force Majeure Event but only in respect of the obligations that are affected by that Force Majeure Event;
- (f) during the 6 month period prior to expiry of this Agreement; or
- (g) in accordance with the terms of this Agreement.

6.13 If, during the term of this Agreement, Peters acquires the assets and goodwill of any new business, any storage, shuttling or distribution services required by that business shall not form part of the Exclusive Services unless the parties expressly so agree in writing.

Replacement Services

6.14 Where NC is in material breach of this Agreement and Peters has served notice on NC in accordance with clause 23.2, Peters may, as part of the Remediation Plan, require NC to appoint a third party to provide services to temporarily replace or supplement the affected Services ("**Replacement Services**"). In such circumstances:

- (a) the Replacement Services shall form part of the Remediation Plan;
- (b) NC shall bear the costs of such Replacement Services and shall reimburse Peters for any additional third party out-of-pocket costs and expenses incurred by Peters as a direct result of such Replacement Services being procured (subject to the approval of Peters, not to be unreasonably withheld, delayed or conditioned) provided that such costs, expenses or other liabilities are reasonable and, where relevant, substantiated by documentary evidence;
- (c) Peters shall continue to pay the Rates in respect of the Services and Replacement Services; and
- (d) the appointment of a third party service provider under this clause shall not constitute a breach by Peters of its obligations in clause 6..

6.15 NC shall be entitled to terminate the Replacement Services and resume provision of the Services on an exclusive basis as soon as NC demonstrates (to Peters reasonable satisfaction) that it is able to provide the Services in accordance with the Service Levels and in all material respects in accordance with the terms of this Agreement. NC will have the right, without any obligation to do so, to store Products at an alternate warehousing facility in Victoria, with Peters' prior written agreement (not to be unreasonably withheld, delayed or conditioned) where the number of Pallets which require storage exceeds (i) the relevant forecast (plus the applicable buffer percentage) provided by Peters pursuant to paragraph 1.3 of Schedule 2, when NC does not have spare capacity available at the Facility or (ii) the Maximum Pallet Volume ("**Excess Pallets**"), and provided that:

- (a) NC shall give Peters prior notice in writing (no less than 10 Business Days prior to any proposed use of such alternative facility) of its intention to do so; and
- (b) such alternative warehousing facility proposed is in all material respects suitable and and compliant with all requirements of Peters' insurers.

6.16 NC shall be and remain liable for all out-of-pocket third party additional costs incurred by Peters and shall reimburse Peters fully on demand for any such additional costs Peters incurs as a result of use of any such alternative facility if NC is storing Pallets at such third party facility at a time when NC has made less than the Maximum Pallet Volume available for Peters. Peters shall be and remain liable for all reasonable costs incurred by NC and shall reimburse NC fully on demand for any such additional costs which NC incurs as a result of use of any such alternative facility if NC is storing Pallets at such facility for Peters in excess of the Maximum Pallet Volume. NC shall be under no obligation to store Pallets at the Facility in excess of the Maximum Pallet Volume at any time when NC does not have space available to accommodate Peters' excess storage requirements. NC acknowledges and agrees that it shall be reasonable for Peters to withhold such consent in circumstances where its insurer withholds consent (or imposes terms of insurance which are less favourable to Peters than its then current insurance arrangements). In

any circumstances where Peters withholds its consent in accordance with this clause 6.16 it shall be entitled to appoint a third party to store such Excess Pallets (and to provide shuttling services and distribute the relevant Products) and this shall not be a breach of clause 6.11.

Stock Count

- 6.17 NC shall undertake all stock counts in accordance with Schedule 10 (*Stock Count*).

7. Warranties

Subject to satisfaction of the Conditions, NC warrants in favour of Peters that, as of the Service Commencement Date, it will have adequate capacity and all Approvals necessary to enter into and to perform its obligations under this Agreement.

8. Care of products

- 8.1 Full legal and beneficial title to the Products shall remain with Peters at all times.
- 8.2 Peters shall ensure that the Products are presented to NC securely and properly packed in compliance with all Applicable Law and recognised industry standards.
- 8.3 Without prejudice to Peters' rights and remedies (including the right to bring a claim for breach of contract) in connection with loss or damage of the Products where caused by NC's negligence (for the avoidance of doubt any breach of clauses 8.3(a) to 8.3(f) shall be deemed caused by NC's negligence), risk in the Products shall remain with Peters at all times (including when the Products are in the possession or control of NC during Shuttling Services and whilst in storage). NC shall comply with the Schedules in relation to the inspection and storage of the Products including visually examining the Products in line with the procedures in the Operational Procedures Document and notifying Peters if damage is detected during any such visual inspection. NC shall, whilst the Products are in its possession or control:
- (a) store the Products in agreed conditions as specified in the Operational Procedures Document;
 - (b) ensure that the Products are not tainted or contaminated in any way;
 - (c) ensure that the Products, that are clearly identified as belonging to Peters, are not tampered with;
 - (d) immediately notify Peters of any loss, physical damage, theft, seizure or loss of possession of any of the Products;
 - (e) not sell, charge, pledge, mortgage or otherwise dispose of the Products or any part of them or permit any lien or other third party interest to arise over the Products or part of them, or intentionally part with possession of the Products or any part of them (except in relation to the fulfilment of the Services or on the instructions of Peters) and shall keep the Products free from distress, execution and other legal process; and
 - (f) not alter, remove, conceal or otherwise interfere with any markings on any materials in which the Products are packaged and shall deliver the Products in the same packaging in which they were supplied to NC unless otherwise directed by Peters.
- 8.4 NC shall notify Peters if it becomes aware of any breach or anticipated breach by Peters which is or is likely to cause NC to breach any of its obligations under this Agreement at the next call or meeting held pursuant to paragraph 2.1 of Schedule 6 (Contract Management) ("**Peters Default**"). The non-performance or delay by NC of its obligations under this Agreement shall be excused only if and to the extent that:
- (a) it results directly from the Peters Default;
 - (b) NC has provided notice of such failure in accordance with this clause; and
 - (c) NC shall take (and procure that each subcontractor shall take) and continue to take all steps reasonably necessary, including deploying reasonable additional internal resources where commercially reasonable and feasible to avoid, eliminate or mitigate the effect of any such actual or anticipated Peters Default and, where commercially reasonable, continue to perform its obligations.

8.5 Peters shall have the right to visit the Facility to examine the Products at any time on reasonable notice provided that in relation to any such visit Peters shall comply with all reasonable requirements in the Facility Rules, as applicable from time to time.

9. Product Recalls

9.1 Each Party must notify the other Party immediately if it becomes aware of a defective Product which may require recall or where a Party becomes aware of any circumstances that might necessitate a recall of any of the Products.

9.2 Whether a recall of the Products is required or deemed advisable will be decided by Peters at its absolute discretion.

9.3 NC, at Peters' cost subject to clause 9.4, must provide Peters with any reasonable assistance requested by Peters relating to the recall of Products.

9.4 Any recall of the Products which is directly caused by NC or its Personnel in its handling of the Products or as the direct result of any security or other failure in respect of the Facility as a result of which there arises any actual or reasonably suspected defect in, contamination or damage to the Products will be at the cost of NC (including the reasonable cost of its personnel associated with the recall of the Products), provided that such costs of the recall are reasonable, evidenced, proportionate to risk posed by the defective Products, and provided also that Peters uses reasonable endeavours to mitigate the costs.

9.5 NC will not make any press or other announcement or release any information without Peters' prior written approval.

10. Peters' obligations

10.1 Peters shall:

- (a) perform its obligations under this Agreement (including for the avoidance of doubt, the Schedules);
- (b) supply NC with such information as required by Schedule 2 (*Services*) or as NC may reasonably require; and
- (c) at NC's cost with respect to third party costs, use reasonable endeavours to cooperate with all reasonable requests of NC which are necessary for NC to fulfil its obligations hereunder.

10.2 Peters shall ensure that Products are made available for collection by NC or its sub-contractor in accordance with the requirements set out in Schedule 2.

11. Health, environmental and safety hazards

11.1 NC shall promptly:

- (a) notify Peters of any health, environmental and safety hazards which may arise in connection with the performance of the Services; and
- (b) inform Personnel and any other persons engaged in the performance of this Agreement at or visitors to the Facility and the Sites of all such hazards and shall instruct such persons in connection with any necessary associated safety measures.

11.2 NC shall prepare, with the assistance of Peters, and maintain a Business Continuity Plan (in accordance with the requirements contained in Schedule 8 (*Business Continuity Plan*)).

11.3 Where appropriate, NC shall activate the Business Continuity Plan if the hazards referred to under 11.1(a) materialize.

11.4 NC shall comply with all relevant legislation and industry codes when performing its obligations under this Agreement, including the "Cold Chain, Health and Safety Systems and Procedures, Chain of Responsibility Standard".

12. Intellectual property

12.1 All Intellectual Property rights in any documents, assets, designs or data provided to a Party by the other Party in connection with the performance of this Agreement shall remain vested in and the property of the first mentioned Party or remain licensed to such Party, as appropriate. Each

Party hereby grants to the other Party the non-exclusive right for the duration of this Agreement to use such Intellectual Property free of charge for the sole purpose of enabling the other Party to perform its obligations under this Agreement (and, in the case of rights granted to Peters, for the purpose of receiving the benefit of the Services).

- 12.2 Ownership of the Supplier Systems and the Services Equipment, including all Intellectual Property rights in them and any developments made by NC in connection with the provision of the Services, shall be the exclusive property of NC (or its licensors) and Peters shall not acquire title to or any interest in such systems, equipment or rights except as may be specifically set out in this Agreement.

13. **Facility and Sites**

- 13.1 NC shall maintain a Business Continuity Plan according to which NC shall use reasonable endeavours to continue providing the Services in the event of: any disaster; any health, environmental or safety hazard; or other reason preventing use of the Facility and/or Sites or preventing or impacting performance or delivery of the Services. Upon request of Peters, NC shall collaborate with Peters in testing the efficacy of the Business Continuity Plan provided that NC shall not be obliged to do so more than once in any 12 month period.

- 13.2 The Parties acknowledge and agree that, to the extent permitted by Applicable Law:

- (a) NC shall be responsible for the health and safety of all Personnel at the Facility; and
- (b) Peters shall be responsible for the health and safety of all Personnel at the Sites.

14. **Change request procedure and changes in law**

- 14.1 Any amendments to this Agreement shall be made following a Change Request in accordance with Schedule 7 (Amendments).

15. **Rates**

- 15.1 In consideration of the provision of the Facility Services and the Shuttling Services, Peters shall pay the Rates to NC in accordance with Schedule 4 (Rates).

Adjustment of Rates

- 15.2 The Rates shall be subject to adjustment in accordance with Schedule 4 (Rates).

Alteration of Rates for unforeseen costs

- 15.3 Peters acknowledges and agrees that:

- (a) NC has designed and developed the Facility among other things on the basis of Peters Information after having evaluated the same; and
- (b) the parties shall discuss in good faith an increase in the Rates (or an alternative allocation of costs between the parties) to take account of any additional reasonable costs incurred by NC in connection with the development, construction and/or operation of the Facility or the performance of the Refurbishment Services, to the extent that such costs arise as a result of the Peters Information being inaccurate in any material respect.

Quotation for new products

- 15.4 NC shall provide a full written quotation within 10 Business Days of receiving a written request from Peters for the supply of Services as set out in Schedule 2 (Services) for products which are not Products. NC will not unreasonably withhold the supply of additional Services where commercially reasonable and feasible within the overall scope of the Facility and NC's operations and shall provide the additional Services at pricing and on terms that are mutually agreeable to the parties as determined in accordance with the procedure set out in Schedule 7 (Amendments).

16. **Payment and GST**

Invoices

- 16.1 NC shall invoice Peters weekly for the Services delivered in the previous week and in accordance with the Rates set out in Schedule 4 (Rates).

Payment of invoices

16.2 Unless otherwise expressly provided in this Agreement or agreed by the Parties in writing, all invoices submitted by NC shall be paid by Peters within 30 days from the end of month of invoice from NC.

16.3 All sums payable under this Agreement are to be in Australian Dollars (AUD\$).

GST

16.4 All sums payable under this Agreement and any other payments due to NC shall be exclusive of any applicable GST or other taxation which shall be payable by Peters subject to receipt of a Tax Invoice.

16.5 If a Supply made under or in connection with this Agreement is a Taxable Supply, then at or before the time any part of the consideration for the Supply is payable:

(a) the Recipient must pay the GST Act Supplier an amount equal to the total GST for the Supply, in addition to and in the same manner as the consideration otherwise payable under this Agreement for that Supply; and

(b) the GST Act Supplier must give the Recipient a Tax Invoice for the Supply.

16.6 For clarity, the GST payable under clause 16.4 is correspondingly increased or decreased by any subsequent adjustment to the amount of GST for the Supply for which the GST Act Supplier is liable, however caused.

16.7 If either party has the right under this Agreement to be reimbursed or indemnified by another party for a cost incurred in connection with this Agreement, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).

16.8 Where a Tax Invoice is given by the GST Act Supplier, the GST Act Supplier warrants that the Supply to which the Tax Invoice relates is a Taxable Supply and that it will remit the GST (as stated on the Tax Invoice) to the Australian Taxation Office.

16.9 Where a Supply made under or in connection with this Agreement is a Progressive or Periodic Supply, clause 16.5 applies to each component of the Progressive or Periodic Supply as if it were a separate Supply.

16.10 Any words capitalised in this clause 16 and not already defined in this Agreement have the meaning given to those words in the GST Act.

Disputes in respect of invoices

16.11 Should Peters have a bona fide dispute in respect of the whole or any part of any invoice then Peters shall notify NC of the nature of such dispute in writing within 7 Business Days of receipt of the invoice giving all relevant details. If Peters notifies NC that it disputes the whole or any part of sums payable under any invoice in accordance with this clause 16.11 (the "**Dispute Notice**"), NC will credit the invoices and will send two new invoices, one for the disputed part and one for the undisputed part, both with the original invoice date and any credit note issued shall be deemed to have been issued as of the original invoice date. Peters shall pay the undisputed invoice but in no event no later than 30 days from the end of month of invoice related to the undisputed part. The Parties shall cooperate in good faith to resolve the dispute over the invoice as amicably and promptly as possible and on settlement of any dispute Peters shall make the appropriate payment in any agreed period within which payments are due to be made or, failing which, within 10 Business Days of the date on which the dispute is resolved.

16.12 If the Parties are unable to settle the dispute in accordance with clause 16.11 within 10 Business Days of Peters issuing a Dispute Notice, the Parties shall resolve such dispute through the Dispute Resolution Procedure.

Interest on late payment

16.13 If either Party fails to pay within the payment term, the receiving Party shall be entitled to charge and the paying Party shall pay interest calculated on a daily basis from the due date of payment on all overdue amounts (both before and after judgment) until actual payment has been received

by the receiving Party in full. Unless otherwise provided by applicable mandatory law, the interest rate shall be the rate fixed from time to time under the *Penalty Interest Rates Act 1983* (Vic) from the date on which the amount should have been paid until the date it is paid. For the avoidance of doubt, neither Party shall be entitled to charge interest and neither Party shall pay interest on invoices which are the subject of a bona fide dispute and which have been notified to the other Party as being in dispute under the terms of this clause 16 (*Payment*).

- 16.14 Each Party will notify the other of any overdue payments in writing to such person as nominated by the other Party for such purpose.

17. Remedies for breach

- 17.1 Without prejudice to its other rights and remedies, including Peters' right to claim damages, if NC materially fails to perform the Services (or any substantial part of them) (including during the Initial Period) due to a breach of NC's material obligations in this Agreement NC shall be obliged at Peters' option to:

- (a) remedy such breach by re-executing the relevant part of the Services free of charge and arrange all such additional resources as are reasonably necessary to perform the Services in accordance with the applicable Service Levels as early as reasonably practicable thereafter and at no additional charge to Peters;
- (b) source (if applicable) alternative Facility Services at (an) other site(s) (and NC shall ensure such site(s) are appropriate in all material respects and compliant with all requirements of Peters' insurers) and arrange all such additional resources as are reasonably necessary to perform the Facility Services in accordance with the Service Levels as early as reasonably practicable thereafter and at no additional charge to Peters;
- (c) pay to Peters a sum equal to the Replacement Value of any defective Products resulting from NC's failure to perform the Services in accordance with this Agreement; or
- (d) repay or credit to Peters that part of the Rates paid by Peters to NC relating to the provision of the relevant part of the affected Facility Services (exclusive of any GST).

- 17.2 Where NC has a right to terminate this Agreement under clause 24.5 NC, shall (without prejudice to its other rights and remedies) be entitled to suspend the Services. NC shall resume (or not suspend as applicable) the Services immediately on satisfaction of the amounts specified in the Payment Default Notice (as defined in clause 24.5). Notwithstanding any suspension of the Services, Peters shall pay such Rates as are due in respect of those elements of the Services (for example, on-going storage) which continue to be provided during the suspension period.

18. Indemnities and limitation of liability

- 18.1 Nothing in this Agreement shall exclude or limit either Party's liability for:

- (a) death or personal injury caused by the defaulting Party's negligence; or
- (b) fraudulent misrepresentation or fraud; or
- (c) breach of obligations under applicable product liability laws; or
- (d) any other matter for which it would be illegal for a Party to exclude or attempt to exclude its liability.

- 18.2 Save for NC's right, on Termination of this Agreement by NC pursuant to clause 24.5, to recover the Minimum Annual Revenue for the period up to the Expiry Date, neither Party shall be liable to the other whether in contract, tort (including but not limited to negligence), breach of statutory duty, under misrepresentation or otherwise, arising out of or in connection with this Agreement for any Consequential Loss.

- 18.3 Without prejudice to the other limitations on its liability in this Agreement, NC shall only be responsible for loss or damage of the Products where caused by its sole negligence (including as specified in clause 8.3) or where such loss or damage occurs during the performance of Transport Services by NC and/or its sub-contractors.

- 18.4 NC shall have no liability:

- (a) for any loss or destruction of, or damage to, Products for which it would otherwise be liable unless it is advised in writing of such loss, destruction or damage by Peters within 20 days of the date on which Peters has actual notice of the existence of such loss, destruction or damage;
 - (b) for any shortfall of any Products contained within sealed containers or packaging, which NC collected from Peters or which were delivered to NC and which have remained in such packaging without being tampered with or replaced;
 - (c) for any costs incurred by Peters as a result of, or in connection with, a product recall except as provided in clause 9.4;
 - (d) subject to and in accordance with the provisions of clause 8.4 in respect of any Peters Default.
- 18.5 NC shall have no liability (including but not limited to negligence) in respect of any claim brought against it in respect of loss or destruction of, or damage to, Products to the extent that such loss, destruction or claim relates to less than 0.1% of the number of cases of Products delivered into its custody or control in the relevant calendar year.
- 18.6 Subject to clauses 18.1 to 18.3, the liability of NC to Peters (if any) in contract, tort (including but not limited to negligence), breach of statutory duty, under misrepresentation or otherwise (in each case whether or not caused by NC's negligence) arising out of, or in connection with:
- (a) this Agreement;
 - (b) performance of this Agreement or any failure or delay in the performance of this Agreement;
 - (c) termination of this Agreement;
 - (d) any breach of any express or implied term of this Agreement;
 - (e) the provision of any Services or the failure or delay in the provision of any Services;
 - (f) any statement made, or not made, or advice given or not given, by or on behalf of NC;
 - (g) any loss or destruction of, or damage to, Products or other property,
- shall in no event exceed:
- (i) in respect of loss of or damage to the Products: the cost of replacing such Products; and
 - (ii) in respect of liability arising in connection with a failure to achieve the Conditions, the costs specified in clause 2.5 subject also to the limitations thereon set forth in this Agreement; and
 - (iii) in respect of all other liability:
 - (A) in the period from the Commencement Date up to and including the Full Services Commencement Date AUD\$2,000,000, less any compensation paid to Peters and/or costs borne by NC pursuant to clause 2.5; and
 - (B) in any twelve month period from the Full Services Commencement Date onwards, a sum equivalent to 100% of the total Rates paid and/or which would have been payable if the Facility Services had been performed in full and there had been no claims or deductions under this Agreement, by Peters in the immediately preceding twelve month period,
- 18.7 Save for Peters' liability to pay the Rates in accordance with this Agreement (including without limitation clause 16.2) for the full term of this Agreement, through and including the Expiry Date and any Extended Period, and subject to clause 18.1, the liability of Peters to NC (if any) in contract, tort (including but not limited to negligence), breach of statutory duty, under misrepresentation or otherwise (in each case whether or not caused by Peters' negligence) arising out of, or in connection with:
- (a) this Agreement;

- (b) performance of this Agreement or any failure or delay in the performance of this Agreement;
 - (c) termination of this Agreement; or
 - (d) any breach of any express or implied term of this Agreement,
- shall in no event exceed in each calendar year (in aggregate) a sum equivalent to 100% of the total Rates payable by Peters in that year or, if higher, the total Rates which would have payable to NC if such failure, delay, termination or breach had not occurred, such statement had not been made or such advice had not been given (as the case may be).
- 18.8 Any Service Credits due to Peters in respect of failure to achieve Service Levels shall be included in NC's total aggregate liability set out in clause 18.6(iii) and shall count towards such limit.
- 18.9 Service Credits shall be Peters' remedy, notwithstanding clause 23, for the service failures to which such Service Credits relate, save that:
- (a) this will not limit or exclude NC's liability under or in connection with any other provision of this Agreement (including if breach of such other provision(s) is caused by the same relevant acts, omissions or occurrence that gave rise to the failure to achieve the relevant Service Level); and
 - (b) if the total Service Credits accrued in any calendar year exceed AUD\$50,000, Peters shall, without prejudice to:
 - (i) Peters' other rights and remedies (including without limitation the right to terminate this Agreement in accordance with clause 24); and
 - (ii) the limits on NC's liability set out in this Agreement,
 be entitled to claim damages in respect of all service failures in excess of such amount to which such Service Credits relate in that calendar year (such that the sole remedy provision shall not apply for the relevant calendar year). In calculating any such damages, credit shall be given for any relevant Service Credits already received by Peters in respect of the relevant circumstances.
- 18.10 Each party shall use its reasonable endeavours to mitigate its losses in the event of any breach by the other party of its obligations under this Agreement, even where such breach is the subject of an indemnity under this Agreement.
- 18.11 The limitations in this clause 18 do not apply to any claim arising out of fraud, dishonesty, gross negligence or wilful misconduct.
- 19. Insurance policies**
- 19.1 NC shall throughout the term of this Agreement have and maintain the following insurance policies with insurers of repute at its own cost:
- (a) employers' liability insurance to the extent required at Law;
 - (b) public liability insurance with an indemnity limit of no less than AUD\$20 million in respect of any single claim or incident;
 - (c) solely in respect of Products during the performance of Transport Services by NC, insurance covering destruction or loss of, or damage to, the Products, however caused, to their full retail value; and
 - (d) such other insurance required by Law.
- 19.2 Peters shall throughout the term of this Agreement have and maintain the following insurance policies with insurers of repute at its own cost:
- (a) insurance covering material damage/interruption in respect of the Products other than during the provision of the Transport Services or Shuttling Services by NC; and
 - (b) product liability insurance,
- provided always that NC:

- (a) shall ensure that it takes any reasonable action required from time to time during the term of this Agreement to ensure that the Facility continues to meet Peters' insurer's standard requirements for equivalent premises in line with Good Industry Practice and (insofar as it is reasonably within its power) shall not permit any circumstance to occur or arise in relation to the Peters Insurances as would entitle the relevant insurer to refuse to pay any claim under such Peters Insurances; and
 - (b) shall procure that the Facility is compliant with the Specification during the term of this Agreement; and
 - (c) shall make available to Peters' insurers upon reasonable request the Specification related information detailing the specifications of the Facility from time to time.
- 19.3 If any damage to, or loss or destruction of the Products occurs, and falls within the terms of the policy held by Peters pursuant to clause 19.2(a), then Peters shall claim indemnity from the relevant insurer in respect of any loss, damage, cost or expense it suffers or incurs as a result of such damage, loss or destruction and shall be precluded from bringing any claim against NC unless the damage or loss is the responsibility of NC in accordance with clause 18.3. For the avoidance of doubt, the Parties acknowledge and agree that nothing in this clause 19.3 shall be deemed a waiver by Peters' insurers of their subrogation rights.
- 19.4 Each Party shall:
- (a) on the written request of the other Party from time to time provide such other Party with a written statement of its insurer(s) confirming that the insurance requirements as set out in clause 19.1 and clause 19.2 are met, including by providing copies of the relevant insurance policy certificates, details of the cover provided and evidence of payment of the most recent premium; and
 - (b) comply with all obligations and meet all conditions of its Insurances and not do or omit to do, nor permit or suffer to be done or omitted anything which may invalidate any of its Insurances.
- 19.5 The payment of the premiums in respect of the Insurances shall be the responsibility of the relevant Party.
- 19.6 Neither Party shall take or omit to take any reasonable action or (insofar as it is reasonably within its power) permit anything to occur in relation to its Insurances as would entitle the relevant insurer to refuse to pay any claim under its Insurances.
20. **Confidentiality and publicity**
- 20.1 Each Party shall keep and procure to be kept secret and confidential (i) all Confidential Information belonging to the other Party or any member of such Party's Group disclosed or obtained as a result of the relationship of the Party or any member of such Party's Group under this Agreement and (ii) the existence of this Agreement and shall not use nor disclose the same, provided that each Party may disclose such information to its affiliates and their respective officers, employees, investors, shareholders and prospective direct or indirect investors or shareholders, Group companies, and their respective advisers and agents together with any current or future provider of finance or insurance to such Party or its affiliates from time to time or with the prior written consent of the other Party (each a "**Permitted Disclosee**"). Where disclosure is made to any person (including for the avoidance of doubt any Permitted Disclosees), it shall be done subject to obligations equivalent to those set out in this Agreement and, where not already bound by relevant professional obligations of confidentiality, such person shall enter into a written undertaking confirming the same. The Parties agree to use their reasonable endeavours to procure that any Permitted Disclosee complies with such obligations and in any event each Party shall continue to be responsible to the other in respect of any disclosure or use of such Confidential Information by a person to whom disclosure is made by such Party.
- 20.2 The obligations of confidentiality in clause 20.1 shall not extend to any information which a Party can show:
- (a) is in, or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality under this Agreement; or
 - (b) was independently disclosed to it by a third party entitled to disclose the same; or

- (c) is required to be disclosed under any applicable law, or by order of a court or governmental body or authority of competent jurisdiction.
- 20.3 The Parties shall ensure that the Personnel are aware of and undertake to comply with the obligations of confidentiality set out in clause 20.1.
- 20.4 Neither Party shall make any announcement or otherwise publicise the existence of or disclose to any person the provisions of this Agreement without the prior written consent of the other Party.
21. **Contract management, information and reporting**
- The Parties shall comply with the contract management, information and reporting obligations set out in Schedule 6 (*Contract Management*).
22. **Privacy**
- 22.1 The Parties confirm that it is not their intention to process any Personal Information while executing this Agreement, however if any Personal Information is transferred or otherwise disclosed by Peters to NC, the provisions of this clause 22 shall be applicable.
- 22.2 Without prejudice to NC's other obligations in respect of information security, NC shall:
- (a) having regard to the state of technological development and to the cost of implementing any measures, provide a level of security (including appropriate technical and organisational measures) appropriate to:
 - (i) the harm that might result from:
 - (A) unauthorised or unlawful processing of such Personal Information; or
 - (B) accidental loss, destruction or damage of such Personal Information; and
 - (ii) the nature of the Personal Information;
 - (b) take reasonable steps to ensure the reliability of NC's Personnel who have access to the Personal Information.
- 22.3 All Personal Information acquired by NC from Peters or any other member of Peters' Group shall be returned or deleted (at the option of Peters) on request. NC shall be responsible for the acts and omissions of any third party with whom it contracts or which processes Personal Information on its behalf in connection with this Agreement as it is for its own acts and omissions in relation to the matters provided for by this clause 22.
- 22.4 Peters must obtain any necessary consents from, and make any necessary disclosures to, all relevant individuals for the purpose of disclosing their Personal Information to NC under this Agreement, and must otherwise comply in all respects with its obligations under the Privacy Act in respect of any Personal Information disclosed to NC.
- 22.5 Peters must give all assistance required by NC from time to time in relation to compliance by NC with the Privacy Act, or any investigation, request or enquiry (formal or otherwise) from the Privacy Commissioner regarding the Personal Information disclosed to NC under this Agreement.
- 22.6 Each party shall indemnify, defend and hold the other party harmless from and against all reasonable costs, expenses, losses, liabilities proceedings and claims of any nature suffered, brought or incurred directly or indirectly as a result of a breach by the first party of its obligations under this clause 22.
23. **Remediation plan process**
- 23.1 Subject always to clause 23.2, if NC commits a material breach of any of its substantial obligations under this Agreement ("**Breach**"), Peters may not serve notice pursuant to clause 24.1 to terminate this Agreement without first complying with the provisions of this clause 23.
- 23.2 If NC commits a Breach, Peters shall give notice in writing to NC specifying the Breach and the Parties shall use reasonable endeavours (acting reasonably and in good faith) to agree a commercially reasonable and feasible remediation plan specifying the actions NC proposes to take to remedy the Breach ("**Remediation Plan**") and including the date by which such action must be completed, ("**Remediation Plan Completion Date**"). If the Parties, acting reasonably and in good faith, are unable to agree the Remediation Plan and/or Remediation Plan Completion



Date within 20 Business Days from the date of notification of Breach, Peters shall (in accordance with clause 24.1) have the right to terminate this Agreement.

23.3 If NC fails to implement or successfully complete the Remediation Plan by the required Remediation Plan Completion Date then, Peters may:

- (a) terminate this Agreement in accordance with clause 24.1; or
- (b) give NC a further opportunity to resume full implementation of the Remediation Plan and set a revised date for completion of any relevant outstanding actions. If NC subsequently fails to implement or successfully complete the Remediation Plan by the revised Remediation Plan Completion Date, Peters may terminate this Agreement in accordance with clause 24.1.

24. Termination

24.1 Peters may immediately serve notice to terminate this Agreement or all or any of the Services without payment of compensation or other damages caused to NC by such Termination by giving notice in writing to NC (although during all periods prior to termination Peters shall be liable for the Rates), such termination to take effect on the date specified in the written notice which shall be no later than 12 months following the date of such notice, if any one or more of the following events happens:

- (a) (subject to the provisions of clause 23 and clause 24.2) NC commits a material breach of any of its substantial obligations in relation to the Services, which breach is not remedied by the Remediation Plan Completion Date, or where no Remediation Plan Completion Date has been agreed in accordance with clause 23.2, within a further 30 Business Days; or
- (b) an Insolvency Event occurs in relation to NC, which is not remedied within 30 days.

24.2 Notwithstanding any other rights or obligations Peters may have under this Agreement, save for during the first three (3) months following the Services Commencement Date, if, due to fault on the part of NC, the OLCOT is below 95% for longer than 10 consecutive weeks or 13 weeks accumulated in any 12 month period, Peters shall be entitled to notify NC in writing and NC shall have 4 weeks from the date of such notice to demonstrate to Peters' satisfaction (acting reasonably and in good faith) that it is able to achieve an OLCOT of at least 95% unless not due to fault on the part of NC. If NC is unable to so demonstrate within such time period, NC shall be deemed to be in material breach and Peters shall be entitled to terminate this Agreement on not less than 90 days' prior written notice.

24.3 In addition, and notwithstanding any other rights or obligations Peters may have under this Agreement, Peters shall have the right to terminate this Agreement (such termination to take effect on the date specified in the written notice which shall be no later than 12 months following the date of such notice) without payment of compensation or other damages in respect of losses caused to NC by such Termination by giving written notice of such Termination to NC within 30 days following the date on which Peters first learned of such circumstance (although during all periods prior to termination Peters shall be liable for the Rates):

- (a) in the circumstances set out in clause 30.3;
- (b) if on a Change of Control a Competitor acquires Control of NC;
- (c) if there is any other Change of Control of NC without the consent of Peters (such consent not to be unreasonably withheld, delayed or conditioned); provided, however, if R&R Ice Cream plc or any of its affiliates or Subsidiaries shall have approved such Change of Control at any time (in writing), whether related to this Agreement or not, then such approval shall be deemed approval by Peters for purposes of this Agreement; or
- (d) if NC or any member of its Group becomes a Competitor.

24.4 If Peters becomes entitled to terminate this Agreement, it may instead at its discretion terminate this Agreement (such termination to take effect on the date specified in the written notice) only in respect of any part of the Services to be provided under this Agreement without terminating the whole of this Agreement. Any termination by Peters under this clause 24.4 in respect of part of the Services shall be made as if it were an amendment to this Agreement using the Change Request Form, but shall not require consent or agreement of NC unless NC provides reasonable

evidence that, because of the nature or volume of Services which would continue after the partial termination, it would be less economic for NC to continue to provide those Services. To the extent that they are applicable, the Parties shall comply with the relevant provisions of clause 25 in respect of the terminated Services. Save to the extent of the termination of part of the Services to be provided under this Agreement, this Agreement shall continue in full force and effect.

- 24.5 Except as provided in clause 30.3, NC may terminate the Agreement in the circumstances set out in this clause 24.5 only and any right NC may otherwise have to terminate the Agreement at common law or otherwise (including by acceptance of repudiation by Peters) is hereby excluded. NC shall have the right to serve written notice on Peters (a "**Payment Default Notice**") addressed for the attention of the Director of Operations if Peters has failed to pay the undisputed amount of any invoice by the due date for payment on at least 3 occasions in any 12 month period and R&R Ice Cream plc has failed to pay such amounts in accordance with clause 38. Such notice shall state NC's intention to terminate or suspend this Agreement if Peters does not pay such undisputed invoice amount within 30 days of receipt of the Payment Default Notice. If Peters does not pay the undisputed invoice amount within that 30 day period, NC shall be entitled to terminate or suspend this Agreement on 30 days by notice in writing to Peters.
- 24.6 The termination or suspension of this Agreement or of any of the Services shall be without prejudice to the rights and remedies of either Party which may have accrued up to the date of termination.

25. **Consequences of termination**

25.1 On Termination (in whole or in part) for any reason whatsoever:

- (a) the Parties shall take reasonable steps to mitigate any costs they incur as a result of such Termination;
- (b) the Parties shall implement and comply with a plan to transfer the Products and Services (with an initial meeting between the Parties ultimately within 30 Business Days of the Termination Date);
- (c) subject to the terms of this Agreement, NC shall continue to make the Products available for Peters to be collected for a period not longer than 12 months, subject to payment by Peters of the Rates (as applicable to the Services being provided) on the Termination Date;
- (d) any rights or licences granted under or pursuant to this Agreement shall cease to have effect save as (and to the extent) expressly provided for in this clause 25;
- (e) each Party shall promptly return to the other Party, or dispose of in accordance with the other Party's instructions, all Confidential Information and other data and documents (including the other Party's customers' details) and copies of them disclosed or supplied to that Party pursuant to or in relation to this Agreement and shall certify in writing to the other Party when the same has been completed;
- (f) NC shall within 30 days of the Termination Date submit its final invoice to Peters setting out the total amounts due to NC pursuant to this Agreement after taking into account any sums due to Peters in accordance with this Agreement and Peters shall pay the same no later than 30 days after receipt of such invoice by Peters; and
- (g) Peters shall within 30 days of the Termination Date submit its final invoice to NC setting out the total amount due to Peters pursuant to this Agreement and NC shall pay the same no later than 30 days after receipt of such invoice by NC.

- 25.2 Unless otherwise agreed in writing between the Parties, on termination of this Agreement by Peters for any valid reason in accordance with the terms of this Agreement, NC shall (at its own cost and expense) within a reasonable time reinstate the Sites to at least the same condition as they were in before the performance of the Refurbishment Services.

Cost Recovery in respect of Refurbishment Costs

- 25.3 If this Agreement is terminated by NC pursuant to clause 24.5 prior to the Expiry Date, Peters shall be liable to pay to NC the depreciated value of the Refurbishment Services as at the effective date of such termination, calculated in accordance with the Schedule 11 (*Depreciation Schedule*).

26. **Financial Statements**

Upon request by Peters, NC shall provide to Peters on an annual basis a financial overview, meaning an audited balance sheet and an audited cash flow report, accompanied by an auditor's report.

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

- 27.1 During the term of this Agreement, NC and/or its affiliates/Related Body Corporates may elect to periodically seek financing and/or refinancing (each a "**Financing**") from third party lenders (each a "**Lender**") utilising this Agreement, the Facility or other assets related thereto but excluding the Products (all such assets being hereinafter collectively referred to as the "**Assets**") as collateral for any such Financing. Peters agrees to reasonably cooperate with NC and/or its affiliates/Related Body Corporates in connection with any such Financing, all at no out-of-pocket cost or expense to Peters, including by amending this Agreement if requested by a Lender, provided however that Peters shall not be required to amend any economic or service related terms of this Agreement or amend any provisions which have no reasonable relationship to the Financing or where such amendments would otherwise materially prejudice Peters economically. For the avoidance of doubt, the Parties hereby confirm that any assignment (in particular as collateral) of claims under or in connection with this Agreement is allowed under Applicable Law.

28. **Assignment and Subcontracting**

Assignment and subcontracting by NC

- 28.1 Subject to clauses 27 and 29, NC must not assign, subcontract, transfer, delegate, charge, create a security interest over, encumber, pledge or otherwise dispose of or deal with any of its rights or obligations under this Agreement, or attempt or purport to do so, without the prior written consent of Peters.
- 28.2 Any permitted assignment or subcontracting by NC will not relieve NC of its obligations to Peters under this Agreement and NC will be fully responsible for the acts and omissions or other failures of its assigns as if they were acts and omissions of NC.
- 28.3 NC must ensure that all subcontractors are aware of the obligation of NC under this Agreement to the extent relevant to the services being provided by the subcontractor.
- 28.4 NC must, at the reasonable request of Peters, promptly provide to Peters a list of all material subcontracts under which NC has subcontracted the performance of any part of this Agreement including:
- (a) the name of the subcontractor;
 - (b) the period of the subcontract; and
 - (c) the nature of the subcontracted services.
- 28.5 NC must ensure that all subcontractors are aware of the obligation of NC under clause 28.4.
- 28.6 If at any time Peters is concerned that the performance of a subcontractor engaged by NC may not be satisfactory, then (without limitation to any other rights of Peters under the Agreement or at law):
- (a) Peters may notify NC of the concern and the reasons for the concern; and
 - (b) NC must, as soon as practicable after notification, investigate and consider the concern, and notify Peters of its finding and conclusions and any appropriate remedial action in relation to the concern.

Assignment by Peters

- 28.7 Peters shall not assign or otherwise dispose of any of its rights or obligations under this Agreement to any third party without the prior written consent of NC, except Peters may assign its rights under this Agreement:
- (a) to a member of its Group by giving written notice to NC, provided that such assignment shall not relieve Peters of its obligations under this Agreement; and
 - (b) in connection with a sale of all or substantially all of its business, provided that in deciding whether to grant its consent in such circumstances NC shall be entitled (acting

reasonably and in good faith) to take into account the creditworthiness and solvency of Peters' proposed assignee (which shall be no less than that of Peters).

29. Transfer of the agreement and management continuity on Change of Control

29.1 In connection with the structuring of its investment in the construction and operation of the Facility, NC may transfer this Agreement, or subcontract the Services, to a newly created company, which is directly or indirectly owned by NC, or to an affiliate or subsidiary of NC. Personnel proposed to provide the Services are expected to remain the same following any such transfer or sub-contract. Peters hereby agrees that, subject to the conditions set forth below and the presumptions set out in this clause, NC may transfer this Agreement or sub-contract performance of the Services as follows:

(a) **Affiliate Transfers:** NC may transfer (assign) this Agreement to any Related Body Corporate and any such transferee shall have the same transfer rights as NC hereunder provided that:

(i) NC shall notify Peters in writing in advance of such transfer; and

(ii) NC shall be liable for the acts and omissions of that transferee as fully as if they were the acts and omissions of NC,

each such transfer to become effective upon receipt by Peters of a written notification issued by NC and the transferee.

(b) **Third Party Transfers:** NC may transfer (novate) this Agreement to any third party provided that:

(i) such third party is not a Competitor of Peters; and

(ii) NC obtains the written consent of Peters (such consent not to be unreasonably withheld, conditioned or delayed and to be provided or expressly denied within 5 Business Days of the request from NC for consent) and provided that the transferee must be of reasonable financial standing (and the parties agree that if the proposed transferee's financial standing is similar to that of NC, it shall be deemed adequate), capable of meeting the obligations under this Agreement and can provide the Services to the equivalent or better standards provided by NC;

(c) Any transfer (novation) pursuant to sub-clause 29.1(b) above shall take effect on the date that Peters grants its consent or such later date as NC may reasonably specify. Upon the transfer becoming effective, NC shall cease to be a party to this Agreement and the transferee shall step into all rights, benefits and future obligations of NC under this Agreement, but NC shall not be discharged from any obligations or liabilities arising prior to the date of transfer. Following such a transfer all references to NC in this Agreement shall be construed as references to the transferee.

(d) **Sub-contractors:** NC may sub-contract the performance of the Services to any group company, associated company or affiliate of NC (including any Related Body Corporate), or to any third party, provided that:

(i) NC shall be liable for the acts and omissions of the sub-contractor as fully as if they were the acts and omissions of NC;

(ii) NC obtains the written consent of Peters (such consent not to be unreasonably withheld, conditioned or delayed and to be provided or expressly denied within 5 Business Days of the request from NC for consent); and

(iii) except in the case of a subcontract involving any Related Body Corporate, any third party sub-contractor is not a Competitor of Peters.

29.2 If any Change of Control of NC occurs in the first three years following the Commencement Date, NC shall use its reasonable endeavours to ensure that the key Personnel engaged in managing the provision of the Services remain unchanged for a reasonable period following that Change of Control.

29.3 If a bank or any other financial investor exercises its rights in respect of any asset of NC that is connected to the provision of the Services (including the Facility), NC shall use reasonable endeavours to ensure that the key Personnel engaged in managing the provision of the Services

are not changed for a reasonable period following that entity exercising its rights. If at any time a member of key Personnel resigns or ceases to perform his role due to ill health or death, NC shall promptly notify Peters and provide a replacement that is acceptable to Peters (such approval by Peters not to be unreasonably withheld or delayed).

30. Force majeure

30.1 Subject to clause 30.2, neither Party shall be in breach of this Agreement, nor liable for any failure, partial failure or delay in performance of any obligations under this Agreement (and, subject to clause 30.3, the time for performance of the obligations shall be extended accordingly) arising from or attributable to circumstances beyond the reasonable control of the party liable to perform, including but not limited to any of the following:

- (a) acts of God, including but not limited to fire, flood, earthquake, windstorm or other natural disaster;
- (b) war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;
- (c) terrorist attack, civil war, civil commotion or riots;
- (d) fire, explosion or other accidental damage (save where attributable to the breach or negligence or act or omission of the party liable to perform and provided that such fire, explosion or other accidental damage could not have been prevented by acting in accordance with Good Industry Practice) ;
- (e) any labour dispute, including but not limited to strikes, industrial action or lockouts (other than where solely relating to that Party's workforce);
- (f) interruption or failure of utility service, including but not limited to electric power, gas or water (save where attributable to the breach or negligence of or act or omission by the party liable to perform); and
- (g) in respect of Transport Services, a shortage of fuel for road vehicles provided that:
 - (i) the fuel shortage impacts the whole of the Victoria region; and
 - (ii) no other customer of NC is treated more favourably than Peters in connection with the allocation of fuel,

(each a "**Force Majeure Event**").

The failure of a sub-contractor or other third party to comply with its contractual obligations to the party liable to perform shall only constitute a Force Majeure Event where and to the extent that such failure was caused by any of the circumstances listed in paragraphs (a) to (g) above which affect such subcontractor, and the expression Force Majeure Event shall be construed accordingly.

30.2 Neither Party shall be excused from any obligation to make payment of any sum due under this Agreement by virtue of a Force Majeure Event except to the extent that the Services to which such payments relate are not provided as a result of the Force Majeure Event.

30.3 If the Force Majeure Event prevails for a continuous period of more than three months, the non-affected Party may terminate this Agreement by giving not less than 7 days' and not more than 12 months' written notice to the affected Party. On the expiry of that notice period, this Agreement will terminate. Such termination shall be without prejudice to the rights of the Parties in respect of any breach of this Agreement occurring prior to such termination.

31. Notices

31.1 Any notice, demand, consent or other communication (a "**Notice**") given or made under this Agreement:

- (a) must be in writing and signed by the sender or a person duly authorised by the sender;
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand to the address below or the address last notified by the intended recipient to the sender:

Name	Australasian Food Group Pty Limited
Attention	Joseph Saroufim Head of Supply Chain and Procurement
Address	254-294 Wellington Road, Mulgrave, Victoria, Australia

Name	NewCold Pty Ltd	
Attention	David Richardson President / CEO	Bram Hage Founder / EVP
Address	Gravinnen van Nassauboulevard 105, 4811 BN, Breda, The Netherlands	c/o EMKC, Level 1, 140 Bourke Street, Melbourne, VIC 3000

- (c) will be conclusively taken to be duly given or made:
- (i) in the case of delivery in person, when delivered; and
 - (ii) in the case of delivery by post, seven Business Days after the date of posting,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent or at a time that is later than 5pm in the place to which the Notice is sent, it will be conclusively taken to have been duly given or made at the start of business on the next Business Day in that place

- 31.2 The Guarantor hereby irrevocably appoints Allens (the "**Process Agent**") of Allens, C/- Tom Story, Deutsche Bank Place, 126 Phillip Street, Sydney, NSW 2000 (as the same may be changed from time to time and notified to the other parties hereto in writing), as its agent to accept service of process in the State of Victoria in any Proceedings. The Guarantor agrees that service of process in the State of Victoria in any Proceedings may be made on its Process Agent and service upon it shall be deemed completed whether or not forwarded to or received by the Guarantor. The Guarantor agrees to inform the other parties in writing of any change of address of the Process Agent. If the Process Agent ceases to be able to act or to have an address in Victoria, the Guarantor agrees that it will appoint a person with an office in Victoria as its agent for service of process and deliver to the other parties within fourteen (14) days a copy of a written acceptance of appointment by the relevant process agent.

32. General

- 32.1 In performing the Services NC is an independent contractor.
- 32.2 Neither Party shall be, nor shall either Party represent itself as being, an agent, partner, employee or representative of the other and neither Party shall hold itself out as such, or as having any power or authority to incur any obligation of any nature, express or implied, on behalf of the other Party, and nothing in this Agreement, and no action taken by the Parties pursuant to this Agreement shall create, or be deemed to create, a partnership or joint venture or relationship of employer and employee or principal and agent between the Parties and no employee of either Party shall be deemed to be or have become an employee of the other Party.
- 32.3 This Agreement and each of the documents referred to in it contain the entire agreement between the Parties in relation to their subject-matter and supersede and replace with effect from the Commencement Date all previous agreements between, and any prior correspondence or representations of, the Parties.
- 32.4 All warranties and conditions not set out in this Agreement whether implied by statute or otherwise are excluded to the extent permitted by law. The Parties irrevocably and unconditionally waive any right they may have to claim damages for, and/or to rescind this Agreement because of breach of any warranty not contained in this Agreement, or any misrepresentation whether or not contained in this Agreement, unless such misrepresentation was made fraudulently or the way of conduct was not in compliance with applicable law.

- 32.5 The Parties acknowledge that this Agreement has not been entered into wholly or partly in reliance on, nor has either Party been given any warranty, statement, promise or representation that is not fully set out in this Agreement.
- 32.6 Nothing in clauses 32.4 or 32.5 will exclude any liability of a Party if such misrepresentation was made fraudulently.
- 32.7 No purported alteration or variation of this Agreement shall be effective unless it is in writing, refers specifically to this Agreement and is made in accordance with clause 14.
- 32.8 The rights and remedies of either Party in respect of this Agreement shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by such party to the other nor by any failure of, or delay by the said Party in ascertaining or exercising any such rights or remedies. Any waiver of any breach of this Agreement shall be in writing. The waiver by either Party of any breach of this Agreement shall not prevent the subsequent enforcement of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.
- 32.9 If at any time any part of this Agreement (including any one or more of the clauses of this Agreement or any sub-clause or paragraph or any part of one or more of these clauses) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from this Agreement and the validity and/or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired as a result of that omission.
- 32.10 Each of the Parties shall, and shall use their reasonable endeavours to procure that any necessary third parties shall, execute and deliver to the other Party such other instruments and documents and take such other action as is necessary to vest in the other all rights granted or to be granted to the other pursuant to this Agreement and otherwise fulfil the provisions of this Agreement in accordance with its terms.
- 32.11 The Parties to this Agreement do not intend that there be any third party beneficiaries to this Agreement. No consent of any third party is needed for any variation of this Agreement.
33. **Dispute Resolution**
- 33.1 Any dispute under this Agreement shall be treated in accordance with the provisions of this clause 33 (the "**Dispute Resolution Procedure**").
- 33.2 If there is a dispute or difference between the Parties arising out of or in connection with this Agreement, then within 10 Business Days of a Party notifying the other Party in writing of the Dispute, a senior representative of each of Peters and NC (and where required, the sub-contractor), who shall each have authority to settle the dispute, must meet in good faith and use all reasonable endeavours to resolve the dispute.
- 33.3 If the dispute is not settled within 10 Business Days of notification under clause 33.2, either Party may initiate mediation before a commercial mediator by serving a written demand for mediation (**Mediation Notice**). The mediator will be selected by agreement between the parties, or in the absence of such agreement within 5 Business Days of Mediation Notice, such person nominated by the President of the Institute of Arbitrators and Mediators Australia (at the request of either Party). The mediator shall not have the authority to require, and neither Party may be compelled to engage in, any form of discovery prior to or in connection with the mediation. Mediation shall be conducted within 30 Business Days of the Mediation Notice.
- 33.4 All negotiations and mediation shall be conducted in strict confidence. Those negotiations and mediation shall be without prejudice to the rights of the Parties (and shall not be used in evidence or referred to in any way without the prior written consent of both Parties) in any future court proceedings except in so far as necessary to enforce any compromise agreement entered into.
- 33.5 If the dispute has not been resolved as a result of negotiations and mediation referred to in clauses 33.2 and 33.3 then either Party may pursue formal resolution of that dispute pursuant to clause 34.
- 33.6 Nothing in this clause 33 shall prevent any party from seeking injunctive or other emergency relief against the other at any time.
34. **Governing law and jurisdiction**



- 34.1 This Agreement and any dispute or claim arising out of, relating to or in connection with it shall be governed by, and construed in accordance with, the laws of Victoria.
- 34.2 Subject to clause 33, all disputes and claims arising out of, relating to or in connection with this Agreement (whether contractual or non-contractual) shall be subject to the exclusive jurisdiction of the courts of the Victoria and Courts competent to hear appeals from those Courts, to which the Parties irrevocably submit.
35. **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, when executed, shall be an original of this Agreement and all counterparts shall together constitute one instrument.
36. **Attorney Fees and Costs**
- Except as otherwise provided, 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 the foregoing, 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, as well as any appeal thereof, shall be awarded its reasonable attorney fees and costs.
37. **Judicial Interpretation**
- In the event the provisions of this Agreement require judicial or other interpretation, it is agreed that the court interpreting or construing same shall not apply a presumption that the terms hereof shall 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 same, it being agreed that all parties to this Agreement participated in the preparation of this Agreement.
38. **Peters Guarantee**
- 38.1 Subject to clause 38.4, in consideration of NC entering into this Agreement, the Guarantor:
- (a) irrevocably and unconditionally guarantees to NC the due and punctual performance of all the payment obligations of Peters contained in this Agreement as they fall due; and
 - (b) shall pay to NC (or procure that Peters pays) within 30 days of demand any sum of money which Peters shall at any time be liable to pay to NC under or pursuant to this Agreement (as amended, varied, restated, supplemented, substituted, replaced or novated), and which has not been paid at the time the demand is made.
- 38.2 For the avoidance of doubt, the obligations of the Guarantor in this clause 38 only arise in respect of an undisputed sum of money which Peters is liable to pay to NC, and in no circumstances is the Guarantor liable to pay any invoiced amounts which are the subject of a bona fide dispute and which have been notified to NC as being in dispute under the terms of clause 16. The Guarantor's obligations in this clause 38 will apply upon resolution of any dispute in respect of a disputed amount (and Peters failing to pay such invoice in accordance with clause 16).
- 38.3 The obligations of the Guarantor in this clause 38 are as primary obligations and not as a mere surety and shall not be affected by any of the obligations of Peters being void, voidable or unenforceable for any reason and in such event the Guarantor shall perform the payment obligations of Peters as if it were primarily liable for the performance.
- 38.4 Peters and the Guarantor shall procure, prior to any Change of Control of Peters taking effect, that a guarantee on equivalent terms to this clause 38 is provided by a guarantor of reasonable financial standing in respect of Peters' obligations under this Agreement, such replacement guarantee to be in full force and effect in favour of NC from the date that such Change of Control takes effect. NC acknowledges that, for this purpose, an entity with financial standing equivalent to that of R&R Ice Cream plc as at the date of this Agreement would constitute reasonable financial standing. Provided that such a guarantee is procured, R&R Ice Cream plc shall be released from its guarantee of any future obligations of Peters with effect from the date on which the Change of Control occurs.




Executed in accordance with section 127 of the *Corporations Act 2001* (Cth)
by **Australasian Food Group Pty Ltd (ACN 154 314 913)**:


A Director

MICHAEL TINKLER
A Full name of Director

11-5-2016
A Date


A Director/Secretary

MARCELLO MATTIA
A Full name of Director/Secretary

11-5-2016
A Date

Executed in accordance with section 127 of the *Corporations Act 2001* (Cth)
by **NewCold Pty Ltd (ACN 609 728 083)**:

^ Director



^

Director/Secretary



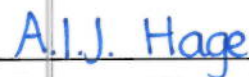
^

Full name of Director



^

Full name of Director/Secretary



^

Date

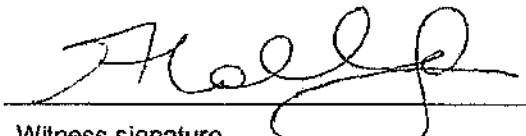


^

Date

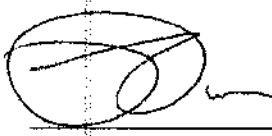


Executed for R&R Ice Cream plc by its authorised representative in the presence of:

A Witness signature 

A Full name of witness MARTIN PETER HOWARD

A Date 6 5 16

A Authorised Representative signature 

A Full name of authorised representative ANDREW FINEGAN

A Position CFO

A Date 6 5 16

List of Schedules and Appendices

Schedule 1	–	Facility
Schedule 2	–	Services
Schedule 3	–	Service Levels
Schedule 4	–	Rates & Conditions
Schedule 5	–	Gain share mechanism
Schedule 6	–	Contract management
Schedule 7	–	Amendments
Schedule 8	–	Business Continuity Plan
Schedule 9	–	WMS / IT
Schedule 10	–	Stock Count
Appendix 1	–	Peters Information
Appendix 2	–	Pro forma balance sheet (for illustrative purposes only)
Appendix 3	–	Location of Peters' warehouses



Schedule 1

(Facility)

1. Outline

- 1.1. The location of the Facility will be at 489 – 555 Robinsons Road, Truganina, Victoria 3029, Australia.
- 1.2. The Facility will consist of a high bay storage building, in which frozen products will be stored at the agreed temperature, a low-bay building including a dispatch area and a value-added logistics area, technical rooms and offices.
- 1.3. In front of the high-bay storage building, there will be a dispatch area dedicated to unloading, handling and loading activities.
- 1.4. Technical rooms will form part of the low bay building, along with offices and restrooms for truck drivers and Facility operators. The technical rooms will accommodate the main equipment to operate the Facility.
- 1.5. The processes in the Facility will be automated, which means that conveyor systems and automated stacker cranes will automatically handle the in-feed, storage and out-feed of Pallets as well as the replenishment of pick Pallets to the picking area on a floor above the shipment area. This system will be managed by NC's standard Facility Management System (WMS) and all flows will be controlled by NC's standard in-house developed Material Flow Control System (MFCs).
- 1.6. Although the Facility will be highly automated, there will still be manual activities, mainly for unloading and loading and in the order picking area. These manual activities will be supported by technology in certain areas such as voice-picking, RF scanning, ergonomic equipment, etc.
- 1.7. The Facility is expected to have a storage capacity of gross 102,000 Pallet locations resulting in a net capacity of approx. 95,000 Pallet locations, due to technical and logistical constraints. In addition, the Facility will as a minimum accommodate the following daily volumes:
 - Operations shall be open around the clock and running for 21 effective hours (so taking account of time for breaks, personal care, shift changes etc.).
 - Receipt of Products shall be a 24 hour non-stop process, with the majority of the shuttle loads arriving during the late evening and early morning.

2. Material handling equipment

- 2.1. The Facility will have a system that transports the Pallets to their storage position in the deep freeze high bay building using conveyors and stacker cranes, managed by the WMS and MFCs.
- 2.2. This will include a number of stacker cranes that will automatically store and retrieve the Pallets that are stacked multi deep behind each other in the bays between the crane aisles.
- 2.3. Storage channels will be situated on either side of the crane aisles using the satellite storage principle so that Pallets will be stored in a condensed manner.
- 2.4. The stacker cranes will be equipped with a handling device to pick and drop a Pallet from and onto the Facility conveyor system. The same handling device will be equipped with a satellite unit that will lift the Pallet from the handling device, travel into the storage channel on the special Z type beams (that will be remote driven using an unwind power cable) and drop the Pallet at the storage location by lowering the lift unit. The satellite unit will then return back to the handling device ready for a new storage or retrieval job.
- 2.5. The Pallets that are stored between two crane aisles will be retrieved from either side over the full length resulting in flexible storage, i.e. 1 Pallet handled by stacker crane 1 and 7 Pallets handled by stacker crane 2 or 4 Pallets vs. 4 Pallets when the storage channel contains 8 Pallets.

3. Security

- 3.1. NC will develop and operate a safe Facility for the Personnel and the Products. NC will perform the Services in compliance with the FM Global or to the NFPA regulations, and to the approved Peters health & safety regulations.

- 3.2. Subject to securing the necessary governmental and other approvals, the fire protection system for the Facility will be an oxygen reduction system for the high bay cold store. In the other deep freeze areas a dry sprinkler system will be installed. In order to avoid false alarm (for instance when a sprinkler head is hit by a forklift truck) resulting in an out of operation situation for an unexpected time, the sprinkler will be connected with a sensitive aspiration system. All other ambient areas will be protected by a normal sprinkler system.

4. **Design data**

- 4.1. The details set out in this paragraph 4 have been based on historic data and are for background information purposes only. All estimates have been provided for planning purposes only and are not volume commitments made by Peters. The parties acknowledge that actual requirements may differ from time to time.
- 4.2. The maximum anticipated requirement of Peters within the Facility is 21,000 Pallet locations and the maximum volume that will be available for Peters shall not exceed the Maximum Pallet Volume (as hereinafter defined), except where excess capacity is available at the Facility and the Parties agree on terms for such excess volume. Peters' current average requirement per year is 15,500 Pallet locations.
- 4.3. The number of batches (Best Before Date on daily basis) in the Facility at any one time is approx. 400 with an average number of 45 Pallets per batch.
- 4.4. The total anticipated requirement of inbound Pallets is 140,000 per year.
- 4.5. As at 30 September 2015, the total number of cases delivered as part of the order picking process is expected to be approx. 1,600,000 cases. Order picking has two distinct phases. The period from April to August is regarded as the 'off peak period' whereas the period from September to March is regarded as the 'peak period'. The following figures are based on twelve month data to 30 September 2015:

'Off peak' period weekly case pick = 23,000 average

'Peak period' weekly case pick = 37,000 average

Peak week 2015 case pick = 50,000

At this point in time all orders are received and picked the day prior to dispatch.

It is expected that approx. 65% of the Pallets shall leave the cold store as full trailers.

Schedule 2

(Services)

1. Scope

1.1. The Services consist of the following:

- (c) Refurbishment Services;
- (d) Transport Services;
- (e) Shuttling Services;
- (f) Facility Services including:
 - (i) Reception of loads (Inbound)
 - (ii) Storage of loads (Inventory)
 - (iii) Order picking
 - (iv) Loading of orders (Outbound)
 - (v) Value added service activities (VAS);
- (g) the Transition Services; and
- (h) subject to the terms of this Agreement, any other service, practice and/or standard that would ordinarily be expected of a well-managed, expert service provider performing warehouse and distribution services to customers of the same nature and size as Peters.

1.2. The Products to be handled will be frozen food products packed in cases and placed on Pallets when entering the Facility.

1.3. On any day, and provided that the Annual Forecast Report, as updated with each rolling 4 week forecast, has accurately provided notice of the requested peak day volumes, NC shall ensure it can accommodate the following peak day volumes:

Throughput inbound by shuttle:	1,100	Pallets
Throughput inbound by truck:	120	Pallets
Case picking:	15,000	cases
Throughput outbound by truck:	1,100	Pallets

1.4. To enable NC to comply with its obligations and to enable the operational success of the design of the Facility (stacker cranes, conveyors, etc.) Peters shall comply with the following requirements:

- (i) Every component in the Facility will be designed for the transport of Pallets with a maximum footprint (including overhang) of 1,165 x 1,165 mm. The maximum overhang of any Pallet shall be 25 mm on any side. Subject to the following sentence, the height of the Pallets and load will be maximum 1,200 mm, with a tolerance of 20mm. NC shall also accept Pallets with a maximum height up to 1,800 mm, all other requirements remaining the same as for other Pallets, (such taller Pallets "**Oversize Pallets**") provided that such Oversize Pallets constitute 5% or less of the total monthly inbound volume of Pallets for the relevant month set out in the latest Annual Forecast Report (as defined below). Any Oversize Pallets over 5% shall only be accommodated at the Facility subject to availability of space. NC shall be entitled to charge an additional AUD\$0.25 on the Storage Rate in respect of all Oversize Pallets;
- (j) The shuttle transport from Peters Warehouse 1 to the Facility will be restricted by the maximum allowed dimensions of a refrigerated trailer. The overall width of two Pallets side by side will be maximum 2,400 mm;
- (k) The average weight will be ± 400 kg's and the maximum weight will be 600 kg's;
- (l) The build of the Pallet including wrapping will have sufficient stability to allow automated handling with stacker cranes and conveyors;

- (m) Pallets will be of good quality without missing planks or missing blocks; and
- (n) Each Pallet load shall carry a barcode label so that it can be uniquely and automatically identified. The barcode will be of a standard design and readable quality to be mutually agreed by the Parties.

If the Products do not meet the requirements set out in this paragraph 1.4 then NC may, at its sole discretion rearrange the Products so as to meet the requirements set out in this paragraph 1.4. In such case:

- NC will notify Peters promptly of the reason(s) for the Products' non-conformance with the requirements of paragraph 1.4 and the action taken as a result; and
 - Peters will be responsible for any reasonable costs incurred in connection with any such action.
- 1.5. The Parties agree and acknowledge that all forecasts have been provided for planning purposes only and are not volume commitments made by Peters. The parties acknowledge that actual requirements may differ from time to time.
 - 1.6. Procedures will be agreed to ensure that sufficient information is provided to NC on weekly production, co-packing and sales forecast e.g. a weekly rolling 4 week forecast with a fixed 1 week horizon. In any event, unless agreed otherwise, Peters will:
 - on or before Peters' accounting year end (at the Commencement Date, the 31 December) in each year, provide NC with a written detailed annual forecast (broken down on a monthly basis) ("**Annual Forecast Report**") for the following year reflecting the number of Pallet positions which Peters reasonably and in good faith forecasts will be required for the storage and handling of the Products, Shuttling and the Transport Services during the following year;
 - provide weekly reports to NC of the number of Pallet locations which Peters reasonably and in good faith forecasts will be required for the storage and handling of the Products until the end of the relevant year;
 - upon reasonable notice, use reasonable endeavours to provide NC with indicative volume forecasts and handling requirement upon request by NC;
 - provide information to NC as soon as reasonably practicable after the order is released. Order patterns are standard day 1 for day 2 with orders in before 17.00 hours on day 1, unless a different planned delivery time has been agreed with a Peters' customer.
 - 1.7. Each new forecast shall supersede all previous forecasts. Peters shall notify NC as soon as reasonably possible of any changes to the forecasts.
 - 1.8. Peters shall act reasonably in consulting with NC on the detail of each forecast and in providing all advance notice with respect to all other information required by NC to perform the Services hereunder.
 - 1.9. On the basis of such Annual Forecast Report, as updated by the continuing forecasts through the year, NC shall ensure Pallet locations are reserved to accommodate such forecasts, together with an additional buffer percentage up to a total maximum committed number of 22,000 Pallet locations ("**Maximum Pallet Volume**"). In each year, the buffer percentage shall be 15% of the forecast for the period 1 April up to and including 31 August and 10% of the forecast for the period 1 September up to and including 31 March all subject to the Maximum Pallet Volume.
 - 1.10. NC shall provide the Services in respect of the Products (including accepting delivery and storing Products at the Facility) to the extent that the storage of such Products will not exceed the Maximum Pallet Volume.
 - 1.11. If Peters' requirements for storage space for Products exceed the Maximum Pallet Volume or the relevant forecast, the provisions of clause 6.13 of this Agreement shall apply.
 - 1.12. Notwithstanding any of the above, NC shall not store the Products at any site, warehouse or cold storage other than the Facility without the prior written consent of Peters. In the event Peters do consent to an alternative site, warehouse or cold storage this shall be subject to such alternative site, warehouse or cold storage being noted on Peters' insurance policy.
 - 1.13. NC shall ensure Products in the Facility are kept stored within the agreed temperature range (below -23°C). During Shuttling NC shall procure that the temperature of the trailer shall be maintained at or below -20°C at all times.

- 1.14. NC shall log, record and keep records of the actual temperatures at which the Products are kept, stored and transported by NC for the preceding 6 years.
- 1.15. NC shall, on receipt of reasonable notice from Peters, permit Peters to read and take copies of the temperature records for the Products.
- 1.16. Under normal conditions Products shall be delivered from Peters Warehouse 1 into the shuttle trailer with a temperature of -20°C.
Products shall be released for delivery at a temperature of -20°C and the procedure for release will be set out in the OPD.
- 1.17. The Facility will be operating 24 hours per day 7 days per week. Operational schedules will be discussed with Peters on a regular basis depending on production schedules and sales forecast.
- 1.18. As a general rule Peters will operate in a three shift full continuous operation during the season period (1st September until 31st March) and a two shift operation during the rest of the year (1st April until 31st August), however the operational scheme may change as a result of sales. Peters will inform NC of a change in the shift pattern at least 2 weeks in advance.

2. Shuttling Services

- 2.1. The Shuttling Services include the primary transportation of Pallets between Peters Warehouse 1 and the Facility.

Included in the Services from Peters Warehouse 1 shall be:

- (a) Investment in and maintenance of trucks and trailers;
- (b) Investment in and maintenance of loading equipment on site in the Manufacturing Facility to include installation of automatic transport units, buffer lanes and conveyor belts; and
- (c) Drivers.

- 2.2. Peters will:

- (d) regularly clean the load equipment in accordance with the manufacturer's instructions; and
- (e) load the Pallets onto the conveyor linked to the loading equipment.

3. Facility Services

- 3.1. The Facility Services performed in the Facility will be set out in more detail in the OPD, detailing the operating procedures and conditions, provided always the content of the OPD shall conform to the Services as described in this Agreement. For the avoidance of doubt, if the Parties do not agree the OPD the Services will be performed in accordance with the services description specified in this Schedule 2.
- 3.2. The Facility Services of reception of goods include acceptance of Pallets from the Manufacturing Facility, from co-packers and returns from customers. For these goods the unloading process shall be done manually.
- 3.3. Part of the reception process shall be a quality and quantity check of the incoming goods:
 - (a) Check on Pallet ID (check if Pallet ID correctly manifested)
 - (b) Check on Pallet profile (dimensions)
 - (c) Check on weight (missing cartons, excess weight)
 - (d) Check on temperature < - 20°C (random spot checks)

Where inspections identify that corrective action will be required (such as adjusting the profile and changing the Pallets) this will be performed by NC at Peters' cost.

- 3.4. The Facility Services for storage of Pallets shall be done based on the First Expired First Out (FEFO) principle per batch (production day code per article).

NC will keep accurate inventory records for all Products stored and managed in the Facility. These records will include (but is not limited to) stock balances, stock status by batch by Pallet, receipts and despatches for all Products managed at the Facility.

- 3.5. NC will provide reasonable resources to understand any discrepancies and correct systems. In the event that Peters require a full stock check of its Products held at the Facility (or any Site) this will be charged at actual cost unless a discrepancy is revealed and it is due to the fault of NC. NC shall on Peters' request supply copies of such inventory despatch and delivery documentation to Peters on a weekly bases and a stock reconciliation is performed.
- 3.6. Retrieval of individual Pallets, other than for loading of orders (i.e. for quality issues) shall be carried out at the request of Peters at extra cost to Peters (in accordance with the Rates set out in Schedule 4 (Rates)). The process for retrieving single boxes from multiple pallets will be included in the OPD.
- 3.7. The Facility Services for order picking include the assembly of customer orders including order picking of single cases. Order picking will be done in a designated picking area, manually on an order by order basis. The rate structure is based on the number of cases delivered as part of an order.
- 3.8. The Facility Services for the loading of orders include loading of Pallets into trucks. Pallets that are shipped as received from production (so no order picking Pallet), will not receive a new shipment label.
- 3.9. When required in accordance with the terms hereof, NC shall provide the ability to load up to 6 Peters trucks at the Facility site and shall provide power outlets to enable charging of the trucks onsite, such power supply to be metered and charged to Peters.

4. **Transport Services**

- 4.1. NC shall, prior to the completion of the Refurbishment Services, provide one (1) truck and one (1) tautliner (together the "**Transport Equipment**") to Peters (at no cost to Peters). Peters may use the Transport Equipment to transport palletized dry Products from Peters Warehouse 2 to the Manufacturing Facility Warehouse.
- 4.2. NC shall case pick the volumes destined for the VSR Trucks based at the Facility and at the Manufacturing Facility. Subsequently, NC will, at no additional costs to Peters, provide transport from the Facility to Peters Warehouse 1 where the Products will be cross-docked and loaded onto the VSR trucks.
- 4.3. NC will provide parking positions for up to 6 Peters' VSR Trucks at the Facility premises. The parking positions will each include a three phase power connection.

5. **Refurbishment Services**

- 5.1. NC shall (at its own cost) refurbish Peters Warehouse 1 and Peters Warehouse 2 as follows:
 - (a) Peters Warehouse 1 to be refurbished with the purpose of preparing loads for facilitating the Shuttling Services across to the Facility, including the following services:
 - (i) pallet wrapping, using the existing equipment;
 - (ii) installation of automatic pallet labeller;
 - (iii) provision of approximately 194 pallet spaces, for the use by Peters to store QA and retention products, and raw materials destined for production;
 - (iv) loading of the Peters Route Trucks, which shall take place in / near the existing dock area; and
 - (b) Peters Warehouse 2 to be refurbished with the purpose of dry goods. This will include the fitting of new racking.
- 5.2. Notwithstanding NC's obligations set out in paragraph 5.1, the parties shall (acting reasonably and in good faith) negotiate and agree a detailed plan for the Refurbishment Services (including without limitation budget and timescale) within 90 days following the Commencement Date.
- 5.3. Unless otherwise set out in the refurbishment plan agreed pursuant to paragraph 5.2, NC shall complete:

- (a) the refurbishment of Peters Warehouse 1 on or before 1 August 2017; and
- (b) the refurbishment of Peters Warehouse 2 on or before 1 September 2017.



Schedule 3

(Service Levels)

1. Introduction

- 1.1. NC's performance shall be measured by key performance indicators in respect of intake, storage, dispatch and distribution as detailed in this Schedule 3 (the "**KPIs**"), all of which is subject to Peters and all its contractors and sub-contractors fulfilling their obligations on a timely basis and in accordance with the terms of this Agreement. Notwithstanding anything that may be construed to the contrary in the Agreement or the Schedules, circumstances outside of NC's control that negatively impact the KPI's, including, without limitation, late arriving trucks, pallets of poor quality, or stock shortages, are excluded in the calculation of KPIs unless NC meets the Standard KPI level despite these factors. NC shall be entitled to charge to Peters any additional direct costs which NC reasonably incurs in complying with its obligations under this Agreement (where relevant, substantiated by documentary evidence) to the extent Peters or any of its contractors, subcontractors, agents etc. are responsible for such circumstances.
- 1.2. The KPI's will reflect the quality of the operation and are measured on a daily basis and reported on a weekly basis at the weekly meeting (see Schedule 6). The Initial KPI's and Standard KPI's are calculated over a monthly period.

2. Definitions

2.1. Unloading done in time

The percentage of inbound shipments that are unloaded from the vehicles within the unloading time window of 2 hours (assuming that the vehicles arrive within the agreed time slot of 2 hours).

2.2. Orders delivered on time

The percentage of deliveries that arrive within 2 hours of the planned delivery time (as reported by the Peters customer). Late arrivals are recorded and only lates that are under the control of NC are to be counted.

2.3. Order quality

The percentage of orders for which all cases included on the picking note were shipped (excludes Peters related stock shortages).

2.4. Inventory accuracy

The percentage of loads that are physically located on the location indicated in the WMS.

2.5. Stock loss

The stock value of write-offs (including both damaged and missing stock) versus the value of the throughput of the operation.

2.6. OLCOT: Orders Loaded Complete On Time

This KPI is the combination of Orders loaded on time and Order quality. Service credits will be calculated on the basis of the OLCOT KPI level. If the performance level for the month is below the Standard KPI due to the fault of NC a service credit will be payable according to the applicable band in paragraph 4 of this schedule.

Formula: $OLCOT = \text{Orders loaded on time} \times \text{Order quality}$

3. **Key performance indicators**

Target description	Minimum Performance Level	Initial KPI	Standard KPI
Unloading done in time	98.00%	98.00%	99.00%
Orders loaded on time	95.00%	97.00%	98.50%
Order Quality (Orders Complete)	95.00%	98.50%	99.50%
Inventory accuracy	98.00%	99.00%	99.90%
Stock loss	0.10%	0.05%	0.025%
OLCOT- Orders Loaded Complete On Time	90.25%	95.55%	98.01%

4. **Service Credits**

- 4.1. The standard OLCOT KPI is the ongoing level at which achievement of the KPI's result in full payment of the tariffs. If the performance level for the month is below this level due to the fault of NC then Service Credits apply.
- 4.2. Service Credits will be calculated ONLY on the basis of the OLCOT KPI level. If the performance level for the month prior to the Full Services Commencement Date is below the Initial KPI a Service Credit will be payable according to the applicable band.

From	95.55	94.50	93.45	92.40	91.35	90.25
To	94.50	93.45	92.40	91.35	90.25	0
Service Credit AUD\$ (x 1.000)	3	5	8	12	18	25

- 4.3. If the performance level for any month after the Full Services Commencement Date is below the Standard KPI due to the fault of NC a Service Credit will be payable according to the applicable band below:

From	98.01	96.70	95.40	94.10	92.80	91.50	90.25
To	96.70	95.40	94.10	92.80	91.50	90.25	0
Service Credit AUD\$ (x 1.000)	3	5	8	12	18	25	25+

- 4.4. If the performance level for any month, after the Full Services Commencement Date, is below the minimum performance level for OLCOT due to the fault of NC, a Service Credit will be payable of:
- a) AUD\$ 25,000 per month + AUD\$ 1,000 per 0.1% that it is below such minimum performance level on the first occasion in each 12 month period from the Full Services Commencement Date; and
- b) AUD\$50,000 + AUD\$2,000 per 0.1% that it is below such minimum performance level on the second and each subsequent occasion in each 12 month period from the Full Services Commencement Date.

Schedule 4
(Rates and conditions)

1. **Standard Rates**

1.1. Goods In and Out

	Measurement	Rate
Handling in	AUD\$ / Pallet	3.55
Handling out	AUD\$ / Pallet	4.95
Pallet-Reject (extra charge)	AUD\$ / Pallet	5.00

Rates are rounded to 0.01.

"Pallet-Rejects" are nonconforming Pallets, which are restricted from accessing the high-bay storage when checked upon arrival in the dispatch area, caused by either a physical deficiency (excessive weight, excessive height, excessive overhang, poor quality Pallet, missing or incorrect Pallet label, poorly stretch wrapped) or missing or incorrect Pallet ID (data not corresponding with ASN). Pallets that do not come from the Manufacturing Facility shall also be processed by NC at the Facility. If these Pallets are rejected, NC shall be entitled to charge the Pallet-Reject Rate for each Pallet-Reject, provided always that NC shall not be entitled to charge for any Pallet-Rejects within the following thresholds:

- during the Initial Period, the threshold shall be Pallet-Rejects to the total of 5% of all processed Pallets; and
- after the Full Services Commencement Date, the threshold shall be Pallet-Rejects to the total of 1% of all processed Pallets.

Pallets coming from the Manufacturing Facility shall be checked as part of the loading process on site and rejects shall be handled by Peters at its cost. All Pallets finally sent to the Facility shall again be checked and rejects shall be considered to be the result of the shuttling (and therefore there shall be no cost to Peters) unless NC can demonstrate otherwise.

1.2. Storage

	Measurement	Rate
Pallet	AUD\$ / Pallet per week/part week	3.60

Rates are rounded to 0.001.

The weekly storage rate includes a Pallet hire rate of \$0.24 per week.

To include the so called "part week" Pallets, NC shall charge the first week of storage at the moment of receipt.

A weekly snap shot will be taken from the inventory (WMS) at Sunday 23:59 hours and the number of Pallets will be multiplied by the rate.

1.3. Order picking

	Measurement	Rate
Single case picking	AUD\$ / case	0.42

Rate is rounded to 0.001.

The rate for case picking shall include all Pallet handling, Pallet wrapping film and a Pallet label.

1.4. Shuttle Service

	Measurement	Rate
Pallet-IN from Manufacturing Facility	AUD\$ / Pallet	4.45

Rate is rounded to 0.01

1.5. Value Adding Services activities

Unplanned labour for all VAS activities shall be on an hourly bases at a rate of AUD\$45 (which shall be compared and adjusted annually based upon market rates each year), not including materials. NC shall only be entitled to charge this hourly rate if this Agreement specifically states it shall apply, or otherwise if the Parties agree in writing that it shall apply.

2. **Minimum Annual Revenue**

2.1. For the purpose of this paragraph 2 (Minimum Annual Revenue):

- (a) "Minimum Annual Revenue" means the Rates that would be payable annually for an average storage volume of 8,000 Pallets at the Facility at any time;
- (b) "year" means each successive period of 12 months from the Full Services Commencement Date to the Expiry Date.

2.2. If in any year the amount invoiced by NC for storage Services provided by NC is less than the Minimum Annual Revenue, then Peters shall make a payment equal to such shortfall to NC within 30 days of the date of NC's invoice.

2.3. Should Peters dispute the invoice issued pursuant to paragraph 2.2, then Peters shall notify NC in writing of the nature of such dispute in writing within 10 Business Days of receipt of the invoice giving all relevant details.

2.4. The Parties shall cooperate in good faith to resolve the dispute over the invoice as amicably and promptly as possible and on settlement of any dispute Peters shall make the appropriate payment in any agreed period within which payments are due to be made or, failing which, within 10 Business Days of the date on which the dispute is resolved.

2.5. If the Parties are unable to settle the dispute in accordance with paragraph 2.4 within 10 Business Days of Peters issuing the notice in accordance with paragraph 2.3, the Parties shall resolve such dispute through the Dispute Resolution Procedure.

3. **Rate review**

3.1. The Rates in this Schedule are fixed until 1 December 2017, save for any adjustment to take account of changes in the costs of electricity in accordance with paragraphs 3.2 and 3.3 below and the costs of fuel in accordance with paragraphs 3.5 and 3.6 below.

3.2. The Rates as at the Commencement Date are based on an Electricity Price of \$0.07 per kWh. The proportion of the Rate relating to storage (as stated in clause 1.2 above) which is attributable to the cost of electricity is 10%. Accordingly, on the Services Commencement Date the Rate for storage shall be adjusted as follows:



Rate for storage as at the Services Commencement Date = $3.60 * (1 + (A * 0.10))$

where:

$$A = \frac{(B - 0.07)}{0.07}$$

B = The Electricity Price as at the Services Commencement Date

- 3.3. Subject to paragraph 3.4 below, on 31 December 2017 and each subsequent anniversary thereof, (each such date a "Rate Review Date"), the Rate for storage shall be varied as follows:

Rate for storage as at each Rate Review Date = $A * (1 + (B * 0.10) + (E * 0.90))$

where:

A = The Rate in respect of storage immediately prior to the Rate Review Date

$$B = \frac{(C - D)}{D}$$

C = The Electricity Price as at the current Rate Review Date

D = The Electricity Price as at the last Rate Review Date

E = $\frac{(\% \text{ increase in CPI since the last Rate Review Date}) * 0.5}{100}$

100

By way of example only:

The Rate for storage is AUD\$3.60

Between 31 December 2017 and 31 December 2018:

(a) the change in the Electricity Price (being "B") is +6%; and

(b) change in CPI is +4%

Therefore the following calculation is performed for the Rate for storage on 31 December 2018:

$$3.60 * (1 + (0.06 * 0.10) + ((0.04 * 0.5) * 0.90)) =$$

$$3.60 \times 1.024 = 3.6864$$

The new Rate for storage is therefore AUD\$3.686

- 3.4. On the first Rate Review Date only, the Rates shall be adjusted by percentages equal to the changes in CPI and the Electricity Price (as applicable) since the Services Commencement Date.
- 3.5. At Rate Review Date, each of the Rates, other than the Rate for storage and the rates for unplanned labour for VAS activities, which shall be adjusted in accordance with paragraph 1.5 above, shall be adjusted by 50% of the percentage change in CPI since the previous Rate Review Date, calculated as follows:

Rate as at Rate Review Date = A * (1+B)

where:

A = The Rate immediately prior to the Rate Review Date.

B =
$$\frac{(\% \text{ increase in CPI since the last Rate Review Date}) * 0.5}{100}$$

3.6. Fuel Escalator

NC shall adjust the Shuttle Rate in respect of each single or cumulative movement in the Australian Institute of Petroleum – National Terminal Gate Prices (the "**Net Fuel Price**") by the end of each calendar month. The data used to calculate the fuel levy changes will be the monthly National average Net Fuel Price for the preceding month. Such adjustment shall be effective from the first day of the calendar month immediately following.

- (a) The Shuttle Rate component weighting on fuel is 23%.
- (b) The "peg price" of fuel is to be set at 93.15 cents per litre. At the commencement of the Shuttling Service, the fuel price shall be adjusted in accordance with the actual price (based on the Australian Institute of Petroleum – National Terminal Gate Prices).
- (c) Fuel prices are excluding GST and Government Rebates.
- (d) Revised pricing for fuel will take effect on the 1st calendar day of each month.

By means of example only:

Fuel levy = $((B/A)-1)*C$

Where

A = Agreed "peg price"

B = Terminal Gate Price – AIP Website – Preceding month National average (less GST and Government Rebates)

C = Component Weighting on Fuel

= $((0.95450/0.9315)-1)*23\% = 0.57\%$

Schedule 5

(Gain share mechanism)

1. Savings opportunities

- 1.1. Throughout the term of this Agreement, and subject to clause 13 of the Agreement, NC will use reasonable efforts to identify, evaluate and (with Peters' consent) implement structural savings opportunities that are commercially reasonable and feasible ("**Opportunities**"). This requirement shall not stop the need for both parties to cooperate to achieve the Services set out in other parts of this Agreement.
- 1.2. Where Opportunities are identified a project brief will be completed and presented at the monthly meeting for initial feedback. The monthly meeting team will decide if the idea should be progressed to a feasibility stage and resources invested to investigate the idea further.
- 1.3. Once the feasibility study has been completed the Opportunity will be presented to Peters for agreement to progress. The costs / structural savings will be accounted for as stated below (see guidance on sharing savings). The parties shall agree the checks that will be performed to verify the project was a success and delivered the expected net benefits.
- 1.4. Once the implementation phase has been carried out the parties will perform the checks to verify the project was a success and delivered the benefits forecast.

2. Guidance on sharing savings

2.1. Operational savings

NC will use reasonable efforts to ensure continuous quality assurance, technical innovation and service improvement in accordance with the terms of this Agreement to drive reductions in the operational costs of the Services, other than Storage. Any such reduction in operational costs, other than with respect to Storage, will be reflected in the annual Rate review set out in Schedule 4 (*Rates*).

2.2. Opportunities - project savings

Prior to the implementation of an Opportunity, the parties will agree the percentage of the cost savings that will be allocated to each of them and the manner in which any expense associated with achievement of the cost savings shall be borne by both of them. NC shall ensure all cost savings allocated to Peters and achieved in a year will be credited to Peters at the end of that year.

Schedule 6
(Contract Management)

1. Contract management

1.1. Peters shall appoint a Peters representative and inform NC 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 Peters Representative shall have authority to liaise with NC Representative in connection with the Services to be performed under this Agreement and such Peters representative shall give instructions or directions to and shall liaise exclusively with NC representative or such other persons advised to it by NC representative from time to time for that purpose under this paragraph 1.1 of Schedule 6. NC shall appoint a senior employee as its representative to be Peters' contact at NC to be responsible for the performance of the Services and who will have the authority to liaise with and receive instructions from Peters. Such appointment (and any subsequent appointment) shall be subject to the prior written approval of Peters (such approval not to be unreasonably withheld, conditioned or delayed). NC may rely on the oral, email, text or other written instructions or direction of the Peters representative. NC shall keep Peters notified of the contact details of NC Representative.

1.3. NC shall:

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

2. Information & reporting

- 2.1. The parties agree that throughout the term of this Agreement the following meetings shall take place at times, dates and locations to be agreed between the parties. It assumes that the representatives nominated by both parties have the authority to make the decisions for which the meeting is designed. The parties will further define ways of working, content of meetings, representatives and reporting in the OPD:
- (d) a daily conference call / meeting to discuss immediate operational requirements at which Peters representative and NC Representative will be present;
 - (e) 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 NC Representative and the Peters Representative shall be present;
 - (f) a monthly meeting to discuss the previous month's performance, monthly trends, progress on gain share activities and key business issues at which NC Representative and the Peters Representative shall be present;
 - (g) a quarterly meeting to discuss the previous quarter's performance, innovation, quarterly trends, key business issues, gain share proposals and the forthcoming quarter's business plan at which NC Representative and the Peters representative shall be present; and a strategic development meeting to review the Agreement and business direction held as required (minimum once a year).

- (h) a strategic development meeting to review the Agreement and business direction held as required (minimum once a year).



Schedule 7
(Amendments)

1. Change request

- 1.1. For the purposes of this Agreement a "**Change Request**" is:
- (i) a request to change or add to the Services;
 - (j) to amend this Agreement or any document attached to or referred to in this Agreement (including any specification); or
 - (k) any matter which causes or is likely to cause either party to incur costs or charges outside the scope of the Rates.
- 1.2. Subject to paragraph 2.2 of this Schedule no Change Request shall be binding on the parties unless the requirements of the Change Request Procedure have been satisfied and a Change Request Form is agreed and signed by the Authorised Representatives.
- 1.3. Subject to paragraph 2.2 of this Schedule the parties shall, until such time as a Change Request is formally agreed to by both parties, continue to perform their respective obligations without taking account of the Change Request.
- 1.4. Change Requests may be originated either by Peters or by NC or may be originated by the parties jointly. In the case of any Change Request, NC shall within 10 Business Days supply to Peters either:
- (l) full details of all consequential changes which will be required to the Services, the Service Levels, the Rates and all other effects of the proposed change which must be reasonable and demonstrable; or
 - (m) written confirmation that there will be no such consequential changes or effects;

2. Change request report

- 2.1. In the event NC gives notice to Peters within 5 Business Days of receipt of a Change Request that it cannot provide the Change Request report within a 10 Business Day period, the parties shall agree a suitable period within which NC shall be required to provide the change request report. The parties shall subject to paragraph 2.5, use their reasonable endeavours to agree a Change Request within 10 Business Days of receipt of the Change Request Report by Peters but if they are unable to reach agreement, the following provisions shall apply:
- (n) if a Change Request originated by NC would in Peters' reasonable opinion have an adverse impact on NC's ability to perform the Services in accordance with the Service Levels, Peters shall be entitled to refuse that Change Request;
 - (o) if NC can demonstrate to Peters' reasonable satisfaction that a Change Request originated by Peters would require any consequential changes as set out in paragraph 1.4 (including reasonable changes to the Rates), Peters shall be entitled to require NC to comply with that Change Request subject to Peters agreeing to such consequential changes; and
 - (p) if NC fails to demonstrate to Peters' reasonable satisfaction that any consequential changes as set out in paragraph 1.4 are required, Peters shall not be entitled to require NC to comply with that Change Request.
- 2.3. As soon as NC or Peters becomes aware of any change that should be made to the Services to ensure that the Services and the performance of them conform to any change of legislation, Good Industry Practice or new legal or regulatory requirements which affects the Services, NC or Peters shall notify the other party of the change and, where the Parties so agree, NC shall carry out the change as part of the Services. The allocation of the costs of implementing changes shall be agreed between the parties (acting reasonably).
- 2.4. On signature by the Authorised Representatives of a Change Request Form, this Agreement shall be deemed amended in accordance with the provisions of that Change Request Form.

- 2.5. A party shall not be under any obligation to accept a Change Request where to accept such would cause such party to be in breach of its other obligations under this Agreement or otherwise, or have adverse effect on such party's business. If such a request arises the parties should work together to agree potential solutions (this may include the party requesting the breach to waive its rights prior to the other party accepting).



Schedule 8
(Business Continuity Plan)

1. Business continuity plan

- 1.1. In the event that circumstances at the Facility prevent the provision of the Services then NC shall use commercially reasonable efforts to implement changes such that the shortfall in performance (as measured by the KPIs) is addressed and performance returns to acceptable levels.
- 1.2. The following sections cover the key points and principles that are to be included in a Business Continuity Plan that will be fully defined by the Full Services Commencement Date.
- 1.3. 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 Peters, and one from NC 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 Peters or its suppliers, would determine that the Peters 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, (probably 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 NC (with cooperation from Peters) 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 service levels that independently, or together constitute a sufficient risk to trigger the immediate communications;
 - (d) The responses expected as a consequence of triggering the immediate communications i.e. what action needs to be taken by those being communicated to. This would include availability for emergency meetings, onward communications to other parties related to the Services, and clear responsibilities for actions required;
 - (e) Confidentiality expectations. It is probable that triggering of the Business Continuity Plan is driven by an unexpected problem with providing Services. In this event it is essential that there is strict control over what is said and to whom. The Business Continuity Plan will include several pre prepared written communications that are pre- approved for use by the managing team. There will be communications for general release, and communications specifically for the customers of Peters. 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 NC employees
 - (v) Industrial action by Peters 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 Facility
 - (xi) Loss of software systems
 - (xii) Epidemic
 - (xiii) Exceptional weather conditions
 - (xiv) Fire
 - (xv) Explosion(s)
 - (xvi) Gas leaks (i.e. ammonia)
- (g) For each predictable situation there will be a planned response, this response to include:
- (i) How to keep the product safe
 - (ii) How to keep personnel safe
 - (iii) Reciprocal agreements with other suppliers
 - (iv) Emergency administration required (including software if available)
 - (v) Specific responsibility for actions, with timings
 - (vi) Review meeting schedule for the managing team
 - (vii) External help available with lead times for mobilisation
 - (viii) Emergency manual procedures that require H&S procedures approved
 - (ix) Programme of testing and validating the responses to a predictable event
- (h) For non-predictable events there will be a similar response plan, that would move quickly to a review and planning session for the managing team. The managing team would be responsible for determining the most appropriate action, and may well call upon a combination of the activities identified in the predictable situations plans.
- 1.4. The Business Continuity Plan will be developed through time, however the first effective version will be agreed no later than 1 April 2018. 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

(WMS / IT)

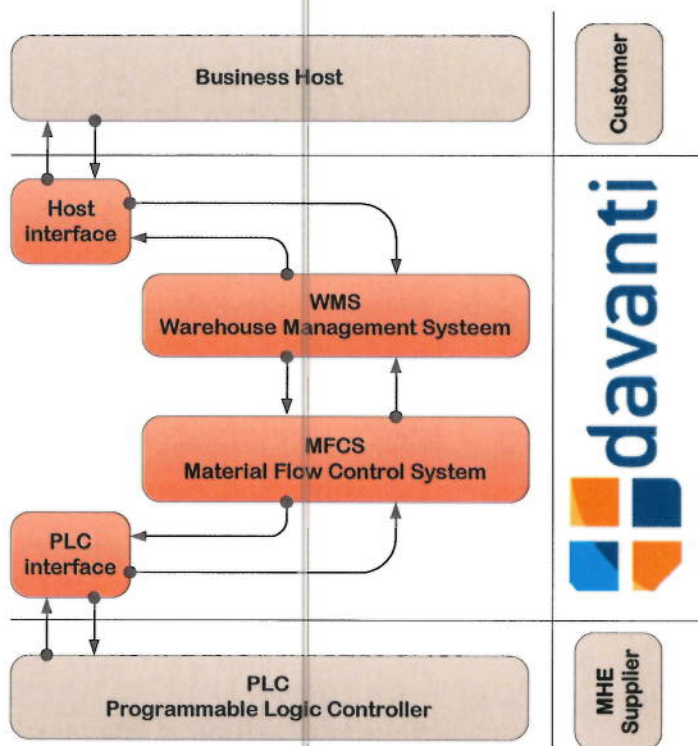
1. Background

The Warehouse Management Software (WMS) that NewCold uses for their operations is MLS from Davanti. Davanti, employing over 50 people, is a service and solution provider for the B2B warehouse management industry and a 100% daughter company of NewCold. NewCold has a strong relationship with Davanti, with short communication lines, priority in terms of appointing resources to projects and being agile in terms of implementing customer-specific requirements. MLS, Davanti's core warehouse management software product, is regarded as one of the leading systems in warehouse management software, with a specific track record in automated warehouses in the food sector.

2. Software Architecture

The typical software architecture to control automated warehouses consists of four layers:

1. Business Host: system is controlled by the customer, and is used for product and inventory administration, purchasing, production, sales order registration and the financial transactions regarding the business;
2. Warehouse Management System (WMS): the WMS (Warehouse Management System) contains the detailed inventory administration, tracing history for the general food law and the business logic for procedures and rules within the warehouse. For example, it can force operational procedures like temperature registration during product receipt, barcode scanning during loading and additional counting in case of detailed picking activities. Also, business rules like FEFO (First Expired First Out) deliveries on customer level, work load balancing, product redundancy and dynamic segregation storage are controlled by the WMS;



3. Material Flow Control System (MFCS): the MFCS consists of three parts:

- (a) visualisation of the installation: give the warehouse operator a real time view regarding the pallets on the installation and the status of the equipment itself. From the visualisation the operator can see, check and solve the errors on the installation;
- (b) transport route logic: pallets have to travel from one position to another position on the installation; the transport route logic will determine the "real time" best route for pallet based on the status and traffic pressure on the different parts of the installation. and
- (c) Standard PLC interface: the MFCS standard package has low level communication protocols to be able to connect read and write from and into the PLC. This gives the opportunity to get a lot of information from the PLC register but also change the PLC register values to get an optimal performance.

4. Programmable Logic Controllers (PLCs): the PLC is part of the MHE (Material Handling Equipment) and controls the individual engines, sensors, scales and barcode readers on the installation. Within the PLC the maximum values for, for example, weight overload are

secured to prevent damage on the installation. The values of the sensors and engines registered in the PLC are used by the MFCS.

MLS SoftwareAs shown in the picture above Davanti is able to deliver the WMS and MFCS software including the interface connections to the Business Host and the PLC. Both the WMS and MFCS are developed in-house and are currently running in a large number of operational sites.

The quality of a logistic operation is, from software point of view, a result of the quality of the total used software package. This package consists of the software parts themselves, clear agreements in functionality and responsibility and an interface with no gaps (all information needed to full fill the task).

Schedule 10

(Stock Count)

1. Annual Stock Count

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). As a result, Parties agree that annual stock audits shall be performed as follows: NC 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 take place by NC's employees (the "**Employee**") under supervision of Peters' representatives and / or (external) audit staff. The Annual Stock Count includes retrieving Pallets from the high-bay storage at random, or if preferred by Peters according to a specified list, up to a maximum of 0.5% of Pallets in storage in the Facility at that moment (the "**First Round Count**"). Prior to the First Round Count, all Pallet in- and out movements between both Parties are completed and the WMS and Peters' ERP shall be reconciled such that opening systems stock match. The retrieved pallets should be checked against the data (product, quantity, best before date, SSCC label, or the "**System Records**") as recorded in the WMS.

(ii) Should the discrepancy during the First Round Count exceed the threshold of 99.9%, a further random sample of 0.1% of the Pallets in storage in the Facility at that moment shall be checked against the System Records (the "**Second Round Count**").

(iii) 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.

(b) On an annual basis, a wall-to-wall count on the pick floor shall be conducted as follows:

(i) The first round of counting shall be conducted by NC employees (Peters' representatives may attend, but not necessarily) by use of the RF terminals. The employee shall scan the racking label and the Pallet label for each Pallet. The case quantity shall be entered manually on the RF terminal. After the first round, the WMS opening stock shall be compared to the data recorded on the RF terminals. A list shall be generated, including the (possible) differences found.

(ii) The second round of counting shall be conducted by NC employees (Peters' representatives may attend, but not necessarily) by use of the 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 Peters' employees and / or representatives. For this round, a randomly populated list shall be obtained from the WMS, including the racking positions of specific Pallets, and vice versa the Pallet ID for which the racking position has to be confirmed. The scope will be a minimum of 10% of all Peters' pick facings.

(c) 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 NC and Peters representatives.

2. Daily Stock Count

NC will provide the stock levels as recorded in its WMS to Peters on a daily basis. Any discrepancies between the WMS and Peters' ERP system should be communicated to Peters as soon as practically possible. If there are significant discrepancies (as defined below), then Peters shall be entitled to further inspection of certain SKUs or pallet positions within NCs warehouse, which shall be undertaken in the presence of Peters' representatives.

- (a) 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**"). Contrary, if there are no cases left but the WMS displays otherwise, a shortage exists ("**Shortage**").
 - (i) In case of a Surplus or Shortage, the Employee shall inform the shift leader and specifies 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 checks 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.
 - (ii) Also, Employees shall be required by the system to count the number of cases left on a pallet at random basis.
 - (iii) Reports of the pick floor counts as mentioned under this paragraph (a) shall be reported to Peters on a weekly basis.
- (b) The stock record shall be assumed to be accurate where the number of mismatches is less than 10 Pallets per 10,000 Pallet movements, or 0.10% (the "**Threshold**"). If the figure exceeds the Threshold, a stock count should be carried out on the basis that a sample of 0.1% of the Pallets currently stored in the 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 0.1% of stored pallets to be requested at random.

Schedule 11
(Depreciation Schedule)



Peters MHE - Depreciation Schedule

Date of investment

1/07/2017

Start of depreciation term

1/07/2017

Costs of investment

\$ 1,400,000

By means of example

Months of depreciation

120

In years

10

Remaining value

\$

7/4/16 - Agreed to \$0

	Depreciation per month	Total depreciation per year	Bookvalue end of year	To be reimbursed by Peters
2017 Jan	\$ -		\$	1,400,000
Feb	\$ -		\$	1,400,000
Mar	\$ -		\$	1,400,000
Apr	\$ -		\$	1,400,000
May	\$ -		\$	1,400,000
Jun	\$ -		\$	1,400,000
Jul	\$ 11,667		\$	1,388,333
Aug	\$ 11,667		\$	1,376,667
Sep	\$ 11,667		\$	1,365,000
Oct	\$ 11,667		\$	1,353,333
Nov	\$ 11,667		\$	1,341,667
Dec	\$ 11,667		\$	1,330,000
Total 2017		\$ 70,000	\$ 1,330,000	
2018 Jan	\$ 11,667		\$	1,318,333
Feb	\$ 11,667		\$	1,306,667
Mar	\$ 11,667		\$	1,295,000
Apr	\$ 11,667		\$	1,283,333
May	\$ 11,667		\$	1,271,667
Jun	\$ 11,667		\$	1,260,000
Jul	\$ 11,667		\$	1,248,333
Aug	\$ 11,667		\$	1,236,667
Sep	\$ 11,667		\$	1,225,000
Oct	\$ 11,667		\$	1,213,333
Nov	\$ 11,667		\$	1,201,667
Dec	\$ 11,667		\$	1,190,000
Total 2018		\$ 140,000	\$ 1,190,000	
2019 Jan	\$ 11,667		\$	1,178,333
Feb	\$ 11,667		\$	1,166,667
Mar	\$ 11,667		\$	1,155,000
Apr	\$ 11,667		\$	1,143,333
May	\$ 11,667		\$	1,131,667
Jun	\$ 11,667		\$	1,120,000
Jul	\$ 11,667		\$	1,108,333

Aug	\$	11,667	\$	1,096,667
Sep	\$	11,667	\$	1,085,000
Oct	\$	11,667	\$	1,073,333
Nov	\$	11,667	\$	1,061,667
Dec	\$	11,667	\$	1,050,000
Total 2019		\$	140,000	\$ 1,050,000
2020 Jan	\$	11,667	\$	1,038,333
Feb	\$	11,667	\$	1,026,667
Mar	\$	11,667	\$	1,015,000
Apr	\$	11,667	\$	1,003,333
May	\$	11,667	\$	991,667
Jun	\$	11,667	\$	980,000
Jul	\$	11,667	\$	968,333
Aug	\$	11,667	\$	956,667
Sep	\$	11,667	\$	945,000
Oct	\$	11,667	\$	933,333
Nov	\$	11,667	\$	921,667
Dec	\$	11,667	\$	910,000
Total 2020		\$	140,000	\$ 910,000
2021 Jan	\$	11,667	\$	898,333
Feb	\$	11,667	\$	886,667
Mar	\$	11,667	\$	875,000
Apr	\$	11,667	\$	863,333
May	\$	11,667	\$	851,667
Jun	\$	11,667	\$	840,000
Jul	\$	11,667	\$	828,333
Aug	\$	11,667	\$	816,667
Sep	\$	11,667	\$	805,000
Oct	\$	11,667	\$	793,333
Nov	\$	11,667	\$	781,667
Dec	\$	11,667	\$	770,000
Total 2021		\$	140,000	\$ 770,000
2022 Jan	\$	11,667	\$	758,333
Feb	\$	11,667	\$	746,667
Mar	\$	11,667	\$	735,000
Apr	\$	11,667	\$	723,333
May	\$	11,667	\$	711,667
Jun	\$	11,667	\$	700,000
Jul	\$	11,667	\$	688,333
Aug	\$	11,667	\$	676,667
Sep	\$	11,667	\$	665,000
Oct	\$	11,667	\$	653,333
Nov	\$	11,667	\$	641,667
Dec	\$	11,667	\$	630,000
Total 2022		\$	140,000	\$ 630,000
2023 Jan	\$	11,667	\$	618,333
Feb	\$	11,667	\$	606,667
Mar	\$	11,667	\$	595,000

Apr	\$	11,667	\$	583,333
May	\$	11,667	\$	571,667
Jun	\$	11,667	\$	560,000
Jul	\$	11,667	\$	548,333
Aug	\$	11,667	\$	536,667
Sep	\$	11,667	\$	525,000
Oct	\$	11,667	\$	513,333
Nov	\$	11,667	\$	501,667
Dec	\$	11,667	\$	490,000
Total 2023		\$	140,000	\$ 490,000
2024 Jan	\$	11,667	\$	478,333
Feb	\$	11,667	\$	466,667
Mar	\$	11,667	\$	455,000
Apr	\$	11,667	\$	443,333
May	\$	11,667	\$	431,667
Jun	\$	11,667	\$	420,000
Jul	\$	11,667	\$	408,333
Aug	\$	11,667	\$	396,667
Sep	\$	11,667	\$	385,000
Oct	\$	11,667	\$	373,333
Nov	\$	11,667	\$	361,667
Dec	\$	11,667	\$	350,000
Total 2024		\$	140,000	\$ 350,000
2025 Jan	\$	11,667	\$	338,333
Feb	\$	11,667	\$	326,667
Mar	\$	11,667	\$	315,000
Apr	\$	11,667	\$	303,333
May	\$	11,667	\$	291,667
Jun	\$	11,667	\$	280,000
Jul	\$	11,667	\$	268,333
Aug	\$	11,667	\$	256,667
Sep	\$	11,667	\$	245,000
Oct	\$	11,667	\$	233,333
Nov	\$	11,667	\$	221,667
Dec	\$	11,667	\$	210,000
Total 2025		\$	140,000	\$ 210,000
2026 Jan	\$	11,667	\$	198,333
Feb	\$	11,667	\$	186,667
Mar	\$	11,667	\$	175,000
Apr	\$	11,667	\$	163,333
May	\$	11,667	\$	151,667
Jun	\$	11,667	\$	140,000
Jul	\$	11,667	\$	128,333
Aug	\$	11,667	\$	116,667
Sep	\$	11,667	\$	105,000
Oct	\$	11,667	\$	93,333
Nov	\$	11,667	\$	81,667
Dec	\$	11,667	\$	70,000

Total 2026		\$	140,000	\$	70,000
2027	Jan	\$	11,667	\$	58,333
	Feb	\$	11,667	\$	46,667
	Mar	\$	11,667	\$	35,000
	Apr	\$	11,667	\$	23,333
	May	\$	11,667	\$	11,667
	Jun	\$	11,667	\$	-0
	Jul	\$	-	\$	-0
	Aug	\$	-	\$	-0
	Sep	\$	-	\$	-0
	Oct	\$	-	\$	-0
	Nov	\$	-	\$	-0
	Dec	\$	-	\$	-0
Total 2027		\$	70,000	\$	-0
2028	Jan	\$	-	\$	-0
	Feb	\$	-	\$	-0
	Mar	\$	-	\$	-0
	Apr	\$	-	\$	-0
	May	\$	-	\$	-0
	Jun	\$	-	\$	-0
	Jul	\$	-	\$	-0
	Aug	\$	-	\$	-0
	Sep	\$	-	\$	-0
	Oct	\$	-	\$	-0
	Nov	\$	-	\$	-0
	Dec	\$	-	\$	-0
Total 2028		\$	-	\$	-0
2029	Jan	\$	-	\$	-0
	Feb	\$	-	\$	-0
	Mar	\$	-	\$	-0
	Apr	\$	-	\$	-0
	May	\$	-	\$	-0
	Jun	\$	-	\$	-0
	Jul	\$	-	\$	-0
	Aug	\$	-	\$	-0
	Sep	\$	-	\$	-0
	Oct	\$	-	\$	-0
	Nov	\$	-	\$	-0
	Dec	\$	-	\$	-0
Total 2029		\$	-	\$	-0
2030	Jan	\$	-	\$	-0
	Feb	\$	-	\$	-0
	Mar	\$	-	\$	-0
	Apr	\$	-	\$	-0
	May	\$	-	\$	-0
	Jun	\$	-	\$	-0
	Jul	\$	-	\$	-0
	Aug	\$	-	\$	-0

Appendix 1
(Peters Information)

1.1 Production output

Total pallets produced per year	140,535
Days of production	251
Average number of pallets per day	560
Maximum number of pallets per day	1,058
Shipments to Coldstore	3,055
Average # pallets per shipment	46.00

Batch size average	82.3
Batch size smallest	6.5
Batch size greatest	157.3
Most common	94.4

1.2 Storage Volumes

Average pallets stored	15,576
Maximum pallets stored	21,947
Minimum pallets stored	11,256

1.3 Product Data

Average pallet weight	408 kg
Maximum pallet weight	598 kg
Maximum pallet height	1,200 mm
Total # SKU's	158
Total # SKU's for picking	158

1.4 Order Data

(a) Inbound orders	
Import (ambient raw & packaging) plts:	7,973
(b) Outbound orders	
Orders per year	9,499
Order lines per year	117,067
<i>Average order line per order</i>	<i>12.32</i>
Number of cases picked	1,365,488
Mixed pallets shipped	19,881
<i>Average # cases per mixed pallet</i>	<i>68.68</i>

Full pallets shipped	125,710
Total pallets shipped	145,591
Average pallets per order	15.33
Average pallets per orderline	1.24
Shipments to customers	4,749
Average pallets shipped per day	582
Peak number of pallets per day	1,350
Average pallets per shipment	31



Appendix 2
(Financial Statements)

Example:



NewCold Coöperatief U.A

Annual report 2014



KPMG Audit
The report on which our report dated

25 SEP 2015

also refers to
annual financial statements prepared
RTS/RTS Accountants N.V.

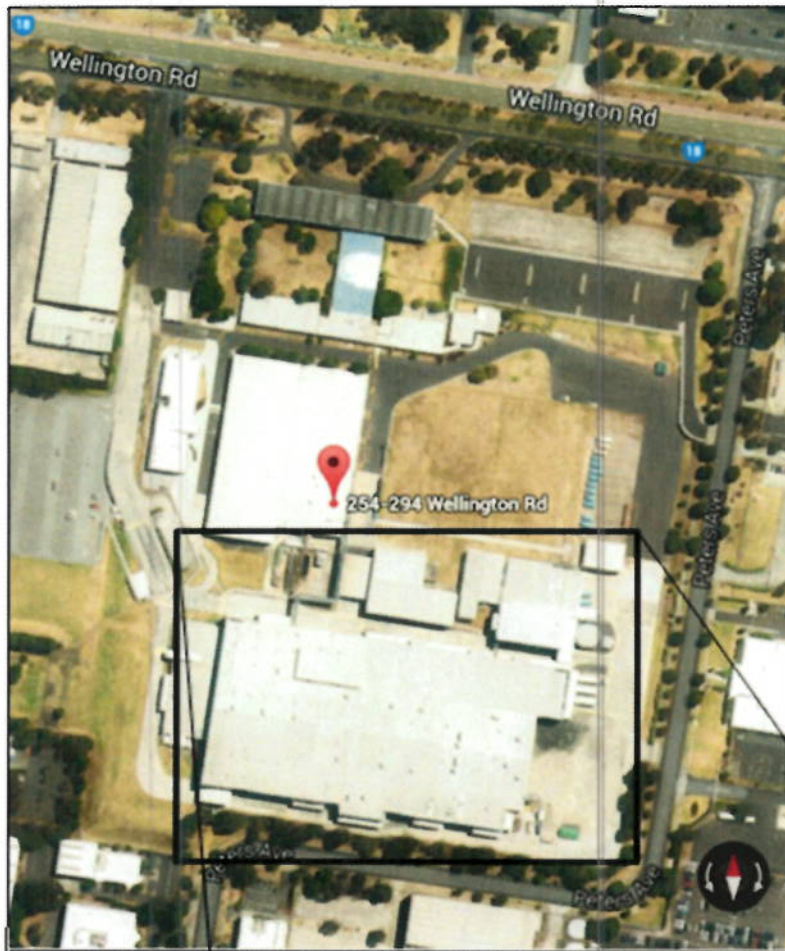
A handwritten signature in blue ink, located in the bottom right corner of the page.

Contents

Directors' report	1
General information	1
Financial information	2
Going concern	4
Significant risks and uncertainties	5
Financial and non-financial performance indicators	5
Environmental and personnel related information	5
Information regarding financial instruments	6
Research and development	6
Sustainability related information	6
Other information	7
Future developments	7
Consolidated financial statements	
Consolidated statement of financial position	8
Consolidated statement of profit or loss and other comprehensive income	10
Consolidated statement of changes in equity	13
Consolidated statement of cash flows	15
Notes to the consolidated financial statements	16
Company financial statements	
Company balance sheet	74
Company income statement	75
Notes to the Company Financial statements	76
Other information	86
Provisions in the Articles of Association governing the appropriation of profit / (loss)	86
Proposal for appropriation of result	86
Subsequent events	86
Special provision in the articles of association regarding governance	86
Branches	86
Auditor's report	87

Note: Full document can be viewed upon request

Appendix 3



1. Peter's Warehouse 1
2. Peter's Warehouse 2
3. Manufacturing Facility Warehouse
4. Manufacturing Facility



A handwritten signature in blue ink, located in the bottom right corner of the page.

