

DATED

14 June

2018

BETWEEN

Augusta Industrial Fund No.1 Limited

("the Lessor")

A N D

Icepak Limited

("the Lessee")

AND

Hall's Group Limited

("the Guarantor")

**Deed of Lease relating to Premises
at 20 Paisley Road, Mt Wellington**



8-10 Queen Street PAPAURA
Telephone: (09) 295 1700
Facsimile: (09) 295 1701

THIS DEED dated the 14th day of June 2018

BETWEEN **AUGUSTA INDUSTRIAL FUND NO.1 LIMITED** a company incorporated in New Zealand under company number 6806435 (hereinafter called "the Lessor")

AND **ICEPAK LIMITED** a company incorporated in New Zealand under company number 3009720 (hereinafter called "the Lessee")

AND **HALL'S GROUP LIMITED** a company incorporated in New Zealand under company number 2481928 (hereinafter called "the Guarantor")


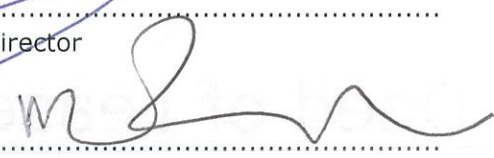
IT IS AGREED

The Lessor leases to the Lessee and the Lessee takes on lease the Premises for the term and at the rental set out in the First Schedule and subject to the terms and conditions set out in the Second Schedule.

The Guarantor guarantees the obligations of the Lessee under this Lease on the terms set out in the Second Schedule.

SIGNED AS A DEED

SIGNED on behalf of
AUGUSTA INDUSTRIAL FUND NO.1 LIMITED
as Lessor by two of its Directors

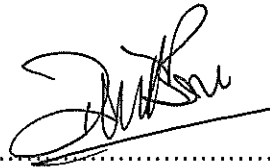

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Director

.....
Director

SIGNED on behalf of
ICEPAK LIMITED
as Lessee by two of its Directors

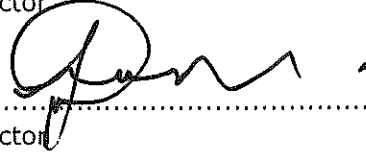

.....
Director

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Director

SIGNED on behalf of
HALL'S GROUP LIMITED
as Lessee by two of its Directors



.....
Director



.....
Director

FIRST SCHEDULE

Reference Schedule

Item 1 Name and address of Lessor:

Augusta Industrial Fund No.1
Limited
Level 2, 30 Gaunt Street
Auckland 1010

**Item 2 Name and address of Lessee
and the Guarantor**

Icepak Limited
1 Spartan Road
Takanini
Auckland 2105

Hall's Group Limited
1 Spartan Road
Takanini
Auckland 2105

**ITEM 3 DESCRIPTION OF BUILDING
AND LAND**

(a) Buildings

The buildings on the Land, together with any extension
or alterations subsequently made to the same.

(B) LAND

20 Paisley Road, Mt Wellington being the whole of the
land comprised in computer freehold register
NA127C/413.

ITEM 4 DESCRIPTION OF PREMISES

The Land and the Buildings thereon together with the
Lessor's Fixtures and Fittings.

ITEM 5 INITIAL TERM OF LEASE

Twelve (12) years

ITEM 6 RIGHTS OF RENEWAL

(a) Rights of Renewal Two (2) further terms of Six (6) years
each

(b) Renewal dates 1 December 2031 and 1 December 2037

ITEM 7 COMMENCEMENT DATE

1 December 2019

ITEM 8 EXPIRY OF TERMS

(a) Expiry date (Initial Term): 30 November 2031

(b) Final Expiry date: 30 November 2043

ITEM 9 (INITIAL) RENT

\$1,709,000.00 per annum plus GST

ITEM 10 RENT REVIEW DATES

Each anniversary of the Commencement Date.

ITEM 11 PERMITTED USE

Coolstore and coldstore storage and operations, controlled atmospheric storage, blast freezing, dry goods storage and handling, transportation, distribution and general logistics and incidental and ancillary administration and office facilities.

ITEM 12 SPECIFIED RATE OF INTEREST

A rate that is 5 percent per annum above the Lessor's bank's base rate for commercial lending from time to time.

ITEM 13 SCHEDULES FORMING PART OF THIS LEASE

First Schedule: Reference schedule

Second Schedule: Terms and conditions

Third Schedule: Lessee's Fixtures and Fittings

Fourth Schedule: Lessor's Fixture and Fittings

SECOND SCHEDULE

Terms and Conditions

1.0 DEFINITIONS, INTERPRETATIONS AND EXCLUSIONS

1.1 Definitions: In this Lease, unless a contrary intention appears:

"Authorised Officer" means in respect of each party, any director or any person from time to time nominated as an authorised officer by that party by a written notice to the other party accompanied by specimen signatures of all new persons so appointed.

"Authority" means any authority having jurisdiction over the Land and/or Building and includes, where appropriate, any utility supplier;

"Building Services" means all services provided by the Lessor as an integral part of the building for the general use and enjoyment of the building by the Lessee including water, gas, electricity, lighting, air conditioning, heating and ventilation, telecommunications and lifts whether or not they are located within the premises but excluding the Refrigeration Plant.

"Existing Lease" means the deed of lease of the Property between Perpetual Trust Limited as landlord and Eskimo Logistics Group Limited as tenant dated 14 May 2001.

"Existing Lease Works" means all repair, maintenance, replacement, redecoration and cleaning works required to be carried out by the lessee and/or the lessor under the Existing Lease.

"Expiry Date" means the expiry date specified in Item 8(a) of the First Schedule or if the Lessee exercises its rights of renewal in accordance with the terms and conditions set out in this Lease then the last day of the renewed term(s).

"GST" means Goods and Services Tax or any tax in the nature of a goods and services tax;

"Guarantor" means the guarantor named in this Lease;

"Lease" means this deed (and includes the schedules and annexures specified in Item 13 of the First Schedule);

"Lessee" means the Lessee, its successors and permitted assigns and where the circumstances permit, the employees and agents of the Lessee;

"Lessee's Fixtures and Fittings" means the items of plant, machinery or fixtures and fittings which are in or on the Premises and owned by the Lessee which, at the Commencement Date include the chattels owned by the Lessee and the fixtures detailed in the Third Schedule, and which shall include a replacement of any of such items and any other fixtures and fittings installed by the Lessee after the Commencement Date;

"Lessor" means the Lessor its successors and assigns and where the circumstances permit, the employees and agents of the Lessor;

"Lessor's Fixtures and Fittings" means the Buildings, Building Services and the

other fixtures on the Land (excluding the Lessee's Fixtures and Fittings) detailed in the Fourth Schedule, and which shall include a replacement of any of such items and any other fixtures and fittings after the Commencement Date;

"PINZ" means the Property Institute of New Zealand;

"Property Council" means the Property Council of New Zealand Inc.;

"Refrigeration Plant" means all refrigeration plant, refrigeration equipment and refrigeration machinery associated with the cool and cold store facilities at the Premises.

"Related Company" has the meaning given to it in the Companies Act 1993.

"Rent" means the rent specified in Item 9 of the First Schedule as varied under this Lease from time to time;

"Rentable Area" has the meaning ascribed to it and follows the system of calculation set down by the Property Council/PINZ from time to time in their Guide for Measurement of Rentable Areas;

"Term" means the term of this Lease together with any renewal term (where the renewal is exercised by the Lessee in accordance with this Lease);

"Vendor" means Madill & Smeed Limited as vendor under an agreement for sale and purchase of the Premises dated on or about 29 November 2017 with Augusta Funds Management Limited as purchaser; and

"Working Day" means a day which is not a Saturday or Sunday or a public holiday in Auckland, New Zealand, and not any day commencing on 24 December in any year and ending on 5 January in the following year.

1.2 **Interpretation:** In this Lease, unless a contrary intention appears:

- (a) whenever terms appear in this Lease that also appear in the First Schedule then those terms shall have and include the meaning set out in the First Schedule;
- (b) singular words shall include the plural, the masculine gender shall include the feminine, persons shall include companies, and vice versa;
- (c) any provision of this Lease to be performed by two or more persons shall bind those persons jointly and severally;
- (d) the table of contents and any headings and marginal notations in this Lease have been inserted for convenience only and shall not limit or govern the construction of the terms of this Lease;
- (e) any reference in this Lease to any statute or regulation is deemed to include all amendments and revisions made from time to time to that statute or regulation and all statutes or regulations replacing the same;
- (f) references in this Lease to "month" or "monthly" shall mean respectively calendar month and calendar monthly; and
- (g) where the Lessor's consent or approval is required pursuant to any provision

of this Lease such consent or approval shall be required for each separate occasion despite any prior consent or approval obtained for a similar purpose on a prior occasion.

1.3 **Exclusion of certain Property Law Act provisions:** The covenants, conditions and powers contained in Sections 218 and 219 of the Property Law Act 2007 shall not be implied in this Lease and are expressly negated.

1.4 **Exclusion of implied terms:** This document comprises the entire agreement between the parties and any previous representations, warranties, arrangements and statements whether expressed or implied are excluded from this Lease and do not form part of the agreement between the parties.

1.5 **Unenforceable provisions:** If any provision of this Lease shall be held to be illegal, invalid or unenforceable this shall not affect the other provisions in this Lease, which shall remain in full force and effect.

2.0 **TERM**

2.1 **Term of Lease:** The Term of this Lease shall commence on the Commencement Date and shall expire at midnight on the Expiry Date.

2.2 **Monthly tenancy/holding over:** If the Lessor permits the Lessee to continue to occupy the Premises beyond the Expiry Date and the Lessor and Lessee agree the rent which will be payable during such occupation, the Lessee's occupation shall, unless otherwise agreed, be pursuant to a tenancy at will terminable on the basis set out below. The rental shall be payable monthly in advance, the first payment to be made on the day following the Expiry Date. The tenancy shall be determinable at any time by either party by 20 Working Days' notice in writing but otherwise the tenancy shall continue on the terms and conditions (so far as applicable to a tenancy at will) set out in this Lease.

2.3 **Right of renewal:** The Lessee may serve written notice of its wish to renew this Lease ("Intention to Renew Notice") no earlier than eighteen months before and no later than twelve months before the relevant Renewal Date. Following service of the Lessee's Renewal Notice, the Lessor shall, provided that at the date of service of the Lessee's Renewal Notice the Lessee is not in material breach of this Lease, renew this Lease from the Expiry Date for the additional period(s) noted in Item 6 of the First Schedule, as follows:

- (a) the Rent shall be reviewed in accordance with clause 3.4 of this Lease;
- (b) the Rent shall be subject to review and/or adjustment during the further Term(s) on the specified Rent Review Dates; and
- (c) the renewal lease shall be upon and subject to the covenants and agreements expressed and implied in this Lease in relation to the initial Lease Term except that the Rights of Renewal set out in Item 6 of the First Schedule shall be reduced by one and the initial Lease Term plus all further Term(s) shall expire on or before the Final Expiry Date.

3.0 **RENT, GST, OPERATING EXPENSES, RENT REVIEW, INTEREST, RATES**

3.1 **Agreement to pay Rent:** The Lessee will pay the Lessor the Rent, as varied in accordance with this Lease without demand), deduction, set-off or counterclaim.

3.2 Goods and services tax

(a) In this clause:

"the Act" means the Goods and Services Tax Act 1985;

"the basic consideration" means the consideration (whether in money or otherwise) to be paid or provided by the Lessee for any supply of goods and services by or on behalf of the Lessor under this Lease (other than tax payable pursuant to this clause);

"goods and services tax" means goods and services tax charged in accordance with the Act; and

"goods", "services" and "taxable supply" have the meanings respectively assigned to them by the Act.

(b) The basic consideration is not inclusive of goods and services tax.

(c) In addition to the basic consideration, the Lessee will pay to the Lessor the amount of all goods and services tax chargeable on any taxable supply by the Lessor under this Lease.

(d) Any amount payable by the Lessee pursuant to clause 3.2(c) shall:

(i) be payable on the date on which the relevant supply is deemed to take place by virtue of the Act; and

(ii) be recoverable and bear interest as though it were Rent.

3.3 **Manner of payment of Rent and other moneys:** The Rent shall be paid by the Lessee by equal monthly instalments in advance on the first day of each month commencing on the Commencement Date provided that if this Lease shall commence on a day other than the first day of a month then the Lessee shall pay on the Commencement Date the Rent calculated on a daily basis from the Commencement Date through to the end of that month. The Lessee shall pay the Rent to the Lessor by automatic payment.

3.4 Percentage Review of Rent

(a) The Rent shall be automatically increased on each Rent Review Date in accordance with the following formula:

$$R = A \times 1.02$$

Where:

A = Rent payable immediately preceding the relevant Rent Review Date;

R = Rent payable from the relevant Rent Review Date.

(b) The Lessee shall pay the reviewed Rent on and from the relevant Rent Review Date without the need for any notice or demand from the Landlord.

3.5 **Interest on overdue moneys:** Without prejudice to other remedies, if any moneys payable by the Lessee to the Lessor shall be unpaid for 5 days after the due date for payment (whether any demand shall have been made or not) such moneys shall bear interest computed from the due date until the date of payment in full at the Specified Rate.

3.6 **Outgoings**

(a) The Lessee shall pay all outgoings incurred in respect of the Premises including the following:

- (i) rates, taxes, assessments and/or levies payable to any local or territorial authority (including New Zealand Fire Service charges and the maintenance charges in respect of all fire detection and fire fighting equipment);
- (ii) charges for water, gas, electricity, telephones and other utilities or services;
- (iii) rubbish collection charges;
- (iv) insurance premiums and related valuation fees for the insurances the Lessor is obliged to maintain under this Lease; and
- (v) any other costs, fees, and charges relating to the Premises which the Lessor becomes liable for during the Term (it being acknowledged that this Lease is intended to be a "triple net lease" and the Lessee will not be entitled to require the Lessor to pay any such costs, fees and charges or to seek any reimbursement from the Lessor).

(b) Where permissible, the Lessee will pay the outgoings specified in clause 3.9(a) directly to the relevant authority, utility providers, service contractors or other third party as and when they fall due. For any outgoings specified in clause 3.9(a) which cannot be directly paid by the Lessee:

- (i) the Lessor will provide a tax invoice for such outgoings to the Lessee (with reasonable supporting details and documents);
- (ii) the Lessee shall pay the invoiced amount no later than 10 Working Days from the date of receipt of the invoice; and
- (iii) the Lessor shall pay such outgoings to the relevant payee.

4.0 **ASSIGNMENT AND SUBLETTING**

4.1 **Control of assignment and subletting**

(a) Save as expressly permitted pursuant to this clause 4, the Lessee shall not assign, sublet, part with possession or transfer any whole or part of the Premises or otherwise deal with the whole or any part of the Premises.

(b) Subject always to compliance with clause 4.2:

- (i) the Lessee may assign the whole (but not part) of the Premises with the prior written consent of the Lessor (such consent not to be unreasonably withheld or delayed) where the proposed assignee is

respectable, responsible and suitable and has a financial covenant or can demonstrate sufficient financial resources sufficient to enable it to meet its obligations under the Lease;

- (ii) the Lessee may sublet the whole (or part) of the Premises with the prior written consent of the Lessor (such consent not to be unreasonably withheld or delayed) where the proposed sublessee is respectable, responsible and suitable and has a financial covenant or can demonstrate sufficient financial resources sufficient to enable it to meet its obligations under the proposed sublease.
- (c) Any consent provided by the Lessor shall only become effective (and until such time the Lessor shall not be obliged to release any documents signifying such consent) upon satisfaction of the conditions listed in clause 4.2.
- (d) Where the Lessor consents to a sublease, such consent shall extend only to that sublease and, notwithstanding the terms of such sublease, the Lessor's consent shall not permit any sublessee to deal with any sublease in any way which the Lessee is restrained from dealing without consent.

4.2 **Conditions of Assignment/Subletting**

- (a) No later than 10 Working Days prior to the date of the proposed assignment/subletting ("Disposal Date") the Lessee shall give to the Lessor:
 - (i) written notice of the proposed assignment or subletting;
 - (ii) such information as the Lessor may reasonably require to demonstrate to the Lessor the financial covenant or resources of the proposed assignee/sublessee and any proposed guarantor;
 - (iii) such information as the Lessor may reasonably require of the proposed assignee's or sublessee's proposed use of the Premises.
- (b) The Lessee shall:
 - (i) on the Disposal Date pay to the Lessor such reasonable sum of money as the Lessor shall require on account of the third party costs incurred by the Lessor in considering the proposed assignment or subletting. All such costs may be charged and retained by the Lessor whether or not the proposed assignment or subletting proceeds to completion.
 - (ii) In the case of an assignment, by the Disposal Date:
 - (aa) deliver to the Lessor a deed duly executed by the Lessee and the proposed assignee in a form acceptable to the Lessor covenanting that the proposed assignee will at all times pay the Rent and observe all the terms and conditions of this Lease; and
 - (bb) where the Lessor has consented to the assignment on the basis that a guarantee of the assignee's obligations will be provided, arrange for the agreed guarantors to enter into a deed guaranteeing the performance of the proposed

assignee of the terms of this Lease;

(iii) In the case of a sublease, by the Disposal Date deliver to the Lessor a deed duly executed by the sublessee in a form acceptable to the Lessor containing a covenant that the proposed sublessee will at all times observe the terms and conditions of this Lease (in so far as they are applicable to the subleased premises) and to pay the rent due under the sublease.

(c) There is to be no material unremedied breach of any of the terms of this Lease as at the Disposal Date.

4.3 **Change of shareholding:** For the purposes of this clause 4.0, if the Lessee is a company that is not listed on the New Zealand Stock Exchange or the Australian Stock Exchange, any:

- (a) change or rearrangement in the ultimate beneficial ownership of the shareholding of the Lessee; or
- (b) alteration in the constitution of the Lessee altering the effective control of the Lessee; or
- (c) other change whereby there is a change in the effective management or control of the Lessee,

will be deemed a proposed assignment of this Lease and will require the consent of the Lessor under this clause 4.0.

5.0 MAINTENANCE AND ALTERATIONS

5.1 Lessee to keep Premises in good repair:

- (a) Subject to clauses 5.1(c), (d), (e) and (h), the Lessee's liability to repair and maintain the Premises (including the Lessor's Fixtures and Fittings and the Refrigeration Plant) will be limited to carrying out any repair and maintenance that is necessary to:
 - (i) ensure that the Premises comply with all statutory and regulatory requirements (including but not limited to those relating to health and safety);
 - (ii) comply with the requirements of the Lessor's insurer;
 - (iii) mitigate any nuisance caused to adjoining properties;
 - (iv) keep the Refrigeration Plant in good and substantial repair and condition (including replacement of the Refrigeration Plant or any individual component of the Refrigeration Plant where it has reached the end of its economic life);
 - (v) comply with the obligations contained in clause 5.1(b).
- (b) The Lessee shall keep and maintain the Premises (including the Lessor's Fixtures and Fittings) in good order and repair, having regard to their condition as at the Commencement Date (following completion of any Existing Lease Works), including:

- (i) keeping the Premises clean and tidy;
- (ii) maintaining service maintenance contracts for all Building Services;
- (iii) keeping and maintaining the Lessee's Fixtures and Fittings in good operational order and repair;
- (iv) repairing all glass breakages and breakage or damage to all doors, windows, light fittings and power points in the Buildings and shall keep and maintain the electrical system in the Buildings in good operating condition as determined by the Lessee (acting reasonably);
- (v) painting those parts of the interior and exterior of the Buildings which have been previously painted when the Lessee (acting reasonably) determines the same requires repainting;
- (vi) washing down the exterior of the Buildings when the Lessee (acting reasonably) determines the same requires cleaning;
- (vii) keeping all floor coverings in the Buildings clean and replace all floor coverings worn or damaged by the Lessee other than by fair wear and tear with floor coverings of a similar quality when reasonably required by the Lessee;
- (viii) maintaining the storm and wastewater drainage systems on the Premises (including downpipes and guttering of the Buildings) clear and unobstructed;
- (ix) maintaining all surfaced areas on the Premises (including the carparking, vehicular and pedestrian accessways) in a clean and tidy condition, repairing and/or resurfacing such areas to an appropriate standard and specification when such repair and/or resurfacing is determined by the Lessee to be reasonably required;
- (x) ensuring all rubbish is disposed of in a manner as reasonably determined by the Lessee;
- (xi) maintaining all fences and gates on the Premises; and
- (xii) making good any damage caused to the Building by improper or careless use by the Lessee;
- (xiii) maintaining compliance schedules for each of the Buildings (including all reports and supporting information as required by sections 108 and 110 of the Building Act 2004 as and when required),

save that the Lessee will have no liability under this clause 5.1(b) to repair and maintain the Premises if and to the extent such repair and maintenance is required as a result of fair wear and tear following reasonable use or is the result of the Lessor's failure to comply with its obligations under clause 5.9(a).

- (c) The Lessee shall not be responsible for any damage caused by:
 - (i) fire, flood, explosions, lightning, storm, earthquake or volcanic activity; or

- (ii) any risk against which the Lessor is insured, in each case, except where:
 - (aa) any such damage is intentionally done or caused by the Lessee or any agent of the Lessee;
 - (bb) such damage is the result of an act or omission by the Lessee or any agent of the Lessee that occurred on or about the Premises and/or the Land and which constitutes an indictable offence within the meaning of the Summary Proceedings Act 1957; or
 - (cc) any insurance moneys are rendered irrecoverable as a consequence of any act or omission on the part of the Lessee or any agent of the Lessee.
- (d) The Tenant must arrange for the Premises (including the Lessor's Fixtures and Fittings and the Refrigeration Plant) to be inspected on the Commencement Date and at 6 monthly intervals thereafter from the Commencement Date by a mutually agreed property management company and for the property management company to prepare a report. If the parties are unable to agree on the identity of the property management company then either party may apply to the chair of the Property Institute of New Zealand to identify the property management company. The Tenant will provide the report to the Landlord immediately upon receipt (which must be addressed to both the Landlord and the Tenant). The Tenant must (at its own cost) obtain any specialist technical report(s) recommended by the property management company in its report and must (at its own cost) comply with any recommendations in the report (and any separate specialist technical report) relating to maintenance (including preventative maintenance), repair and replacement within a reasonable time of receiving the report (or, if applicable, within a reasonable time of receiving any specialist technical report) and provide confirmation of completion of such works to the Landlord.
- (e) On the final expiry or earlier determination of this Lease, the Lessee:
 - (i) shall yield up the Premises (including the Lessor's Fixtures and Fittings and the Refrigeration Plant) in such a condition that it is fit for its intended purpose (being the existing use as at the Commencement Date) and can be reasonably let to another high quality tenant;
 - (ii) shall remove its chattels from the Premises;
 - (iii) may, but shall not (otherwise as set out in subclause (ii)) be obliged to, remove all the Lessee's Fixtures and Fittings and make good any damage to the Premises. In respect of the Lessee's make good obligations under this subclause 5.1(e)(iii), the Lessee shall, in a good and workmanlike manner fill, patch and/or repair any holes or damage caused by the Lessee as a result of the removal of the Lessee's Fixtures and Fittings in the floors, walls and/or ceiling.
- (f) Ownership of any Lessee's Fixtures and Fittings left in the Premises following the expiry or earlier determination of this Lease shall vest in the Lessor.
- (g) The Lessee must not remove the Refrigeration Plant (or any other

component of the Premises necessary to operate the coolstore facility) from the Premises.

- (h) Without limiting the Lessee's obligations contained in this clause 5, the parties will (at the Lessee's cost) instruct an independent building surveyor approved by the Lessor to inspect the Premises (including the Lessor's Fixtures and Fittings and the Refrigeration Plant) not earlier than 18 months prior to expiry of the Term (and not later than 15 months prior to expiry of the Term) in order to identify what works need to be carried out by the Lessee in order to comply with its obligations contained in clause 5.1(e). The cost of the report will be shared equally by the Lessee and the Lessor. The Lessee must carry out the works identified in the report that are necessary to comply with clause 5.1(e).
- (i) Without prejudice to any other rights or remedies of the Lessor, any failure by the Lessee to fully comply with its obligations contained in clause 5.1(e) prior to final expiry (or earlier determination) of this Lease will entitle the Lessor to charge rent and outgoings to the Lessee at the same rates as applied immediately prior to final expiry (or earlier determination) until such time as the relevant works have been completed in full.

5.2 **Lessee to keep Refrigeration Plant in good repair**

The Lessee shall keep and maintain the Refrigeration Plant in good order and repair including all repairs and replacements of both an operating and a capital nature.

5.3 **No liability for the Lessor:** The parties acknowledge that this Lease is intended to be a "triple net lease" and the Lessor shall not have any liability to repair, maintain, replace, reseal, clean or redecorate the whole or any part or parts of the Premises (except as set out in clause 7.2(a)).

5.4 **Building warrant of fitness:** The Lessee shall be responsible for obtaining a building warrant of fitness for all Buildings on the Premises. The Lessor shall sign any necessary documentation at the cost of the Lessee (but will not otherwise have any liability to the Lessee in connection with the obtaining of a building warrant of fitness). If the Lessee fails to obtain the building warrant of fitness within a reasonable time following the due date for renewal, the Lessor may (at the Lessee's cost) obtain the warrant of fitness as required.

5.5 **Right to undertake maintenance:** If the Lessee has not within a reasonable time following receipt of written notice from the Lessor, which notice shall specify a timeframe which the Lessor considers reasonable in the circumstances, carried out any work to be done pursuant to clause 5, such work may be undertaken by the Lessor at the cost of the Lessee, payment to be made to the Lessor on demand, and which may be recovered by the Lessor as rent in arrear.

5.6 **Alterations and additions:**

- (a) The Lessee may make non-structural alterations or additions to any part of the Premises without the Lessor's consent. The Lessee shall notify the Lessor of any such alterations or additions and provide updated as-built plans to the Lessor promptly following completion of the Works.
- (b) If the Lessee wishes to make any structural alterations or additions, the Lessee shall obtain the prior written consent of the Lessor, such consent not to be unreasonably withheld or delayed. The Lessee shall provide the Lessor

with plans and specifications of any proposed structural alterations. The Building and Premises as altered or added to, shall remain in the ownership of the Lessor.

- (c) The Lessee will ensure that any alterations or additions made to the Premises:
 - (i) are carried out in a good and workmanlike manner and in accordance with all necessary consents;
 - (ii) do not, in the opinion of the Lessor, diminish the residual value of the Premises; and
 - (iii) comply with all statutory and regulatory requirements.
- (d) The Lessee shall not be obliged to reinstate any alterations or additions undertaken in accordance with clauses 5.6(a) or (b) at the end or earlier expiry of the Term (provided that it has complied with the terms of clause 5.1(c)).
- (e) The Lessee shall have exclusive naming and signage rights to the Premises and shall not require the consent of the Lessor to any erection or alteration to any signage provided that upon expiry of this Lease the Lessee shall remove all signage to promote the Lessee and make good any damage caused to the Building by such removal.

5.7 Compliance with laws and notices:

- (a) The Lessee shall at all times comply with all statutes, ordinances, regulations, bylaws or other enactments (whether or not in place as at the Commencement Date) relating to the Premises and with all requirements, notices or orders notified to the Lessee given by any Authority.
- (b) The Lessee shall:
 - (i) comply strictly with any building consent in respect of any work being carried out by or on behalf of the Lessee;
 - (ii) comply with any notice to rectify given by a territorial authority in respect of any building work carried out by or on behalf of the Lessee;
 - (iii) not do or allow anything which would constitute a breach by the Lessor of any obligation under the Building Act 2004; and
 - (iv) not do or allow anything which would constitute a breach by the Lessee or the Lessor of any obligation in the Health and Safety at Work Act 2015.
- (c) The Lessee will bring to the attention of the Lessor any requirements, notices or orders affecting the Premises or the Building which may come to the attention of or be served on the Lessee (whether or not the Lessee is obliged to comply with the same).

5.8 Entry by Lessor to view and effect repairs and alterations: The Lessor shall have the right to enter the Premises at all reasonable times and on reasonable notice (but at any time and without notice in the case of an emergency):

- (a) to view the state of repair and to ascertain whether or not there has been any breach of this Lease;
- (b) to carry out any work which the Lessor is entitled to undertake pursuant to clause 5.5; and/or
- (c) for the purpose of complying with any legislation or with any notice served on the Lessor or Lessee for which the Lessee is not responsible under this Lease,

provided that in exercising such rights the Lessor shall use its reasonable commercial endeavours to minimise any disturbance caused to the Lessee and shall comply with all reasonable requirements of the Lessee, including in respect of health and safety.

5.9 **Prior leasing arrangements:**

- (a) The Lessor covenants in favour of the Lessee to:
 - (i) use its reasonable endeavours to enforce the obligations on the part of the tenant contained in the Existing Lease; and
 - (ii) comply with the obligations on the part of the lessor contained in the Existing Lease in relation to the Existing Lease Works if and to the extent that the Lessor is indemnified by the Vendor for the cost of those works.
- (b) Save as provided for in clause 5.9(a), the Lessee acknowledges and agrees that the Lessor will have no liability to the Lessee regarding the condition of the Premises.

5.10 **Separation works:**

- (a) If and to the extent that any works need to be carried out to separate the Premises from any adjoining premises (*Separation Works*), then the Lessor will use reasonable endeavours to reach agreement with the registered proprietor of the adjoining premises that the Separation Works are not required to be carried out (but the Lessor shall not be required to make any payment in order to reach such agreement). If the Lessor is unable to reach agreement and the Separation Works are required to be carried out, then the Lessee (and not the Lessor) will be liable to carry out such works on demand from the Lessor. The Separation Works will be carried out by the Lessee:
 - (i) in a good and workmanlike manner; and
 - (ii) in accordance with:
 - (aa) all necessary consents;
 - (bb) the requirements of any adjoining owner which are legally binding on the Lessor;
 - (cc) the reasonable requirements of the Lessor; and
 - (dd) all statutory and regulatory requirements.

6.0 **INSURANCES**

6.1 **Lessor shall insure**

- (a) The Lessor shall at all times during the term keep and maintain cover in respect of the Premises against damage and destruction by fire, flood, explosion, lightening, storm earthquake and volcanic activity for full replacement and reinstatement or (if not obtainable) indemnity to full insurable value together with cover for up to 24 months indemnity in respect of consequential loss of rent and outgoings, and \$10,000,000 public liability. If insurance cover required under this subclause becomes unavailable during the Term other than because of the Lessor's act or omission, the Lessor will not be in breach while cover is unavailable, provided the Lessor uses all commercially reasonable endeavours on an ongoing basis to obtain cover. The Lessor will advise the Lessee in writing whenever cover becomes unavailable and provide reasons as to the unavailability. The Lessor will also provide the Lessee with reasonable information relating to the cover when requested by the Lessee.
- (b) The parties acknowledge and agree pursuant to section 271 of the Property Law Act 2007 that to the extent of any excess payable regarding any insurance policy held by the Lessor, the excess will represent an amount for which the Lessor has not insured, or has not fully insured the Premises against destruction or damage arising from the events to which the section applies. If the Lessor makes any claim against its insurance for any destruction or damage because of any negligent act or omission or default of the Lessee, the Lessee will pay the Lessor the amount of the excess not exceeding \$2,000.

6.2 **Lessee not to void insurance**

- (a) The Lessee shall not carry on or allow upon the Premises any trade or occupation or allow to be done any act or thing which:
 - (i) shall make void or voidable any policy of insurance on the Premises;
 - (ii) may render any increased or extra premium payable for any policy of insurance except where in circumstances in which any increased premium is payable the Lessee shall have first obtained the consent of the insurer of the Premises and the Lessor and made payment to the insurer of the amount of any such increased or extra premium as may be payable but the carrying on by the Lessee in a reasonable manner of the business use or of any use to which the Lessor has consented shall be deemed not to be a breach of this clause.
- (b) In any case, where in breach of subclause 6.2(a) the Lessee has rendered any insurance void or voidable and the Lessor has suffered loss or damage, the Lessee shall at once compensate the Lessor in full for such loss or damage.

6.3 **When Lessee to have benefit of Lessor's insurance**

- (a) Where the Premises are destroyed or damaged by fire, flood, explosion, lightning, storm, earthquake, volcanic activity or any risk against which the Lessor is (or has covenanted with the Lessee to be) insured the Lessor will not require the Lessee to meet the cost of making good the destruction or

damage to the Premises. The Lessee will not be excused from liability under this subclause if and to the extent that:

- (i) the destruction or damage was intentionally caused by the Lessee or those for whom the Lessee is responsible; or
- (ii) the destruction or damage was the result of an act or omission by the Lessee or those for whom the Lessee is responsible and that act or omission:
 - (aa) occurred on or about the property; and
 - (bb) constitutes an imprisonable offence; or
- (iii) any insurance moneys that would otherwise have been payable to the Lessor for the damage or destruction are rendered irrecoverable in consequence of any act or omission of the Lessee or those for whom the Lessee is responsible.

6.4 **Lessee to maintain insurances:** The Lessee shall keep current at all times with a reputable insurance company a policy or policies of:

- (a) public and products liability insurance applicable to the Premises and the business carried on in the Premises for an amount of not less than \$10 million; and
- (b) for the replacement of the Lessee's Fixtures and Fittings.

The Lessee will, if requested, provide the Lessor from time to time with certificates of currency.

6.5 **Lessee to claim:** In the event there is any damage to the Lessee's Fixtures and Fittings due to an insured event and the provisions of clause 7.1 do not apply, then the Lessee shall:

- (a) prepare and submit a claim to the insurer in respect of the damage; and
- (b) use reasonable endeavours to obtain the proceeds of the insurance policies; and
- (c) promptly respond to any enquiries and requests received from the insurer in relation to the claim.

On receipt of any proceeds from the Lessee's insurer, the Lessee shall promptly utilise the proceeds to reinstate and repair the damage to the Lessee's Fixtures and Fittings.

7.0 **DAMAGE OR DESTRUCTION**

7.1 **Total Destruction:** If the Premises or the Building shall be destroyed or so damaged as to render the Premises or the Building untenable then the term shall at once terminate from the date of destruction or damage. Any termination pursuant to this subclause shall be without prejudice to the rights of either party against the other.

7.2 Partial Destruction

- (a) If the Premises or the Buildings shall be damaged but not so as to render the Premises or the Buildings untenable and:
- (i) the Lessor's policy or policies of insurance shall not have been invalidated or payment of the policy moneys refused in consequence of some act or default of the Lessee; and
 - (ii) all the necessary permits and consents are obtainable,
- the Lessor shall with all reasonable speed expend any insurance monies received in repairing such damage and/or reinstating the Premises or the Building. The Lessor will not otherwise have any liability to repair or reinstate the Premises or the Building.
- (b) If the Lessor has not reinstated the Premises and/or Building so that the Premises are in a suitable condition to be handed over to the Lessee within twenty four (24) months of the date of the destruction or damage, then either party may serve written notice on the other terminating this Lease.
- (c) Any repair or reinstatement shall be carried out by the Lessor using materials and a form of construction which are:
- (i) of an equal or better standard than; and
 - (ii) to a plan equivalent to,
- that which existed in the Premises prior to the occurrence of the damage or destruction.
- (d) Until the completion of the repairs or reinstatement a fair proportion of the Rent and outgoings shall cease to be payable as from the date of damage.
- (e) If any necessary permit or consent shall not be obtainable the parties shall discuss in good faith with a view to agreeing any changes to the Premises or Buildings which may enable consent to be obtained, but if no such agreement is reached within 40 Working Days of the permit or consent being declined then the Term shall at once terminate but without prejudice to the rights of either party against the other.

7.3 No access in emergency

- (a) If there is an emergency and the Lessee is unable to gain access to the Premises to fully conduct the Lessee's business from the Premises because of reasons of safety of the public or property or the need to prevent reduce or overcome any hazard, harm or loss that may be associated with the emergency, including:
- (i) a prohibited or restricted access cordon applying to the Premises; or
 - (ii) prohibition on the use of the Premises pending the completion of structural engineering or other reports and appropriate certifications required by any competent Authority that the Premises are fit for use; or

(iii) restriction on occupation of the Premises by any competent Authority,

then a fair proportion of the Rent and outgoings shall cease to be payable for the period commencing on the date when the Lessee became unable to gain access to the Premises to fully conduct the Lessee's business from the Premises until the inability ceases.

(b) This subclause 7.3(b) applies where subclause 7.3(a) applies and this Lease is not cancelled as provided for elsewhere in this clause 7. When this subclause 7.3(b) applies, either party may terminate this Lease by giving 10 Working Days written notice to the other if the Lessee is unable to gain access to the Premises for 12 months.

Any termination shall be without prejudice to the rights of either party against the other.

8.0 USE OF PREMISES

8.1 **Permitted use:** The Lessee will not use the Premises for any purpose other than the Permitted Use. If the Permitted Use requires compliance with section 114 or section 115 of the Building Act 2004, the Lessee shall comply with the Building Act 2004 and pay all compliance costs.

8.2 **Suitability of Premises:** The Lessor does not warrant that the Premises are or will be suitable for any of the purposes of the Lessee and to the extent permitted by law all implied warranties as to suitability are expressly negated.

8.3 **Payment of utility charges by Lessee:** The Lessee shall pay to the relevant Authorities all charges for utilities and other services connected to the Premises and if the Lessee makes default in payment, the Lessor may pay the charges and recover the same, as if such charges were Rent in arrears.

9.0 DEFAULT BY LESSEE

9.1 **Re-entry:** If at any time during the term of this Lease:

- (a) any Rent payable by the Lessee is in arrears for 10 Working Days;
- (b) there is a default by the Lessee in respect of any obligation of the Lessee other than payment of Rent and such default is not remedied within a reasonable period after notice has been given to the Lessee or, in the case of repairs required to be effected by the Lessee, such repairs are not completed within a reasonable time;
- (c) execution is levied against any of the assets of the Lessee and remains unsatisfied;
- (d) the Lessee (not being a company) is declared bankrupt or insolvent or assigns his/her estate or enters into a deed of arrangement for the benefit of creditors; or
- (e) the Lessee (being a company) either:
 - (i) goes into liquidation (other than a voluntary liquidation for the purposes of reconstruction or amalgamation approved in writing by the Lessor);

- (ii) is wound up or dissolved;
- (iii) enters into a scheme of arrangement with any of its creditors; or
- (iv) has a receiver or voluntary administrator appointed,

subject to the Lessor having served, in accordance with section 353 Property Law Act 2007, a valid notice pursuant to section 245 or 246 (as the case may be) of the Property Law Act 2007, it shall be lawful for the Lessor to re-enter the Premises and determine the estate of the Lessee and remove or otherwise deal with any goods, fittings, fixtures and effects found on the Premises without releasing the Lessee from any liability in respect of any antecedent breach.

9.2 **Lessor may remedy Lessee's default:** The Lessor may remedy at any time without notice any default by the Lessee under this Lease and in such case all costs incurred by the Lessor shall be paid by the Lessee to the Lessor on demand.

9.3 **Non-Waiver:** No waiver by the Lessor of any breach of this Lease shall operate as a waiver of any similar or subsequent breach. No custom or practice which may exist or develop between the parties shall be construed to waive or lessen any rights, powers or privileges at law or in equity for the Lessor to insist upon the strict observance by the Lessee of this Lease.

9.4 **Essential terms:** Any breach of the following covenants by the Lessee shall be deemed to be a breach of an essential term of this Lease:

- (a) the covenant to pay Rent and any other moneys to the Lessor where such breach gives rise to a right of re-entry under this Lease;
- (b) the covenant dealing with assignments, subletting and parting with possession; and
- (c) the covenant dealing with the use of the Premises.

10.0 COVENANTS BY LESSOR

10.1 **Quiet enjoyment:** The Lessee paying the Rent and other monies payable to the Lessor under this Lease and observing the Lessee's covenants in this Lease shall peaceably hold the Premises without improper interruption by the Lessor or persons lawfully claiming under the Lessor until the expiry or sooner determination of this Lease.

10.2 **Signage:** The Lessor shall not erect any signage on the Premises during the Term.

10.3 **Requirement to notify:** In the event that the Lessor intends to sell transfer or otherwise dispose of its interest in the Land to a third party transferee ("Transferee"), the Lessor shall serve written notice ("Sale Notice") on the Lessee advising of such intention.

11.0 CONSENT OF MORTGAGEE

11.1 The Lessor shall, at its own expense, procure the consent of any mortgagee of the Premises, which consent shall be in a form reasonably acceptable to the Lessee and which shall:

- (a) continue in respect of any extension or renewal of the Term;
- (b) acknowledge the right of the Lessee to remove its fixtures and fittings; and
- (c) not impose any additional obligations on the Lessee.

12.0 MISCELLANEOUS

12.1 **Lessee to permit exhibition of Premises:** The Lessee will permit the Lessor or the Lessor's agents to exhibit the Premises to prospective purchasers of the Building at all reasonable times during the Term and to prospective tenants during the last 6 months of the Term on reasonable notice. The Lessor shall comply with all reasonable requirements of the Lessee in respect of such rights of access to the Premises.

12.2 **Notices:** All notices, requests, demands, consents, approvals, agreements or other communications to or by a party to this Lease:

- (a) must be in writing addressed to the intended recipient at the address shown below or the address last notified by the intended recipient to the sender:

Lessor

Augusta Industrial Fund No.1
Limited
Level 2, 30 Gaunt Street
Auckland 1010

Lessee

Icepak Limited
1 Spartan Road, Takanini 2105
Attention: Chief Executive
Officer

Guarantor

Hall's Group Limited 1 Spartan
Road, Takanini 2105 Attention:
Chief Executive Officer

- (b) must be signed by the sender or if a company, by its Authorised Officer;
- (c) will be taken to have been served:
 - (i) in the case of delivery in person, when delivered to or left at the address of the recipient shown in this Lease (as the case may be) or at any other address which the recipient may have notified to the sender;
 - (ii) in the case of mail, on the fifth Working Day after the date on which the notice is accepted for posting by the relevant postal authority,

but if service is on a day which is not a Working Day in the place to which the communication is sent or is later than 4.00pm (local time) on a Working Day, the notice will be taken to have been served on the next

Working Day in that place; and

- (d) must, to the extent applicable, comply with the provisions of Part 7 of the Property Law Act 2007.

12.3 Disputes resolution

- (a) In the event of any dispute arising between the parties in respect of this Lease except as otherwise expressly provided, the parties shall, without prejudice to any other right or entitlement they may have pursuant to this Lease or otherwise, explore whether the dispute can be resolved by agreement between them using informal dispute resolution techniques such as negotiation, mediation, independent expert appraisal or any other alternative dispute resolution technique. The rules governing any such technique shall be as agreed between the parties or as selected by LEADR (Leading Edge Alternative Dispute Resolvers).
- (b) If the dispute is not resolved within 14 days of written notice by one party to the other of the dispute either party may refer the dispute to arbitration before a sole arbitrator under the Arbitration Act 1996.
- (c) The arbitration will be commenced by one party notifying the other party in writing of its requirement that a dispute or disputes be referred to arbitration and by nominating a sole arbitrator.
- (d) If the other party does not accept the arbitrator nominated by the first party and both parties are unable to agree on a single arbitrator within 7 days of the service of the notice under clause 12.3(c) requiring arbitration (excluding the date of service), either party may request the president of the Auckland District Law Society (or its successor entity) appoint an arbitrator.
- (e) If any arbitrator fails to act in pursuance of the arbitration, either party may request the aforesaid law society president to nominate within 10 days a replacement for that arbitrator who shall act in place of the defaulting arbitrator.
- (f) The arbitrator shall give reasons for his or her award and those reasons shall form part of the award.
- (g) Either party may appeal to the High Court on any question of law arising out of an award.
- (h) The provisions of the First and Second Schedules to the Arbitration Act 1996 apply except as otherwise varied in the above clauses.
- (i) Nothing in clauses 12.3(a) to 12.3(h) shall prevent either party from applying to the High Court for urgent equitable relief in respect of any matter under this Lease.

12.4 **Freehold covenants:** The Lessee shall at all times observe and comply with all of the terms, covenants and conditions of any instruments registered against the title to the Land.

12.5 **Costs:** Each party shall pay its own costs in respect of the negotiation, preparation and completion of this Lease or any extension or variation.

12.6 **Governing law:** This Lease is governed by the laws of New Zealand. The parties submit to the exclusive jurisdiction of New Zealand courts.

13.0 **GUARANTEE**

13.1 In consideration of the Lessor granting this Lease at the request of the Guarantor, as the Guarantor admits and acknowledges, the Guarantor guarantees:

- (a) payment by the Lessee of the rent and other money due and payable at the times and in the manner provided for in the Lease;
- (b) the due and punctual observance and performance by the Lessee of those covenants, terms and conditions expressed or implied in the Lease which are to be observed and performed by the Lessee under the Lease.

13.2 The Guarantor acknowledges and agrees that:

- (a) although as between the Lessee and the Guarantor the latter may only be a surety, as between the Guarantor and the Lessor, the Guarantor will be deemed a principal debtor;
- (b) no waiver or indulgence by the Lessor, or any other act, matter or thing, will operate to release the Guarantor from liability under the Guarantor's covenants in this deed.

13.3 The Guarantor's liability under this deed is not affected by:

- (c) the granting of time or any other indulgence to the Lessee;
- (d) the compounding, compromise, release, abandonment, waiver, variation or renewal of any of the Lessor's rights against the Lessee or by any omission to enforce those rights;
- (e) any variation of the Lease; or
- (f) any other thing which under the law on sureties might, if not for this clause, wholly or partly release the Guarantor from the Guarantor's obligations under this deed.

13.4 The Lessor is not obliged to commence proceedings against the Lessee before taking proceedings against the Guarantor.

13.5 The Guarantor will guarantee the obligations of the Lessee under any renewed lease in circumstances where Hall's Refrigeration Transport Limited (or a related company of Hall's Refrigeration Transport Limited) has exercised the right of renewal. In such circumstances, the Guarantor will if required by the Lessor execute a deed of renewal of this Lease (which will include this clause 13.0).



THIRD SCHEDULE

Lessee's Fixtures and Fittings

The schedule of Lessee's Fixtures and Fittings will be prepared by the Lessee as at the Commencement Date and will be subject to the written approval of the Lessor (which will not be unreasonably withheld or delayed provided that it does not include any of the Lessor's Fixtures and Fittings). Following approval by the Lessor the schedule will be annexed to this Lease.

FOURTH SCHEDULE

LESSOR'S FIXTURES AND FITTINGS

The schedule of Lessor's Fixtures and Fittings will be prepared by the Lessor as at the Commencement Date (having regard to ownership of the fixtures and fittings within the Building following expiry of the Existing Lease) and will be subject to the written approval of the Lessor (which will not be unreasonably withheld or delayed provided that it does not include any of the Lessor's Fixtures and Fittings). Following approval by the Lessee the schedule will be annexed to this Lease.

