

Standard Security Terms

Kensington Swan
Solicitors
Wellington & Auckland
New Zealand

Table of Contents

1	Interpretation.....	1
2	Nature of security created by these Standard Security Terms	2
3	Payment of Secured Moneys	3
4	Representations and warranties.....	4
5	Covenants.....	5
6	Livestock.....	7
7	Powers of Secured Party	8
8	Miscellaneous provisions.....	12
9	Amendments	14

Rural Livestock Finance Limited

Standard Security Terms

1 Interpretation

1.1 **Definitions:** In these Standard Security Terms, unless the context otherwise requires:

"**Amalgamation**" means an amalgamation under the Companies Act 1993;

"**Business Day**" means any Monday to Friday (inclusive) on which registered banks are open for general banking business in Dunedin and Christchurch;

"**Debtor**" means the person named as the borrower or debtor in any relevant loan agreement with or application for finance from the Secured Party and which refers to or incorporates these Standard Security Terms;

"**Disposal**" or "**Dispose**" means, by way of a single transaction or a series of transactions, whether related or not and whether voluntary or involuntary, the sale, transfer, grant or lease or other disposition of Secured Property, unless such disposal is made in the ordinary course of business of the disposing by the Debtor or the disposal is in exchange for other assets comparable or superior as to type, value and quality;

"**Enforcement Event**" means the events described in clause 7.2 of these Standard Security Terms and an event of default (however so defined) in any of the Transaction Documents or any other document relating to any Secured Obligations provided by the Secured Party to the Debtor;

"**Guarantor**" means each person named as a guarantor in any relevant Transaction Document;

"**Livestock**" includes any living organism other than a plant that is kept or used for the purposes of the business of farming;

"**Obligor**" means the Debtor and each Guarantor and each of them;

"**PPSA**" means the Personal Property Securities Act 1999, and includes the Regulations, unless the context requires otherwise;

"**Regulations**" refers to the Personal Property Securities Regulations 2001, as amended and in force from time to time;

"**Secured Moneys**" means all moneys which the Debtor now is or in the future becomes liable to pay to the Secured Party including (but not limited to):

- a. all money, loans, credits, advances and payments now or in the future lent or made by the Secured Party to or for the accommodation of the Debtor, to or for the accommodation of any other person at the request of the Debtor, or the payment or repayment of which is guaranteed by the Debtor to the Secured Party or of which the Debtor is otherwise liable to the Secured Party;
- b. all moneys payable by the Debtor to the Secured Party under any Transaction Document;
- c. all moneys payable by the Debtor to the Secured Party under or pursuant to any obligation of the Debtor to the Secured Party (including without limitation and by way of example only any obligations of the Debtor to redeem and/or pay any sum on account of the amount required to redeem any redeemable preference shares issued by the Debtor and held by or for the Secured Party);
- d. all moneys which the Secured Party has paid or may become liable to pay for or to the benefit of the Debtor;
- e. all moneys paid or payable by the Secured Party by reason of it having at the request of the Debtor become a party to or holder of any bill of exchange, bill of lading, or liable under any bond, guarantee, indemnity, monetary obligation or financial service;
- f. all interest, commission, costs, expenses and charges payable to or incurred by the Secured Party in relation to any Transaction Document;
- g. all of the above obligations of the Debtor to the Secured Party existing or arising in the future and whether actual or contingent or liquidated or unliquidated and whether of the Debtor alone or with other persons or to the Secured Party alone or with other persons;

"**Secured Obligations**" means all obligations, duties, requirements, undertakings and responsibilities (including the obligation to pay the Secured Moneys) of the Debtor to the Secured Party, imposed on or agreed to by the Debtor;

"**Secured Party**" means Rural Livestock Finance Limited;

"**Secured Property**" means:

- a. all present and after-acquired Livestock and progeny of Livestock (including all proceeds of Livestock and progeny of Livestock), in which the Debtor has rights (whether in its personal capacity, as trustee of any Trust or as partner of any partnership) or (if the Debtor is a trustee of a Trust) in which the Trust of which the Debtor is a trustee has rights or (if the Debtor is a partner in a partnership) in which the partnership has rights, in any case whether now or in the future; and
- b. the Security Account;

"**Security**" includes any:

- a. Security Interest; and/or
- b. any mortgage, pledge, lien, charge, assignment or any other agreement,

which is now or in the future given by the Debtor to the Secured Party as security for any Secured Moneys;

"**Security Account**" means the bank account or bank accounts opened in the Debtor's name with a registered bank designated as the Security Account under or in connection with any Transaction Document;

"**Security Interest**" means the security interest granted pursuant to clause 2.1 in favour of the Secured Party and intended to have effect as a security interest under the PPSA, and to confer (subject to these Standard Security Terms) all of the rights and powers which a secured party may under any law have under such a security interest, and in these Standard Security Terms generally, refers to any interest created by any transaction that would give rise to a security interest as defined in PPSA, and where the context permits, also includes any security interest that arises by operation of law;

"**Transaction Document**" means any document (including these Standard Security Terms) which creates or evidences the Debtor's liability for payment of the Secured Money or performance of the Secured Obligations, or secures or is intended to secure payment of the Secured

Moneys or performance of the Secured Obligations and includes in particular any application for finance by the Debtor to the Secured Party and any loan agreement between the Debtor and the Secured Party.

1.2 **PPSA:** The following expressions used in any Transaction Document (whether or not expressed with an initial capital letter) have the same meaning as in PPSA, unless the context requires otherwise: “**Account Receivable**”, “**Financing Statement**”, “**Financing Change Statement**”, “**Goods**”, “**Inventory**”, “**Money**”, “**Negotiable Instrument**”, “**Proceeds**”, “**Purchase Money Security Interest**”, “**Security Agreement**” and “**Security Interest**”.

1.3 **General Interpretation:**

- a. **Headings:** Headings and subheadings are inserted for convenience only and do not affect the interpretation of these Standard Security Terms.
- b. **Clauses:** References to clauses and subclauses are references to clauses and subclauses of these Standard Security Terms.
- c. **Modification of documents:** References to any document (however described) shall include references to that documents as modified, novated, supplemented, varied or replaced from time to time.
- d. **Time and waiver:**
 - i. time shall be of the essence in the performance of the Secured Obligations.
 - ii. no failure to exercise, delay in exercising, or limited or partial exercise of the Secured Party’s powers under any Transaction Document will operate as a waiver of such powers.
 - iii. no waiver by the Secured Party of its rights or powers will be of any effect unless in writing and signed by the Secured Party.
 - iv. anything which the Secured Party may do at any time may also be done from time to time.
- e. **Rights cumulative:** The rights conferred upon the Secured Party by any Transaction Document are cumulative and are not exclusive of any other rights or remedies.
- f. **Part exercise of powers:** The powers conferred upon the Secured Party by any Transaction Document may be exercised in whole or in part and in respect of the whole or any part of the Secured Moneys and Secured Property.
- g. **Legislation:** References to any legislation include any modification, re-enactment or replacement of such legislation and any subordinate legislation.
- h. **Severability:** Any provision of any Transaction Document which is or becomes invalid, illegal or unenforceable does not affect the Secured Party’s remaining powers and remedies under any Transaction Documents.
- i. **Gender and number:** Unless the context otherwise requires, a gender includes each other gender and the singular includes the plural and vice versa.
- j. **Parties:** Any references to any parties to these Standard Security Terms include their respective executors, administrators, successors and, in the case of the Secured Party, its assigns, and in the case of the Debtor, its permitted assigns.
- k. **Currency:** All references to monetary amounts in these Standard Security Terms refer to New Zealand currency unless otherwise stated.
- l. **Joint and Several:** Where the Debtor comprises more than one person, each such person shall be jointly and severally liable for all obligations under these Standard Security Terms.

1.4 **Conflict between Document:** If there is any conflict between any of the provisions of these Standard Security Terms and any provisions of:

- a. a Transaction Document; and/or
- b. any other agreement between the Secured Party and the Debtor (other than a Transaction Document),

then the Secured Party is entitled to determine which shall prevail.

2 **Nature of security created by these Standard Security Terms**

2.1 **Grant of Security Interest:** The Debtor hereby charges, and grants a Security Interest in the Secured Property (whether owned legally or beneficially), in favour of the Secured Party as security for payment of the Secured Moneys and for the performance by the Debtor of its obligations under the Secured Obligations and Transaction Documents.

2.2 **Security Interest in proceeds:** Except to the extent set out in clause 5.1, nothing in these Standard Security Terms authorises any sale or other dealings with Secured Property which gives rise to proceeds, unless the Secured Party has expressly agreed to any such dealing by the Debtor. The Secured Party’s Security Interest in all Secured Property will continue in the proceeds of any such dealing, whether or not authorised by the Secured Party, and the Debtor agrees:

- a. to do such things as the Secured Party may reasonably request to ensure that the Secured Party has a perfected Security Interest in any such proceeds;
- b. where any proceeds are serial-numbered goods, to inform the Secured Party of the details necessary to allow the Secured Party to register a financing statement in respect of those proceeds no later than the time at which the Secured Party has rights in those proceeds.

2.3 **Registration of financing statement:** The Debtor agrees:

- a. that the Secured Party may register a financing statement under PPSA in respect of each item or type of Personal Property that is from time to time subject to these Standard Security Terms, in such a manner as the Secured Party considers desirable in order to fully perfect its Security Interest in the Secured Property;
- b. to pay all registration fees incurred by the Secured Party in doing so, on demand;
- c. to do such things as the Secured Party may reasonably request in order to allow the Secured Party to fully perfect its Security Interest in that manner;

- d. that if any Secured Moneys is advanced for the purpose of acquiring rights in Personal Property, it will be applied to that purpose, and the Debtor will do such things as may be necessary to ensure, and record, that in respect of any such Secured Moneys the Security Interest given by these Standard Security Terms constitutes a purchase money security interest; and
 - e. if the Debtor acquires any serial-numbered goods that are Secured Property for the purposes of these Standard Security Terms, as soon as any such Secured Property is acquired the Debtor will advise the Secured Party of such details of that Secured Property as are necessary to allow the Secured Party to register a financing statement under PPSA in respect of any such serial-numbered goods.
- 2.4 **Verification statement waiver:** Pursuant to section 148 of PPSA, the Debtor irrevocably waives the need for the Secured Party to give it a copy of any verification statement in respect of any financing statement or financing change statement which the Secured Party may from time to time register under PPSA in respect of, or pursuant to, these Standard Security Terms.
- 2.5 **Priority:** The Security Interest created by clause 2.1 of these Standard Security Terms is, unless the Secured Party has otherwise agreed, a first ranking security, intended to take priority over all other security interests.
- 2.6 **Continuing security:** The Security created by these Standard Security Terms shall operate as a running and continuing Security between the Secured Party and the Debtor, irrespective of any sums which may be paid to the credit of the account or accounts of the Debtor with the Secured Party. Notwithstanding the appointment at any time or times of a Receiver or the retirement or removal of any Receiver or the exercise by the Secured Party or by any Receiver of any right, power or authority conferred by these Standard Security Terms, any other Transaction Document or by law and notwithstanding any settlement of account or any other matter or thing whatsoever, the Security created by these Standard Security Terms shall remain in full force in respect of the Secured Moneys and shall extend to cover any sum of money which may hereafter become owing from the Debtor to the Secured Party until a final release has been executed by the Secured Party.
- 2.7 **Other securities:**
- a. The Secured Moneys shall include all moneys owing by the Debtor to the Secured Party notwithstanding that those moneys or any part thereof may be expressed to be secured by any other Security or other security or guarantee held by the Secured Party, and notwithstanding that any other arrangement or agreement may not express any moneys referred to therein as being intended to be secured by these Standard Security Terms.
 - b. These Standard Security Terms are given in addition to and not in substitution for any Security or other security or guarantee held by the Secured Party. Nothing contained in these Standard Security Terms shall discharge, abate or prejudice any Security or other security or guarantee at any time held by the Secured Party for payment of any part of the Secured Moneys.
- 2.8 **Collateral securities:**
- a. In relation to the Secured Party, these Standard Security Terms are, and shall be deemed for all purposes to be, collateral to any Security, other security or guarantee at any time held by the Secured Party (whenever such Security or other security or guarantee is given) in respect of all or any part of the Secured Moneys;
 - b. These Standard Security Terms and each such Security, other security or guarantee held by the Secured Party shall be read and construed together, so that a default (howsoever defined) under one of them shall be deemed to be a default under each of them, but nevertheless so that the Secured Party may exercise any of its rights, powers and remedies under any one or more of them separately or concurrently.
- 2.9 **Security relates to all indebtedness:** All existing and future Securities held by the Secured Party in respect of the Debtor's obligations will secure the Secured Moneys.
- 2.10 **Release of Secured Property:** The Secured Party may from time to time agree to release Secured Property from these Standard Security Terms, on such terms as the Secured Party may require, but always subject to clause 8.12. If the Secured Party does so:
- a. the release of any item of Secured Property from these Standard Security Terms will not affect the Secured Party's Security Interests or other rights in any other Secured Property that remains subject to these Standard Security Terms;
 - b. recognising that the Secured Party may incur costs in doing so, the Debtor agrees to pay any fees or costs the Secured Party may reasonably require as a condition precedent to any such release or in respect of any financing change statement that may be registered under PPSA in respect of it, even if the release or financing change statement is one which the Debtor would otherwise be entitled to require under PPSA (including, without limitation, under section 169 of PPSA).
- 3 **Payment of Secured Moneys**
- 3.1 **Covenant to pay:** The Debtor covenants and agrees with the Secured Party that the Secured Moneys will be paid in the amounts, on the dates and in the manner provided by the Transaction Documents, and will duly perform and observe all its obligations under the Transaction Documents, and if not so provided then upon demand.
- 3.2 **Payments to be free and clear:** All payments to be made by the Debtor under these Standard Security Terms or any other Transaction Document shall be made without deduction, set-off or counterclaim and free of any restriction or condition (equitable or otherwise) and, in particular, without deduction or withholding for or on account of any taxes unless that deduction or withholding is required by law.
- 3.3 **Reinstatement:** If a payment to the Secured Party is avoided by law:
- a. that payment will be deemed not to have discharged or affected the obligation in respect of which that payment was made; and
 - b. the Secured Party will be deemed to be restored to the position it would have been in, and will be entitled to exercise all the rights it would have had, if that payment had not been made.
- 3.4 **Grossing-Up of Payments:** If:
- a. the Debtor, or any person on its behalf is required by law to make a deduction or withholding for or on account of tax or on another account, whether by way of set-off or otherwise, from an amount paid or payable by the Debtor under any Transaction Document; or
 - b. the Secured Party or a person on its behalf is required by law to make a deduction or withholding from, or a payment on or calculated by reference to, an amount received or receivable under any Transaction Document (excluding tax on its overall net income),

then the Debtor indemnifies the Secured Party against that amount and the amount in respect of which that deduction, withholding or payment is required to be made is to be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment, the

Secured Party receives and retains (free from any liability in respect of that deduction, withholding or payment) a net amount equal to the amount which it would have received and so retained had no deduction, withholding or payment been required to be made.

3.5 **Notice of Legal Requirements:** If any party is required to make a deduction, withholding or payment for or on account of tax or on another account, it is to notify any other affected party immediately.

3.6 **Timely Payment to Tax Authority:** If the Debtor is required to make a deduction, withholding or payment for or on account of tax or on another account, it is to account to the appropriate tax or other authority for the relevant amount within the time allowed, without incurring a penalty for late payment.

3.7 **Tax Credit:** If the Secured Party receives the benefit of a final tax refund or credit resulting from the Debtor having made a deduction or withholding referred to in clause 3.4, it will pay to the Debtor or the relevant Guarantor such part of that benefit as, in the reasonable opinion of the Secured Party, will leave it in no less favourable position (after that payment, and taking account of any additional payment made to it under clause 3.4 and any tax payable by it on that additional payment) than it would have been in if no deduction or withholding had been required. In doing so, the Secured Party:

- a. is obliged to act reasonably but is otherwise to be the sole judge of the amount of any such benefit and the date on which it is received;
- b. has an absolute discretion as to the order and manner in which it employs or claims tax credits and allowances available to it (unless the law requires otherwise); and
- c. has no obligation to disclose to the Debtor any information regarding its tax affairs or tax computations.

3.8 **Tax Receipts:** Promptly after making a deduction, withholding or payment, the Debtor is to deliver to the Secured Party a receipt or other documentation satisfactory to the Secured Party evidencing the deduction, withholding or payment.

4 **Representations and warranties**

4.1 **Secured Party's reliance:** By agreeing to be bound by these Standard Security Terms each Obligor is deemed to have made the representations and warranties that are set out in clauses 4.2 and 4.3 and any representations and warranties contained in any Transaction Document. Each Obligor is deemed to have repeated those representations and warranties on each day that any Secured Moneys remains unpaid or undischarged. In making, or in continuing to make, any Secured Money available to the Debtor, the Secured Party is relying on the correctness, accuracy and truthfulness of those representations and warranties. The Secured Party continues to rely on the correctness, accuracy and truthfulness of those representations and warranties on each day that any Secured Moneys remains unpaid or undischarged by reference to the facts and circumstances then applying.

4.2 **Representations and warranties relating to the Secured Property:** Each Obligor represents and warrants that:

- a. **Ability to create security:** the Debtor has sufficient rights in the Secured Property to grant a Security Interest in that property in favour of the Secured Party;
- b. **No Security Interest:** except as disclosed to and accepted in writing by the Secured Party, no Security Interest exists over or affects any Secured Property, nor is there any agreement to give or permit to exist a Security Interest in or affecting any Secured Property;
- c. **Compliance requirements:** it is in compliance with:
 - i. all laws, regulations, by-laws, directives and consents to which it, or the Secured Property, or the land on which the Secured Property is located, is subject; and
 - ii. all obligations binding on, or in respect of, it or the Secured Property by law, contract or otherwise;
- d. **Use of Secured Property:** except in accordance with accepted and prudent farming practice and in compliance with all applicable laws and regulations, none of the Secured Property has been:
 - i. used in connection with the creation, treatment, storage or handling of a pollutant ; or
 - ii. polluted or contaminated by a pollutant; or
 - iii. subject to a notice, direction, order or condition requiring a pollutant to be cleaned up, contained or dealt with in any way and it is not aware that such a notice, direction, order or condition is pending;
- e. **After-acquired Secured Property:** the Debtor will apply all amounts advanced to it by the Secured Party for the purpose of enabling the Debtor to acquire rights in any Secured Property for that purpose, and the Debtor represents and warrants that immediately following any such application it will be able to give the same representations and warranties in respect of that property as those in clauses 4.2a – 4.2d. For the avoidance of doubt, where advances are made by the Secured Party, whether on overdraft or otherwise, and the purpose of those advances is to provide the Debtor with working capital, that purpose includes the acquisition of any property the Debtor acquires in the ordinary course of its business.

4.3 **General representations and warranties:** Each Obligor represents and warrants that:

- a. **Powers:** it has the power to enter into and observe, perform and comply with its obligations under these Standard Security Terms and each Transaction Document;
- b. **Authorisations and consents:** everything required to be done (including the obtaining of any necessary consents, the declaration of any interests, and the passing of all necessary resolutions) to:
 - i. enable it to lawfully exercise its rights, and perform and comply with its obligations under these Standard Security Terms, and its obligations under any Transaction Document;
 - ii. ensure that those obligations are legal, valid, binding and enforceable in accordance with their respective terms; and
 - iii. make these Standard Security Terms, and each Transaction Document admissible in evidence in the Courts of New Zealand,has been duly done;
- c. **Non-contravention:** the Obligor's entry into, and the exercise of its rights and performance of and compliance with its obligations under these Standard Security Terms, and each Transaction Document, do not and will not:

- i. contravene any law; nor
- ii. contravene any consent applying to it, or any of its property; nor
- iii. contravene any of the documents or laws constituting it; nor
- iv. exceed any limitation on, or constitute an abuse of, the powers of its directors or officers; nor
- v. contravene any agreement to which it is a party or that is binding on any of its property;
- d. **Obligations binding:** the Obligor's obligations under these Standard Security Terms, and each Transaction Document, are legal, valid, binding and enforceable in accordance with their respective terms;
- e. **No Default:** no Obligor is in default under:
 - i. any agreement relating to indebtedness; nor
 - ii. any guarantee; nor
 - iii. any other agreement to an extent or in a manner that has or could have a material adverse effect on it;
- f. **Solvency:** each Obligor is able to pay its due debts and it is not engaged, or about to engage, in business for which its financial resources are unreasonably small and it has not incurred an obligation knowing that it will not be able to perform the obligation when required to do so.
- g. **Information:** all information provided by any Obligor to the Secured Party in connection with these Standard Security Terms and each Transaction Document is correct, accurate and true as at the date when that information was provided, and remains so at the date of these Standard Security Terms, and there are no facts or circumstances that have not been disclosed to the Secured Party that would make that information incorrect, inaccurate or untrue and the same applies for each Obligor in respect of any Transaction Document and any Secured Obligations;
- h. **Litigation:** no litigation, arbitration or administrative proceeding is current or pending or to any Obligor's knowledge threatened:
 - i. to restrain its entry into, or the performance of or compliance with its obligations under these Standard Security Terms or any Transaction Document; or
 - ii. that could have a material adverse effect on it or the Secured Property or on the Secured Party's ability to exercise or enforce its rights under these Standard Security Terms or any Transaction Document;
- i. **Trustees:** where any Obligor is a trust:
 - i. the trustees named in the relevant Transaction Document(s) are the only trustee(s) of the Trust and no action has been taken to remove any of them;
 - ii. the trustees are not in default of any terms of the Trust;
 - iii. the trustees are entering into the transactions contemplated by the Transaction Documents (including these Standard Security Terms) for the benefit of the Trust and for proper purposes;
 - iv. the trustees have made all of the terms of the Trust available to the Secured Party for its inspection;
 - v. the trustees have the right to be fully indemnified out of the property of the Trust (except where they are in breach of trust or have acted dishonestly) and no action has been taken to limit or restrict that right;
 - vi. the Secured Party's rights under these Standard Security Terms rank in priority to the claims of the beneficiaries against that property.

5 Covenants

5.1 Covenants relating to the Secured Property: Each Obligor will:

- a. **Dealings with Secured Property:** not dispose of, lend, factor, subordinate, part with possession of or otherwise deal with any Secured Property, nor attempt or threaten to do any of these, other than:
 - i. with the prior written consent of the Secured Party; or
 - ii. subject to clause 6, in the case of Secured Property that is Inventory or Money, in the ordinary course, and for the purpose of carrying on, that Debtor's ordinary business; or
 - iii. in the case of Secured Property that is Livestock (whether Inventory or not) in the ordinary course, and for the purpose of carrying on, the Debtor's ordinary business and strictly in accordance with clause 6; or
 - iv. in the case of Secured Property that is Accounts Receivable, to collect in and realise those Accounts Receivable; or
 - v. in the case of insurance proceeds, in accordance with the relevant terms under the Transaction Document; or
 - vi. as otherwise permitted by these Standard Security Terms;
- b. **Payment to account:** promptly pay all proceeds from any dealing with any Secured Property in accordance with clause 5.1a into its account with the Secured Party designated for the time being for that purpose;
- c. **Removal:** not, without the prior written consent of the Secured Party, remove any of the Secured Property out of the jurisdiction in which it is located;
- d. **Delivery of certificates:** deposit with the Secured Party on request:
 - i. all or any certificates and documents of title relating to the Secured Property; and
 - ii. all or any of its insurance policies.
- e. **Notice of Security Interest:** give all notices the Secured Party requires to draw these Standard Security Terms to the attention of any of the Debtor's present or future debtors and other creditors;

- f. **No Security Interests:** without the prior written consent of the Secured Party, create or attempt to create or permit to subsist a Security Interest in or affecting the Secured Property (except for a Security Interest created under these Standard Security Terms or a Transaction Document);
- g. **Maintain and repair Secured Property:** maintain and protect the Secured Property and keep the same in good and substantial repair and in good working order and condition, free from any unlawful contamination and hazardous wastes, and promptly remedy on being required to do so by the Secured Party every defect in the repair, order or condition of any of the Secured Property and remove or eliminate any unlawful contamination or hazardous wastes affecting any of the Secured Property;
- h. **Pay rent, etc:** duly and promptly pay all rents and other amounts and perform and comply with all obligations under each lease or licence granted to any Obligor and, on the request of the Secured Party, provide a receipt for each of those payments;
- i. **Access:** provide to the Secured Party, and ensure that each person in possession of any Secured Property will provide to the Secured Party, full and unfettered access at all reasonable times;
 - i. to the Secured Property and the land on which it is located; and
 - ii. to inspect and take copies of or extracts from all books of account, vouchers and other documents relating in any way to any Obligor and its management, business or property;
- j. **Prejudicial actions or omissions:** not do, or omit to do anything that renders any of the Secured Property or a Security Interest created under these Standard Security Terms or any Transaction Document invalid or unenforceable, or liable to forfeiture or cancellation or that may cause or contribute to a deterioration in the value of the Secured Property.

5.2 **Positive covenants:** Each Obligor will:

- a. **Events of Default:** notify the Secured Party upon it becoming aware of any Enforcement Event, and provide the Secured Party with full details of any action taken (or to be taken) as a result;
- b. **Change of name:** not change its name without giving the Secured Party 5 business days' written notice of what its new name will be and will co-operate in permitting the Secured Party to register any financing change statements the Secured Party may consider to be necessary under PPSA as a consequence;
- c. **Maintain consents:** obtain and maintain in full effect, all consents required to enable it to perform or comply with its obligations under these Standard Security Terms and each Transaction Document;
- d. **Compliance:** duly and punctually:
 - i. comply with and observe all laws, regulations, by-laws, directives and consents to which it, or the Secured Property is, or becomes, subject;
 - ii. maintain all consents to which it, or the Secured Property is, or becomes, subject;
 - iii. perform all obligations binding on it or the Secured Property by law, contract or otherwise.
- e. **Pay charges, rates, taxes:** pay and discharge all charges, rates, taxes, assessments, impositions and outgoings rated, charged, assessed or imposed upon or payable by the Debtor in respect of the Secured Property or any part thereof or its business generally, upon the days when the same respectively shall become payable;
- f. **Insurance:** keep the Secured Property insured in accordance with any requirements notified to the Debtor by the Secured Party from time to time and in any event insure all Livestock in transit in accordance with prudent commercial practice.
- g. **Information to be true:** ensure that all factual information any Obligor provides to the Secured Party in connection with these Standard Security Terms, and any Transaction Document is correct, accurate, true and is not misleading or deceptive as at the date that information is provided;
- h. **Appointment and Retirement of Partners:** if any Obligor is a partnership, promptly notify the Secured Party of the appointment of each new partner and the retirement of any partner;
- i. **Trustees:** if any Obligor is a Trust, promptly advise the Secured Party of any appointment or proposed appointment of a new trustee and use its best endeavours to ensure the new trustee signs such documents as the Secured Party may require to ensure that the Secured Party is not adversely affected;
- j. **Perform obligations:** perform and comply with its obligations under each Transaction Document to which it is a party;
- k. **Uncalled capital:** if any Obligor is a company, at the Secured Party's request, procure the calling up of its uncalled capital for payment to the Secured Party on such conditions as the Secured Party shall then specify;
- l. **Change of address:** promptly give the Secured Party written notice of any change in its address, electronic mail address, or facsimile number.

5.3 **Negative covenants:** No Obligor will, without the prior written consent of the Secured Party:

- a. **Compromise:** enter into or make any proposal for a compromise, except on terms previously approved by the Secured Party;
- b. **Trustees:** if the Obligor is a Trust, permit:
 - i. any of the terms of the Trust to be changed;
 - ii. any distribution of any of the capital of the Trust;
 - iii. any of the Trust property to be disposed of other than for the purposes of the Trust;
 - iv. the Trust to incur any liability on behalf of the Trust, that is for less than full consideration;
 - v. the Trust to repay any loans made to the Trust by any settlor or any beneficiary of the Trust;
 - vi. the Trust to be wound up; nor
 - vii. if the Obligor is the sole trustee of the Trust, cease to be a trustee.

- c. **Companies:** if the Obligor is a company:
 - i. adopt a constitution or make, or take any step towards making, any change in its constitution or constitutional documents;
 - ii. form or acquire a subsidiary (within the meaning of the Companies Act 1993), or make any change in the shareholding of a subsidiary that effects or may effect a change in its control or cause it to cease to be a subsidiary;
 - iii. enter into or become the subject of an Amalgamation;
 - iv. purchase or subscribe for shares in another company;
 - v. pass any resolution that any of its capital that has not been called up, is not to be capable of being called up;
 - vi. call up or receive in advance of calls, any uncalled capital;
 - vii. become party to any agreement or arrangement whereby:
 - A. the liability of any of the Obligor's shareholders in respect of any unpaid capital, is released or reduced;
 - B. any of the Obligor's funds or property are applied or used in reduction of any shareholder's liability in respect of unpaid capital;
 - viii. make or attempt to make a Distribution (within the meaning of the Companies Act 1993), except on such terms and in compliance with such conditions previously agreed between the Obligor and the Secured Party in writing;
 - ix. re-issue any security redeemed by it;
 - x. enter into any Major Transaction (within the meaning of the Companies Act 1993);
 - xi. agree to the purchase of all or any of the shares of a shareholder following receipt by the Obligor of a notice by that shareholder pursuant to section 111(1) of the Companies Act 1993;
 - xii. make, or allow any person to make on its behalf any application to the Commissioner of Inland Revenue to be a member of a group of companies pursuant to and for the purposes of section 55 of the Goods and Services Tax Act 1985;
 - d. **Change of business:** make, or threaten to make, a substantial change in the nature or scope of its business as presently conducted;
 - e. **Provide goods and services:** supply any goods or services, or lend money to, or make or place any investment in or with, any person except in the ordinary course of, and for the purposes of carrying on its ordinary business, and then only for proper value and on proper arms length commercial terms;
 - f. **Guarantee:** give a guarantee (otherwise than to the Secured Party);
- 5.4 **Financial and reporting covenants:** The Debtor will:
- a. Financial information: keep complete, up-to-date and comprehensive accounting records and in accordance with all applicable legislation and will promptly provide to the Secured Party, at its request, any information that is concerned with or relates to the Debtor's financial condition, operations and affairs;
 - b. Other information: promptly deliver to the Secured Party details of any material litigation, arbitration, administrative proceedings, directive, notice, claim or assessment that is/are current, pending or, to its knowledge, threatened against it or the Secured Property.
- 5.5 **Authority to accountants, auditors and financial advisors:** The Debtor authorises the Secured Party to discuss the Debtor's financial statements and financial affairs at any time with the Debtor's accountants, auditors and financial advisors, and authorise and request the Debtor's accountants, auditors and financial advisors to participate in those discussions and provide any information the Secured Party requests.
- 6 **Livestock**
- 6.1 **Positive Covenants:** Without limiting the generality of any other provision of these Standard Security Terms, for all Livestock that is Secured Property each Obligor will:
- a. **Notification of Sales:** notify the Secured Party in writing of any intended sale of Livestock prior to selling such Livestock, setting out the details of the Livestock to be sold and the intended purchaser and price (if known);
 - b. **Identification:** at the Obligor's own cost and expense, mark, tag, or otherwise identify that Livestock in accordance with usual commercial practice and as otherwise required from time to time by the Secured Party;
 - c. **Inspection:** at the Secured Party's request, allow and take all steps available to the Obligor to assist any authorised person of the Secured Party to view and inspect that Livestock;
 - d. **Condition of Livestock:** use and adopt all due and proper means for keeping and maintaining that Livestock free from disease, and in healthy condition;
 - e. **Management of Livestock:** properly manage that Livestock and only employ properly skilled and qualified persons to assist the Debtor in doing so;
 - f. **Fencing:** keep that Livestock securely fenced or otherwise contained;
 - g. **Inventory List:** provide to the Secured Party a written inventory of that Livestock, at such intervals as the Secured Party may require and in any event at the Secured Party's request, setting out by species, the number, age and sex of the Livestock, details of the tagging or identification system used for the Livestock (including any replacement system) and the places where the Livestock is kept;
 - h. **Replacement Livestock:** if any of the Livestock dies or is lost, immediately replace that Livestock with other Livestock in a healthy condition and of like value and description.
- 6.2 **Negative Covenants:** Without limiting the generality of any other provision in these Standard Security Terms the Debtor will not, without the prior written consent of the Secured Party:
- a. **Quality:** change the general quality, character or description of the Livestock which is Secured Property; and

- b. **Moving of Livestock:** move Livestock which is Secured Property from the land where it is kept, or permit any other Livestock to be kept on that land except where such Livestock is clearly distinguishable from the Livestock that is Secured Property, as described in the latest inventory list provided to the Secured Party.

7 Powers of Secured Party

7.1 **Upon occurrence of Enforcement Event:** At any time after the occurrence of an Enforcement Event each Obligor agrees that the Secured Party may, without any notice to the Debtor and without prejudice to any other rights, powers, remedies or authorities it may have under these Standard Security Terms or any other Transaction Document, or otherwise at law:

- a. declare all or any part of your indebtedness to the Secured Party to be immediately due and payable, irrespective of whether the due date for payment has arrived;
- b. cancel or suspend any entitlement of the Debtor to receive the whole or any part of any lending facility or other financial accommodation that has been made available to the Debtor by the Secured Party;
- c. enter upon and take and keep possession of the Secured Property or any part thereof and for such purposes to enter upon any land or premises where the Secured Property may be located;
- d. manage or carry on the business of any Secured Property or any part thereof, and for such purpose may do such acts and deal with the Secured Property as it thinks fit and as if it were the absolute owner of the Secured Property;
- e. notwithstanding any previous neglect or waiver, exercise any rights, powers, remedies and authorities conferred upon mortgagees at law, and in particular without limitation, may buy in and resell or otherwise Dispose of the Secured Property or any part thereof whether by private contract, public auction or tender or otherwise as it thinks fit in its sole discretion, and the Secured Party shall not be liable for any loss incurred thereby;
- f. employ or engage persons to exercise and/or facilitate the exercise, of its rights, powers, remedies and authorities and utilise revenue derived from the business or sale of the Secured Property to pay expenses and discharge liabilities which it, or its agents or employees, officers or assigns may incur in connection with such exercise;
- g. generally execute all necessary documents and instruments and exercise all rights and powers of the Debtor in respect of the Secured Property to recover the Secured Moneys;
- h. exercise all of the powers, rights and remedies given to a secured party by PPSA or by law, as supplemented and/or modified by these Standard Security Terms;
- i. appoint a receiver in the manner provided for by these Standard Security Terms;
- j. set-off, combine, apply or appropriate any payments to, or credit balances maintained in, any account of the Debtor with the Secured Party against the Debtor's obligations under these Standard Security Terms or any other Transaction Document;
- k. use or buy any foreign currencies as it considers necessary to effect any set-off, combination or application;
- l. break the period for which such credit balances are held;
- m. debit and/or charge any account of the Debtor either alone or jointly with any person with all or part of the Secured Moneys or any other moneys payable by the Debtor under these Standard Security Terms or any other Transaction Document; and
- n. generally exercise the powers and discretions given to a receiver by these Standard Security Terms.

7.2 **Enforcement Events:** The following are Enforcement Events:

- a. **Failure to Pay:** the Debtor fails to pay all or any part of any Secured Moneys on its due date, or all or any part of any Secured Moneys become capable of being declared due before they would otherwise become due;
- b. **Breach of Specified Obligations:** the Debtor fails to perform or comply with its obligations under these Standard Security Terms or any other Transaction Document and such failure, if capable of remedy, is not remedied to the satisfaction of the Secured Party within five Business Days after notice from the Secured Party specifying the failure and requiring its remedy;
- c. **Breach of warranty:** any representation, warranty or undertaking made or deemed to be made by the Debtor in connection with these Standard Security Terms or any other Transaction Document is not correct accurate, true or complied with or is found to be or becomes untrue, inaccurate or not complied with (whether by omission or otherwise);
- d. **Death:** if the Debtor is an individual, the Debtor dies or an order is made under the Protection of Personal and Property Rights Act 1988 in relation to the Debtor or its property;
- e. **Partnership:** if the Debtor is a partnership, a bankruptcy petition is filed against any of the partners or any of the partners is adjudged bankrupt, or any liquidator is appointed of any of the partners or any petition or application is filed in any court or any other step is taken by any person for the dissolution of any of the partners or any meeting is convened for the purposes of considering the taking of any of these steps, or the partnership is dissolved or any application is made for the dissolution of the partnership or any meeting is convened for this purpose;
- f. **Winding up:** if the Debtor is a Trust, an application is made or an order is made or a resolution is passed or a notice is given for the winding up of the Trust or any meeting is convened for the purposes of considering such winding up;
- g. **Bankruptcy or dissolution:** a bankruptcy petition is filed against the Debtor (if the Debtor is an individual) or the Debtor is adjudged bankrupt (if the Debtor is an individual) or an order is made, resolution is passed or notice is given, or any liquidator is appointed, or any petition or application is filed in any court or any other step is taken by any person for the dissolution of the Debtor (except for the purpose of and followed by a solvent Amalgamation) on terms approved by the Secured Party before that step is taken or any petition or application is filed in any court) or any meeting is convened for the purposes of considering the taking of any of these steps;
- h. **Compulsory Acquisition:** if all or a material part of the Secured Property is compulsorily acquired by any government agency or the Debtor sells or divests itself of all or a material part of the Secured Property pursuant to a binding order from a governmental agency, and the Debtor does not receive compensation for the acquisition, sale or disposal which is acceptable to the Secured Party;
- i. **Trustee:** if the Debtor is a Trust, any application or order is sought or made in any court for the removal of any of the trustees of the Trust, for any accounting to be taken in respect of the Trust or any of the Trust's property to be brought under the court's control, or the Debtor breaches any term of the Trust;

- j. **Statutory Management:** the Debtor is declared at risk pursuant to the Corporations (Investigation & Management) Act 1989, a statutory manager is appointed or any step is taken with a view to any such appointment under that Act (including a recommendation or submission by any person to the Securities Commission supporting such an appointment) or if any other person is appointed under statute or law to manage any of the Debtor's affairs;
- k. **Appointment of Receiver:** a receiver, manager, administrator or similar official is appointed in respect of the Debtor or any of the Secured Property;
- l. **Investigation:** any inspector, investigator or similar official is appointed under any applicable legislation to investigate the affairs of the Debtor;
- m. **Guarantor:** any of the events described in subparagraphs 7.2b to 7.2l and 7.2q to 7.2y (inclusive) occurs in relation to any person who has guaranteed any of the Debtor's obligations in favour of the Secured Party;
- n. **Secured Property:** in respect of any Secured Property, any step is taken to levy or enforce a distraint, attachment, execution or other legal process on or against that Secured Property or to enforce a Security Interest against it;
- o. **Disputed Title:** the Debtor's ownership of, title to, right of use or possession of or other rights in respect of any or all of the Secured Property is disputed or becomes the subject of a dispute or the Secured Party believes that all or any of the Secured Property are at risk (within the meaning of section 109 of the PPSA);
- p. **Environmental Law:** any of the Secured Property becomes subject to a restraining order or clean up notice under an environmental law;
- q. **Cross Default:** any other indebtedness of an amount in excess in total of \$2,000, or its equivalent in other currencies, of the Debtor is not paid when due or within any applicable grace period in any document relating to such indebtedness, or becomes capable of being rendered due and payable prior to its stated maturity by reason of a default, cancellation event, prepayment event or similar event (whatever called);
- r. **Pooling of Debts:** an order is made in respect of the Debtor requiring the Debtor to pay or assume liability for the debts or obligations of any other person;
- s. **Suspension of Payments:** the Debtor stops or suspends, or threatens to stop or suspend, payment of the Debtor's indebtedness generally;
- t. **Change in Control:** if the Debtor is a company, there is a change in control of the Debtor or its holding company;
- u. **Meeting to Consider Default Actions:** if the Debtor is a company, any meeting of directors or shareholders is called for the purpose of considering, and if thought fit, passing any resolution the passing or performance of which would cause an Enforcement Event;
- v. **Cancellation:** any financing, standby, underwriting, credit or indemnity facility available to the Debtor from any person is cancelled, suspended or withdrawn (in whole or in part);
- w. **Illegality or Avoidance:** it becomes or will become illegal for the Debtor or any other person to comply with its obligations under all or any part of any Transaction Document or all or any part of any Transaction Document is or becomes invalid or unenforceable or is held, declared or claimed by any person other than the Secured Party, to be void, voidable or unenforceable;
- x. **Minority Buyout:** if the Debtor is a company, a member of the Debtor gives notice to it requiring it to purchase that member's shares under section 111 of the Companies Act 1993;
- y. **Material Adverse Change:** the Secured Party is or becomes of the opinion that events have occurred (whether a single event or a series of related or unrelated events) or circumstances have arisen, (whether or not by reason of any act or default of the Debtor) which have a material adverse effect on the Debtor or any other party (other than the Secured Party) to any Transaction Document or on the Secured Property;
- z. **Change Demand:** if the Debtor demands registration of a financing change statement pursuant to section 162 of the PPSA when the requirements of section 162 have not been met.

7.3 **Immediate Consequences:** Immediately on the occurrence of an Enforcement Event:

- a. without prejudice to any subsequent exercise by the Secured Party of its rights of set-off or combination, all of the Secured Party's rights of set-off or combination against the Debtor will be deemed to have been exercised (whether or not any book entries have actually been passed); and
- b. all of the Debtor's contingent obligations (whether in respect of a guarantee or otherwise) to the Secured Party will be deemed to have been converted into actual liabilities, and shall thereafter be fully enforceable against the Debtor by the Secured Party.

7.4 **No obligation on Secured Party to exercise powers:** It shall not be incumbent on the Secured Party nor any receiver appointed by the Secured Party to exercise any right, power, remedy or authority it may have under these Standard Security Terms or other Transaction Documents or at law, and nor shall the Secured Party or any receiver be answerable or accountable for any loss occasioned (directly or indirectly) by its omission or delay so to do or for any loss occasioned (directly or indirectly) by the exercise or execution or a partial or attempted exercise or execution of any such right, power, remedy or authority or any trust connected therewith or for any other description of involuntary loss howsoever the same may be incurred.

7.5 **Exercise of powers by officers, attorneys or assigns:** All rights, powers, remedies or authorities which the Secured Party may have under these Standard Security Terms or any other Transaction Document or at law may be exercised from time to time by the Secured Party or by their respective officers, attorneys or assigns.

7.6 **Powers exercisable despite other secured parties:** The Secured Party may exercise any power to take possession of and/or sell any Secured Property even if the Secured Party does not have priority over any other parties having a Security Interest in the same Secured Property, and section 109 of PPSA will not apply to the extent it is inconsistent with this clause.

7.7 **Secured Party may perform the Debtor's obligations:** In the event that:

- a. any Enforcement Event occurs; or
- b. the Secured Party reasonably considers it necessary or desirable to perform any obligation, pay any money or incur any expense (whether in the course of inspecting, taking possession of, selling, preserving or protecting the Secured Property or otherwise) in order to protect the Secured Party's interests,

then, the Secured Party may perform such obligation, pay such money or incur such expense. All moneys so paid shall be repayable by the Debtor upon demand and be deemed to form part of the Secured Moneys and carry interest accordingly until payment at the rate for the time being payable as provided in the relevant Transaction Document.

7.8 **Appointment of receivers:** At the Debtor's request or at any time after the occurrence of an Enforcement Event, the Secured Party may appoint in writing any person or persons to be a receiver or receiver and manager of all or any part of the Secured Property and may from time to time and at any time in like manner remove any receiver or receiver and manager so appointed and appoint another or others in their place, provided that:

- a. if two or more persons are appointed to be receivers, the Secured Party may specify in such appointment that their rights, powers and remedies vest in them jointly or jointly and severally and failing such specification their rights, powers and remedies shall vest in them jointly and severally; and
- b. any and every receiver so appointed shall be the agent of the Debtor, and the Debtor alone shall be responsible for their acts and omissions.

7.9 **Powers of receivers:** Every receiver appointed by the Secured Party under these Standard Security Terms shall have the power, subject to any limitations contained in such appointment, to do the following things:

- a. to take immediate possession of, collect and get in all or any part of the Secured Property and to exercise and enforce all or any of the powers, rights, remedies and authorities of the Secured Party in respect thereof;
- b. to carry on or concur in carrying on any business of the Debtor;
- c. to make and effect all repairs, improvements and insurances and to do all other acts which the Debtor might do in the ordinary conduct of its or their business for the protection and improvement of the Secured Property;
- d. to sell all or any part of the Secured Property in such manner and on such terms as the receiver thinks fit;
- e. to acquire any property or an interest in any property for inclusion in the Secured Property;
- f. to lease, sublease, hire or grant licences in respect of all or any part of the Secured Property and to end, renew, surrender or accept the surrender of any lease, sublease, hire agreement or licence of the Secured Property and to compromise with or make concessions to landlords, tenants, lessors, lessees, licensors or licensees for any period and on any terms;
- g. to compromise, settle or submit to arbitration any disputes or other matters which may arise in connection with any business of the Debtor or the Secured Property;
- h. to bring, take, prosecute or compromise such proceedings as the receiver shall think necessary or expedient in relation to the Secured Property and the business of the Debtor and to use the name or names of the Debtor in such proceedings;
- i. to make calls upon the shareholders and other contributories of the Debtor in respect of uncalled capital and share premiums and to receive moneys in advance of calls;
- j. to give valid receipts for all moneys and execute and do all assurances, acts, deeds, matters and things which the receiver may think proper for realising the Secured Property;
- k. to execute in the name and on behalf of the Debtor all mortgages, transfers, deeds and other assurances and documents necessary to vest in any purchaser, mortgagee or other person the whole or any part of the Secured Property and to enter into all agreements, arrangements, documents and instruments in relation to the powers given to the receiver as shall in the opinion of the receiver be necessary or expedient;
- l. to use the name or names of the Debtor for all or any of the purposes set out in these Standard Security Terms (including this clause) or in any legal proceeding;
- m. to rank and claim in the bankruptcy, insolvency, sequestration, receivership, dissolution, liquidation or statutory management of any person, partnership, trust or company indebted to the Debtor and to receive dividends and to accede to trust deeds for creditors of any such person;
- n. to obtain the benefit of any agreement entered into by the Debtor (including, without limitation, by specific performance), whether or not the agreement is entered into in the exercise of the rights, powers and remedies conferred by these Standard Security Terms and to assent to any modification of any contract or arrangement which may be subsisting in respect of the Debtor's business or the Secured Property;
- o. to establish, incorporate or promote any Subsidiary of the Debtor and to subscribe for, purchase or otherwise acquire, and dispose of, any shares or stock of whatever classes or descriptions in any such Subsidiary;
- p. to borrow or raise from any person (including the Secured Party), in the name and on behalf of the Debtor or otherwise, money required from time to time for any of the purposes mentioned in this clause and to secure money borrowed or raised by mortgage or charge over the Secured Property ranking in priority to, equally with or after these Standard Security Terms;
- q. to employ or engage persons (including employees of the receiver and consultants and professional advisers) in connection with the powers conferred on the receiver by this clause at such remuneration and on such terms as the receiver shall think fit;
- r. to delegate with the consent of the Secured Party to any person or persons by way of power of attorney or other instrument all or any of the powers and discretions vested in the receiver by these Standard Security Terms or by law, including this power of delegation, for any period and to remove and discharge such delegate or delegates and appoint another or others;
- s. to exercise the powers and discretions vested in the receiver by virtue of these Standard Security Terms or by law alone or in conjunction with any receiver appointed by the holder of any other security or charge issued by the Debtor;
- t. to do or cause to be done anything to protect or enforce these Standard Security Terms or to recover the Secured Moneys or which the receiver may reasonably consider to be in the interests of either the Debtor or the Secured Party;
- u. generally to do or cause to be done such acts, matters and things affecting any business of the Debtor and the Secured Property without limitation as the receiver might do or cause to be done if the receiver had the absolute beneficial ownership of the Secured Property and carried on the business of the Debtor for the receiver's own benefit, without being answerable for any loss or damage; and

- v. to exercise fully all powers given or contemplated by the Receivership Act 1993, the Companies Act 1993 or any other Act or rule at law, whether or not these Standard Security Terms expressly does so, and to do so in priority to any rights given by the Companies Act 1993 to any liquidator of the Debtor.
- 7.10 **Receiver's Remuneration:** The remuneration of a receiver may be fixed by the Secured Party and such remuneration is payable by the Debtor and is to form part of the Secured Moneys and secured by the Secured Property.
- 7.11 **Application of moneys received:** All money arising from the exercise of the enforcement rights of a receiver or the Secured Party, and all other money received by a receiver or the Secured Party once these Standard Security Terms have become enforceable, is to be applied, subject to any claim ranking in priority to the Secured Moneys, in the following order of priority:
- a. all costs and expenses (including taxes and legal fees on a solicitor and own client basis) sustained or incurred by a receiver or the Secured Party in connection with, or as a result of, the exercise of their respective rights (including the remuneration of a receiver) under the Transaction Documents in the order determined from time to time by a receiver or the Secured Party;
 - b. all other amounts due to the Secured Party in its capacity as such (including all remuneration payable to the Secured Party);
 - c. in or towards payment to the Secured Party of the Secured Moneys;
 - d. any surplus to those entitled thereto whether by virtue of section 117 of the PPSA, any other statute or otherwise at law;
 - e. if any Secured Moneys are contingently owing or not yet owing at the time of any application of money under this clause, the Secured Party may set aside a sum which is equal to all or part of that contingent indebtedness. Any amount so set aside shall be held by the Secured Party and applied in the following manner:
 - i. whenever any such liability becomes an absolute and ascertained liability the Secured Party shall apply the retained amount towards the amount of such absolute and ascertained liability (or the proper proportion of it as appropriate); and
 - ii. whenever any of the amount so set aside is no longer required for such purposes then it shall become available for distribution and payment as otherwise provided in this clause;

and the Debtor waives any rights under sections 117 and 119 of PPSA, to the extent that those rights might differ (if at all) from the requirements of this clause
- 7.12 **Right to redeem:** The Debtor shall not be entitled to redeem any Secured Property that is subject to these Standard Security Terms at any time prior to sale of that Secured Property, otherwise than by payment of all Secured Moneys in full in any applicable manner permitted, and subject to any applicable conditions required by any relevant Transaction Document or other documents pursuant to which the same may be payable.
- 7.13 **No liability of Secured Party or receiver to account:**
- a. **Proceeds of sale:** If the Secured Party or a receiver sells the Secured Property of the Debtor or any part thereof pursuant to these Standard Security Terms or otherwise, then the Secured Party or receiver shall be accountable for only so much of any purchase money as it actually receives.
 - b. **Not liable as mortgagee in possession:** Neither the Secured Party nor a receiver shall by reason of entering into possession of any Secured Property be liable:
 - i. to account as mortgagee in possession or for anything except actual receipts; or
 - ii. for any loss upon realisation of the Secured Property; or
 - iii. for any accidents occurring in the operations carried on, or for any negligence, default or omission for which a mortgagee in possession might be held liable; and

the Secured Party or a receiver may at any time give up possession of any Secured Property.
 - c. **No liability:** The Secured Party does not incur any liability or undertake any obligation of the Debtor in respect of the Secured Property by virtue of these Standard Security Terms or any Security Interest created under these Standard Security Terms or any Transaction Document.
 - d. **Indemnity:** The Debtor irrevocably and unconditionally indemnifies the Secured Party and each receiver on demand to the fullest extent permitted by law, and the Secured Party and any receiver shall be entitled to be so indemnified out of the Secured Property and any proceeds of sale of the Secured Property, against any cost, loss, expense or liability sustained or incurred by them in connection with:
 - i. the exercise, purported exercise or non-exercise of their respective rights, powers and remedies;
 - ii. the occurrence of any Enforcement Event;
 - iii. any defect in the Debtor's rights to the Secured Property;
 - iv. any claim, demand, action or legal proceeding made or taken by any person (including the Debtor) against the Secured Party or a receiver that in any way relates to any of the Secured Property (including any legal costs incurred by the Secured Party or a receiver (on a solicitor and own client basis) in defending such claim, demand, action or legal proceeding).
- 7.14 **No marshalling:** Each Obligor waives any right to demand that the Secured Party marshal any Security, other security, assets or funds available to it for payment of the Secured Moneys.
- 7.15 **Third party protection:** No party to any Dealing (as defined below) and no person asked to register a Dealing is bound to enquire:
- a. whether an Enforcement Event has occurred, or whether these Standard Security Terms have become enforceable;
 - b. whether a person who is, or purports or is purported to be, a receiver or Attorney is duly appointed;
 - c. about the amount of Secured Moneys and whether the Secured Moneys is due and payable; or
 - d. in any other way as to the propriety or regularity of the Dealing.

For the protection of any party acting in good faith, other than the Secured Party, receiver or Attorney, to a Dealing or a person registering a Dealing, the Dealing will be taken to be authorised by these Standard Security Terms and will be valid accordingly, even if there is any irregularity or impropriety in the Dealing.

In this clause a "Dealing" is:

- e. any payment or any delivery or handing over of an asset to; or
- f. any acquisition, incurring of any indebtedness, receipt, sale, lease, disposal or other dealing, by,

the Secured Party or any receiver, or Attorney, or any person who purports or is purported to be a receiver or Attorney.

- 7.16 **Compromise of debts and moneys paid in relation to Secured Property:** At any time after the occurrence of an Enforcement Event, the Secured Party or any receiver appointed by the Secured Party may:
- a. receive all moneys paid by way of purchase money, compensation, rental or otherwise in respect of the Secured Property or any part thereof, and such receipt by the Secured Party or receiver shall be effective discharge therefor;
 - b. to the exclusion of the Debtor and notwithstanding anything in law to the contrary, claim, agree upon, compromise, settle or otherwise make effective determination in respect of, any debt, purchase money, rental, compensation or other moneys payable to the Debtor.
- 7.17 **Application of insurance proceeds:** Any moneys recoverable under any insurance policy on the Secured Property of the Debtor or any part thereof shall be applied at the option of the Secured Party in or towards replacement or reinstatement of that Secured Property or in or towards payment of the Secured Moneys.
- 7.18 **Statutory powers and legislation:** The powers conferred on a mortgagee, chargee or holder of a Security Interest by law:
- a. are in addition to the rights, powers, remedies or authorities conferred by these Standard Security Terms or any collateral security;
 - b. (to the extent permitted by law) may be exercised by the Secured Party while an Enforcement Event subsists; and
 - c. are excluded or varied only so far as they are inconsistent with the express terms of a Transaction Document,
- and all legislation that:
- d. lessens or varies or otherwise affects in favour of the Debtor an obligation under these Standard Security Terms or any Transaction Document; or
 - e. delays or otherwise prevents or prejudicially affects the exercise by the Secured Party, a receiver or an Attorney,
- is to the fullest extent permitted by law, deemed to be negated and excluded in its application to these Standard Security Terms or any Transaction Document.
- 7.19 **Waiver of rights by Debtor:** Until the Secured Moneys have been paid in full, each Obligor waives in favour of the Secured Party all rights whatsoever against the Secured Party to the extent necessary to give effect to these Standard Security Terms, and further, no Obligor is entitled to:
- a. be subrogated to the position of the Secured Party;
 - b. claim or receive the benefit of:
 - i. any Transaction Document, Security or other deed or agreement in respect of which the Secured Party has an interest or benefit;
 - ii. any moneys held or received by the Secured Party whether pursuant to any Transaction Document, Security or otherwise;
 - c. exercise any rights (including rights of set-off), or claim any amounts by way of contribution or indemnity from any other guarantor or indemnifier;
 - d. exercise any right, power, authority, discretion or remedy available to the Secured Party by reason of any Transaction Document or Security.
- 8 **Miscellaneous provisions**
- 8.1 **Trustees:** If an Obligor is a Trust:
- a. in exercising the Secured Party's powers under these Standard Security Terms or any Transaction Document, and without limiting its rights against the Debtor the Secured Party shall have full recourse to the Trust property to the extent of the indemnity available to the Obligor with respect to the Trust;
 - b. the Secured Party stands in the Obligor's place with respect to all rights the Obligor has to be indemnified out of the Trust property or by any person (including a Trust beneficiary);
 - c. at any time after the occurrence of an Enforcement Event, the Obligor shall if the Secured Party requests, exercise all its rights of indemnity in relation to the Trust property and all rights it may have against any beneficiary so as to cause payment of the Secured Moneys to the Secured Party.
- 8.2 **Independent Trustees:** If the Obligor is a Trust, any trustee who the Secured Party has agreed in writing is an independent trustee, shall have no personal liability under these Standard Security Terms and the Secured Party will not have recourse to any property of such trustee that is not Trust property. However, such limitation will not apply if the trustee is in wilful breach of trust or has acted negligently or dishonestly or the trustee lacks the power or authority to sign these Standard Security Terms in its capacity as trustee.
- 8.3 **Further assurance:** Whenever the Secured Party requests the Debtor to do anything:
- a. for the purpose of ensuring that the Secured Party has a first ranking Security Interest in any property intended to be Secured Property;
 - b. for the purpose of perfecting any such Security Interests, under PPSA or otherwise;
 - c. for aiding in the execution or exercise of any right, power, remedy or authority conferred by these Standard Security Terms or any collateral security,

the Debtor shall do it immediately at its own cost. Compliance with this clause may include the execution or registering of any other document, agreement or financing statement, the delivery of documents or evidence of title to the Secured Property and the execution and delivery of transfers.

8.4 **Partnerships:** If any Obligor is a partnership:

- a. these Standard Security Terms, and each Security Interest created under them, is not to be discharged, nor the Obligor's obligations to be affected by any change in the composition of the partnership or by its incorporation as a body corporate;
- b. each partner undertakes a separate personal liability for all obligations assumed by the partnership (on a joint basis) under these Standard Security Terms and the Secured Party may have recourse to each partner's personal property as if the Secured Party were a personal creditor of that partner;
- c. a change in the composition of the partnership is not to affect the Secured Party's rights under these Standard Security Terms.

8.5 **Merger:** The right of the Secured Party to sue and recover on any other agreement, security, bill of exchange, draft, promissory note, letter of credit or other negotiable instrument in order to recover the Secured Moneys or any part thereof shall not be deemed to have merged in these Standard Security Terms.

8.6 **Costs and expenses:** The Secured Party, upon giving notice to the Debtor shall be at liberty from time to time without further authority than these Standard Security Terms to debit and charge the account of the Debtor maintained with the Secured Party with all reasonable costs, charges and expenses (including, in particular, legal expenses, insurance premiums and expenses in connection with the appointment of an investigator or receiver under these Standard Security Terms) of and incidental to the Secured Property or these Standard Security Terms or the exercise or attempted exercise of any right, power, authority or remedy conferred on the Secured Party under or by virtue of these Standard Security Terms or by law together with interest on all such moneys at the rate of interest for the time being payable under the Transaction Documents. Such costs, charges and expenses shall be covered by this security created by these Standard Security Terms and form part of the Secured Moneys and shall be payable on demand.

8.7 **Evidence:** Subject to any specific provision of any Transaction Document to a different effect, for all purposes, including legal proceedings, a certificate (not being a demand) signed by an officer of the Secured Party (whose appointment it shall not be necessary to prove) stating all or any of the following:

- a. the amount of the Secured Moneys owing to the Secured Party;
- b. that any amount is owing, payable or repayable to the Secured Party by the Debtor;
- c. the rate of interest applicable to the Secured Moneys pursuant to the relevant Transaction Document;
- d. the nature and amount of any costs or expenses incurred by the Secured Party in connection with the exercise of any right, power, remedy or authority under these Standard Security Terms;
- e. any other matter or thing arising out of or in connection with these Standard Security Terms;

shall, in the absence of manifest error, be conclusive evidence as between each Obligor and the Secured Party of the matters or amounts stated in the certificate.

8.8 **Privacy of information:** The Secured Party is authorised by each Obligor:

- a. to use any information it holds about the Obligor (whether now or in the future) for any purpose in relation to the usual business functions and activities of the Secured Party;
- b. to collect information about the Obligor from any other person for the purpose of carrying out the usual business functions and activities of the Secured Party;
- c. to disclose information about the Obligor to any person who guarantees, or provides insurance, or provides any other credit support, in respect of the Obligor's obligations to the Secured Party, subject to the recipient executing a confidentiality agreement that is enforceable by (without limitation) the Obligor;
- d. to disclose information about the Obligor to any potential assignee or transferee or any other person with whom it may wish to enter into contractual relations in connection with these Standard Security Terms, subject to the recipient executing a confidentiality agreement that is enforceable by (without limitation) the Obligor.

8.9 **Power of attorney:**

- a. **Appointment:** For the purpose of enabling the Secured Party to obtain the full benefit of these Standard Security Terms the Debtor irrevocably appoints the Secured Party and every receiver, severally to be the attorney of the Debtor (an "Attorney").
- b. **Extent of power:** Each Attorney may:
 - i. in the name of the Debtor, as its act and deed, and at its expense in all things, do anything which the Debtor has agreed to do under the provisions of these Standard Security Terms or which, in the Attorney's opinion, is necessary or expedient to give effect to any right, power or remedy conferred on the Secured Party or a receiver by these Standard Security Terms, by law or otherwise (including executing deeds and instituting, conducting and defending legal proceedings);
 - ii. delegate its powers (including this power of delegation) to any person for any period, and revoke a delegation; and
 - iii. exercise or concur in exercising its powers even if the Attorney has a conflict of duty in exercising its powers or has a direct or personal interest in the means or result of that exercise of powers.
- c. **Ratification:** The Debtor hereby ratifies anything done by an Attorney appointed pursuant to clause 8.9a or any delegate in accordance with this clause 8.9b.
- d. **Notice:** In the event that the powers conferred by this clause 8.9 are to be exercised at any time prior to the occurrence of an Enforcement Event, the Secured Party shall use all reasonable endeavours to notify the Debtor of any exercise by an Attorney of its rights under this clause 8.9 before such rights are exercised, and shall, as soon as practicable after such exercise, use all reasonable endeavours to notify the Debtor of the action taken by the Attorney in exercising such rights.

- 8.10 **Waiver and remedies:**
- a. Delay by the Secured Party in exercising all or any of its rights, remedies or powers expressed or implied in these Standard Security Terms, or the partial exercise thereof, shall not operate as a waiver of such rights, remedies or powers or prevent the Secured Party from at any time exercising all or any of such rights, remedies or powers;
 - b. The rights, remedies or powers expressed or implied in these Standard Security Terms are cumulative and not exclusive of any rights, remedies or powers provided at law.
- 8.11 **Suspense account:** In the event of the liquidation of the Debtor, the Debtor authorises the Secured Party:
- a. to prove for all moneys received by any receiver, Attorney or the Secured Party under or by virtue of these Standard Security Terms or any collateral security; and
 - b. to retain and carry to a suspense account to appropriate at the discretion of the Secured Party, any dividend received in the liquidation of the Debtor, and any other moneys received in respect of the Secured Moneys until the Secured Party has been paid the Secured Moneys in full, but on the basis that for so long as any amounts are thus held in any such suspense account, they shall accrue interest at the same rate (if any) as that which the Secured Party is entitled to, and actually does, charge to the Debtor on the relevant Secured Moneys to which the funds would have been applied had they not been paid to the suspense account, to the intent that the Debtor shall ultimately be in the same position as if the relevant amounts had not been thus paid to a suspense account.
- 8.12 **Reinstatement:** Any termination of these Standard Security Terms, or any Security, or the liability of any Obligor under any Transaction Document or these Standard Security Terms, shall be conditional upon no payment made or received under these Standard Security Terms being set aside or avoided for any reason whether by statute or otherwise. If any payment, or Security in respect of the Secured Moneys is set aside or avoided for any reason whatsoever, then:
- a. the relevant payment shall be deemed not to have been made;
 - b. the liabilities and obligations of each Obligor shall be the same as if no payment had been made, notwithstanding that termination has occurred;
 - c. the Security shall be deemed not to have been released; and
 - d. each Obligor shall on demand by the Secured Party take all steps and sign all documents requested by the Secured Party to restore to the Secured Party any Security held by the Secured Party prior to any payment and/or Security being set aside.
- 8.13 **Partial invalidity:** If at any time any provision of any Transaction Document is or becomes illegal, invalid or unenforceable in any respect under the law of any relevant jurisdiction, that illegality, invalidity or unenforceability shall not affect the ability of the Secured Party to enforce the provisions, or as the case may be the remaining provisions, of such Transaction Document, nor shall the legality, validity or enforceability of those provisions under the law of any other jurisdiction in any way be affected or impaired thereby.
- 8.14 **Assignment:** The Secured Party may assign or transfer the whole or any part of its rights or obligations under these Standard Security Terms and any Transaction Document to any other persons without the Debtor's consent and may disclose any information about the Debtor to any potential assignees or transferees on a confidential basis. The Debtor may not assign or transfer any of its rights or obligations under these Standard Security Terms without the Secured Party's prior written consent.
- 8.15 **Notices:**
- a. Any notices given by the Secured Party to the Debtor shall be in writing and given by:
 - i. delivery; or
 - ii. e-mail; or
 - iii. mailing by pre-paid post; or
 - iv. transmission by facsimile.
 - b. Any notice given under these Standard Security Terms may (unless the Debtor has, by written notice to the Secured Party, specified another address) be given to the addresses and facsimile numbers set out in any Transaction Document or such other address or facsimile number of the relevant party as may from time to time be provided by that party.
 - c. Notices given under these Standard Security Terms shall be deemed to have been made or given:
 - i. **Delivery:** In the case of delivery, when received;
 - ii. **E-mail:** In the case of e-mail, when the e-mail enters the information system of the recipient as designated in any Transaction Document or otherwise advised by the recipient, if the time of such entry is on a Business Day during normal business hours in the place of receipt or, if the time of such entry is after normal business hours in the place of receipt, it shall be deemed received at the commencement of the next following Business Day;
 - iii. **Facsimile:** In the case of any facsimile transmission sent on a Business Day during normal business hours in the place of receipt, upon the facsimile machine from which the facsimile was sent producing a transmission report which evidences that the facsimile was sent in its entirety to the facsimile number of the intended recipient notified for the purposes of this clause, or, if the transmission is sent after normal business hours in the place of receipt, it shall then be deemed received at the commencement of the next following Business Day; and
 - iv. **Mail:** In the case of mailing, on the third Business Day after the date of mailing.
- 8.16 **Governing law and jurisdiction:** These Standard Security Terms shall be governed by New Zealand law and the Debtor submits to the non-exclusive jurisdiction of the Courts of New Zealand.
- 9 **Amendments**
- 9.1 These Standard Security Terms may be amended by the Secured Party from time to time in its discretion by giving not less than 20 Business Days' prior notice to the Debtor in accordance with clause 9.2
- 9.2 For the purposes of clause 9.1, notice may be given, at the Secured Party's discretion, by email, fax, post or on the Secured Party's website. Any notice given by email, fax or post shall be given in accordance with clause 8.15.