

Agreed terms

1. Defined terms and interpretation

1.1 Defined terms

In this Agreement, unless the context otherwise requires:

Agreement means this Livestock facility agreement.

Attorney means a person (including a Receiver) appointed as an attorney under this Agreement and includes any agent or delegate.

Livestock means the livestock specified in the Facility Details (and includes, where the context permits, any offspring of any such livestock).

Default Rate means the default rate specified in the Facility Details.

Event of Default means an event or circumstance specified in clause 12.1.

Final Repayment Date means in relation to a Loan, the date specified in the Facility Details in respect of that Loan.

Insolvency Event means any of the following:

- (a) an Obligor is unable to pay its debts or is deemed or presumed to be unable to pay its debts, or takes steps to benefit any of its creditors or stops or threatens to stop payments, or an application is made or any steps taken whatsoever for the bankruptcy or liquidation of the Obligor or the Obligor is declared or becomes bankrupt or insolvent;
- (b) any step is taken to appoint, or with a view to appointing, a statutory manager or similar official of or to an Obligor (including the making of any recommendation under the Corporations (Investigation and Management) Act 1989, or an Obligor or any associated person (as that term is defined in that Act) of any of them, is declared at risk under that Act);
- (c) an Obligor ceases or threatens to cease to carry on that Obligor's business, or (if the Obligor is a company) any step is taken or proposal made to dissolve, liquidate, amalgamate or to put the Obligor into voluntary administration;
- (d) a receiver, administrator or similar official is appointed in relation to any property of an Obligor, or an Obligor requests the appointment of, or an application is made for the appointment of, any such official;
- (e) if an Obligor is a natural person, the Lender receives notice that the Obligor is deceased, or that an order has been made in relation to the Obligor under the Protection of Personal and Property Rights Act 1988; or
- (f) if an Obligor is a trustee of a trust, it is unable to satisfy out of the assets of the trust the liabilities incurred by it as and when those liabilities fall due.

Loan means each loan an amount equal to the relevant Purchase Price from the Lender to the Borrower on the terms and subject to the conditions of this Agreement or the principal amount outstanding for the time being of that loan.

Loan Amount means the amount specified in the Facility Details.

Money Owing means, at any time, the aggregate of all amounts actually owing or remaining unpaid by the Borrower to the Lender at that time, including under this Agreement.

Obligor means the Borrower and any Guarantors.

Other Property means all of the Borrower's present and future interests in, and all of the Borrower's present and future rights in relation to, any Real Property and any other assets, other than Personal Property.

Permitted Security Interest means any security interest:

- (a) created in favour of the Lender;
- (b) on any collateral other than the Livestock, existing prior to the security interest created by this Agreement;
- (c) created with the Lender's consent;
- (d) on any collateral other than the Livestock, which is:
 - (i) a lien arising solely by operation of law;
 - (ii) a security interest taken in collateral by a seller to the extent that it secures the obligation to pay all or part of the purchase price of that collateral, where that collateral is purchased in the ordinary course of business of the buyer and the purchase price is paid within 60 days of supply; or
 - (iii) a netting or set-off arrangement entered into in the ordinary course of a person's banking arrangements for the purpose of netting debit and credit balances.

Personal Property means all of the Borrower's present and after acquired personal property to which the PPSA applies, and all of the Borrower's present and future rights in relation to any personal property to which the PPSA applies, including the Livestock.

Personal Property Securities Register means the register created under the PPSA.

Potential Event of Default means any event or circumstance which would, with the giving of notice, the satisfaction of a condition or making of a determination or the passage of time (or any combination of those things), become an Event of Default.

Power means any right, power, discretion or remedy of the Lender under this Agreement or applicable law.

PPSA means the *Personal Property Securities Act 1999*. **Purchase Price** means the purchase price for the relevant Livestock payable to the Parent as agent of the seller of the Livestock, as notified by the Parent to the Borrower.

Real Property means all of the Borrower's present and future estates and interests in freehold and leasehold land, and in all buildings, structures and fixtures from time to time in that land.

Receiver means a person appointed as a receiver or receiver and manager under this Agreement

Secured Money means all money and amounts (in any currency) that the Borrower is or may become liable to pay to or for the account of the Lender (whether present or future, actual or contingent, secured or unsecured, joint or several, as principal, surety or otherwise) and includes all Money Owing.

Secured Obligations means all present and future obligations which the Borrower (whether alone or with any other person and in any capacity) has or owes to the Lender (whether alone or with any other person and in any capacity) other than obligations to pay or deliver any Secured Money.

Secured Property means Personal Property and the Other Property, and includes any part of it.

1.2 PPSA terms incorporated

In this Agreement, unless the context requires otherwise, the following words and expressions (and grammatical variations of them) have the same meanings as are given to them in the PPSA: **financing statement, proceeds, security interest, transfer, value and verification statement**.

1.3 Funding of initial payment of Purchase Price

If the Parent has paid the Purchase Price (or any part of the Purchase Price) (the Parent Payment) to the seller of the Livestock on behalf of the Borrower prior to the Parent receiving the proceeds of any Loan under this Agreement pursuant to clause 2.3, the Obligors, the Lender and the Parent acknowledge and agree as follows:

- (a) the amount of the Parent Payment is a debt due and owing by the Borrower to the Parent;
- (b) the Parent transfers and assigns absolutely to the Lender all of the Parent's rights, title and interest in and to the Parent Payment and any associated security interests in the Livestock, and the Lender agrees and consents to the transfer and assignment;
- (c) the terms and conditions applicable to the debt as transferred and assigned by the Parent to the Lender are as set out in this Agreement (with the Loan Amount representing the amount of the Parent Payment made); and
- (d) accordingly, any security interest granted by the Borrower in the Livestock in favour of the Parent shall be transferred and assigned to the Lender.

2. Loan

2.1 Loan

The Lender agrees to make each Loan available to the Borrower on the terms and subject to conditions of this Agreement.

2.2 Purpose

The Borrower must apply the proceeds of each Loan to pay the Purchase Price of the Livestock that are to be purchased by that Loan.

2.3 Payment direction

The Borrower hereby irrevocably instructs and authorises the Lender to pay the proceeds of each Loan to the Parent to be applied in payment of the relevant Purchase Price and the Parent must apply the proceeds of each Loan in payment of the relevant Purchase Price for the purpose of enabling the Borrower to acquire title to the Livestock.

2.4 Conditions precedent

The Lender will not be obliged to advance a Loan to the Borrower unless:

- (a) the Lender has received a copy of this Agreement duly executed by the Borrower and any Guarantors (if required);
- (b) no Event of Default or Potential Event of Default has occurred and is continuing;
- (c) the Lender and/or the Parent (as applicable) has received payment of all costs, fees and expenses due and payable under this Agreement;
- (d) if an Obligor is a company, if requested, it has provided the Lender with a director's certificate in the form provided by the Lender;
- (e) if an Obligor is a trust, if requested, it has provided the Lender with a trustee certificate in the form provided by the Lender;
- (f) if an Obligor is a partnership or limited partnership, if requested, it has provided the Lender with a copy of the partnership agreement and evidence satisfactory to the Lender from the Obligor that the partnership agreement is complete, correct, fully in force and not subject to amendment or revocation (and in the case of a limited partnership, a copy of the certificate of registration and a list of the Obligor's partners including their respective capital commitments and capital contributions);
- (g) the Lender has carried out credit checks on each Obligor and the results of those credit checks are satisfactory to the Lender; and
- (h) the Lender has completed "know your customer" checks in respect of each Obligor and its respective authorised representatives, and any other person for whom the Lender reasonably believes that an applicable customer identification procedure must be conducted in connection with this Agreement and the transactions contemplated by this Agreement.

3. Interest

3.1 Default interest payable

- (a) If an Obligor does not pay any amount due under this Agreement when due, it must pay interest on that overdue amount at the Default Rate.
- (b) This interest will:
 - (i) accrue on a daily basis;
 - (ii) be payable without the need for demand and, if not so paid, will be compounded daily and will itself bear interest under this clause 3.1; and
 - (iii) apply for the period beginning on its due date and ending on the date of its receipt by the Lender (both before and after any judgment).

4. Repayment and prepayment

4.1 Final repayment

On the Final Repayment date for each Loan, the Borrower must pay the Loan Amount in respect of that Loan.

4.2 Payment authorisation

The Borrower hereby irrevocably instructs and authorises the Parent to pay the proceeds from any sale of any livestock sold by the Parent (on behalf of the Borrower) to the Lender in payment of any Money Owing that is due and payable.

4.3 Prepayment

- (a) The Borrower may prepay a Loan in whole or in part at any time on giving not less than 10 Business Days' written notice to the Lender.
- (b) The Borrower shall immediately apply, or procure the immediate application of, the proceeds from any disposal of any Livestock in prepayment of the relevant Loan.
- (c) Any amounts prepaid may be re-advanced under this Agreement at the sole discretion of the Lender.

4.4 Additional amounts due

At the time of the prepayment of all or part of a Loan, the Borrower must pay to the Lender any interest accrued on any amount prepaid.

5. Payments

5.1 Mode of payments

Each payment to the Lender under this Agreement is to be made on the due date in immediately available freely transferable funds in the manner that the Lender, by notice to the Borrower, specifies from time to time, without deduction or set-off.

5.2 Payments to be free and clear

Each payment by an Obligor to the Lender under this Agreement is to be made:

- (a) free of any restriction or condition; and
- (b) free and clear of and (except to the extent required by law) without any deduction or withholding for or on account of tax or on any other account, whether by way of set-off, counterclaim or otherwise.

5.3 Reinstatement

If a payment made by an Obligor to the Lender pursuant to this Agreement is avoided by law:

- (a) that payment will be deemed not to have discharged or affected the relevant obligation of the Borrower; and
- (b) the Lender and each Obligor will be deemed to be restored to the position in which each would have been if that payment had not been made.

5.4 Taxes

- (a) If:
 - (i) an Obligor is required by law to make a deduction or withholding for or on account of tax from an amount paid or payable by an Obligor to the Lender under this Agreement; or
 - (ii) the Lender is required by law to make any payment for or on account of any tax or otherwise on or in relation to any amount received or receivable by it under this Agreement, then:
 - (iii) the Borrower must pay the amount required to be deducted, withheld or paid to the relevant authority before the date on which any penalties attach;
 - (iv) the amount payable by the Borrower will be increased to the extent necessary to ensure that, after that deduction, withholding or payment is made, the Lender receives a net amount equal to the amount it would have received if deduction, withholding or payment required to be made.
- (b) Promptly after the making by an Obligor of a deduction, withholding or payment in accordance with clause 5.4(a), the Borrower will deliver to the Lender a receipt or other documentation satisfactory to the Lender evidencing the deduction, withholding or payment.

6. Grant of security

6.1 Security interest

To secure to the Lender payment or delivery of the Secured Money and compliance with the Secured Obligations, the Borrower:

- (a) grants a security interest in its Personal Property to the Lender; and
- (b) charges to the Lender its Other Property; and
- (c) agrees to mortgage to the Lender its present and future interests in any Real Property.

6.2 Continuing security and obligations

The security interest granted under this Agreement is a continuing security interest until all Secured Property is released from the security interest granted under this Agreement.

7. Priority

7.1 Priority of Security Interest in the Secured Property

The security interest granted in the Secured Property has the same priority in relation to all Secured Money.

7.2 No agreement or consent to subordination or attachment

Nothing in this Agreement may be construed as an agreement or consent by the Lender to:

- (a) **(subordination)** subordinate the security interest created under this Agreement in favour of any person;
- (b) **(security)** any security interest other than any Permitted Security Interest attaching to or being created in any Secured Property; or
- (c) **(deferral of attachment)** defer or postpone the date of attachment of the security interest created under this Agreement in any Secured Property.

7.3 Contrary agreements

This clause 7 is subject to any written agreement to the contrary between the parties, including the overriding provisions of any subordination and/or priority agreement entered into by the Lender in respect of any other holder of security.

8. Guarantee

Each Guarantor:

- (a) unconditionally and irrevocably guarantees to the Lender the punctual payment of all Secured Money and the performance of the Secured Obligations;
- (b) agrees that, if the Borrower fails to pay any Secured Money when due, it shall pay that Secured Money to the Lender, whether or not demand has been made on the Borrower or any other person;
- (c) agrees that this is a continuing guarantee until all of the rights of the Borrower have been fully discharged. No waiver, granting of time, indulgence or release of any person, nor modification of the obligations of the Borrower or any other person will release the Guarantor from this guarantee; and
- (d) agrees to separately indemnify the Lender against any loss the Lender may suffer as a result of any failure by the Borrower as a direct or indirect result of any amount of the Secured Money not being recoverable.

8.1 Principal obligation

The liability of each Guarantor under this guarantee shall constitute a principal obligation of the Guarantor and such liability shall not be relieved, or in any way affected in a manner prejudicial to the Lender, by anything which, but for this provision, might operate to affect or discharge the liability of, or otherwise provide a defence to, the Guarantor including, without limitation, the Lender reducing or agreeing to limit the liability of any particular party comprised in the Guarantor or releasing any such party from liability.

8.2 Joint and Several Liability

If there is more than one Guarantor, the liability of each Guarantor is joint and several.

9. Representations

9.1 General representations

Each Obligor represents that:

- (a) it has the power, and has taken all necessary action to authorise the entry into, and compliance with its obligations under, this Agreement;
- (b) its obligations under this Agreement are legal, valid, binding and enforceable in accordance with their respective terms, subject to equitable principles and insolvency laws of general application;
- (c) neither the entry into this Agreement, or the performance of its obligations under this Agreement conflicts with, or results in a breach of any terms, conditions, provisions of, or constitutes a default under, any law binding on it or any agreement to which it is a party;
- (d) it has taken all necessary action (including obtaining consents) required to authorise the entry into, and the performance of its obligations under, this Agreement;
- (e) in the case of the Borrower, it is the sole legal and beneficial owner of the Secured Property, subject only to any Permitted Security Interest;
- (f) all information given to the Lender is true and is not misleading in any way;
- (g) it is not in default under any other agreement or security of any nature; and
- (h) no Event of Default has occurred and is continuing.

9.2 Trustee representations

If an Obligor is a trust, each trustee (**Trustee**) represents in its personal capacity (but subject to any limitation of liability accorded to it) and as trustee of the trust that:

- (a) no amendments have been made to the trust deed that have not been disclosed in writing to the Lender;
- (b) the Trustees are validly appointed as, and constitute all of the trustees of, the trust;
- (c) no event for the vesting of any of the trust assets has occurred and no distributions from trust assets have been made;
- (d) it is entitled to be indemnified out of the trust assets in full in respect of its obligations under this Agreement;
- (e) it is not in default under the trust deed;
- (f) the entry into this Agreement is in the interests of the beneficiaries of the trust; and
- (g) none of the assets have been mixed with other property.

9.3 Partnership representations

If an Obligor is a partnership, each partner represents that:

- (a) the partnership has not been terminated or dissolved nor has any event for the vesting of any of the partnership assets occurred;
- (b) its right to be indemnified out of the assets of the partnership has not been limited in any way;
- (c) it legally owns all the assets of the partnership; and
- (d) it has not entered into any other agreement in relation to the partnership.

9.4 Representations continuing

Each of the representations in this clause will be deemed to be repeated continuously so long as this Agreement remains in effect by reference to the facts and circumstances then existing.

10. Undertakings

10.1 General undertakings

Each Obligor undertakes that it will:

- (a) keep and maintain the Secured Property in a good state of repair and in good working order and condition and protect it from loss or damage, including, without limitation:
 - (i) take all steps and use all means that a person using best industry practice and engaged in a similar business or undertaking would take or use to keep the Livestock free from disease and in good condition;
 - (ii) properly and skilfully manage the Livestock;
 - (iii) keep the Livestock securely fenced or otherwise contained;
- (b) keep an updated inventory of the Livestock, detailing by species the number and age of the Livestock, as well as the land on which the Livestock is then being kept and the details of any marks, tags or other identification systems used to identify the Livestock and provide such records to the Lender following a request from the Lender;
- (c) ensure that the Lender and any of its officers, employees and agents has access to inspect the Secured Property at all reasonable times;
- (d) protect and enforce its title to, and the Lender's title as Secured Party of, the Secured Property;
- (e) ensure that the Livestock is distinctively identified with an ear-tag or permanent earmark and/or brand as agreed with the Lender;
- (f) not dispose of any Secured Property other than a disposal of any Livestock in the ordinary course and for the purpose of carrying on its ordinary business on ordinary arms-length commercial terms and for proper value where the proceeds of such Livestock is applied in prepayment of the relevant Loan;
- (g) not, without the prior written consent of the Lender, move the Livestock from the location set out in the Facility Details, or permit any other livestock to be kept on that land except where such livestock is clearly distinguishable from the Livestock, as described in the latest inventory provided to the Lender;

- (h) not, without the prior written consent of the Lender, create or permit to exist a security interest in any Secured Property other than a Permitted Security Interest;
- (i) not do, omit to do, or allow to occur, anything that might adversely affect the security of the Lender under this Agreement;
- (j) not change its name without giving at least 14 days' prior notice to the Lender; and
- (k) notify the Lender of the occurrence of any Event of Default, any Potential Event of Default and any event or circumstance that may have a material adverse effect on it, immediately upon becoming aware of it, giving full details of it and of any action taken (or to be taken) as a result.

11. Credit checks and anti-money laundering

- (a) By signing this Agreement, each Obligor authorises the Lender to conduct credit checks with a credit reporting agency on it from time to time when the Lender considers it appropriate. If a driver licence is provided, that information may also be disclosed to the credit checking agency or any Government agency for credit checking or anti-money laundering checking purposes.
- (b) By signing this Agreement, each Obligor:
 - (i) consents to the Lender collecting, using and disclosing the personal information of that Obligor; and
 - (ii) authorises any third party to provide the personal information of that Obligor to the Lender; to the extent that such information is collected, used, disclosed and/or provided for the purposes of anti-money laundering checking.

12. Event of Default

12.1 Specified Events of Default

Each of the events or circumstances set out in this clause 12.1 is an Event of Default.

- (a) **(non-payment)** the Borrower fails to pay to the Lender any Secured Money when due;
- (b) **(breach of representations)** a representation or statement by an Obligor in or in connection with this Agreement is not true and accurate;
- (c) **(breach of obligations)** an Obligor fails to perform or comply with any of its obligations under this Agreement;
- (d) **(insolvency)** an Insolvency Event occurs in relation to an Obligor;
- (e) **(change of control)** a change occurs in the control of an Obligor without the prior written consent of the Lender;
- (f) **(cross default)** any indebtedness of an Obligor is not paid when due or becomes due, or capable of being due, before its stated maturity;
- (g) **(illegality)** it is or will become unlawful for an Obligor to perform or comply with its obligations under this Agreement;
- (h) **(material adverse effect)** any other event (or series of events) occurs which, in the opinion of the Lender, may have a material adverse effect on an Obligor or on the ability or willingness of an Obligor to comply with its obligations to the Lender.

12.2 Event of Default and acceleration

If an Event of Default occurs, the Lender may by notice to the Borrower declare that the Money Owning is immediately due and payable, in which case the Borrower must immediately pay to the Lender in full the Money Owning.

12.3 Consequences of an Event of Default

In addition to the rights in clause 12.2, if an Event of Default occurs the security interest created under this Agreement will become immediately enforceable.

13. Appointment of Receiver

13.1 Appointment

The Lender may (in addition to and without prejudice to any of its other rights), at any time, appoint in writing (and remove, replace and fix the remuneration and other terms of appointment of) one or more Receivers (jointly and severally) in respect of any Secured Property on terms considered necessary or expedient by the Lender if:

- (a) an Event of Default occurs; or
- (b) the Borrower so requests; or
- (c) the Lender, in its sole discretion, believes that any Secured Property is at risk of being seized, becoming subject to a security interest or otherwise being dealt with in contravention of this Agreement.

13.2 Receiver agent of Borrower

A Receiver is the agent of the Borrower. The Borrower is solely responsible for the acts and defaults of a Receiver.

13.3 Receiver's rights

Subject to any restriction imposed by the Lender, a Receiver has

- (a) all the rights conferred on receivers and managers by law (including under the Receiverships Act 1993); and
- (b) the right in respect of the Secured Property to do anything the Borrower could do as if the Receiver had full and beneficial ownership of the Secured Property.

14. Application of amounts

14.1 Order of application

All amounts received or recovered by the Lender from the security created under this Agreement will be applied in the manner and order determined by the Lender. In the absence of any determination, those amounts will be applied in the manner described in clause 14.2. This clause is subject to:

- (a) any claims ranking in priority to the security interest created under this Agreement; and
- (b) any mandatory provisions of law (including any mandatory provisions of the PPSA).

14.2 Order of application where no determination

Subject to clause 14.1, amounts received or recovered by the Lender or any Receiver from the security created under this Agreement will be applied in payment:

- (a) first, of all expenses incurred by the Lender, to the Receiver and any Attorney in the exercise, or attempted exercise, of rights under, or otherwise in connection with, this Agreement;
- (b) second, of the Receiver's remuneration;
- (c) third, of all other Secured Money;
- (d) fourth, to each holder of a security interest of which the Lender is aware and which ranks after the security interest created under this Agreement in relation to the relevant Secured Property, to the extent, and in the order, of such priority; and
- (e) fifth, of any surplus to the Borrower (including for receipt on behalf of any other persons who may be entitled to the same).

15. Protections

15.1 Lender not restricted

The Lender need not:

- (a) exercise a Power, give a consent or make a decision under this Agreement; or
- (b) resort to a Power before resorting to any other of them.

15.2 Protection of Lender

The Lender is not:

- (a) accountable for any proceeds of enforcement other than those proceeds actually received by it;
- (b) obliged to enforce payment of the Secured Money;
- (c) liable in respect of any conduct or delay in the exercise, manner of exercise, attempted exercise, or non-exercise of any right by the Lender;
- (d) liable to account as mortgagee in possession in respect of the Secured Property; or
- (e) liable for any loss resulting from, or consequential on, any of the matters set out in clauses 15.2(a) to (d).

15.3 Indemnity

Subject to any mandatory law, the Borrower will indemnify the Lender, each Receiver, and each attorney appointed in accordance with clause 18, against each cost and loss (including loss of profit or margin) incurred by it as a result of:

- (a) the occurrence or continuance of an Event of Default;
- (b) the receipt or recovery by the Lender of all or any part of any amount payable under this Agreement (by prepayment or acceleration or otherwise) otherwise than on the due date relating to such amount; or
- (c) anything done or omitted by it in the exercise of a Power under this Agreement or conferred by law (whether or not arising by reason of mistake, oversight, negligence or error of judgment),

by payment to it on demand of the amount and in the currency that it certifies is required to compensate it for that cost or loss.

15.4 Indemnities irrevocable

The above indemnities are unconditional and irrevocable and are to survive both termination of this Agreement and payment of all other Secured Money and compliance with all Secured Obligations.

15.5 No marshalling or merger

The Lender is not required to marshal, enforce, apply, appropriate, recover or exercise any security, guarantee or other entitlement held by it or any assets which it holds or is entitled to receive. The Lender's right to payment of the Secured Money (including under any negotiable instrument or other agreement) will not merge in the Borrower's obligation to pay that Secured Money under this Agreement.

16. General security provisions

16.1 Security continuing and independent

Each of this Agreement and the security interest created under it:

- (a) is in addition to and enforceable independently of any other security interest or guarantee; and
- (b) shall remain in full force and effect (whether or not at any given time the Borrower is indebted to the Lender) until all Secured Property is released from the security interest granted under this Agreement.

16.2 Release

If, in the opinion of the Lender:

- (a) the Borrower has paid all the Secured Money and complied with all the Secured Obligations; and
- (b) there is no reasonable possibility that any Secured Money received by the Lender will have to be repaid under any applicable law, the Borrower may redeem the Secured Property. All documents that are necessary in connection with this redemption are to be in the form the Lender requires.

16.3 No postponement of attachment or subordination

Nothing in this Agreement is to be construed as:

- (a) an agreement that a security interest under this Agreement attaches at a later time than the time specified in section 40(1) of the PPSA; or
- (b) an agreement to subordinate a security interest under this Agreement in favour of any person.

16.4 Further assurance

On the request of the Lender, the Borrower must, at its own cost, promptly execute and deliver to the Lender all documents, and do anything else that the Lender requires, to perfect the Borrower's title in and to the Secured Property, to perfect, preserve, maintain or protect the Lender's security interest in the Secured Property, secure to the Lender the full benefit of its rights under this Agreement or facilitate the exercise of any Power by the Lender or any Receiver or any Attorney at any time, or the realisation of the Secured Property following an Event of Default.

17. Liability for the Secured Property

17.1 Liabilities and obligations

The Lender does not (and will not be deemed to) undertake any obligation of the Borrower in respect of the Secured Property by virtue of this Agreement.

17.2 Performance of Borrower's obligations by Lender

Notwithstanding clause 17.1, and in default of the Borrower doing so, the Lender may (without being obliged to do so) perform any obligation of the Borrower in respect of any Secured Property. Each amount spent for that purpose (including costs and losses) must be reimbursed by the Borrower on demand by the Lender.

18. Power of attorney

18.1 Appointment

The Borrower irrevocably appoints the Lender, each nominee of the Lender, each authorised officer or attorney of the Lender and every Receiver severally, for valuable consideration to be its attorney (with full power to appoint substitutes and to sub-delegate) on behalf of the Borrower and in its name or otherwise and at its expense to complete, execute and otherwise perfect all assignments, transfers, security interests and other documents, and generally to do all other acts and things, that the Borrower is obliged to do under this Agreement.

18.2 Ratification

The Borrower hereby ratifies and confirms to each person dealing with any Attorney whatever that Attorney does in the exercise of any of the rights referred to in clause 18.1.

19. PPSA

19.1 Waiver and section 109

Without limiting any other provision of this Agreement, the Borrower:

- (a) **(waiver)** waives its right to receive any verification statement in respect of any financing statement or financing change statement relating to any security interest created under this Agreement;
- (b) **(section 109)** agrees that, at any time after an Event of Default has occurred, the Lender may:
 - (i) take possession of any Secured Property; and/or
 - (ii) dispose of any Secured Property in such manner and generally on such terms and conditions as the Lender thinks desirable,
and otherwise do anything the Borrower could do in relation to the Secured Property.
- (c) **(contracting out)** agrees that it has no rights under sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, 133 and 134 of the PPSA.

20. Assignment

20.1 By Obligors

No Obligor may assign, transfer or otherwise deal with its rights, interests or obligations under this Agreement.

20.2 By Lender

The Lender may assign, transfer, novate or otherwise deal with its rights, interests and obligations under this Agreement without the consent of, or notice to, an Obligor, including without limitation to any party that provides finance to the Lender.

20.3 Contract and Commercial Law Act 2017

For the purposes Part 2 Subpart 1 of the *Contract and Commercial Law Act 2017*, each Receiver and each Attorney is entitled to enforce against an Obligor each provision of this Agreement which confers a benefit on a Receiver or Attorney (as the case may be). However, none of them need consent to any amendment made to this Agreement.

20.4 Counterparts

This Agreement may be executed in any number of counterparts. This has the same effect as if the signature on the counterparts were on a single copy of this Agreement.

20.5 Effective as a deed

This Agreement is effective as a deed notwithstanding that it has been signed under hand by the Lender and the Parent.

20.6 Governing law and jurisdiction

This Agreement is governed by the laws of New Zealand. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of New Zealand courts and waives any right to object to an action being brought in those courts.