

# 3PL AGREEMENT

## PARTIES

- Service Provider** Sands Fridge Lines Pty Ltd (ACN 120 911 613) as agent for A.J Sands & C.J Sands & K.J Sands & Hecsands Pty Ltd & Sands Contracting Pty Ltd & Sands Holdings Pty Ltd trading as Sands Fridge Lines and Sands Milk Transport (ABN 31 171 233 818)
- Customer** Insert name and ABN

## BACKGROUND

- A. The Service Provider operates a business that carries out the collection, transportation, storage and delivery of goods.
- B. The Customer wishes to appoint the Service Provider, and the Service Provider wishes to accept an appointment, as a supplier of services to store goods and, if requested, to collect goods and to transport goods under this agreement.

## AGREEMENTS

### 1. DEFINITIONS/INTERPRETATION

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#### 1.1 In this agreement:

**Associated Entity** means any associated entity of the Service Provider in accordance with the meaning given to that term in the *Corporations Act 2001* (Cth).

**Authorised Officer** means an employee of the party whose title contains the word 'manager' or a solicitor acting on behalf of the party or a person authorised by the party to act as an authorised officer for the purposes of this agreement and notified to the other party.

**Authority** includes any legal or administrative authority exercising any jurisdiction within an Australian state or territory.

**Business Day** means a day other than a Saturday, Sunday or public holiday in the state in which the relevant Services are to be provided.

**Business Hours** means the hours, on any Business Day, specified in Schedule 1 Item 9.

**Carriage** includes loading, unloading and transporting the Goods and the towing of a trailer but does not include Storage.

**Charges** means the amount payable to the Service Provider determined in accordance with clause 21, as varied under this agreement.

**Chain of Responsibility Law** means the *Road Traffic (Administration) Act 2008* (WA), the *Road Traffic (Vehicles) Act 2012* (WA), the Heavy Vehicle National Law as enacted in any Australian state, and any other Commonwealth, state or territory Law dealing with the obligations of parties involved in the transport of goods by road.

**Commencement Date** means the date specified in Schedule 1 Item 3.

**Consequential Loss** means any indirect or consequential loss; loss of use; loss of product or production; delayed, postponed, interrupted or deferred production; inability to produce, deliver or process; loss of profit, revenue or anticipated revenue; loss of bargain, contract, expectation or opportunity; liquidated damages; punitive or exemplary damages; in each case arising from or in connection with the performance of Services and whether or not foreseeable at the time of entering this agreement.

**Container** includes any container, trailer, wagon, transportable tank, pallet, flat rack or any other unit or device used to consolidate Goods.

**Credit Terms** means the period set out in Schedule 1 Item 15.

**Damage** means physical damage and includes deterioration, evaporation and contamination.

**Dangerous Goods** means Goods that are or may become noxious, dangerous, flammable or damaging or that may harbour or encourage vermin or other pests, or that are or may become liable to harm any property whatsoever.

**Enforcement Costs** means any fees, costs and expenses, including legal expenses on an indemnity basis, incurred by the Service Provider in connection with any default under or enforcement or attempted enforcement of this agreement.

**Force Majeure Event** means acts of God, lightning, earthquakes, cyclones, floods, landslides, storms, explosions, fires and any natural disaster, acts of war, acts of public enemies, terrorism, public disorder, riots, civil commotion, malicious damage, vandalism, sabotage, explosions, nuclear accidents, strikes, epidemics, pandemics, cyber warfare, cyber attacks, ransomware attacks, cyber sabotage, labour disputes and other industrial disturbances, any border or road closure or congestion of roads, any quarantine or customs restriction, any interruption of power supply or scarcity of fuel or any accident, collision or breakdown of a vehicle, machinery or equipment.

**Goods** means the type of goods described in Schedule 1 Item 1 accepted by the Service Provider from, or at the request of, the Customer for the provision of Services and includes any Container or packaging supplied by or on behalf of the Customer.

**Goods Receipt Advice** means a written statement setting out the results of the Service Provider's inspection and count of Goods received by the Service Provider for Storage at the Storage Location and setting out details of the receipt of the Goods into the Service Provider's computer system.

**GST** has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Insolvency Event** means in relation to any corporation:

- (a) the appointment of an administrator or provisional liquidator in respect of it;
- (b) its winding up (whether voluntary or involuntary);
- (c) dissolution of the corporation;
- (d) a receiver, receiver and manager or trustee is appointed in respect of the corporation or its property;
- (e) a ground for winding up occurs in relation to the corporation;
- (f) the corporation ceases or threatens to cease to carry on its business;
- (g) the corporation is deemed to be or states that it is unable to pay its debts when they fall due;  
or
- (h) the corporation enters into, or resolves to enter into any arrangement, composition or compromise with or an assignment for the benefit of all or any class of its creditors; and

in relation to any person, they are or take any step that results or may result in their becoming an insolvent under administration as defined in section 9 of the *Corporations Act 2001* (Cth).

**Intellectual Property Rights** means all rights to intellectual property including copyright, trademarks, designs, patents, circuit layout rights and confidential information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether or not registrable, registered, unregistered or patentable and any rights with respect to any invention, discovery, trade secret, secret process, know-how, concept, idea, process, data or formula.

**Interest** means an amount calculated on any Outstanding Amount at the rate of 1.0% per calendar month, compounded annually.

**KPIs** means the key performance indicators set out in Schedule 3.

**Law** includes all applicable statutes, regulations, proclamations, orders, bylaws, requirements and approvals.

**Legal Change** means any new Law or change to Law, including Chain of Responsibility Law, including increases to any statutory fees or charges.

**Material Change** means:

- (a) a Legal Change;
- (b) a change to the nature of the Goods to be stored at the Storage Location;
- (c) an increase to the fees or charges charged to the Service Provider by any of its Subcontractors; or
- (d) a change by the Customer to loading, unloading or Storage requirements.

**Modern Slavery Laws** means the *Modern Slavery Act 2018* (Cth), Divisions 270 and 271 of the *Criminal Code Act 1995* (Cth) and any other applicable Law that prohibits exploitation of workers, human trafficking, slavery, forced labour, child labour or debt bondage.

**Nominated Area** means the geographic area referred to in Schedule 1 Item 6.

**Outstanding Amount** means any amount which remains unpaid upon the expiry of the Credit Terms or for which the Customer is otherwise liable, pursuant to this agreement, to the Service Provider.

**Packing List** means a written list of the contents of a Container including details of the description and number of Goods in that Container.

**Personnel** means in relation to a party means the party's officers, officeholders, employees, agents and Subcontractors.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**Service Provider Representative** means the representative of the Service Provider as specified in Schedule 1 Item 17 as replaced by time to time by written notification to the Customer.

**Services** means any operations or services undertaken by or on behalf of the Service Provider (whether gratuitously or not), in any way connected with Goods including Carriage and Storage.

**Storage** means:

- (a) unpacking Containers for the purpose of the storage of Goods by Service Provider;
- (b) palletising and wrapping Goods;
- (c) stocktaking;

- (d) receiving Goods into the Storage Location including confirmation of quantities and batch numbers;
- (e) handling inbound and outbound Goods into and out of the Storage Location; and
- (f) storing Goods.

**Storage Location** means the warehouse/s specified in Schedule 1 Item 8 and any alternative warehouse used for Storage pursuant to clause 5.5.

**Subcontractor** includes any person who pursuant to a contract or arrangement with any other person (whether or not the Service Provider) performs or agrees to perform the Services or any part of them.

**Tax Invoice** has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Term** means the period specified in Schedule 1 Item 4 and any extension of that Term pursuant to clause 3, subject to earlier termination in accordance with this agreement.

1.2 In this agreement:

- (a) a reference to a person is to be construed as a reference to an individual, body corporate, unincorporated association, partnership, joint venture or government body;
- (b) headings are included for convenience only and do not affect the interpretation of this agreement;
- (c) words importing the singular include the plural and vice versa and words importing a gender include other genders;
- (d) where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) wherever 'include' or any form of that word is used, it will be construed as if it were followed by '(without being limited to)';
- (f) references to any document (including this agreement) include references to the document as amended, consolidated, supplemented, novated or replaced;
- (g) a reference to a statute includes a reference to all enactments amending or consolidating the statute and to an enactment substituted for the statute and any subordinate legislation, including regulations;
- (h) monetary references are references to Australian currency;
- (i) any Schedules or Annexures form part of this agreement;
- (j) a reference to an Item is a reference to an Item in the relevant Schedule to this agreement;
- (k) no provision will be construed adversely to a party solely on the grounds that the party was responsible for the preparation of this agreement or that provision; and
- (l) all indemnities survive the termination or expiration of this agreement.

## **2. NEGATION OF LIABILITY AS A COMMON CARRIER**

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The Service Provider is not a common carrier and will accept no liability as such. All Services are performed by the Service Provider subject only to this agreement and the Service Provider reserves the right to refuse, in its discretion, to provide Services in respect of any goods.

### **3. APPOINTMENT AND TERM**

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- 3.1 The Customer appoints the Service Provider, and the Service Provider accepts the appointment, to provide the Services from the Commencement Date for the Term.
- 3.2 At least three months before the end of the period set out in Schedule 1 Item 4, the Customer must notify the Service Provider in writing as to whether it wishes to extend the agreement for an additional period, or whether it wishes the agreement to come to an end at the end of that period. If the Customer notifies the Service Provider that it wishes to extend the agreement, the parties will negotiate in good faith to agree the terms of any extension, including the period of the extension.
- 3.3 If the Customer does not give notice in accordance with clause 3.2, this agreement may be extended by the Service Provider for the period specified in Schedule 1 Item 5, by the Service Provider giving written notice to the Customer.
- 3.4 If this agreement expires in circumstances where it has not been extended by agreement of the parties or pursuant to clause 3.3, and the Service Provider continues to provide Services to the Customer, this agreement will be automatically extended until such time as either party gives 60 days' written notice of their intention to terminate this agreement.

### **4. FIRST RIGHT OF REFUSAL**

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- 4.1 The Customer appoints the Service Provider as its preferred supplier of Storage and any ancillary warehousing and handling services for the Goods in the Nominated Area.
- 4.2 During the Term, the Customer grants to the Service Provider, and the Service Provider accepts, the right of first refusal to transport all of the Goods from the Storage Location to the destinations set out in Schedule 1 Item 7 and any other destination as may be agreed between the parties from time to time.
- 4.3 Notwithstanding clause 4.2, the Customer will be entitled to use the services of a party other than the Service Provider (provided that party's driver has been inducted to allow it to enter the Storage Location) for the transportation of the Goods to places where the Service Provider is unable to transport the Goods due to:
- (a) the Service Provider's vehicles being inappropriate for the safe transportation of the Goods;
  - (b) a Force Majeure Event; or
  - (c) a failure by the Service Provider to otherwise comply with its obligations in this agreement.

### **5. SERVICE PROVIDER'S OBLIGATIONS**

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- 5.1 The Service Provider will:
- (a) take reasonable care to protect and safeguard the Goods and to follow any special handling requirements notified to the Service Provider by the Customer;
  - (b) store any Goods it is requested by the Customer to store, at the Storage Location, subject to the Contractor having sufficient capacity to accept the Goods into the Storage Location;
  - (c) account for all Goods received into the Storage Location and use modes of Storage appropriate for the nature of the Goods, noting that Goods in a Container may be stored outside and not under cover;
  - (d) ensure that it has systems to allow it to perform the Storage, including to record and track stock movements of Goods;
  - (e) keep the Storage Location open for business during Business Hours;

- (f) provide any additional services set out in Schedule 1 Item 2;
  - (g) undertake stocktakes of the Goods held at the Storage Location at the cost of the Customer at the intervals set out in Schedule 1 Item 11;
  - (h) allow the Authorised Officer of the Customer who has been inducted to allow them to enter the Storage Location, to access the Storage Location on reasonable notice and during Business Hours to inspect the Goods, provided that the Customer complies with all reasonable health and safety policies of the Service Provider;
  - (i) provide the Services exercising the degree of skill, care, and efficiency that would be expected from a competent provider of Services;
  - (j) at its own expense, hold all licences as may be required by Law in connection with the Services;
  - (k) use reasonable endeavours to comply with the Customer's reasonable and lawful directions;
  - (l) use reasonable endeavours to obtain a proof of delivery when undertaking Carriage;
  - (m) comply with the special requirements set out in Schedule 1 Item 10;
  - (n) comply with any procedures, codes or practices detailed in Schedule 1 Item 12; and
- 5.2 when requested to undertake Carriage, use reasonable endeavours to arrange for the delivery of Goods to the address nominated by the Customer and to effect delivery at the date and time requested by the Customer (subject to compliance with all applicable Law, including Chain of Responsibility Law). The Customer acknowledges that the Service Provider's obligations to account for Goods, whether pursuant to clause 5.1(c) or otherwise, do not extend beyond ensuring that the Service Provider has received the number of pallets noted on any consignment note, and the Service Provider is not required to count or account for cartons or any other form of packaging or container placed on a pallet.
- 5.3 The Service Provider may allow Goods to remain in a vehicle or trailer during the Services while the Goods are awaiting further transport, transshipment or consolidation.
- 5.4 The Service Provider will not be obliged to release any Goods from Storage except to the Customer or to a person authorised in writing by the Customer to receive the Goods.
- 5.5 Provided that it first obtains the consent of the Customer (which must not be unreasonably withheld), the Service Provider may store the Goods at an alternative storage location.
- 5.6 If any identifying document or mark with respect to Goods is lost, damaged, destroyed or defaced, the Service Provider may open any document, wrapping, package or other Container in which the Goods are placed or carried to inspect them, either to determine their nature or condition, or to determine their ownership.
- 5.7 To the extent permitted by Law, any conditions, guarantees, terms and warranties which would otherwise be implied into this agreement or imposed by Law are excluded. Without limitation, this exclusion applies to any implied conditions, guarantees, terms or warranties of merchantability or of satisfactory quality applying to the Services.

## **6. ASSOCIATED ENTITIES**

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- 6.1 The Customer acknowledges and agrees that the Service Provider enters into this agreement for the benefit of itself and for any Associated Entity and that each Associated Entity is entitled to all rights and privileges under this agreement as if each reference to the Service Provider were to the relevant Associated Entity.
- 6.2 The Customer acknowledges and agrees that:

- (a) the Service Provider holds the rights and privileges under this agreement on trust for its own benefit and for the benefit of each Associated Entity, and the Service Provider may enforce this agreement on behalf of any Associated Entity; and
- (b) any breach of this agreement, or any negligence or other actionable acts or omissions by the Customer may result in Associated Entities suffering loss or damage.

6.3 The Service Provider is entitled to recover from the Customer any loss or damage suffered or incurred by an Associated Entity in connection with the provision of Services by the Service Provider or any Associated Entity to the same extent that the Associated Entity would have been entitled to, if the Associated Entity had been a party to this agreement and all indemnities in this agreement will apply for the benefit of each Associated Entity.

## **7. KPIS**

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7.1 The Service Provider must use its best endeavours to comply with the KPIs during the Term. The purpose of the KPIs is to ensure a minimum level of performance by the Service Provider.

7.2 The KPIs and the measures and tolerances in the KPIs may be amended, added to or deleted by agreement in writing by the parties.

7.3 The Service Provider must track, monitor and report on its compliance with the KPIs in accordance with the timetable agreed by the parties.

7.4 The Service Provider's KPI performance will be adjusted to reflect the extent to which any delay or failure is caused by a Force Majeure Event or the Service Provider acting in compliance with Chain of Responsibility Law requirements.

7.5 Where the Service Provider agrees to do so, the Service Provider Representative must meet with the Customer's Authorised Officer quarterly in each year of the Term to review the Service Provider's performance under this agreement, including the Service Provider's compliance with the KPIs.

## **8. STORAGE PROCEDURES**

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8.1 When a Container arrives at the Storage Location, the Service Provider must:

- (a) open the Container and inspect, count and compare the number of all incoming Goods with the Packing List for that Container to the highest level of item comprised in the Container. For example, the Service Provider will count pallets, not cartons; and
- (b) send the Customer a Goods Receipt Advice in respect of the Goods.

8.2 The Service Provider must notify the Customer as soon as practicable upon becoming aware that a Container:

- (a) has a broken seal, other than where the seal has been broken in order to allow the Service Provider to de-stuff the Container;
- (b) has an incorrect seal installed;
- (c) displays signs of having been pilfered or Damaged to such an extent that the Service Provider reasonably suspects that Goods have been lost, Damaged or stolen; or
- (d) contains Goods that have been delivered to the Storage Location that, based on a visual inspection only, appear to be outside the temperature range specified in any documentation supplied to the Service Provider.

8.3 The Service Provider will use its best endeavours to supply the Customer with photographic evidence when providing a notification under clause 8.2.

- 8.4 Unless agreed in writing, the Service Provider is not obliged to use a temperature gun or temperature probe to test the temperature of Goods.
- 8.5 The Customer acknowledges that the temperature at which non-ambient Goods are stored is subject to variation, and will not remain constant. For example, Goods nominated as requiring Storage at 5 degrees Celsius may be stored at a temperature between 2 degrees and 8 degrees Celsius.

## 9. THE CUSTOMER'S OBLIGATIONS AND WARRANTIES

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### 9.1 The Customer must:

- (a) where the Goods require temperature control, provide written notice to the Service Provider of the nature of the Goods and the temperature setting to be maintained;
- (b) where the Goods require special treatment or handling, provide written notice to the Service Provider of the special treatment required;
- (c) ensure all Goods are clearly and accurately labelled;
- (d) comply with all Law that deals with the Services;
- (e) notify the Service Provider by 12pm each Business Day of any Goods:
  - (i) that must be dispatched from the Storage Location, with any dispatch to then be undertaken by the Service Provider within two Business Days (or 48 hours);
  - (ii) where the Goods are in a metropolitan area and must be picked up, the Service Provider must be notified by 10.30 am for same day pick; pickups after 10.30am will default to following day unless agreed by the Service Provider; and
- (f) ensure that delivered in Goods are at the Storage Location by 10.30am each Business Day unless otherwise agreed by the Service Provider.
- (g) for each consignment of Goods or Container that the Customer wishes the Service Provider to receive into the Storage Location, provide a delivery date and time window for the delivery of the Goods to the Storage Location;
- (h) where required by Law, provide an accurate container weight declaration;
- (i) ensure that the loading of the Goods onto the Service Provider's vehicle will not cause the vehicle to exceed any dimension or mass limits under Chain of Responsibility Law; and
- (j) provide all documents, information and assistance necessary to allow the Service Provider to comply with the requirements of any Authority.

### 9.2 The Customer warrants that:

- (a) the Goods are in a fit state to allow the Services to be performed and are packed in a manner adequate to withstand the ordinary risks associated with the Services;
- (b) the Goods within any Container are adequately restrained in accordance with the Load Restraint Guide published by the National Transport Commission;
- (c) all Goods will be clearly labelled on the outside at the point of entry of any lifting device, with labels that are temperature resistant;
- (d) if Goods within a Container are not evenly distributed, the Customer will provide a load plan of the contents of the Container before requesting the Service Provider to provide Services;

- (e) any chilled or refrigerated Goods will be tendered at the temperature set out on the Consignment Note;
- (f) where Goods are to be transported or stored in a temperature-controlled Container:
  - (i) the Container has been properly pre-cooled or pre-heated, to the temperature set out on the Consignment Note; and
  - (ii) the Goods have been properly stuffed/packed in the Container.
- (g) it is authorised by all persons owning or having any interest in the Goods (including the consignee) to accept the terms set out in this agreement on their behalf;
- (h) all details supplied with respect to the Goods, including the details of description, items, pallet space, quantity, weight, volume, quality, value and measurements, are correct;
- (i) it will not consign a load of Goods in excess of the legal carrying capacity of the Service Provider's vehicle;
- (j) there is a suitable and safe road and approach for the Service Provider's vehicle/s to the place from which the Goods are to be collected and the place to which the Goods are to be delivered;
- (k) safe and adequate commercial loading/unloading facilities and equipment will be available at any place from which any Goods are to be collected and to which any Goods are to be delivered; and
- (l) unless specifically declared in writing prior to tendering the Goods, the Goods are not Dangerous Goods.

9.3 The Service Provider relies on the details of description, items, pallet space, quantity, weight, quality, value and measurements supplied by the Customer but does not admit their accuracy.

## 10. FORECASTING

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10.1 Within seven days of the Commencement Date, the Customer must provide the Service Provider with a forecast for the period commencing on the Commencement Date and ending on the last day of the period six months from the Commencement Date setting out the expected volume of Services required to be performed by the Service Provider including expected volumes/activity levels for:

- (a) Storage;
- (b) inbound and outbound Carriage;
- (c) picking; and
- (d) handling.

10.2 Thereafter, the Customer must, 30 days before the start of each quarter, provide the Service Provider with a forecast of its expected month-by-month volumes/activity levels for:

- (a) Storage;
- (b) inbound and outbound Carriage;
- (c) picking; and
- (d) handling.

## 11. AUDIT

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- 11.1 The Customer is entitled, upon provision of reasonable notice in writing, and provided it causes as little disruption as is reasonably practicable to the provision of the Services, to audit the Service Provider's performance under this agreement and the Service Provider must cooperate with such an audit.
- 11.2 The Customer is not entitled to carry out more than one audit in any year of the Term.

## 12. SUBCONTRACTING

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- 12.1 The Service Provider, at its discretion, may subcontract on any terms the whole or any part of the Services.
- 12.2 If the Service Provider subcontracts any Services, the Service Provider:
- (a) will not be relieved of any of its liabilities or obligations under this agreement; and
  - (b) will be liable to the Customer for any act or omission of the Subcontractor as if such act or omission were the act or omission of the Service Provider.
- 12.3 Every exemption, limitation, condition and liberty contained in this agreement and every right, exemption from liability, limitation, defence and immunity applicable to the Service Provider or to which the Service Provider is entitled under this agreement will also be available to and will extend to protect:
- (a) all Subcontractors;
  - (b) every employee or agent of the Service Provider or of a Subcontractor; and
  - (c) all persons who are liable for the acts or omissions of any person falling within clauses 12.3(a) or 12.3(b).
- 12.4 For the purposes of clause 12.3, the Service Provider is or will be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and each of them and all such persons and each of them will to this extent be, or be deemed to be, parties to this agreement.

## 13. LIABILITY OF SERVICE PROVIDER

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- 13.1 The Goods are at the risk of the Customer. Neither the Service Provider nor any Subcontractor nor any other person who undertakes the Services will, under any circumstances, (except where any legislation otherwise requires) be under any liability whatsoever (whether in contract, tort, bailment or otherwise) for any:
- (a) loss of the Goods;
  - (b) Damage to the Goods; or
  - (c) misdelivery or nondelivery of the Goods,
- whether in the course of Services or otherwise, unless the Customer proves that such loss, Damage, misdelivery or nondelivery was caused by the negligence or wilful default of the Service Provider.
- 13.2 Any liability of the Service Provider under clause 13.1 will be reduced proportionately to represent the extent to which the Customer's (or any other person's) negligent or wrongful act or omission caused the loss, Damage, misdelivery or nondelivery of the Goods.

## 14. EXCLUSIONS OF LIABILITY AND LIMITATIONS OF LIABILITY

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- 14.1 Notwithstanding any other provision of this agreement, the Service Provider will not be liable for Consequential Loss.
- 14.2 Notwithstanding any other provision of this agreement, the Service Provider will not be liable for any:
- (a) loss of or Damage to Goods caused by:
    - (i) a Force Majeure Event;
    - (ii) the negligent setting or management of the temperature of any refrigerated Container by the Service Provider or by any other person;
    - (iii) mechanical failure of a refrigerated Container;
    - (iv) the Service Provider following the Customer's instructions;
    - (v) the Goods becoming infected or contaminated with any virus, bacteria, fungi, pathogen, disease, mould, vermin or like condition;
    - (vi) vibration, road conditions, weather or weather events of any kind whatsoever;
    - (vii) the Goods being inherently defective or in such a condition that they cannot be loaded, unloaded or transported by road without Damage;
    - (viii) inherent vice or the nature of the Goods;
    - (ix) a decline in value, or loss of value as a result of the Goods becoming past, or close to, their 'use by' or expiry date; or
    - (x) insufficiency or unsuitability of packing or preparation of the Goods to withstand the ordinary risks associated with the Services;
  - (b) loss of or Damage to Goods comprising electrical or mechanical derangement, shrinkage or ordinary wear and tear; or
  - (c) any loss or damage suffered in connection with delay in the delivery or collection of Goods.
- 14.3 Notwithstanding any other provision of this agreement, the maximum aggregate financial liability of the Service Provider in relation to or in any way connected with any loss of Goods, Damage to Goods, or misdelivery, delay in delivery or non-delivery of Goods is limited to the sum set out in Schedule 1 Item 13 for each incident. For the purposes of this subclause, 'incident' means any event which results in loss of Goods, Damage to Goods, misdelivery, delay in delivery or non-delivery of Goods, and all claims that result from the one original cause will be considered, for the purpose of this subclause, to have arisen from the same incident.
- 14.4 Notwithstanding any other provision of this agreement, in addition to the limit of liability set out in clause 14.3, the Service Provider's aggregate liability in any year of the Term arising from any loss of Goods, Damage to Goods or misdelivery, delay in delivery or non-delivery of Goods is further limited to the number of claims set out in Schedule 1 Item 13.
- 14.5 The limitations of liability set out in clause 14.3 and 14.4 do not apply to the extent that any loss or Damage to Goods is caused by the Service Provider engaging in malicious conduct, deliberate or wilful misconduct, fraud or criminal conduct.

## 15. CONTAINERS

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- 15.1 Notwithstanding any other provision of this agreement, the Customer:

- (a) agrees that the Service Provider will have no liability or responsibility in relation to any hire charge or demurrage charge associated with any Container;
- (b) must ensure that any pallets are transferred to and from any relevant hire accounts and that any necessary documentation is provided to relevant pallet hire businesses; and
- (c) agrees that, unless the Service Provider has agreed in writing to accept liability for pallet transfer, the Service Provider has no liability or responsibility for any hire charges associated with pallets.

## **16. DELIVERY**

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- 16.1 The Service Provider is authorised to deliver the Goods at the address nominated to the Service Provider for that purpose. The Service Provider will be deemed to have delivered the Goods if, at that address, it obtains from any person a receipt or signed delivery docket for the Goods.
- 16.2 If the nominated place of delivery is unattended or if delivery cannot otherwise be effected by the Service Provider, the Service Provider may, at its option, deposit the Goods at that place (which will be conclusively presumed to be due delivery under this agreement), store the Goods or redeliver the Goods to the Customer at the Customer's expense.
- 16.3 If the Goods are stored by the Service Provider pursuant to clause 16.2:
- (a) the Customer will pay or indemnify the Service Provider for all costs and expenses incurred with respect to such storage; and
  - (b) the Service Provider may, at any time, redeliver the Goods to the Customer at the Customer's expense.

## **17. INSURANCE**

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The Customer must:

- (a) effect and maintain an insurance policy in its own name that covers loss of or Damage to the Goods while the Service Provider is providing Storage with respect to the Goods; and
- (b) provide a certificate of currency in respect of the policy referred to in clause 17(a), within seven days of receiving a request from the Service Provider.

## **18. INDEMNITIES**

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The Customer will indemnify the Service Provider:

- (a) in respect of any liability whatsoever in respect of the Goods to any person (other than the Customer) who claims to have, who has, or who in the future may have any interest in the Goods or any part of the Goods; and
- (b) against all losses, damages, expenses, claims, fines, duty, tax, demands, actions and proceedings or any other liability suffered or incurred by, or made or instituted against, the Service Provider as a result of:
  - (i) a breach of the Customer's obligations under this agreement; or
  - (ii) any negligence, malicious conduct, deliberate or wilful misconduct, fraud or criminal conduct of the Customer.

## 19. LIEN

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- 19.1 The Goods are accepted subject to a general lien for all charges due or that may become due to the Service Provider by the Customer on any account whatsoever, whether in respect of the Goods or in respect of any other goods in respect of which the Service Provider or any Associated Entity provides or has provided Services.
- 19.2 Without prejudice to any other rights the Service Provider may have under Law, if charges are not paid when due, or the Goods are not collected when required or designated, the Service Provider may:
- (a) remove all or any of the Goods and store them as the Service Provider thinks fit, at the Customer's risk and expense; or
  - (b) without notice and immediately in the case of perishable Goods, or otherwise on the provision of 14 days' notice, open and sell all or any of the Goods as the Service Provider thinks fit (whether by private treaty or public auction, including auction on an internet based platform) and apply the proceeds to discharge the lien and costs of sale without being liable to any person for any loss caused.
- 19.3 The parties agree that the lien arising under this agreement:
- (a) attaches to the Goods when the Goods are accepted by the Service Provider; and
  - (b) is a security interest.
- 19.4 On request by the Service Provider, the Customer must promptly do anything for the purposes of ensuring that any security interest created under, or provided for by, this agreement is enforceable, perfected (including perfection by registration), maintained and is otherwise effective. Anything that is required to be done under this clause will be done at the Customer's expense. The Customer agrees to reimburse the Service Provider's costs in connection with any action taken by the Service Provider under or in connection with this clause.
- 19.5 The parties agree that, to the extent permitted by the PPSA:
- (a) sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA do not apply (unless the Customer is otherwise notified in writing by the Service Provider); and
  - (b) any right to receive a notice, statement or verification statement under sections 129, 130, 132, 134, 135 or 157 of the PPSA is waived.
- 19.6 Terms used in this clause have the same meaning as under the PPSA.

## 20. INTELLECTUAL PROPERTY RIGHTS

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- 20.1 The Service Provider warrants it will not infringe any Intellectual Property Rights or any other rights of any person in performing the Services.
- 20.2 The Customer owns all rights, title and interest in all information and processes communicated to the Service Provider by the Customer under this agreement, and grants the Service Provider a revocable, royalty free, non-exclusive licence to use any Intellectual Property Rights in such information and processes but only to the extent required to perform the Services.
- 20.3 On the expiry or termination of this agreement, the Service Provider must immediately cease to use any Intellectual Property Rights of the Customer.

## 21. SERVICE PROVIDER'S CHARGES

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- 21.1 In consideration of the Service Provider providing Services to the Customer, the Customer agrees to pay the Service Provider all sums due to the Service Provider without any deduction, counterclaim or set-off.
- 21.2 In addition to any other charges contemplated under this agreement the Customer is liable to pay:
- (a) the amounts for the particular Services set out in Schedule 2 Item 1;
  - (b) where any Goods are under customs control, all customs duty, excise duty and costs (including any fine or penalty) that the Service Provider becomes liable to pay or pays;
  - (c) any hand unloading charges that are required because the Goods cannot be safely unloaded or loaded using mechanical means;
  - (d) any expenses and charges to comply with any Law or order or requirement made under Law or with the requirement of any market, harbour, dock, railway, shipping, customs, excise or warehouse authority;
  - (e) if the Goods are at any time re-quantified, re-weighed or re-measured, any proportional additional charges;
  - (f) a fuel levy calculated in accordance with Schedule 2 Item 2; and
  - (g) where no Charges for particular Services are set out in Schedule 2 Item 1, charges for those Services as are agreed by the parties or otherwise in accordance with the Service Provider's standard schedule of rates;
  - (h) Interest on any Outstanding Amount; and
  - (i) Enforcement Costs.
- 21.3 The Service Provider will invoice the Customer at the frequency specified in Schedule 1 Item 14.
- 21.4 Each Tax Invoice received by the Customer must be paid by the Customer within the Credit Terms.
- 21.5 The parties acknowledge that the Charges do not include any allowance for the cost impact to the Service Provider of Material Change.
- 21.6 The Service Provider may claim as an adjustment to the Charges any additional costs arising from its performance of the Services (including the Service Provider's direct costs and those of the Service Provider's Personnel) as a result of any Material Change, basing the calculation for such adjustment on the cost base of the relevant Services that would have been applicable had the Material Change not taken place.

## 22. GST

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- 22.1 Unless GST is expressly included, the consideration to be paid or provided under this agreement for any supply made under this agreement does not include GST. To the extent that any supply made under this agreement is a taxable supply, the GST exclusive consideration to be paid or provided for that taxable supply will be increased by the amount of GST payable in respect of that taxable supply.
- 22.2 The additional amount payable under clause 22.1 must be paid at the same time as the consideration for the taxable supply or the date on which the party making the supply delivers a Tax Invoice, whichever is later.

## 23. REVIEW OF CHARGES

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- 23.1 On (insert date) and thereafter annually on 1 July (the **Review Date**), the Charges set out in Schedule 2 Item 1 will be reviewed and increased, as agreed by the parties.
- 23.2 Any increase to the Charges made pursuant to this clause will apply with effect from the commencement of the month following the determination of the new Charges pursuant to clause 23.1.
- 23.3 If the parties are unable to agree on an increase to the Charges within seven days of the Review Date, each of the Charges will be increased in accordance with the mechanism set out in Schedule 2 Item 3.

## 24. DANGEROUS GOODS

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- 24.1 If the Service Provider agrees to provide Services with respect to Dangerous Goods:
- (a) such Goods must be accompanied by a written declaration disclosing the nature of such Goods;
  - (b) the transport of any Dangerous Goods may be delayed if the Service Provider is unable to promptly transport those Goods because they are incompatible with other goods; and
  - (c) the Customer must comply with all Law with respect to Dangerous Goods, including the Australian Code for the Transport of Dangerous Goods by Road & Rail.
- 24.2 If, in the opinion of the Service Provider, acting reasonably, the Goods are or are liable to become of a dangerous or flammable or damaging nature and pose a threat of property damage or personal injury, the Goods may at any time be destroyed, disposed of, abandoned or rendered harmless without compensation to the Customer and without prejudice to the Service Provider's right to charge for any Services.

## 25. FORCE MAJEURE EVENT

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- 25.1 If, because of a Force Majeure Event, the Service Provider is unable to carry out an obligation under this agreement:
- (a) the Service Provider must give the Customer prompt written notice and reasonable particulars of the Force Majeure Event and, so far as is known, the probable extent that the Service Provider will be unable to perform or be delayed in performing its obligation; and
  - (b) the relevant obligations of the Service Provider and the Customer (other than any obligation of the Customer to pay money), so far as they are affected by the Force Majeure Event, will be suspended during the continuance of the Force Majeure Event.
- 25.2 If the Service Provider gives a notice under clause 25.1, the parties must meet promptly and, in any event within 14 days, and each use reasonable endeavours to reach a mutually acceptable solution to alleviate any hardship or unfairness caused to either party as a result of the Force Majeure Event.

## 26. NOTIFICATION OF CLAIM

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- 26.1 Notwithstanding any other provision in this agreement (other than clause 27) the Service Provider will, in any event, be discharged from all liability whatsoever in respect of the Goods unless written notice of a claim or an intended claim (together with particulars of the circumstances on which the claim is based) is given to the Service Provider:
- (a) in the case of Goods allegedly lost or Damaged in the course of Carriage, within 48 hours from the delivery of the Goods or from the date on which in the ordinary course of business, delivery would have been effected; or

- (b) in the case of Goods allegedly lost or Damaged during Storage, within 48 hours of the removal or attempted removal of the Goods from Storage.
- 26.2 The Customer acknowledges that the time limits set out in clause 26.1 are necessary in order to allow the Service Provider to inspect the Goods and properly investigate the surrounding circumstances with respect to any loss or Damage.
- 26.3 The Service Provider will, in any event, be discharged from all liability whatsoever in respect of the Goods unless legal proceedings are commenced:
- (a) in the case of Goods allegedly lost or Damaged in the course of Carriage, within twelve months of their delivery or of the date on which, in the ordinary course of business, they should have been delivered; or
  - (b) in the case of Goods allegedly lost or Damaged during Storage, within twelve months of the date of removal or attempted removal of the Goods from Storage.

## 27. APPLICABLE LEGISLATION

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- 27.1 Notwithstanding anything contained in this agreement, the Service Provider will continue to be subject to any implied terms, conditions, guarantees or warranties imposed by the *Competition and Consumer Act 2010* (Cth) or any other Commonwealth or state legislation but only in so far as such legislation applies and prevents the exclusion or modification of any such term, condition, guarantee or warranty.
- 27.2 The Service Provider, Customer and consignee must comply with all Law, including Chain of Responsibility Law.
- 27.3 The Customer must not impose any requirement on the Service Provider that would directly or indirectly encourage or require the Service Provider or any person on behalf of the Service Provider to speed, drive while fatigued or otherwise perform the Services in an unsafe manner or in breach of Law.

## 28. COMPLIANCE WITH LAWS

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- 28.1 The Service Provider and the Customer must comply with all Law relating to anti-corruption, anti-competitive practices and anti-money laundering in connection with the provision of the Services.
- 28.2 In performing their obligations under this agreement, both parties must ensure that they:
- (a) do not engage in any conduct that may contravene Modern Slavery Laws; and
  - (b) do all things reasonably required to reduce modern slavery risks in their supply chains.

## 29. DISPUTES

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- 29.1 A party claiming that a dispute, controversy or claim (**Dispute**) has arisen under or in relation to this agreement must give written notice to the other party to this agreement specifying the nature of the Dispute (**Notice**).
- 29.2 A party may not commence any court proceedings relating to a Dispute unless it complies with this clause 29 except where the party seeks urgent interlocutory relief.
- 29.3 A Notice must immediately be referred to an Authorised Officer of the Customer and the Service Provider Representative who together must endeavour in good faith to resolve the Dispute expeditiously.

- 29.4 If the Dispute has not been resolved within seven (7) days of being referred to the persons specified in clause 29.3, the Dispute must be referred to the managing director of each party who must endeavour in good faith to resolve the Dispute expeditiously.
- 29.5 If a Dispute is not resolved within 30 days after the date of the Notice given in accordance with clause 29.1, either party who has complied with this clause 29 may terminate the dispute resolution process undertaken and commence court proceedings in relation to the Dispute.

### **30. TERMINATION**

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- 30.1 Each party will have the right at any time to immediately terminate this agreement by giving notice in writing to the other party if:
- (a) the other party seriously breaches a material term of this agreement and such breach is not remedied within 14 days of receipt of written notice requiring the other party to remedy the breach;
  - (b) the other party breaches a specific provision of this agreement on three or more occasions during any six month period of the Term;
  - (c) the other party experiences an Insolvency Event.
- 30.2 The Service Provider may immediately terminate this agreement by giving notice in writing to the Customer if:
- (a) any undisputed Tax Invoice is outstanding for more than 30 days after the expiry of the relevant Credit Terms; or
  - (b) the Customer is in breach of clause 17.
- 30.3 Either party may terminate this agreement at any time for convenience upon giving the period of notice set out in Schedule 1 Item 16 in writing to the other party.

### **31. PROCEDURE ON TERMINATION AND EXPIRY**

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If this agreement is terminated in accordance with the provisions of clause 30 or if this agreement expires:

- (a) the Service Provider will complete any delivery that has been commenced as at the termination date/expiry date, such delivery to be completed in accordance with the provisions of this agreement;
- (b) the Service Provider will notify the Customer within five (5) Business Days of the Goods that are then held at each Storage Location;
- (c) the Customer will arrange for the removal, at its cost, of the Goods from any Storage Location within five (5) Business Days of receipt of the notice under clause 31(b); and
- (d) within the Credit Terms, the Customer will pay to the Service Provider:
  - (i) any Charges owed to the Service Provider for Services provided up to and including the termination date/expiry date; and

- (ii) any Charges owing to the Service Provider in respect of the Storage of any Goods after the termination date/expiry date and any delivery completed before the termination date/expiry date or completed pursuant to clause 31(a).

## **32. REFERENCES TO AND CALCULATIONS OF TIME**

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- 32.1 Where a provision in this agreement requires notice to be given on a day that is not a Business Day, that notice may be given on the next succeeding day that is a Business Day.
- 32.2 Time will be of the essence as regards a date or period determined under this agreement except that a date or period may be altered by agreement in which case time will be of the essence for the date or period as altered.

## **33. NOTICES**

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- 33.1 All notices given under this agreement must be in writing and may be delivered in person or by mail or by any medium specified in the address for service set out in Schedule 1 Item 18.
- 33.2 A party may change its particulars for service by notice in writing to the other parties.
- 33.3 A notice sent by post will be deemed given on the day it is posted and received six (6) days after posting.
- 33.4 A notice sent by email will be deemed received at the time and on the date that it is sent, unless the sender receives notification that the delivery of the email was unsuccessful, in which case the email will not be deemed to have been received.
- 33.5 For the purposes of clause 33.4, 'delivery' of an email means the time that an email reaches the recipient's server.

## **34. ENTIRE AGREEMENT**

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- 34.1 The entire agreement between the parties is contained within this agreement and there are no other understandings, representations or agreements between the parties that are not set out in this agreement.
- 34.2 The Service Provider will not be bound by any agreement purporting to vary this agreement unless such agreement is in writing and signed on behalf of the Service Provider by an Authorised Officer of the Service Provider.

## **35. GENERAL**

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- 35.1 This agreement will be construed in accordance with the Law in force in Western Australia and the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of Western Australia and courts entitled to hear appeals from those courts.
- 35.2 The failure of a party to take action to enforce its rights under this agreement or the granting of any time or indulgence will not be construed as a waiver of the provision nor as a waiver of the right of the party at a later time to enforce its rights under this agreement.
- 35.3 Where the Customer comprises two or more persons, an agreement or obligation to be performed or observed by the Customer binds those persons jointly and severally.
- 35.4 This agreement may consist of a number of counterparts and if so the counterparts taken together constitute one and the same instrument.
- 35.5 Any reference to a party in this agreement includes, and any obligation or benefit under this agreement will bind or take effect for the benefit of, that party's executors, administrators, successors in title and assigns.

- 35.6 Except where this agreement provides otherwise, each party will be responsible for all its own costs (including legal costs) incurred in the negotiation of, and the performance of its obligations pursuant to, this agreement.
- 35.7 If any provision of this agreement is invalid, illegal or unenforceable, that provision will, to the extent that it is invalid, illegal or unenforceable, be treated as severed from this agreement, without affecting the validity and enforceability of the remaining provisions.
- 35.8 The indemnities in this agreement survive the termination or expiration of this agreement.

## SCHEDULE 1

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- Item 1      **Type of goods to be stored/transported**  
[insert a description of the goods to be stored/transported under this agreement]
- Item 2      **Additional Services to be provided**  
[please see definitions of carriage and storage. If other activities, such as supply of labour, co-ordinators, compliance services etc are to be provided, these should be specified here]
- Item 3      **Commencement Date**  
[insert commencement date of agreement]
- Item 4      **Term**  
[insert initial term]
- Item 5      **Extension of Term**  
[Insert]
- Item 6      **Nominated Area**  
[insert the geographic area where Service Provider is to be the preferred Service Provider of storage]
- Item 7      **Destinations**  
[insert locations to which the Service Provider will be entitled to deliver Goods out of the Storage Location]
- Item 8      **Storage Locations**  
[insert address/addresses where Goods are to be stored]
- Item 9      **Business Hours**  
7 am to 5 pm on Business Days
- Item 10     **Special requirements applicable to the Service Provider**  
[you can insert requirements here such as FIFO stock management]
- Item 11     **Intervals for stocktaking**  
[insert frequency of stocktakes]
- Item 12     **Applicable codes and procedures**  
[You can insert requirements here such as any Code of Conduct, requirements to be accredited under HACCP etc]
- Item 13     **Limit of liability of the Service Provider**  
\$insert per incident  
  
A maximum of three claims with respect to incidents occurring in any year of the Term (with each claim limited in its quantum in accordance with clause 14.3).

Item 14 Frequency of invoicing

[how frequently invoices will be issued, eg weekly]

Item 15 Credit Terms

[insert] days from date of invoice

Item 16 Notice Period

[insert period of notice required to terminate the agreement (by either party)]

Item 17 Service Provider Representative

[specify the name and contact details of Sands' contract representative]

Item 18 Addresses for notices

|                  |  |
|------------------|--|
| Service Provider | Sands Fridge Lines Pty Ltd (ACN 120 911 613)<br>[Insert postal address]<br>Email: [insert] |
| Customer:        | [Complete details]<br>[Insert postal address]<br>Email:                                    |

## SCHEDULE 2

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Item 1 Charges excluding GST

[insert rates]

Item 2 Fuel levy

A variable fuel levy may be applied to any transportation charges set out in this agreement due to fluctuations in the price of diesel fuel in accordance with the methodology set out below.

INSERT FUEL LEVY CALCULATION HERE

Item 3 Rate review mechanism

INSERT RATE REVIEW MECHANISM HERE

## SCHEDULE 3

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[insert KPIs]

**SIGNED AS AN AGREEMENT** on the date the last party signed this document:

**SIGNED** by Sands Fridge Lines Pty Ltd (ACN 120 911 613) in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by a director and a director/secretary )  
)  
)

.....  
Director  
  
.....  
Name  
  
.....  
Date

.....  
Director  
  
.....  
Name  
  
.....  
Date

**SIGNED** by **insert name and details of customer** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by a director and a director/secretary or by a sole director (if applicable): )  
)  
)

.....  
Director  
  
.....  
Name  
  
.....  
Date

.....  
Director  
  
.....  
Name  
  
.....  
Date

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