

# The Treasury

## South Canterbury Finance Limited Information Release

### Release Document

April 2011

[www.treasury.govt.nz/publications/informationreleases/scf](http://www.treasury.govt.nz/publications/informationreleases/scf)

Key to sections of the Official Information Act 1982 under which information has been withheld.

Certain information in this document has been withheld under one or more of the following sections of the Official Information Act, as applicable:

- [1] 9(2)(a) - to protect the privacy of natural persons, including deceased people
- [2] 9(2)(b)(i) - to protect trade secrets
- [3] 9(2)(b)(ii) - to avoid unreasonable prejudice to the commercial position of the person who supplied the information or who is the subject of the information
- [4] 9(2)(ba) - to protect information that is subject to an obligation of confidence, or that was or could be provided under legal compulsion, where making the information available would be likely to prejudice the supply of similar information and it is in the public interest for that information to continue to be supplied
- [5] 9(2)(d) - to avoid prejudice to the substantial economic interests of New Zealand
- [6] 9(2)(g)(i) - to maintain the effective conduct of public affairs through the free and frank expression of opinions
- [7] 9(2)(h) - to maintain legal professional privilege
- [8] 9(2)(i) - to enable the Crown to carry out commercial activities without disadvantage or prejudice.

Where information has been withheld, a numbered reference to the applicable section of the Official Information Act has been made, as listed above. For example, an [8] appearing where information has been withheld in a release document refers to section 9(2)(i).

In preparing this Information Release, the Treasury has considered the public interest considerations in section 9(1) of the Official Information Act.

**From:** [1] @minterellison.co.nz  
**Sent:** Thursday, 22 October 2009 12:28 p.m.  
**To:** Stephen Revill; [1]  
**Cc:** [1]  
**Subject:** Revised Documents  
**Attachments:** DMLIB-#1938405-v2-Treasury\_BFA\_-\_Put\_Option\_Deed.DOC; DMLIB-#1938298-v4-Treasury\_BFA\_-\_Facility\_Agreement.DOC

Dear Stephen and [1]

Please find attached the revised Facility Agreement and Put Option Deed, which include the changes discussed between [1] this morning.

We have not made any changes to the General Security and Guarantee Deed or the Deed of Priority (other than to amend the Crown execution block and the SCF contact people). Accordingly, we do not propose to re-circulate those documents.

[1], please note that the Crown has not yet had an opportunity to review these revised documents, so they remain subject to any comments it may have.

Please contact us if you have any questions.

Regards

[1]

Senior Solicitor

[1]

Minter Ellison Rudd Watts Lawyers 125 The Terrace • Wellington 6011

[1]

[www.minterellison.co.nz](http://www.minterellison.co.nz)

---

-----  
**IMPORTANT:**

This email and any attachments are confidential and may be legally privileged. If you are not the intended recipient, any unauthorised use is expressly prohibited. In such a case, please notify us and remove the email and any attachments from your system.

It is your responsibility to check this email and any attachments for viruses or other harmful code before opening or sending on.

Minter Ellison Rudd Watts collects personal information to provide and market our services. For more information about use, disclosure and access, see our privacy statement at <http://www.minterellison.co.nz>. If you do not wish to receive marketing and promotional material from us please respond to this email with the word "unsubscribe" in the subject line.

-----

Please consider the environment before printing this e-mail

**Draft 2**

22 October 2009

# Facility Agreement

---

Her Majesty the Queen in right of New Zealand acting by  
and through the Minister of Finance (the **Crown**)  
Each entity named in schedule 1 (each a **Guarantor**)  
South Canterbury Finance Limited (the **Borrower**)

MinterEllisonRuddWatts  
LAWYERS

17th Floor, 125 The Terrace, Wellington 1  
TEL +64 4 4965000 FAX +64 4 4965001  
[www.minterellison.co.nz](http://www.minterellison.co.nz)

1938298

# Facility Agreement

<b>Details</b>	<b><u>44</u></b>
<b>Agreed terms</b>	<b><u>55</u></b>
<b>1. Defined terms and interpretation</b>	<b><u>55</u></b>
1.1 Defined terms	<u>55</u>
1.2 Interpretation	<u>99</u>
<b>2. Availability</b>	<b><u>1040</u></b>
2.1 Availability of Loan	<u>1040</u>
2.2 Repayment Date	<u>1040</u>
<b>3. Obtaining and using Drawings</b>	<b><u>1040</u></b>
3.1 Conditions precedent to the Drawing	<u>1040</u>
3.2 Amount and use of Drawing	<u>1040</u>
<b>4. Interest</b>	<b><u>1040</u></b>
<b>5. Repayment</b>	<b><u>1040</u></b>
<b>6. Prepayment</b>	<b><u>1144</u></b>
<b>7. Payment under promissory note</b>	<b><u>1144</u></b>
<b>8. Illegality</b>	<b><u>1144</u></b>
8.1 Suspension or cancellation for illegality	<u>1144</u>
8.2 Prepayment for illegality	<u>1144</u>
<b>9. Fees</b>	<b><u>1144</u></b>
<b>10. Representations and warranties</b>	<b><u>1144</u></b>
10.1 General representations and warranties	<u>1144</u>
10.2 Reliance and survival	<u>1242</u>
<b>11. Undertakings</b>	<b><u>1242</u></b>
11.1 Positive undertakings	<u>1242</u>
11.2 Negative undertakings	<u>1242</u>
<b>12. Events of Default and consequences</b>	<b><u>1343</u></b>
12.1 Events of Default	<u>1343</u>
12.2 Effect of an Event of Default	<u>1444</u>
12.3 Appointment of Attorney	<u>1444</u>
<b>13. Costs, Taxes and general indemnity</b>	<b><u>1444</u></b>
13.1 Costs and expenses	<u>1444</u>
13.2 Costs and expenses of an Obligor	<u>1545</u>
13.3 Taxes, fees and charges	<u>1545</u>
13.4 General indemnity	<u>1545</u>
<b>14. Default interest</b>	<b><u>1646</u></b>
<b>15. Payments</b>	<b><u>1646</u></b>
15.1 Payment requirements	<u>1646</u>

15.2	Deduction or withholding	<a href="#">1646</a>
15.3	Insufficient payments	<a href="#">1646</a>
<b>16.</b>	<b>Assignment and substitution</b>	<b><a href="#">1747</a></b>
16.1	By Obligors	<a href="#">1747</a>
16.2	By Crown	<a href="#">1747</a>
<b>17.</b>	<b>Protection of Crown</b>	<b><a href="#">1747</a></b>
17.1	Crown may set off	<a href="#">1747</a>
17.2	Reinstating avoided transaction	<a href="#">1747</a>
<b>18.</b>	<b>General provisions</b>	<b><a href="#">1747</a></b>
18.1	Term of obligations	<a href="#">1747</a>
18.2	Powers	<a href="#">1747</a>
18.3	Consent and waivers	<a href="#">1848</a>
18.4	Law and legislation	<a href="#">1848</a>
18.5	Severability	<a href="#">1848</a>
18.6	Conflict of provisions	<a href="#">1848</a>
18.7	Counterparts	<a href="#">1848</a>
18.8	Governing law and jurisdiction	<a href="#">1848</a>
	<b>Signing page</b>	<b><a href="#">1919</a></b>
	<b>Schedule 1 – Guarantors</b>	<b><a href="#">2323</a></b>
	<b>Schedule 2 – Conditions precedent items</b>	<b><a href="#">2424</a></b>
	<b>Schedule 3 – Form of drawdown notice</b>	<b><a href="#">2626</a></b>
	<b>Schedule 4 – Form of promissory note</b>	<b><a href="#">2727</a></b>

## Details

---

### Date

### Parties

Name	<b>Her Majesty the Queen in right of New Zealand acting by and through the Minister of Finance</b>
Short name	the <b>Crown</b>
Notice details	1 The Terrace Wellington
Attention	Secretary to The Treasury

Name	<b>South Canterbury Finance Limited</b>
Short name	the <b>Borrower</b>
Notice details	19 Sophia Street Timaru
Attention	<del>f</del> Allan Hubbard <a href="#">Lachie McLeod</a> [1]

### Background

This document sets out the basis on which the Crown agrees to provide to the Borrower a short term bridge loan of ~~N.Z.~~\$60,000,000.

# Agreed terms

## 1. Defined terms and interpretation

### 1.1 Defined terms

In this document:

**Attorney** means an attorney (including a Receiver) appointed under a Transaction Document, and includes any agent or delegate;

**Borrower** means South Canterbury Finance Limited;

**Companies Act** means the *Companies Act 1993*;

**Crown** means Her Majesty the Queen in right of New Zealand acting by and through the Minister of Finance;

**Debenture Trust Deed** means the debenture trust deed, among others, between the Trustee and the Borrower dated 30 June 1995 (as amended from time to time);

**Debt** means any present or future actual or contingent debt or other monetary liability in respect of money borrowed or raised or any financial accommodation;

**Deed of Priority** means the deed of priority, among others, between the Borrower, the Crown and the Trustee dated on or about the date of this document;

**Drawdown Date** means 23 October 2009;

**Drawing** means the amount advanced to the Borrower by the Crown under the Loan and includes any other amounts the Crown pays or provides in connection with the Loan;

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

**Facility Limit** means ~~NZ~~ \$60,000,000;

**Government Agency** means any government or governmental, semi-governmental, administrative, public, regulatory or judicial entity, body, department, commission, agency or authority;

**Group** means each Obligor and each of its wholly-owned subsidiaries;

**Guarantee** means a guarantee, indemnity, letter of credit, legally binding letter of comfort or other obligation of any kind:

- (a) to provide funds (whether by the advance or payment of money, the purchase of or subscription for shares or other securities, the purchase of assets or services, or otherwise) for the payment or discharge of; or
- (b) to indemnify any person against the consequences of default in the payment of; or
- (c) to be responsible for,

an obligation or monetary liability of another person or the assumption of any responsibility or obligation in respect of the solvency or financial condition of another person;

**Guarantor** means each entity named in schedule 1;

**Comment [SR1]:** What about the 75% sub that is part of the guaranteeing subs under the Trust Deed – the name escapes me but Hugh will know. It is mentioned in the prospectus as being a 75% sub

**Insolvency Event** means, in respect of a person, any of the following occurring:

- (a) it is taken or admits to be unable to pay its debts under section 287 of the Companies Act or suspends making payments on any of its debts [or, by reason of actual or anticipated financial difficulties, commences negotiations after the date of this document with one or more of its creditors with a view to rescheduling any of its indebtedness]; or
- (b) the value of its assets is or becomes less than the value of its liabilities (taking into account contingent and prospective liabilities); or
- (c) a moratorium is declared in respect of any of its indebtedness or other obligations; or
- (d) except with the Crown's consent:
  - (i) it is the subject of a Liquidation, or an order or an application is made for its Liquidation; or
  - (ii) an effective resolution is passed or meeting summoned or convened to consider a resolution for its Liquidation; or
- (e) any corporate action, legal proceedings or other procedure or step is taken in relation to:
  - (i) the suspension of payments, the dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of that person; or
  - (ii) a composition, compromise, assignment or arrangement with any class of creditors of that person; or
  - (iii) the appointment of a liquidator, receiver, administrator or other similar officer in respect of that person or any of its assets; or
  - (iv) the enforcement of any Security over any assets of that person, or
- (f) it is declared at risk pursuant to the *Corporations (Investigation and Management) Act 1989*, or a statutory manager is appointed or a step taken with a view to any such appointment in respect of it under that Act (including a recommendation by any person to the Securities Commission supporting such an appointment); or
- (g) a step is taken under section 318 of the Companies Act to remove it from the register of Companies;

**Comment [SR2]:** Are we deleting the square brackets

**Interest Rate** means, on any date, the OCR plus a margin of [#] per cent.;

**Kerr Interests** means [*specify*];

**Liquidation** means:

- (a) a winding up, dissolution, liquidation, administration, bankruptcy or other proceeding for which a liquidator is appointed, or an analogous or equivalent event or proceeding in any jurisdiction; or
- (b) an arrangement, moratorium, assignment or composition with or for the benefit of creditors generally or any class or group of them;

**Loan** means the loan to be provided by the Crown to the Borrower as described in the "Background" section to this document;

**Loss** means a loss, claim, action, damage, liability, cost, charge, expense, penalty, compensation, fine or outgoing suffered, paid or incurred;



**Material Adverse Effect** means a material adverse effect on:

- (a) the validity or enforceability of all or any part of a Transaction Document; or
- (b) the Crown's rights or remedies under any Transaction Document; or
- (c) the value or marketability of any Secured Property; or
- (d) the ability of an Obligor to observe or perform its obligations under a Transaction Document; or
- (e) the business, operations, property, condition (financial or otherwise) or prospects of an Obligor or the Group;

**Noteholder Standstill Agreement** means the noteholder standstill agreement, among others, between the United States Investors and the Borrower, dated 17 October 2009;

Formatted: Font: Not Bold

**Obligor** means the Borrower and each Guarantor;

**OCR** means the official cash rate specified by the Reserve Bank of New Zealand;

**Outstanding Amount** means, in relation to the Loan, at any time the aggregate principal amount of all the outstanding Drawings under the Loan;

**Permitted Debt** means:

- (a) Debt incurred under the Transaction Documents; or
- (b) Debt to which the Crown consents in writing; or
- (c) Debt disclosed (by reference to the aggregate amount) in the Prospectus, as at the date of the Prospectus;
- (d) Debt incurred by the Borrower in the ordinary course of business by way of the Prospectus; and
- (e)(e) Debt incurred to acquire goods or services on extended terms in the ordinary course of an Obligor's day-to-day trading;

Formatted: Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.2 cm + Tab after: 2.4 cm + Indent at: 2.4 cm

Formatted: Bullets and Numbering

Comment [SR3]: What does "by way of the Prospectus" mean in this context;

**Permitted Security Interest** means:

- (a) the Security;
- (b) the Security Interest granted in favour of the Trustee;
- (c) the Security Interest or Security Interests granted as Prior Charges disclosed (by reference to the aggregate amount) in the Prospectus, as at the date of the Prospectus;
- (d) a Security Interest over any of an Obligor's assets to which the Crown has consented in writing, but does not include a Security Interest to which the Crown has consented on one or more conditions if any of those conditions are not complied with; ~~and~~
- (e)(e) any Security Interest created under any Transaction Document; and
- (f) any other Security Interest existing at the date of this document;

Formatted: Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.2 cm + Tab after: 2.4 cm + Indent at: 2.4 cm

Formatted: Bullets and Numbering

Formatted: Bullets and Numbering

**Power** means any right, power, discretion or remedy of the Crown, a Receiver or an Attorney under any Transaction Document or applicable law;

**PPSA** means the *Personal Property Securities Act 1999*;

**Prior Charge** has the meaning given to that term in the Debenture Trust Deed;

**Prospective Investor** means [New Zealand Credit Fund No. 1 Limited];

**Prospectus** means prospectus number 60 of the Borrower dated 20 October 2009;

Formatted: Font: Not Bold

**Receiver** means a receiver or receivers and manager appointed under a Security;

**Repayment Date** means 27 October 2009;

**Secured Money** means all money and amounts (in any currency) that an Obligor is or may become liable at any time (presently, prospectively or contingently, whether alone or not and in any capacity) to pay to or for the account of the Crown (whether alone or not and in any capacity) under or in connection with a Transaction Document, and includes money and amounts:

- (a) in the nature of principal, interest, fees, costs, charges, expenses, duties, indemnities, Guarantee obligations or damages;
- (b) whether arising or contemplated before or after the date of this document or as a result of the assignment (with or without an Obligor's consent) of any debt, liability or Transaction Document; and
- (c) which a person would be liable to pay but for an Insolvency Event in respect of that person;

**Secured Property** means all property and assets the subject of a Security;

**Security** means the general security and guarantee deed granted by each Obligor in favour of the Crown, dated on or about the date of this document;

**Security Interest** means:

- (a) any mortgage, charge, encumbrance, lien, pledge, finance lease, sale (or lease) and lease-back, sale and repurchase, assignment by way of security, title or retention arrangement or similar interest imposed by statute, or other arrangement of any nature having similar economic effect to any of the foregoing; and
- (b) any present or future right or interest in personal property that is a security interest for the purposes of the PPSA (other than such a security interest referred to in section 17(1)(b) of the PPSA and not included in paragraph (a) of this definition);

**Tax** means any tax, levy, duty, rate, impost or charge imposed, levied or assessed by a Government Agency, and any related penalty, fine, fee or interest, and includes stamp duty, GST and transaction taxes and duties;

**Transaction Document** means:

- (a) this document;
- (b) each Security;
- (c) the Deed of Priority;
- (d) any document that the Borrower and the Crown agree is a "Transaction Document"; and
- (e) any document entered into or given under or in connection with, or for the purpose of amending or novating, any document referred to in a paragraph above;

**Trustee** means Trustees Executors Limited; and

**United States Investors** means:

- (a) ING Life Insurance and Annuity Company;
- (b) ING USA Annuity and Life Insurance Company;
- (c) Relistar Life Insurance Company;

- (d) Security Life of Denver Insurance Company;
- (e) Nationwide Life Insurance Company;
- (f) Nationwide Life and Annuity Insurance Company<sup>4</sup>;
- (g) Aviva Life and Annuity Company;
- (h) Assurity Life Insurance Company; and
- (i) The Northwestern Mutual Life Insurance Company.

## 1.2 Interpretation

In this document:

- (a) headings are for reference only and do not affect interpretation;
- (b) unless stated otherwise, all interest, amounts in the nature of interest (including discount amounts) and fees are to be calculated on a daily basis and a year of 365 days;
- (c) any undertaking, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (d) the singular includes the plural and *vice versa*, a gender includes other genders and different grammatical forms of defined expressions have corresponding meanings;
- (e) an Event of Default or **subsists** until either remedied or waived by the Crown in writing;
- (f) examples and use of the word **including** and similar expressions do not limit what else may be included.

Unless the context requires otherwise, a reference in this document to:

- (g) a party to any document includes that person's successors and permitted substitutes and assigns (including a person substituted by novation);
- (h) an agreement includes any legally enforceable arrangement, understanding, undertaking or representation whether or not in writing;
- (i) a document or agreement includes that document or agreement as novated, altered, amended, supplemented or replaced from time to time;
- (j) any thing includes any part of it and a reference to a group of things or persons includes each thing or person in that group;
- (k) clauses, schedules and annexures are to those in this document, and a reference to this document includes any schedule and annexure;
- (l) a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (m) time is to New Zealand time unless stated otherwise;
- (n) legislation or other law or a provision of them includes regulations and other instruments under them, and any consolidation, amendment, re-enactment or replacement of them;
- (o) **consent** means and includes all consents, authorisations, approvals, certificates, rulings, notices and documents applied for, required, given, granted, provided or issued in the exercise (or intended or purported exercise) of a power, duty, function, discretion or authorisation under or pursuant to any Regulatory Controls, or by any Authority, and also include any related conditions, and the terms applying to related conditions;

- (p) **dollars** and **\$** means the lawful currency of New Zealand; and
- (q) **property** or an **asset** includes any real or personal, present or future, tangible or intangible property or asset and any right, interest, revenue or benefit in, under or derived from the property or asset.

## 2. Availability

### 2.1 Availability of Loan

Subject to this document, the Crown agrees to make the Loan available to the Borrower on 23 October 2009.

### 2.2 Repayment Date

On the Repayment Date, the Borrower must pay to the Crown all of the Outstanding Amount and any other amount due and payable under this document.

## 3. Obtaining and using Drawings

### 3.1 Conditions precedent to the Drawing

The Crown's obligation to provide the Drawing is subject to the conditions precedent that:

- (a) the Crown has received each item specified in schedule 2 in form and substance satisfactory to it before the Drawdown Date;
- (b) the Crown is satisfied that no Event of Default subsists, or will result from, the Drawing being provided;
- ~~(c)~~ each representation and warranty by an Obligor in the Transaction Documents is true and correct in all material respects and not misleading in any material respect as at the Drawdown Date;
- ~~(e)~~(d) the Crown has received an irrevocable drawdown notice (in the form set out in schedule 3 from the Borrower); and
- ~~(f)~~(e) all fees and expenses due and payable to the Crown under the Transaction Documents as at the Drawdown Date have been paid.

### 3.2 Amount and use of Drawing

The Borrower must make only one Drawing (equal to the Facility Limit) under the Loan and must use the Drawing only to meet repayment obligations to the United States Investors owed under the Noteholder Standstill Agreement.

## 4. Interest

Interest in respect of the Loan is payable at the Interest Rate, accrues daily on the principal amount of the Drawing, and is calculated on the actual number of days elapsed and on the basis of a 365-day year.

## 5. Repayment

On the Repayment Date, the Borrower must repay to the Crown all of the Outstanding Amount, together with all accrued interest and any other amounts due and payable in respect of the Loan, unless the Crown exercises its right to require earlier repayment.

## 6. Prepayment

The Borrower may prepay all or part of the Outstanding Amount at any time without penalty, provided that, if the prepayment is of all of the Outstanding Amount, the Borrower must also pay to the Crown all accrued but unpaid interest outstanding on the date of prepayment.

## 7. Payment under promissory note

Each party acknowledges and agrees that any payment made to the Crown under the promissory note referred to in item 7 of schedule 2 will be applied in reduction of a corresponding amount of the Borrower's Debt to the Crown under the Loan as follows:

- (a) first, on account of accrued but unpaid interest in respect of the Loan; and
- (b) secondly, on account of the Outstanding Amount.

Formatted: Bullets and Numbering

Formatted: ME Normal + Indent, None, Line spacing: single

Formatted: Bullets and Numbering

## 7.8. Illegality

### 7.8.1 Suspension or cancellation for illegality

If the Crown determines that it is or will be unlawful or not possible in practice (**Illegality**) for the Crown to provide, fund or maintain the Loan or otherwise observe or perform its obligations under any Transaction Document, then the Crown may, by notice to the Borrower, suspend or cancel some or all of its obligations under the Transaction Documents to the extent necessary to prevent, remedy or avoid the Illegality.

### 7.8.2 Prepayment for illegality

If the Crown's notice to the Borrower requires the Borrower to prepay all or part of the Outstanding Amount, the Borrower must immediately:

- (a) make that prepayment; and
- (b) pay all accrued interest and other amounts payable by the Borrower to the Crown under the Transaction Documents (including under clause 13.4).

## 8.9. Fees

The Borrower must pay the Crown a non-refundable establishment fee of \$[#] on the Drawdown Date.

## 9.10. Representations and warranties

### 9.10.1 General representations and warranties

Each Obligor represents and warrants to the Crown that:

- (a) neither it nor any of its assets is immune from suit or execution;
- (b) each Transaction Document to which it is party is (subject to equitable principles generally affecting creditors' rights and, in the case of the Transaction Documents, subject to applicable registration) valid, binding and enforceable against it in accordance with the terms of those documents, and the transactions contemplated by those documents are in its best interests and were entered into for its benefit;
- (c) each Security (other than any Guarantee) creates an effective Security Interest which is a Prior Charge for the purposes of the Debenture Trust Deed;

- (d) its execution and performance of each Transaction Document to which it is party do not and will not:
- (i) conflict with or contravene any law, judgment, ruling, order, document or agreement applying to it or its assets, its constituent documents (if it is a company) or any Authorisation; or
  - (ii) result in a Security Interest (other than a Permitted Security Interest) being created on, any of its assets; or
  - (iii) result in a default under any agreement relating to any of its Debt; or
  - (iv) exceed any limitation on, or constitute an abuse of the powers of its directors;

~~(e) it is the sole legal and beneficial owner of the Secured Property the subject of a Security (other than a Guarantee) executed by it;~~

Formatted: Bullets and Numbering

Comment [SR4]: Why deleted?

~~(e)~~ (e) it has fully disclosed in writing to the Crown all facts, documents or other information known to it which:

- (i) is material to the assessment of the nature and amount of risk undertaken by the Crown in entering into and performing the Transaction Documents; or
- (ii) could reasonably be expected to have a Material Adverse Effect; and

~~(e)~~ (f) its assets are not subject to any Security Interests other than Permitted Security Interests.

## **9.210.2 Reliance and survival**

Each Obligor acknowledges that:

- (a) the Crown has entered into the Transaction Documents in reliance on the representations and warranties in this clause 10; and
- (b) those representations and warranties survive execution and delivery of the Transaction Documents and the provision of financial accommodation under them.

## **10.11. Undertakings**

### **10.11.1 Positive undertakings**

Each Obligor must ensure:

- (a) that the Crown is given promptly, whatever other information the Crown requests from time to time about the business, operations, financial condition or state of affairs of the Group, an Obligor or the Secured Property; and
- (b) as its own cost, promptly execute and deliver to the Crown all documents, and do anything else, that the Crown deems appropriate to secure to the Crown the full benefit of its rights under this document or any other Transaction Document.

### **10.11.2 Negative undertakings**

Each Obligor must not, without first obtaining the Crown's written consent:

- (a) create or permit to exist a Security Interest, other than a Permitted Security Interest, over any of its assets or attempt or agree to do so (or if the creation of a Security Interest cannot by law be restricted, create such a Security Interest over any Secured Property without the holder of the Security Interest first entering into a deed of priority in form and substance acceptable to the Crown);

- (b) acquire an asset which is subject to a Security Interest (other than a Permitted Security Interest) or which becomes the subject of such a Security Interest on its acquisition;
- (c) incur any Debt (including giving a Guarantee) other than Permitted Debt; or
- (d) sell, lease or otherwise dispose of any Secured Property.

## **11.12. Events of Default and consequences**

### **11.12.1 Events of Default**

An Event of Default occurs if any one or more of the following occurs (whether or not within an Obligor's control):

- (a) an Obligor fails to pay any of the Secured Money payable by it, in the manner and in the currency required, when due; or
- (b) an Obligor fails to comply with any obligation under a Transaction Document; or
- (c) a statement, representation or warranty made by or on behalf of an Obligor in a Transaction Document, or in a document provided in connection with a Transaction Document, is untrue, incorrect or misleading in a material respect when made or repeated; or
- (d) Debt of an Obligor:
  - (i) becomes due and payable, or capable of being declared due and payable, before its due date; or
  - (ii) is not paid when due or within any applicable grace period, and the amount of the Debt exceeds ~~N.Z.~~\$1,000,000 or its equivalent; or
- (e) an event of default (however described) occurs under any Transaction Document; or
- (f) any judgment or series of judgments arising from the same or similar circumstances is obtained against an Obligor for an amount exceeding ~~N.Z.~~\$1,000,000 or its equivalent; or
- (g) any Security over an asset or property of an Obligor is enforced or becomes enforceable; or
- (h) any Guarantee is enforced or becomes enforceable against an Obligor; or
- (i) an Insolvency Event occurs in respect of an Obligor; or
- (j) execution or distress takes place or is attempted or an order to execute a judgment (however described) for an amount exceeding ~~N.Z.~~\$1,000,000 is made against an Obligor or any of its assets; or
- (k) an Obligor that is a company stops or threatens to stop carrying on its business or a material part of it or substantially changes the nature of its business without the Crown's consent; or
- (l)
  - (i) all or part of any Transaction Document is terminated, void, avoided, illegal, invalid, unenforceable, repudiated or limited in its effect; or
  - (ii) any party has the right to terminate, rescind or avoid all or part of any Transaction Document, or any party other than the Crown so alleges; or

- (m) the Prospective Investor does not fulfil its obligations under its commitment to subscribe bonds issued by the Borrower on or before the Repayment Date; and
- (n) an event or series of events (whether related or not) occurs which would have or be likely to have a Material Adverse Effect.

#### **41.212.2 Effect of an Event of Default**

Upon or at any time after the occurrence of an Event of Default, the Crown may (in addition to the Crown's rights under any of the Loan's terms and conditions) take all or any of the following steps:

- (a) declare that the Secured Money is immediately due and payable, in which case the Borrower must immediately pay to the Crown the Secured Money;
- (b) declare that all or part of the Outstanding Amount of the Loan is payable on demand, in which case the Borrower must pay those amounts to the Crown on demand;
- (c) terminate the Crown's obligations specified in the Notice with immediate effect; and
- (d) cancel the Loan with immediate effect.

#### **41.312.3 Appointment of Attorney**

Each Obligor for valuable consideration, to secure the performance of its obligations under each Transaction Document, irrevocably appoints the Crown and each authorised representative of the Crown separately as its attorney to do any or all of the following on its behalf and in its or the attorney's name after an Event of Default occurs:

- (a) prove in the Liquidation of any Obligor;
- (b) anything which it must do under a Transaction Document or under law in connection with a Transaction Document;
- (c) anything which the Attorney considers necessary or expedient to give effect to a Power or exercise of a Power, or to perfect any Transaction Document, including by signing any document for that purpose; and
- (d) anything which an Attorney is expressly empowered to do under a Transaction Document on its behalf.

Each Obligor agrees to ratify anything done by its Attorney under this power of attorney. An Attorney may delegate its powers (including the power to delegate) to any person for any period and may revoke the delegation.

### **42.13. Costs, Taxes and general indemnity**

#### **42.413.1 Costs and expenses**

The Obligors must (on a joint and several basis) pay or reimburse on demand all costs and expenses of the Crown, a Receiver and an Attorney (and any of their respective officers, employees and agents) in connection with:

- (a) the negotiation, preparation, execution, delivery, registration and completion (including review of conditions precedent material) of, payment of Taxes on, and obtaining financial accommodation under, any Transaction Document;
- (b) a variation, release or discharge of any Transaction Document;



- (c) the registration (where applicable) of financing statements and financing change statements in the Personal Property Securities Register;
- (d) the Crown's entering into any contracts or arrangements in the exercise of its rights;
- (e) giving a consent or approval or waiving a requirement in connection with a Transaction Document;
- (f) exercising, enforcing or protecting a Power, or attempting to do so;
- (g) obtaining or receiving payment of, and distributing, any Secured Money;
- (h) obtaining or procuring performance or satisfaction of an Obligor's obligations under any Transaction Document;
- (i) an Event of Default; and
- (j) obtaining professional advice from a person or consultant about any matter of concern to the Crown, a Receiver or an Attorney in connection with a Transaction Document or the Secured Property.

These costs and expenses include any legal costs and expenses (on a full indemnity basis) ~~and any professional consultant's fees and the costs (calculated on a time employed basis) of in-house legal counsel.~~

**Comment [SR5]:** Deductions of our fees from the advance?

#### **12-213.2 Costs and expenses of an Obligor**

Each Obligor will pay its own costs and expenses in connection with the Transaction Documents.

#### **12-313.3 Taxes, fees and charges**

The Obligors must (on a joint and several basis) pay all:

- (a) Taxes, fees and charges in connection with any Transaction Document or any payment, receipt, supply or other transaction carried out pursuant to, or contemplated by, any Transaction Document; and
- (b) fines and penalties for late payment or non-payment of those amounts.

The Obligors must (on a joint and several basis) pay or reimburse the Crown on demand for all such amounts which are payable or which the Crown determines in good faith to be payable.

#### **12-413.4 General indemnity**

The Obligors indemnify the Crown, each Receiver and any Attorney (and their respective officers, employees and agents) against, and must (on a joint and several basis) pay to the Crown on demand amounts equal to, any Loss arising as a result of or in connection with:

- (a) an Event of Default;
- (b) any payment required under a Transaction Document not being made on its due date;
- (c) the exercise or attempted exercise of any Power; and
- (d) the Crown relying on information supplied by or on behalf of an Obligor which proves to be a misrepresentation or to be misleading or deceptive (including by omission of other information),

including any legal costs and expenses (on a full indemnity basis) and any professional consultant's fees in connection with the above. The Crown's certificate of loss is to be conclusive in the absence of manifest error.

## **13.14. Default interest**

Default interest accrues daily on each unpaid amount of the Secured Money which is due and payable by an Obligor (including on unpaid interest under this clause):

- (a) from and including the due date (or, for an amount payable by reimbursement or indemnity, any earlier date the amount was incurred), up to but excluding the date of actual payment; and
- (b) at the rate determined by the Crown as [#] per cent. above the Interest Rate.

Each Obligor must pay to the Crown accrued default interest under this clause 14 on demand.

## **14.15. Payments**

### **14.15.1 Payment requirements**

All payments by an Obligor under a Transaction Document must be made:

- (a) by [12:00 noon] on the due date;
- (b) to the Crown by payment to an account nominated by the Crown or as the Crown otherwise directs;
- (c) in dollars, in immediately available funds and in full without set-off, counterclaim or, subject to clause 15.2, deduction or withholding; and
- (d) if no date for payment is specified in the relevant Transaction Document, on demand by the Crown.

### **14.215.2 Deduction or withholding**

If an Obligor is required by law to deduct or withhold Taxes from a payment to the Crown under a Transaction Document, it must:

- (a) make that deduction or withholding (and any further deductions or withholdings contemplated by paragraph (b) below), pay to the appropriate Government Agency an amount equal to the full amount deducted and/or withheld as required by law and give the Crown the original receipt for the payment; and
- (b) pay additional amounts to the Crown which will result in the Crown receiving at the time the payment is due (after deduction or withholding of any Taxes in respect of any additional amount) the full amount which the Crown would have received if no deduction or withholding had been required.

### **14.315.3 Insufficient payments**

- (a) If an amount received by the Crown is insufficient to discharge the obligations of an Obligor to the Crown at that time, the Crown may apply that amount to reduce the Secured Money in the order, and to satisfy whatever part of the Secured Money, the Crown sees fit.
- (b) The application will override any appropriation made by an Obligor.

## **15.16.** Assignment and substitution

### **15.16.1** By Obligors

No Obligor may assign, transfer or otherwise deal with its rights, interests or obligations under any Transaction document.

### **15.216.2** By Crown

The Crown may assign or transfer all or any of its rights or obligations under the Transaction Documents at any time and may disclose any information about the Obligors (or any of them) to any potential transferee.

## **16.17.** Protection of Crown

### **16.17.1** Crown may set off

- (a) At any time after an Event of Default, the Crown may, without any demand or notice, set off and apply indebtedness it owes to an Obligor (whatever the currency) against any money owing to it by an Obligor under any Transaction Document, whether or not the amount owed by the Crown or an Obligor is immediately payable or is owed alone or with any other person.
- (b) Each Obligor irrevocably authorises the Crown to do anything necessary (including to sign any document and effect appropriate currency exchanges) for that purpose.

### **16.217.2** Reinstating avoided transaction

Each Obligor agrees that if a payment or other transaction relating to the Secured Money is void, voidable, unenforceable or defective for any reason or a related claim is upheld, conceded or settled (each an **Avoidance**), then even if the Crown knew or should have known of the Avoidance:

- (a) each Power and an Obligor's liability under each Transaction Document will be what it would have been, and will continue, as if the Avoidance had not occurred; and
- (b) it will immediately execute and do anything necessary or required by the Crown to restore the Crown to its position immediately before the Avoidance (including reinstating any Transaction Document).

This clause survives any termination or full or partial discharge or release of any Transaction Document.

## **17.18.** General provisions

### **17.18.1** Term of obligations

Each Obligor agrees that its obligations in the Transaction Documents continue from the date of the relevant document until, subject to clause 17.2, the Secured Money is fully and finally repaid.

### **17.218.2** Powers

- (a) Powers under the Transaction Documents are cumulative and do not limit or exclude Powers under law.
- (b) Full or partial exercise of a Power does not prevent a further exercise of that or any other Power.
- (c) No failure or delay in exercising a Power operates as a waiver or representation.

- (d) Unless expressly provided in a Transaction Document, no Power or Transaction Document merges in, limits or excludes any other Power, Transaction Document or judgment which the Crown (or anyone claiming through it) may have or obtain.

#### **47.318.3 Consent and waivers**

- (a) A consent or waiver by the Crown in relation to a Transaction Document is effective only if in writing.
- (b) If given subject to conditions, the consent or waiver only takes effect when the conditions are complied with to the Crown's satisfaction.

#### **47.418.4 Law and legislation**

To the extent permitted by law:

- (a) each Transaction Document prevails to the extent of inconsistency with any law; and
- (b) any present or future legislation operating to reduce an Obligor's obligations under a Transaction Document or the effectiveness of the Powers is excluded.

#### **47.518.5 Severability**

- (a) A provision of a Transaction Document that is illegal, invalid or unenforceable in a jurisdiction is ineffective in that jurisdiction to the extent of the illegality, invalidity or unenforceability.
- (b) This does not affect the validity or enforceability of that provision in any other jurisdiction, nor the remainder of that Transaction Document in any jurisdiction.

#### **47.618.6 Conflict of provisions**

If there is any conflict between the terms of this document and the terms of any other Transaction Document, the Crown will (in its sole discretion) determine which provision will prevail.

#### **47.718.7 Counterparts**

This document may be executed in any number of counterparts (including facsimile counterparts), all of which, taken together, will constitute one and the same instrument.

#### **47.818.8 Governing law and jurisdiction**

- (a) This document is governed by the laws of New Zealand.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New Zealand (and any court of appeal) and waives any right to object to an action being brought in those courts, including on the basis of an inconvenient forum or those courts not having jurisdiction.

# Signing page

EXECUTED as an agreement

## CROWN

HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND acting by and through ~~John Whitehead for and on behalf of the the Honourable Simon William English~~, Minister of Finance in the presence of:

\_\_\_\_\_  
~~Signature of John Whitehead~~~~The Honourable Simon William English~~

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Occupation of witness

\_\_\_\_\_  
City/town of residence

## BORROWER

SOUTH CANTERBURY FINANCE LIMITED by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

## GUARANTORS

BELFAST PARK LIMITED by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

**Formatted:** Font: Times New Roman, Bold

**BRAEBROOK PROPERTIES LIMITED** by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

**FACE FINANCE LIMITED** by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

**FAIRFIELD FINANCE LIMITED** by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

**FLEXI LEASE LIMITED** by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

**GALWAY PARK LIMITED** by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

**HELICOPTER NOMINEES LIMITED** by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

**HORNCHURCH LIMITED** by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

**RENTAL CARS LIMITED** by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

**SCFG SYSTEMS LIMITED** by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

**SOPHIA INVESTMENTS LIMITED** by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

**SOUTHBURY INSURANCE LIMITED** by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

**TYRONE ESTATES LIMITED** by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director



## Schedule 1 – Guarantors

---

Belfast Park Limited

Braebrook Properties Limited

Face Finance Limited

Fairfield Finance Limited

Flexi Lease Limited

Galway Park Limited

Helicopter Nominees Limited

Hornchurch Limited

Rental Cars Limited

SCFG Systems Limited

Sophia Investments Limited

Southbury Insurance Limited

Tyrone Estates Limited

## Schedule 2 – Conditions precedent items

The following is the list of items referred to in clause 3.1(a).

### Items to be provided to Crown:

Number	Item	Description	Form
1.	Director's certificates	<p>(a) A directors' certificate for each Obligor that is a company in a form acceptable to the Crown properly completed and with all required attachments, duly signed by two directors and dated no earlier than the Drawdown Date.</p> <p>(b) A directors' certificate for the Borrower addressed to the Crown relating to the ability of the Borrower to grant a Prior Charge under the Debenture Trust Deed in a form acceptable to the Crown properly completed and with all required attachments, duly signed by a director and dated no earlier than the Drawdown Date.</p> <p>(c) A directors' certificate for the Borrower addressed to the Trustee relating to the ability of the Borrower to grant a Prior Charge under the Debenture Trust Deed in a form acceptable to the Crown properly completed and with all required attachments, duly signed by a director and dated no earlier than the Drawdown Date.</p>	<i>Original</i>
2.	Transaction Documents	Each Transaction Document required by the Crown, properly executed by all parties to it (other than the Crown) and, where applicable in registrable form, together with all things (including documents) necessary to register the Transaction Document where relevant.	<i>Original</i>
3.	Put agreement	The put agreement between the Kerr Interests and the Crown required by the Crown, executed by the Kerr Interests.	<i>Original</i>
4.	Legal opinion	<p>(a) A legal opinion acceptable to, and addressed to, the Crown from Bell Gully in relation to the enforceability of the Transaction Documents.</p> <p>(b) A legal opinion acceptable to, and addressed to, the Crown from Bell Gully relating to the Noteholder Standstill Deed dated 17 October 2009.</p> <p>(c) [A legal opinion acceptable to, and addressed to, the Crown from Bell Gully relating to the registration of the Borrower's prospectus at the Companies Office.]</p> <p>(d) [A legal opinion acceptable to, and addressed to, the Crown from Bell Gully relating to the matters required to be attended to for the Security Interest created by the Security to take effect as a Prior Charge under the Debenture Trust Deed.]</p>	<i>Original</i>

5.	Prospective Investor Commitment	Evidence of the Prospective Investor's unconditional and irrevocable commitment to subscribe not less than <del>N.Z.</del> \$75,000,000 bonds to be issued by the Borrower.	
6.	Consent of U.S. Investors	Evidence of the consent of the United States Investors to the repayment of the Loan from the proceeds of the Prospective Investor's investment in the Borrower, notwithstanding clauses 4.3(b) and (d) of the Noteholder Standstill <del>Agreement</del> <del>Deed dated 17 October 2009</del> .	
7.	Promissory note	The Crown has received a promissory note in, or substantially in, the form set out in schedule <del>43</del> , duly completed and executed by the Borrower.	<i>Original</i>

### Other items:

Item	Description
Legal costs and expenses and fees	Evidence of payment of: <ul style="list-style-type: none"> <li>(a) the Crown's legal costs and expenses in relation to negotiation and preparation of, and the Crown's entry into, the Transaction Documents; and</li> <li>(b) the facility arrangement fee payable to the Crown.</li> </ul>
Use of Drawing	The Crown being satisfied that the Drawing will be applied in repayment of the Borrower's obligations to the United States Investors.
[Prior Charge	The Crown is satisfied that the Security is a Prior Charge for the purposes of the Debenture Trust Deed and that the Borrower is able to grant that Prior Charge.]
Other conditions	Such other matters as the Crown or the Crown's solicitors may reasonably require.

## Schedule 3 – Form of drawdown notice

To: Her Majesty the Queen in right of New Zealand acting by and through the Minister of Finance  
From: South Canterbury Finance Limited

Formatted: Font: Times New Roman

Formatted: Left, Indent: Left: -0.02 cm, Hanging: 1.6 cm

Formatted: Left

### Drawdown notice under Facility Agreement

Please provide \$60,000,000 on 23 October 2009. The drawing will be repaid by us on the Repayment Date.

Please pay the proceeds of the Drawing to [name of payee, bank account, reference details].

We confirm that as at the date of this notice:

- (a) all the representations and warranties contained in the facility agreement dated on or about the date of this notice (the **Agreement**) have been complied with and would be correct in all respects if repeated today;
- (b) all of the undertakings and covenants contained in the Agreement are being complied with; and
- (c) no event which is an Event of Default has occurred and is continuing unwaived by the Crown whether or not remedied or will occur as a result of making this drawing.

Terms defined in the Facility Agreement and not otherwise defined in this notice have the same meaning when used in this notice.

### DATED:

SIGNED for and on behalf of  
SOUTH CANTERBURY FINANCE  
LIMITED by:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director

Formatted: Bullets and Numbering

# ~~Schedule 3~~ Schedule 4 – Form of promissory note

## Promissory Note

Formatted: Font: 15 pt

Formatted: Font: 12 pt

Holder: Her Majesty the Queen in right of New Zealand acting by and through the Minister of Finance  
 Issuer: South Canterbury Finance Limited  
 Amount: \$60,000,000 plus interest accrued under and in accordance with the Facility Agreement

**THIS IS TO CERTIFY THAT** the Holder is the holder of this promissory note issued subject to the conditions contained in this note.

For value received, the Issuer promises to pay to the Holder the amount specified above in New Zealand dollars, together with any interest accrued as provided below, upon presentation and surrender of the signed original of this note to the Issuer.

This note may be transferred by the Holder to any other person without the consent of the Issuer.

All payments in respect of this note will be made without set-off, counterclaim, fees, liabilities or similar deductions, and free and clear of, and, except as required by law, without deduction or withholding for or on account of taxes.

The Holder and the Issuer each acknowledge and agree that any payment on account of principal and/or interest made by the Issuer to the Holder under the Facility Agreement will reduce the amount owing under this note by a corresponding amount.

In this note **Facility Agreement** means the facility agreement, among others, between the Holder and the Issuer, dated on or about the date of this note.

This note is governed by, and will be construed in accordance with, New Zealand law.

**DATED:**

**SIGNED** for and on behalf of  
**SOUTH CANTERBURY FINANCE LIMITED** by:

\_\_\_\_\_

Signature of Director

\_\_\_\_\_

Name of Director

**Draft 2**

22 October 2009

# Put Option Deed

---

Her Majesty the Queen in right of New Zealand acting by  
and through the Minister of Finance (**Crown**)

[1]

(**Investor**)

MinterEllisonRuddWatts

LAWYERS

17th Floor, 125 The Terrace, Wellington 6011  
TEL + 64 4 4855000 FAX + 64 4 4855001  
www.minterellison.co.nz

# Put Option Deed

---

<b>Details</b>	<b><u>3</u></b>
<b>Agreed terms</b>	<b><u>44</u></b>
<b>1. Defined terms and interpretation</b>	<b><u>44</u></b>
1.1 Defined terms	<u>44</u>
1.2 Interpretation	<u>44</u>
1.3 Headings	<u>55</u>
<b>2. Put Option</b>	<b><u>55</u></b>
2.1 Put Option	<u>55</u>
2.2 Investor's obligations on Exercise Date	<u>55</u>
2.3 Crown's obligations on the Exercise Date	<u>55</u>
2.4 Obligations on Exercise Date interdependent	<u>55</u>
<b>3. Counterparts</b>	<b><u>55</u></b>
<b>4. Governing law and jurisdiction</b>	<b><u>55</u></b>
<b>Schedule 1 - Put notice</b>	<b><u>76</u></b>
<b>Signing page</b>	<b><u>67</u></b>

# Details

---

## Date

## Parties

Name	<b>Her Majesty the Queen in right of New Zealand acting by and through the Minister of Finance</b>
Short name	<b>Crown</b>
Notice details	1 The Terrace Wellington
Attention	The Secretary to the Treasury

Name	[1]
Short name	<b>Investor</b>
Notice Details	[1]

## Background

- A At the request of the Investor, the Crown has made a \$60,000,000 advance to the Borrower under the Facility Agreement.
- B The Investor has committed to subscribe bonds issued by the Borrower.
- C The Investor has agreed to grant the Crown a put option in respect of the indebtedness of the Borrower to the Crown under and in relation to the Facility Agreement.



# Agreed terms

---

## 1. Defined terms and interpretation

### 1.1 Defined terms

In this document:

**Borrower** means South Canterbury Finance Limited;

**Exercise Date** means the date on which the Put Option is exercised by the Crown;

**Facility Agreement** means the facility agreement, among others, between the Crown and the Borrower, dated on or about the date of this document;

**General Security Deed** means the general security and guarantee deed granted by, among others, the Borrower in favour of the Crown, dated on or about the date of this document.

**Promissory Note** means the promissory note issued by the Borrower to the Lender dated on or about the date of this document;

**Purchase Price** means the aggregate of:

- (a) the “Outstanding Amount” (as defined in the Facility Agreement); and
- (b) an amount equal to the accrued but unpaid interest under the Facility Agreement, on the Exercise Date;

**Put Notice** means a notice exercising the Put Option which must be in the form set out in schedule 2; and

**Put Option** means the option referred to in clause 2.

### 1.2 Interpretation

In this document, except where the context otherwise requires:

- (a) the singular includes the plural and *vice versa*, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (d) a reference to N.Z.\$ or \$ is to New Zealand currency;
- (e) a reference to a party is to a party to this document, and includes the party’s executors, administrators, successors and permitted assigns and substitutes;
- (f) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (g) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re enactments or replacements of any of them; and
- (h) a word or expression defined in the *Companies Act 1993* has the meaning given to it in the *Companies Act 1993*.

### 1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

## 2. Put Option

### 2.1 Put Option

The Investor grants the Crown an irrevocable option to put the Promissory Note to the Investor for the Purchase Price.

### 2.2 Investor's obligations on Exercise Date

If the Put Option is exercised in accordance with this clause 2 by the Crown giving a Put Notice to the Investor, then on the Exercise Date the Investor must:

- (a) pay the Crown the Purchase Price in cleared funds by no later than 2:00 p.m. on the Exercise Date; and
- (b) if it requests an assignment and transfer by the Crown of all of its right, title and interest in and to the General Security Deed to the Investor, execute a deed of priority, among other things, with Trustees Executors Limited in relation to the General Security Deed, in or substantially in, the form of the deed of priority dated on or about the date of this document, among others, between the Crown and Trustees Executors Limited.

### 2.3 Crown's obligations on the Exercise Date

The Crown must, on the Exercise Date (but only once it has received the Purchase Price in cleared funds):

- (a) effect a transfer to the Investor of all of its right, title and interest in and to the Promissory Note;
- (b) apply the Purchase Price in full repayment of the Borrower's obligations under the Facility Agreement; and
- (c) if requested by the Investor, assign and transfer all of its right, title and interest in and to the General Security Deed to the Investor.

### 2.4 Obligations on Exercise Date interdependent

Each party's obligations under clauses 2.2 and 2.3 are subject to the other party complying with its obligations under those clauses.

## 3. Counterparts

This document may be executed in any number of counterparts (including facsimile counterparts) all of which, taken together, will constitute one and the same instrument.

## 4. Governing law and jurisdiction

- (a) This document is governed by the laws of New Zealand.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New Zealand (and any court of appeal) and waives any right to object to an action being brought in those courts, including on the basis of an inconvenient forum or those courts not having jurisdiction.

# Signing page

---

**EXECUTED** as a deed

**HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND** acting by and through John Whitehead for and on behalf of the Honourable Simon William English, Minister of Finance in the presence of:

\_\_\_\_\_  
Signature of John Whitehead~~The Honourable Simon William English~~

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Occupation of witness

\_\_\_\_\_  
City/town of residence

**SIGNED** by [1]

\_\_\_\_\_  
Signature of [1]

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Occupation of witness

\_\_\_\_\_  
City/town of residence

# Schedule 1- Put notice

---

## Put Notice

To <sup>[1]</sup>

The Crown irrevocably exercises the Put Option granted under the put option deed between you and the Crown dated [#] October 2009 (the **Put Option Deed**) and requires you to purchase the Promissory Note for the Purchase Price in accordance with the terms of the Put Option Deed.

Capitalised terms used in this notice have the meaning given to them in the Put Option Deed.

Date \_\_\_\_\_  
Signed \_\_\_\_\_  
Name (print) \_\_\_\_\_