

Execution Version

General Security and Guarantee Deed

Each entity named in schedule 1 (the **Debtors**)

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

MinterEllisonRuddWatts

LAWYERS

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General Security and Guarantee Deed

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Details

Date 2010

Parties

Name **Each entity named in schedule 1**
 Short form name Each a **Debtor**
 Notice details As set out in schedule 1

Name **Her Majesty the Queen in right of New Zealand acting by and through the Minister of Finance**
 Short name **the Secured Party**
 Notice details 1 The Terrace
 Wellington 6011
 Facsimile (04) 472 3792
 Attention Secretary to The Treasury

Background

- A To secure to the Secured Party payment or delivery of the Secured Money and compliance with the Secured Obligations, each Debtor has agreed:
- (a) to grant to the Secured Party a security interest in that Debtor's Personal Property;
 - (b) to charge to the Secured Party that Debtor's Other Property; and
 - (c) to mortgage to the Secured Party that Debtor's present and future interests in any Real Property.
- B Each Debtor has agreed to do this in return for the Secured Party providing certain financial accommodation to the Debtors from time to time and other valuable consideration.

Agreed terms

1. Defined terms and interpretation

1.1 Defined terms

In this document:

Attorney means a person (including a Receiver) appointed as attorney under this document or any other Relevant Document (other than an attorney appointed by a Debtor in accordance with clause 21), and includes any agent or delegate of such attorney;

Authorisation means any consent, authorisation, registration, filing, agreement, notarisation, certificate, permit, licence, approval, authority or exemption of, from or required by, a government agency or required by law. Where intervention or action of a government agency within a specified period would fully or partly prohibit or restrict something by law, **Authorisation** includes the expiry of that period without that intervention or action;

Borrower means South Canterbury Finance Limited (in receivership);

Business Day means a week day on which banks are open for general banking business in Wellington;

Charged Securities means all investment securities held by a Debtor in any person, in each case together with all share debentures, options and other investment securities arising under an entitlement to, or exercise of, any Right, and a reference to **Charged Securities** includes any of them;

Collateral Security means each Security Interest (other than the Security Interest created under this document) granted at any time by a Debtor or any other person at the express or implied request of a Debtor in favour of the Secured Party (whether alone or with any other person) to secure payment and/or delivery of any or all of the Secured Money and/or compliance with any or all of the Secured Obligations;

Companies Act means the *Companies Act 1993*;

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

Deed of Priority means the deed of priority dated on or about the date of this document between the Secured Party, the Trustee and each Debtor;

Default means:

- (a) any event or circumstance specified in clause 10.1; or
- (b) any event or circumstance which, with the giving of notice, the making of a determination under a Relevant Document or the passage of time (or any combination of those things), would constitute an event or circumstance under paragraph (a);

Dollars and \$ mean the lawful currency of New Zealand;

Facilities Agreement means the facilities agreement, among others, between the Debtors and the Secured Party dated on or about the date of this document;

Issuer means any person in which a Debtor holds Charged Securities;

Lease means any arrangement whereby an asset may be used, occupied, operated or managed by a person other than the owner. It includes a licence;

Loss means a loss, claim, action, damage, liability, cost, charge, expense, penalty, compensation, fine or outgoing suffered, paid or incurred and includes loss of margin and loss of profit;

Notice means a notice, demand, consent, approval or communication given in accordance with clause 20;

Other Property means, in relation to a Debtor, all of that Debtor's present and future interests in, and all of that Debtor's present and future rights in relation to, any Real Property and any other assets, other than any Personal Property;

Permitted Security Interest means any Security Interest:

- (a) created in favour of the Secured Party;
- (b) created with the Secured Party's prior written consent;
- (c) under the Debenture Trust Deed; and
- (d) any Prior Charges (as defined in the Debenture Trust Deed) existing as at the date of this document;

Personal Property means, in relation to a Debtor, all of that Debtor's present and after-acquired personal property to which the PPSA applies, and all of that Debtor's present and future rights in relation to any personal property to which the PPSA applies;

PLA means the *Property Law Act 2007*;

Power means any right, power, discretion or remedy of the Secured Party, a Receiver or an Attorney under any Relevant Document or applicable law;

PPSA means the *Personal Property Securities Act 1999*;

Principal Debtor means South Canterbury Finance Limited (in receivership);

Priority Amount means \$500,000,000, plus interest;

Real Property means, in relation to a Debtor, all of that Debtor's present and future estates and interests in freehold and leasehold land, and in all buildings, structures and fixtures from time to time on that land;

Receiver means a receiver, or receiver and manager, appointed under this document;

Receiverships Act means the *Receiverships Act 1993*;

Records means, in relation to a person, all information relating in any way to that person's business or any transaction entered into by the person, whether recorded electronically, magnetically or otherwise;

Relevant Documents means:

- (a) this document,
- (b) the Facilities Agreement;
- (c) the Deed of Priority;
- (d) each Collateral Security; and
- (e) each other document (present or future) the Secured Party and Borrower agree is a "Relevant Document";

Rights means, in relation to the Charged Securities:

- (a) distributions, dividends or proceeds;
- (b) bonus shares, debentures or other investment securities;
- (c) options or rights to take up shares, debentures or other investment securities; and
- (d) other rights, money or property of any nature;

Secured Money means all money and amounts (in any currency) that a Debtor is or may become liable at any time to pay to or for the account of the Secured Party under a Relevant Document;

Secured Obligations means all present and future obligations which a Debtor (whether alone or with any other person and in any capacity) has or owes to the Secured Party (whether alone or with any other person and in any capacity) under a Relevant Document, other than obligations to pay or deliver any Secured Money;

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

Security Interest means:

- (a) a mortgage, pledge, charge, lien, assignment, hypothecation, encumbrance, deferred purchase, title retention, finance lease, contractual right of set-off, flawed asset arrangement, sale-and-repurchase and sale-and-leaseback arrangement, order and other arrangement of any kind, the economic effect of which is to secure a creditor; and
- (b) a “security interest” as defined in section 17(1)(a) of the PPSA;

Specified Rate means, in relation to any amount payable to the Secured Party, the cost the Secured Party determines as being the cost to it of funding that amount from time to time, expressed as a percentage rate per annum;

Transfer means, with respect to any Charged Securities or Rights of a Debtor, a transfer thereof duly signed by the relevant Debtor or, in the case of any Charged Securities or Rights legally held by some other person but beneficially owned by that Debtor, duly signed by that other person, with the name of the transferee, date and consideration left blank, but otherwise, if appropriate, in proper form for registration by the person which has issued such Charged Securities or Rights; and

Trustee means Trustees Executors Limited, in its capacity as trustee under the Debenture Trust Deed.

1.2 PPSA terms incorporated

In this document, unless the context requires otherwise, the following words and expressions (and grammatical variations of them) have the same meanings as are given to them in the PPSA: **accession, account debtor, account receivable, advance, aircraft, attach, chattel paper, documents of title, equipment, financing statement, future advance, goods, inventory, investment security, land, motor vehicle, personal property, proceeds, purchase money security interest, serial numbered goods, transfer, value and verification statement.**

1.3 References

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

- (a) an **agreement** includes any legally enforceable arrangement, understanding, undertaking or representation whether or not in writing;
- (b) **at any time** includes from time to time;

- (c) one person being **controlled** by another means that the other person (whether directly or indirectly, and whether by the ownership of share capital, the possession of voting power, contract or otherwise):
 - (i) has the power to appoint and/or remove the majority of the members of the governing body of that person;
 - (ii) otherwise controls or has the power to control the affairs and policies of that person; or
 - (iii) is in a position to derive the whole or a substantial part of the benefit of the existence or activities of that person;
- (d) **costs** incurred by a person includes all commissions, charges, losses, expenses (including legal fees on a solicitor and own client basis) and Taxes incurred by that person;
- (e) **distribution** has the meaning given to that term in the Companies Act;
- (f) **government agency** means any government or governmental, semi-governmental, administrative, public, regulatory or judicial entity, body, department, commission, agency or authority;
- (g) **including** and similar expressions do not limit what else may be included;
- (h) **indebtedness** includes any obligation (whether present or future, actual or contingent, secured or unsecured, joint or several, as principal, surety or otherwise) relating to the payment or repayment of money;
- (i) **law** includes any common law, equity and any statute;
- (j) a **person** includes:
 - (i) an individual, body corporate, association of persons (whether corporate or not), trust, state, agency of a state and any other entity (in each case, whether or not having separate legal personality);
 - (ii) that person's successors, permitted assigns, executors and administrators (as applicable);
- (k) **property** includes, in relation to a Debtor, the whole and any part of that Debtor's business, assets, undertaking, revenues and rights (in each case, present and future), and reference to any property includes any legal or equitable interest in it; and
- (l) a Default **subsists** until either:
 - (i) remedied to the Secured Party's satisfaction; or
 - (ii) waived by the Secured Party in writing in accordance with this document.

1.4 Interpretation

In this document:

- (a) headings are for reference only and do not affect interpretation;
- (b) references to clauses, schedules and annexures are to those in this document, and a reference to this document includes any schedule and annexure;
- (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) references to a document or agreement includes that document or agreement as novated, altered, amended, supplemented or replaced from time to time;
- (e) references to 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;
- (f) references to legislation or other law or a provision of them includes regulations and other instruments under them, and any consolidation, amendment, re-enactment or replacement;
- (g) the singular includes the plural and vice versa, a gender includes other genders and different grammatical forms of defined expressions have corresponding meanings;
- (h) unless stated otherwise, anything (other than making a payment) required to be done on or by a day which is not a Business Day, must be done on or by the next Business Day;
- (i) if the Secured Party considers that an amount paid by a Debtor under a Relevant Document is capable of being avoided or otherwise set aside on the liquidation or administration of that Debtor or otherwise, then that amount will not be considered to have been irrevocably paid for the purposes of this document; and
- (j) no provision or expression is to be construed against a party on the basis that the party (or its advisers) was responsible for its drafting.

1.5 More than one Debtor

In this document:

- (a) a reference to **Debtor** is a reference to each Debtor severally as well as to both or all Debtors jointly;
- (b) when used with reference to a Debtor, Other Property, Personal Property, Real Property and Secured Property means the Other Property, Personal Property, Real Property and Secured Property (as the case may be) of that Debtor and, when used without reference to a particular Debtor, means the Other Property, Personal Property, Real Property and Secured Property (as the case may be) of all the Debtors;
- (c) this document binds both or all Debtors jointly and each Debtor severally; and
- (d) where any Secured Money comprises indebtedness, or a Secured Obligation is an obligation, of one Debtor alone or of some, but not all, of the Debtors (**principal indebtedness or obligation**), then:
 - (i) each Debtor is nevertheless jointly and severally liable for, and in relation to, that principal indebtedness or obligation; and
 - (ii) that principal indebtedness or obligation is secured by all the Secured Property of each Debtor.

2. Grant of security

2.1 Security interest, charge and agreement to mortgage

To secure to the Secured Party payment or delivery of the Secured Money and performance of the Secured Obligations, each Debtor:

- (a) grants to the Secured Party a Security Interest in its Personal Property;
- (b) charges to the Secured Party its Other Property; and

- (c) agrees to mortgage to the Secured Party its present and future interests in any Real Property.

2.2 Transfer and assignment

The Security Interest granted under clause 2.1(a) will:

- (a) to the extent that it relates to present and future accounts receivable and chattel paper, and present and future rights in relation to any accounts receivable and chattel paper, take effect as a transfer by way of security to the Secured Party; and
- (b) to the extent that it relates to present and future rights or choses in action to which clause 2.2(a) does not apply, take effect as an assignment by way of security to the Secured Party.

2.3 Nature of charge in relation to Other Property

The charge created under this document is a fixed charge in relation to Other Property. However, if that charge is not legally and fully effective as a fixed charge then, for so long as and to the extent it may not be so legally and fully effective, that charge is a floating charge until such time as it becomes a fixed charge by virtue of clause 2.4.

2.4 Crystallisation of floating charge

Any floating charge created under this document will become a fixed charge:

- (a) automatically, without the need for any notice or action by the Secured Party, immediately prior to or, if that would not result in the fixed charge being legally and fully effective, contemporaneously with, the occurrence of any Default; or
- (b) on notice from the Secured Party to the relevant Debtor, in respect of such of the Other Property subject to that floating charge as is specified in the notice, if, in the Secured Party's opinion, any of that Other Property is or might be or become seized or taken, subject to any Security Interest other than a Permitted Security Interest, or otherwise in jeopardy.

2.5 Continuing security and obligations

The Security Interest granted under this document is a continuing Security Interest until the Secured Party releases all Secured Property from the Security Interest granted under this document, despite any intermediate payment, discharge, settlement, release or other matter. Each Debtor's obligations under this document continue despite any full or partial release of Secured Property.

2.6 Mortgage

Each Debtor will, if the Secured Party requires at any time, promptly:

- (a) grant in favour of the Secured Party an all obligations mortgage in the form required by the Secured Party over such of that Debtor's interests in any Real Property as the Secured Party may require; and
- (b) deliver to the Secured Party any document, and do any other thing, which the Secured Party requires in order to register any such mortgage.

Each Debtor acknowledges and agrees that any such mortgage will be in substitution for the agreement to mortgage given by the relevant Debtor in clause 2.1(c) and will not in any way affect, or limit, the Security Interest granted under clause 2.1.

3. Priority

3.1 Priority of Security Interest in Personal Property

The Security Interest granted in Personal Property has the same priority in relation to all Secured Money, including future advances. Nothing in this clause 3.1 restricts the Secured Party from claiming that the Security Interest is a purchase money security interest in respect of all or part of the Personal Property.

3.2 No agreement or consent to subordination, attachment or accessions

Nothing in this document may be construed as an agreement or consent by the Secured Party to:

- (a) subordinate the Security Interest created under this document in favour of any person;
- (b) any Security Interest other than any Permitted Security Interest attaching to or being created in any Secured Property;
- (c) defer or postpone the date of attachment of the Security Interest created under this document in any Personal Property;
- (d) any personal property that is not Personal Property becoming an accession to any Personal Property; or
- (e) any Personal Property becoming an accession or affixed to any asset that is not Secured Property.

3.3 Section 92 PLA

For the purposes only of section 92 of the PLA, the maximum amount up to which the Secured Money will rank in priority to any subsequent security over any Other Property is the Priority Amount.

3.4 Contrary agreements

This clause 3 is subject to any written agreement to the contrary between the parties, including the overriding provisions of any subordination and/or priority agreement entered into by the Secured Party in respect of any other holder of security.

4. Guarantee

4.1 Guarantee

Each Debtor hereby unconditionally and jointly and severally with each other Debtor guarantees to the Secured Party the due and punctual payment by the Debtors of the Secured Money and the due observance and performance by each Debtor of all of its and each other Debtor's obligations under the Relevant Documents.

4.2 Liability not prejudiced

Neither the liability of a Debtor, nor any of the rights of the Secured Party, under this clause 4 will be affected or discharged by anything which, but for this clause 4.2, might operate to affect or discharge the liability of, or otherwise provide a defence to, a Debtor (whether or not known to that Debtor or the Secured Party), including:

- (a) any limitation or incapacity of, or affecting, that Debtor, any other Debtor or the Secured Party; or

- (b) a Debtor ceasing to be liable to the Secured Party for any monetary or other obligation whether present or future and whether by reason of any liquidator, receiver, statutory manager or other person disclaiming or abandoning that obligation or otherwise; or
- (c) the granting of any time, credit, or indulgence or other concession, to that Debtor, any other Debtor or any other person by the Secured Party; or
- (d) any amendment to, or variation of, any Relevant Document or any other document, or that Debtor or any other Debtor not receiving notice of any such amendment or variation; or
- (e) any other person giving any similar guarantee or any security, or failing or being incompetent to join into this document or give any similar guarantee or any security, or failing to become legally bound to the Secured Party as intended under any of them; or
- (f) the liability of that Debtor or any other Debtor or any other person to the Secured Party in respect of any Secured Money or any of the obligations under any Relevant Document ceasing from any cause whatever (including release or discharge by the Secured Party, or any person failing to become legally bound to the Secured Party as intended or ceasing to be legally liable to pay any Secured Money or perform any of its respective obligations to the Secured Party); or
- (g) failure by that Debtor, any other Debtor or any other person to provide any security which has been requested by the Secured Party, or any other person; or
- (h) any security held or taken in respect of, or any transaction relating to, any Secured Money or any of the obligations under any Relevant Document being void, voidable, unenforceable, defective or informal, or being released, partially released, discharged, partially discharged or varied in any way; or
- (i) any compounding, compromise, release, abandonment, waiver, variation, relinquishment or renewal, of any agreements, securities, documents of title or assets, or any of the rights of the Secured Party against that Debtor, any other Debtor or any other person; or
- (j) the enforcement of, or failure to enforce, any rights of the Secured Party under any Relevant Document or any other document, or under any law; or
- (k) the dissolution of that Debtor, any Debtor or any other person, or the appointment of any receiver (including the receivership of each Debtor as at the date of this document), liquidator, statutory manager or similar person, or the establishment of any compromise or other arrangement, in respect of that Debtor, any other Debtor or any other person; or
- (l) the amalgamation, change in constitution, status or control, or reconstruction or reorganisation, of that Debtor, any other Debtor or any other person; or
- (m) any failure by the Secured Party to present, demand, or give notice in respect of, any negotiable instrument; or
- (n) the making or granting by the Secured Party (whether alone or together with any other person) to, or at the request of, that Debtor, any other Debtor or any other person (whether alone or together with any other person) of advances or accommodation or the withdrawal or restriction by the Secured Party of any advances or accommodation, or that Debtor, any other Debtor or any other person not receiving notice of any such making, granting, withdrawal or restriction; or
- (o) any variation to the terms of, or replacement or rearrangement of, any advance made, or accommodation granted, by the Secured Party (whether alone or together with any other person) to, or at the request of that Debtor, any other Debtor or any other person (whether

- along or together with any other person), or that Debtor, any other Debtor or any other person not receiving notice of any such variation, replacement or rearrangement; or
- (p) the powers of any person purporting to act on behalf of that Debtor, any other Debtor or any other person in relation to the incurring of any Secured Money proving to be defective in any respect; or
 - (q) anything done or omitted or neglected to be done, by the Secured Party, whether in exercise of the rights, powers and remedies vested in the Secured Party by any Relevant Document or any other document, or otherwise; or
 - (r) any other thing whatever, other than a release of this document given by the Secured Party.

4.3 Additional to other security

The guarantee in this clause 4 is a principal obligation and will be in addition to and not in substitution for or collateral to any other Security Interest or right which the Secured Party may have under or by virtue of this document or any other agreement and, in particular, will be independent of any other Security Interest to the intent that this guarantee may be enforced against a Debtor without first having recourse to any such securities or rights and without taking steps or proceedings against any particular Debtor or any other guarantor and notwithstanding that any other Security Interest may be in whole or in part unenforceable by reason of any rule of law or equity and notwithstanding the loss by the Secured Party of any other Security Interest and notwithstanding any acts or omissions on the part of the Secured Party.

4.4 Secured Party discretion

The Secured Party may determine from time to time whether it will enforce or refrain from enforcing the guarantee in this clause 4 or any other guarantee and may from time to time make any arrangement or compromise with any Debtor which the Secured Party may think expedient.

4.5 Continuing guarantee

The guarantee in this clause 4 is to be a continuing guarantee and accordingly will be irrevocable and will remain in full force and effect until the whole of the Secured Money has been paid or satisfied.

4.6 No subrogation

All money from time to time received by the Secured Party in reduction of the Secured Money from or on account of any Debtor including any dividends upon the liquidation of any Debtor, or from any other person or from the realisation of any security and capable of being applied by the Secured Party in reduction of the Secured Money will be regarded as payments in gross without any right on the part of any Debtor to stand in the place of the Secured Party in respect of or to claim the benefit of any money so received as against any Debtor until the whole of the Secured Money has been paid or satisfied so that in the event of any Debtor going into liquidation the Secured Party will be entitled to prove against each Debtor for the whole of the Secured Money.

4.7 No competition

- (a) In the event of the liquidation of any Debtor, no Debtor will prove in that liquidation in competition with the Secured Party.
- (b) Each Debtor hereby authorises the Secured Party to prove for all money which that Debtor such member has paid under this document or are otherwise owing to that Debtor by the Debtor in liquidation and to retain and to carry to a suspense account and appropriate at the discretion of the Secured Party any amount received until the Secured Party receives 100 cents in the dollar in respect of the Secured Money.

- (c) Each Debtor hereby waives in favour of the Secured Party all rights whatever against any Debtor under this document so far as necessary to give effect to anything contained in this clause 4.

4.8 Other security

The guarantee in this clause 4 will not prejudicially affect or be prejudicially affected by any other Security Interest or guarantee now or hereafter held by the Secured Party for the Secured Money but any such other Security Interest or guarantee will be deemed to be collateral with this document and no Debtor will as against the Secured Party in any way claim the benefit or seek the transfer of any such Security Interest or any part thereof or any right of recourse.

4.9 Principal debtor

Although as between Debtors the liability of a Debtor to the Secured Party may be that of surety only nevertheless as between that Debtor and the Secured Party its liability will be deemed to be the liability of a principal debtor and the Security Interest (if any) given by that Debtor to the Secured Party pursuant to this document will constitute security for the Secured Money and such liability will not be affected or diminished nor will such Security Interests over the Secured Property of the relevant Debtor be released or discharged by any of the matters already mentioned or by any other act, indulgence or omission which but for this clause 4 would have operated to release the relevant Debtor wholly or partly from its liability hereunder to the Secured Party.

5. Indemnity

Notwithstanding anything contained in this document, any other Relevant Document or any other document, should the Secured Money or any part thereof not be recoverable by the Secured Party from the Debtors, or any of the obligations of the Debtors under the Relevant Documents not be enforceable:

- (a) whether by reason of:
- (i) any legal or other limitation, disability or incapacity of or affecting a Debtor or the Secured Party; or
 - (ii) a Debtor ceasing to be legally liable to pay the Secured Money or any part thereof or to perform any of its obligations under the Relevant Documents by reason of any law relating to insolvency, liquidation or otherwise; or
 - (iii) any law, judgment or order of any court postponing or reducing or otherwise affecting payment of the Secured Money or any part thereof or performance of any of the obligations of the Debtors under the Relevant Documents; or
 - (iv) any other fact or circumstance whatsoever; or
- (b) whether or not any transaction relating to the Secured Money or the obligations of the Debtors under the Relevant Documents has been declared void from the beginning or has been subsequently avoided; or
- (c) whether or not any of the matters or facts relating thereto have been or ought to have been within the knowledge of the Secured Party,

then each Debtor, as a separate and additional liability under this document, agrees to indemnify the Secured Party in respect of the Secured Money or such part thereof and in respect of any loss suffered by the Secured Party directly or indirectly as a result of any failure by any Debtor to perform any of the obligations of the Debtors under the Relevant Documents, and the Debtors (on a joint and several basis) as principal debtors must pay upon demand, and in the manner specified in such demand, a sum equal to the amount of the Secured Money or such part thereof and/or the

amount of such loss and the terms of this document will (with all necessary modifications) apply as far as possible to this indemnity.

6. Covenants to pay and comply

6.1 Pay Secured Money

Each Debtor agrees that it will pay or procure payment of the Secured Money to the Secured Party:

- (a) at the times and on the terms stipulated in the other Relevant Documents; or
- (b) to the extent that there is no such stipulation, on demand and otherwise in accordance with this document or as the Secured Party directs.

6.2 Interest

Each Debtor agrees that it will pay or procure payment of interest on the Secured Money to the Secured Party:

- (a) at the times and on the terms stipulated in the other Relevant Documents; or
- (b) to the extent that there is no such stipulation, at the Specified Rate or, if a Default has occurred and is continuing, at the Specified Rate plus a margin of two per cent. per annum (the **Default Rate**). This interest will:
 - (i) accrue on a daily basis;
 - (ii) be payable without the need for demand on the last day of each calendar month in accordance with clause 7.1 and, if not so paid, be compounded and bear interest at the Default Rate; and
 - (iii) be payable before and after judgment is obtained.

6.3 Comply with Secured Obligations

Each Debtor agrees that it will comply with or procure compliance with the Secured Obligations.

7. Payments

7.1 Timing and manner of payments

Unless otherwise specified in any other Relevant Document, each payment to the Secured Party under a Relevant Document will be made:

- (a) if any due date is not a Business Day, on the next Business Day;
- (b) in immediately available, fully transferable, cleared funds for value on the due date to the bank account (if any) specified by the Secured Party;
- (c) free and clear of any restriction or condition;
- (d) except to the extent required by law, without any deduction or withholding for or on account of Tax or on any other account, whether by way of set-off, counterclaim or otherwise; and
- (e) in the currency in which the relevant Secured Money is denominated.

7.2 Currency of account

Dollars is the currency of account and payment for each amount at any time payable by a Debtor under this document.

7.3 Appropriation

- (a) Without limiting clause 12.1, the Secured Party may appropriate all amounts received by it, and any amounts which are held by it, for or to the account of a Debtor, in any order or manner the Secured Party determines (including as between principal, interest and other amounts owing to the Secured Party and including so as to enable the Secured Party to preserve any purchase money security interest).
- (b) The Secured Party's rights under this clause apply despite any rule of law, any appropriation or purported appropriation made by a Debtor or any other person, or any other matter or circumstance.

8. Undertakings

8.1 Positive undertakings

Each Debtor must, unless the Secured Party has otherwise consented in writing:

- (a) comply in all respects with all laws and requirements of government agencies to which it may be subject or in respect of the Secured Property, and ensure that any person occupying or using the Secured Property does the same;
- (b) obtain, comply with and do all that is necessary to maintain in full force and effect any Authorisation required to carry on its business, to comply with its obligations under the Relevant Documents, or for the ownership, use or operation of the Secured Property; and
- (c) maintain its corporate existence in New Zealand.

8.2 Negative undertakings

Each Debtor agrees that, unless the Secured Party has otherwise consented in writing, it will not:

- (a) alter its constitution or any other constituent document of it nor allow them to be amended in any manner; or
- (b) change its name without giving at least 14 days' prior written notice to the Secured Party.

8.3 Information undertakings

Each Debtor agrees that, unless the Secured Party has otherwise consented in writing, it will:

- (a) notify the Secured Party promptly:
 - (i) if any personal property which is not Secured Property and which is subject to a Security Interest which has attached becomes an accession to any Secured Property;
 - (ii) if any Secured Property is moved outside New Zealand;
 - (iii) on the Secured Party's request, of the present location of any Secured Property;
 - (iv) if it acquires, or enters into an agreement to acquire, any investment securities or chattel paper;
 - (v) of any matter adversely affecting the Secured Property;

- (b) if the Secured Party requests in writing, notify each insurer of that Debtor and each other person from whom that Debtor is entitled to receive or claim any account receivable or chattel paper, or the indebtedness or entitlement, of the transfer and assignment referred to in clause 2.2;
- (c) provide to the Secured Party promptly such further information regarding the financial condition, business and operations of it or any other Debtor as the Secured Party requests.

8.4 Undertakings relating to Secured Property

From the date that the receivers were appointed to each Debtor, each Debtor must, unless the Secured Party has otherwise consented in writing:

- (a) comply with the terms of each Security Interest binding on it in respect of the Secured Property from time to time, and, unless the Secured Party first consents in writing:
 - (i) not create or permit to exist any Security Interest over the whole or part of its assets other than a Permitted Security Interest (or, if by law its creation cannot be restricted, that Debtor must procure that the holder of the Security Interest first enters into a priority arrangement in form and substance acceptable to the Secured Party);
 - (ii) ensure that there is no increase in the amount secured under a Security Interest held by someone other than the Secured Party in respect of the Secured Property;
- (b) not allow any Personal Property to become an accession or a fixture to any asset (other than land) that is not Secured Property (or otherwise subject to a Security Interest in favour of the Secured Party) or to be affixed to any land (other than any freehold interest in land in respect of which the Secured Party has a first ranking registered mortgage);
- (c) not move (or allow to be moved) any Secured Property situated in New Zealand as at the date of this document outside New Zealand;
- (d) not do or allow to occur (or omit to do) anything which might:
 - (i) result in the Secured Property, any right or interest of a Debtor in the Secured Property, or any Collateral Security, being or becoming invalid, unenforceable, liable to forfeiture or cancellation;
 - (ii) result in any deterioration in value of any Secured Property (other than by reason of fair wear and tear); or
 - (iii) otherwise adversely affect any Collateral Security;
- (e) if, at the time this document is signed by that Debtor or if the Secured Party so requests and at the time of the request, the Personal Property includes serial numbered goods (including motor vehicles or aircraft) which are not inventory, complete schedule 2 and provide it to the Secured Party;
- (f)
 - (i) not directly or indirectly claim, exercise or attempt to exercise a right of set-off or counterclaim (whether its or any other person's right) against the Secured Party; and
 - (ii) not allow any of its accounts receivable or chattel paper to be subject to any right of set-off, combination of accounts or other defence or claim in favour of the account debtor;

- (g) keep and maintain the Secured Property in a good state of repair and in good working order and condition and protect it from loss or damage and remedy any defects in the repair, order or condition of any Secured Property;
- (h) promptly pay all outgoings (including rent and taxes) payable in respect of the Secured Property;
- (i) ensure that the Secured Property and each Debtor's Records relating to the Secured Property are available for inspection (and in the case of Records, for copying) by the Secured Party and persons authorised by the Secured Party:
 - (i) during business hours; and
 - (ii) at any time without prior notice while a Default subsists or while an event or circumstance subsists that the Secured Party believes exposes a substantial part of the Secured Property to risk of loss, damage or material reduction in value,
 and in each case each Debtor must assist with each inspection (including obtaining any necessary consents or permits of other persons) and ensure that its employees and officers do the same;
- (j) comply with the terms of, and take all action (including as required by the Secured Party) to enforce, each Lease binding on it in respect of the Secured Property from time to time;
- (k) protect and enforce its title to, and the Secured Party's title as Secured Party of, the Secured Property;
- (l) on request by the Secured Party, deliver to the Secured Party and ensure that the Secured Party has possession of:
 - (i) all chattel paper, negotiable instruments, documents of title and all other documents or evidence of title to the Secured Property where possession of that Secured Property by a third party could have the result that the interest of that third party in that Secured Property would defeat the Security Interest of the Secured Party (except to the extent that such documents or evidence of title are in the possession of the holder of a Permitted Security Interest for the purpose of giving effect to that Permitted Security Interest);
 - (ii) all certificates representing Charged Securities and Transfers for the Charged Securities in a form specified by the Secured Party; and
 - (iii) all other documents securing the payment of money to that Debtor,
 at the times and places specified by the Secured Party, and, if it is directed in writing by the Secured Party to do so, pay into an account nominated by the Secured Party the proceeds of all its accounts receivable and chattel paper, and the cash proceeds of any disposal of any other Secured Property, if those proceeds are not immediately applied in payment of the Secured Money;
- (m) if the Secured Party requests, note the Secured Party's interest on the records of the Intellectual Property Office of New Zealand in respect of any patents, trademarks or designs registered with Intellectual Property Office of New Zealand;
- (n) at its own cost, do (and procure that anyone else who has an interest in the Secured Property or who claims under or in trust for a Debtor does) all things that the Secured Party requires in order to:
 - (i) perfect or improve that Debtor's title to, or other right or interest in, all or any part of the Secured Property;

- (ii) perfect, preserve, maintain, protect or otherwise give full effect to the Secured Property, or the Security Interest intended to be created under any Collateral Security, and the priority of that Security Interest required by the Secured Party, including, if requested by the Secured Party:
 - (A) for the Secured Party to register and maintain (including to renew before expiry) one or more financing statements in relation to the Security Interest in Personal Property created under any Relevant Document;
 - (B) to remove any financing statement which is registered against that Debtor or any caveat which is lodged against land which is Other Property in relation to any Security Interest which is not a Permitted Security Interest;
 - (C) executing and delivering to the Secured Party Transfers in relation to any of the Secured Property, undated and blank as to transferee and consideration; and
 - (D) providing details of the Secured Property and noting the interest of the Secured Party on the share register of the Issuer;
- (iii) secure more satisfactorily to the Secured Party payment or delivery of the Secured Money and compliance with the Secured Obligations (including the granting of further specific security in the form required by the Secured Party and depositing with the Secured Party documents or evidence of title and Transfers in relation to investment securities);
- (iv) facilitate the exercise of any right by the Secured Party or any Receiver or Attorney at any time or the realisation of the Secured Property following the occurrence of a Default including the exercise of all rights of inspection, requesting all Records and taking all necessary copies, which that Debtor is entitled to exercise, request or take; and
- (v) otherwise enable the Secured Party to obtain the full benefit of the provisions of any Relevant Document.

8.5 Insurance undertakings

Each Debtor agrees that, unless the Secured Party has otherwise consented in writing or as otherwise directed by the Secured Party, it will:

- (a) insure and keep insured such of the Secured Property as it is prudent to insure, against such risks as should be prudently insured against (having regard to the availability of cover, cost and other relevant factors), in each case for full replacement value and in accordance with prudent commercial practice;
- (b) take out and maintain all other proper insurance against third party liability which it is prudent to insure against in accordance with prudent commercial practice;
- (c) take out and maintain all insurance with reputable insurers and through reputable brokers;
- (d) duly and punctually pay all premiums necessary to maintain all insurance and, on the Secured Party's request, will provide to the Secured Party any receipts for those premiums;
- (e) if the Secured Party requests, ensure that each insurance policy provides that:
 - (i) the Secured Party is either named (in the manner required by the Secured Party) as co-insured for its interest or has its interest noted on the policy (other than for worker's compensation and third party liability policies); the insurer will give to

- the Secured Party copies of all notices given by the insurer which materially amend the terms of the policy or affect the insurance cover or its terms;
- (ii) no cancellation, material change or reduction of insurance is effective until at least 10 Business Days after receipt by the Secured Party of written notice to that effect; and
 - (iii) the Secured Party is named as loss payee of all claims (other than claims under worker's compensation or third party liability policies) following notice of default by a Debtor being given by the Secured Party to the insurer;
- (f) before entering into each insurance policy, disclose to the relevant insurer all facts which are material to the insurer's risk;
 - (g) ensure that all moneys recoverable under any insurance in respect of the Secured Property are applied in or towards replacement or reinstatement of the Secured Property or, if the Secured Party requires, in or towards satisfaction of payment of the Secured Money;
 - (h) not do, or permit to be done or occur, anything which prejudices or may prejudice any insurance or the recoverability of insurance proceeds; and
 - (i) notify the Secured Party as soon as reasonably practicable after that Debtor becomes aware of the cancellation or variation of any insurance policy other than where replaced with insurances having substantially the same effect.

9. Provisions relating to Charged Securities

9.1 Undertakings relating to Charged Securities

Each Debtor agrees that it will:

- (a) where a Debtor is also an Issuer under this document, ensure that all investment securities in the Issuer which are not listed on a stock exchange are certificated at all times and deliver such certificates to the Secured Party;
- (b) not consent to, request or effect, without the Secured Party's prior written consent:
 - (i) a change of register for any Charged Securities (including to, from or within an electronic register system) from that (if any) on which they are recorded or registered at the date of this document (or if later acquired, the date on which they are recorded or registered);
 - (ii) a change in the constitution of any Issuer;
- (c) if the Secured Party requests, note the Secured Party's interest on an Issuer's share register; and
- (d) if the Secured Party requests, take all steps available to that Debtor to procure registration of a Transfer by the relevant Issuer.

9.2 Inspection of records

For the purposes of section 216 of the Companies Act, each Debtor hereby authorises the Secured Party to inspect those records of any Issuer which that Debtor is entitled to inspect by virtue of that section.

9.3 Exercise of Rights

If any right to acquire any Rights in relation to any Charged Securities becomes exercisable at any time, the relevant Debtor will promptly provide full details of that entitlement to the Secured

Party and the relevant Debtor will advise the Secured Party whether or not all or any part of that entitlement will be exercised.

9.4 Calls

If any call or other amount (**call**) becomes payable in respect of any Charged Securities or any Rights:

- (a) while a Debtor is the holder of those Charged Securities or Rights, that Debtor will pay that call to the Issuer on or before the due date for payment and promptly confirm to the Secured Party that such payment has been made; and
- (b) while a Default subsists and the Secured Party or its nominee is the holder of those Charged Securities or Rights, that Debtor will pay an amount equal to that call to the Secured Party or to the Issuer (and, if that Debtor pays the call to the Secured Party, the Secured Party will pay the call to the Issuer).

9.5 Voting

- (a) Until a Default occurs, a Debtor may exercise all voting rights in respect of any Charged Securities and any Rights it holds, provided that, in each case, that Debtor will at no time cast, nor refrain from casting, a vote in a manner which could affect adversely the Secured Property or the Security Interest under this document.
- (b) While a Default subsists, all voting rights in respect of the Charged Securities will be exercisable only by or at the direction of the Secured Party, whether or not the Charged Securities are registered in its name.

9.6 Distributions

- (a) Until a Default occurs, if a distribution is made in respect of any Charged Securities or any Rights, a Debtor may receive and retain that distribution.
- (b) While a Default subsists and if the Secured Party requires, all distributions in respect of all Charged Securities and Rights will be applied by the Secured Party in or towards payment of the Secured Money and if any such distribution is received by a Debtor, that Debtor will promptly pay or transfer it to the Secured Party.
- (c) This clause 9.6 will be read subject to, and will not prejudice, the provisions of any Relevant Document restricting the making of any distribution.

9.7 Listed Charged Securities

While any Charged Securities of a Debtor are listed on any stock exchange, or are subject to an electronic transfer and registration system which results in a system of scripless trading of Charged Securities, that Debtor will:

- (a) provide to the clearing house in which the Charged Securities are held a request that the clearing house note the Secured Party's Security Interest in the Charged Securities on its records, and provide to the Secured Party confirmation that its interest has been so noted;
- (b) note in its records the Secured Party's Security Interest in the Charged Securities; and
- (c) give such other notices and directions as the Secured Party may require to any clearing house or registry or any other person as the Secured Party may require.

10. Default

10.1 Specified Defaults

Each of the events or circumstances set out in this clause 10.1 is a Default.

- (a) an Obligor fails to pay any amount (excluding for this purpose interest capitalised under the Facilities Agreement) under a Relevant Document when due, ignoring for the purposes of this clause, clause 5.4 of the Facilities Agreement; or
- (b) if the Charging Group Member breaches any provision of this document or any other Relevant Document.

10.2 Consequences of Default

If a Default occurs:

- (a) the Security Interest created under this document will become immediately enforceable;
- (b) the floating charge created under this document will become a fixed charge in accordance with clause 2.4(a), to the extent that it is not already fixed;
- (c) the Secured Party may do any or all of the following:
 - (i) on notice to the relevant Debtor terminate any or all of the Secured Party's obligations under the Relevant Documents;
 - (ii) declare all or any part of the Secured Money to be:
 - (A) due and payable on demand, in which event that Secured Money will become due and payable on demand; or
 - (B) due and payable, in which event that Secured Money will become immediately due and payable;
 - (iii) cause itself or its nominee to be registered as the holder of the Charged Securities, or as the person entitled to such Charged Securities;
 - (iv) complete and present any Transfer to any Issuer for registration;
 - (v) complete in favour of any person (including the Secured Party itself) who is purchasing the Charged Securities, any Transfer or any other document signed by or on behalf of a Debtor;
 - (vi) appoint a Receiver pursuant to clause 11; and
 - (vii) (whether or not a Receiver has been appointed) exercise all or any rights which a person would have if appointed as a Receiver under this document.

10.3 Discharge or acquire prior Security Interest

While a Default subsists, the Secured Party may do any one or more of the following:

- (a) purchase a debt or liability secured by a prior Security Interest (including a debt secured by a Permitted Security Interest);
- (b) pay the amount required to discharge or satisfy that debt or liability; and
- (c) take a transfer or assignment of that Security Interest and any guarantee, document or right ancillary or collateral to it,

and, where the Secured Party exercises its rights in this clause:

- (d) the relevant Debtor is indebted to the Secured Party for the same amount paid by the Secured Party or the amount of the debt or liability acquired (whichever is higher) and that amount is immediately payable to the Secured Party and forms part of the Secured Money;
- (e) the Secured Party may rely on a written notice from the holder of a prior Security Interest (a **Prior Secured Party**), or on an ancillary or collateral document, as to the amount and property secured by that prior Security Interest;
- (f) the Prior Secured Party need not enquire whether any amount is owing under a Relevant Document; and
- (g) each Debtor irrevocably directs any such Prior Secured Party to give Secured Party any information it requires in connection with the prior Security Interest.

10.4 Co-operation in exercise of power of sale

If the Secured Party or a Receiver wishes to exercise a right to sell any Secured Property, each Debtor must do or cause to be done all things necessary to enable an expeditious sale and transfer to the purchaser for the value as estimated by the Secured Party, in the manner and on terms the Secured Party thinks fit.

11. Receiver

11.1 Appointment of Receiver

If:

- (a) a Default has occurred which has not been remedied to the satisfaction of, or waived by, the Secured Party; or
- (b) a Debtor so requests,

the Secured Party may appoint any person or persons (whether jointly, severally or jointly and severally) to be a Receiver of all or any of the Secured Property of the Debtors. The Secured Party may do this whether or not it has exercised any other right and even if dissolution of a Debtor has already commenced.

11.2 Additional rights

At any time on or following the appointment of any Receiver, the Secured Party may:

- (a) determine, or vary, the terms of appointment of the Receiver;
- (b) require any Receiver to give it a Security Interest or an indemnity for the due performance of the Receiver's duties;
- (c) remove any Receiver; or
- (d) appoint another Receiver in addition to, or in place of, any Receiver.

11.3 Remuneration

The Secured Party may, subject to the Receiverships Act, determine or vary the remuneration of any Receiver. Such remuneration:

- (a) may be (or may include) a commission;
- (b) is payable by each Debtor;
- (c) will form part of the Secured Money; and
- (d) will be secured by the Security Interest created under this document.

11.4 Receiver agent of Debtors

Every Receiver is the agent of the Debtors except where (but only to the extent that) the Receiver is required by notice from the Secured Party to act as agent of the Secured Party. The Secured Party is not responsible for a Receiver's actions, including the misconduct, negligence or default of a Receiver.

11.5 Receiver's rights

In addition to, and without limiting or affecting, any other rights granted to or conferred on a Receiver (whether under the Receiverships Act, at law or otherwise), and subject to the specific terms of appointment of each Receiver, each Receiver has the right in respect of the Secured Property and each Debtor's business to do anything (whether alone or with any other person) a Debtor could do as if the Receiver had full legal and beneficial ownership of the Secured Property and carried on that Debtor's business for the Receiver's own benefit.

11.6 Exercise of Receiver's rights

Every Receiver will, to the fullest extent permitted by law, exercise its rights in compliance with any directions issued by the Secured Party, and otherwise on such terms and conditions as the Receiver requires.

11.7 Withdrawal

The Secured Party may at any time give up possession of any Secured Property or discontinue any receivership.

12. Application of amounts

12.1 Order of application

All amounts received or recovered by the Secured Party or any Receiver from the security created under this document will be applied in the manner and order determined by the Secured Party or any Receiver. In the absence of any determination, those amounts will be applied in the manner described in clause 12.2. This clause is subject to:

- (a) any claims ranking in priority to the Security Interest created under this document; and
- (b) any mandatory provisions of law (including, in the case of any Personal Property, any mandatory provisions of the PPSA).

12.2 Order of application where no determination

Subject to clause 12.1; amounts received or recovered by the Secured Party or any Receiver from the security created under this document will be applied in payment:

- (a) first, of all expenses incurred by the Secured Party, the Receiver and any Attorney in the exercise, or attempted exercise, of rights under, or otherwise in connection with, any Relevant Document;
- (b) secondly, of the Receiver's remuneration;
- (c) thirdly, of all other Secured Money;
- (d) fourthly, to each holder of a Security Interest of which the Secured Party is aware and which ranks after the Security Interest created under this document in relation to the relevant Secured Property, to the extent, and in the order, of such priority; and
- (e) fifthly, of any surplus to one or more of the Debtors (including for receipt on behalf of any other persons who may be entitled to the same).

12.3 Amounts contingently owing

If, at the time of application of any amounts under clause 12.1 or clause 12.2, any part of the Secured Money is contingently owing, or not yet due and payable, to the Secured Party, the Secured Party or any Receiver:

- (a) may retain an amount equal to all or part of the amount of such Secured Money;
- (b) will place that retained amount in an interest bearing deposit account until such Secured Money becomes actually due and payable or ceases to be contingently owing;
- (c) will pay to the Secured Party from the amount retained, all amounts which become actually due and payable after that time; and
- (d) will apply the balance of the amount retained, together with interest earned whilst on deposit, in accordance with clause 12.1 and clause 12.2.

13. Protections

13.1 Notice, demand or lapse of time required by law

If a notice, demand or lapse of time is required by law before the Secured Party can exercise a Power, then for the purposes of this document:

- (a) that notice, demand or lapse of time is dispensed with to the extent allowed by that law; or
- (b) if not allowed to be dispensed with, but the period of notice, demand or lapse of time is allowed by that law to be shortened or fixed, it is shortened and fixed to one day (or, if a longer minimum period is required by law, to that period).

13.2 Secured Party, Receiver not restricted

The Secured Party or a Receiver need not:

- (a) exercise a Power, give a consent or make a decision under this document unless a Relevant Document expressly provides otherwise; or
- (b) resort to a Collateral Security or Power before resorting to any other of them.

13.3 Secured Party, Receiver not mortgagee in possession or liable

To the extent permitted by law, the Secured Party, a Receiver and any Attorney will:

- (a) not be, nor account or be liable as, mortgagee in possession due to exercise of a Power; or
- (b) not be liable to anyone for any Loss in relation to an exercise or attempted exercise of a Power, or a failure or delay in exercising a Power.

13.4 Protection of Secured Party, Receiver and Attorney

Neither the Secured Party, nor any Receiver or Attorney is:

- (a) accountable for any proceeds of enforcement other than those proceeds actually received by it;
- (b) obliged to enforce payment of the Secured Money or compliance with the Secured Obligations;
- (c) liable in respect of any conduct or delay in the exercise, manner of exercise, attempted exercise, or non-exercise of any right by the Secured Party or a Receiver;
- (d) liable to account as mortgagee in possession in respect of the Secured Property; or

- (e) liable for any Loss resulting from, or consequential on, any of the matters set out in paragraphs (a) to (d) above.

13.5 No marshalling or merger

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

13.6 Protection of third parties

No person dealing with or entering into a transaction with the Secured Party or any Receiver or Attorney need enquire:

- (a) whether a Default has occurred or is subsisting or any Relevant Document or the Security Interest created under it has become enforceable;
- (b) whether any Receiver or Attorney has been properly appointed;
- (c) as to the amount of the Secured Money or whether the Secured Money is due and payable;
- (d) whether any right was exercised or is exercisable;
- (e) as to the propriety or regularity of any transaction or dealing; or
- (f) as to the application of any amount paid to the Secured Party or any Receiver, or to any Attorney.

14. Authorised Representatives

14.1 Authorised Representatives and communications

- (a) Each Debtor irrevocably authorises the Secured Party to rely on a certificate by the receiver of that Debtor as to the identity and signatures of its Authorised Representatives, and to rely on any Notice or other document contemplated by any Relevant Document which bears the purported signature (whether given by facsimile or otherwise) of its Authorised Representative.
- (b) Each Debtor warrants that those persons have been authorised to give notices and communications under or in connection with the Relevant Documents.

14.2 Secured Party's opinion

An opinion or view of the Secured Party for the purposes of this document may be formed or held on its behalf by its Authorised Representative, its board of directors or by any other person it authorises to act on its behalf in relation to the Relevant Documents.

15. General security provisions

15.1 Security continuing and independent

Each of this document and the Security Interest created under it, and each other Collateral Security:

- (a) is in addition to and enforceable independently of any other Security Interest, guarantee or Collateral Security; and

- (b) will remain in full force and effect (whether or not at any given time a Debtor is indebted to the Secured Party) until the execution by the Secured Party and delivery to each Debtor of an unconditional release of this document and each Collateral Security.

15.2 Collateral Securities

This document is collateral to each other Collateral Security. This document and each other Collateral Security will be read and construed together so that:

- (a) a default under one of them will be deemed to be a default under each of them; and
- (b) the Secured Party may exercise any of its rights under any one or more of them separately or concurrently or not at all, and in such order as it chooses.

15.3 Release

A Debtor may require the Secured Party to execute a release of this document or the Security Interest created under it, or to release any Secured Property from that Security Interest, if the Secured Party is satisfied that:

- (a) all Secured Money has been irrevocably paid in full and all commitments which might give rise to Secured Money have terminated;
- (b) no further indebtedness which is Secured Money might in future become payable to the Secured Party under or pursuant to this document or any other agreement entered into, or as a result of any matter or circumstance occurring; and
- (c) all Secured Obligations have been satisfied and there are no liabilities or obligations which will subsequently fall within the description of the Secured Obligations.

15.4 Reinstatement

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

- (a) each Power and each Debtor's liability under each Relevant Document will be what it would have been, and will continue, as if the payment or transaction the subject of the Avoidance had not occurred; and
- (b) each Debtor will immediately execute and do anything required by the Secured Party to restore the Secured Party to its position immediately before the Avoidance (including reinstating any Relevant Document).

This clause 15.4 survives any termination or full or partial discharge or release of this document or any other Relevant Document.

16. Power of attorney

16.1 Appointment

Each Debtor irrevocably appoints the Secured Party, every officer of the Secured Party and every Receiver, separately, for valuable consideration and by way of security to secure the payment of the Secured Money and the performance the Secured Obligations, to be the attorney of that Debtor with power to:

- (a) at that Debtor's expense, do anything that Debtor is obliged to do under any Relevant Document and has failed to do;

- (b) do anything the Attorney thinks desirable to:
 - (i) protect or secure payment or delivery of the Secured Money or compliance with the Secured Obligations; and
 - (ii) give effect to the rights conferred on the Secured Party or any Receiver by this document, any other Collateral Security, or by law or otherwise, even if the Attorney has a conflict of interest in doing so;
- (c) delegate its rights (including this right of delegation) to any person for any period (and to revoke any such delegation); and
- (d) appoint any person its agent for any period (and to revoke any such appointment).

16.2 Ratification

Each Debtor agrees to ratify everything done by an Attorney, or by any delegate or agent of any Attorney, in accordance with this clause 16.

17. Indemnities and costs

17.1 Indemnity

Each Debtor agrees to indemnify, and to pay or reimburse on demand, the Secured Party, each Receiver and each Attorney for all costs and other liabilities (including the remuneration of any Receiver or Investigator) incurred or sustained by the Secured Party or any Receiver or Attorney in connection with:

- (a) the preparation, negotiation, execution, delivery, stamping, administration, registration and other completion of, and any consent, approval, waiver or amendment of or under, any Relevant Document;
- (b) any actual, attempted or contemplated:
 - (i) enforcement of any Relevant Document; or
 - (ii) exercise, preservation or consideration of any right under or pursuant to any Relevant Document or at law (including expenses and liabilities resulting from a mistake or error of judgment);
- (c) any enquiry by a government agency involving that Debtor or any transaction or activity with which the Secured Property or the Secured Money is connected;
- (d) possession of, or any interest or rights in, the Secured Property or any document of title, or any liability, control or right relating to any Secured Property or that Debtor;
- (e) surveying, valuing, inspecting or reporting on the Secured Property;
- (f) the release of any Secured Property from the security created under this document or any other Relevant Document;
- (g) goods and services tax applicable to any supply by the Secured Party to that Debtor; and
- (h)
 - (i) preparing, registering and maintaining any financing statement or financing change statement (including pursuant to section 167 of the PPSA); or
 - (ii) complying with any demand made under section 162 of the PPSA.

17.2 Survival of indemnities

- (a) Each indemnity in this document is:
 - (i) unconditional and irrevocable; and
 - (ii) a continuing and separate obligation which will survive termination, release or discharge of this document or any other Relevant Document, payment of all other Secured Money, and compliance with all Secured Obligations.
- (b) The Secured Party or a Receiver need not incur an expense or make a payment before enforcing an indemnity or reimbursement obligation in this document.

17.3 Debtors' costs

Each Debtor will pay its own costs and expenses in connection with this document.

18. PPSA

18.1 Waiver and section 109

Without limiting any other provision of this document or any other Relevant Document, each Debtor:

- (a) waives its right to receive any verification statement in respect of any financing statement or financing change statement relating to any Security Interest created under any Collateral Security;
- (b) agrees that, at any time after a Default has occurred, the Secured Party may:
 - (i) take possession of any Personal Property; and/or
 - (ii) dispose of any Personal Property in such manner and generally on such terms and conditions as the Secured Party thinks desirable,
 and otherwise do anything that Debtor could do in relation to the Personal Property.

18.2 Part 9 and additional rights

Each Debtor and the Secured Party agree that, to the extent permitted by law and in respect of each Relevant Document and each Security Interest created under a Collateral Security:

- (a) that Debtor and the Secured Party contract out of sections 114(1)(a), 133 and 134 of the PPSA;
- (b) that Debtor and the Secured Party contract out of the Debtor's rights to (and that Debtor waives its rights to):
 - (i) receive a statement of amount under section 116 of the PPSA;
 - (ii) receive notice of the Secured Party's proposal to retain Personal Property under section 120(2) of the PPSA;
 - (iii) object to the Secured Party's proposal to retain any Personal Property under section 121 of the PPSA;
 - (iv) not have goods damaged when the Secured Party (or any person on its behalf) removes an accession under section 125 of the PPSA;
 - (v) not be reimbursed for damage caused when the Secured Party (or any person on its behalf) removes an accession under section 126 of the PPSA;
 - (vi) refuse permission to remove an accession under section 127 of the PPSA;

- (vii) receive notice of the removal of an accession under section 129 of the PPSA; and
- (viii) apply to the Court for an order concerning the removal of an accession under section 131 of the PPSA.

18.3 Other rights

Where the Secured Party has rights in addition to, or existing separately from, those in Part 9 of the PPSA, those rights will continue to apply and are not limited or excluded (or otherwise adversely affected) by any right provided by any Relevant Document or by law.

18.4 Credit (Repossession) Act

Where any Secured Property constitute “consumer goods” under the *Credit (Repossession) Act 1997*, nothing in this document nor in any Relevant Document will have the effect of contracting out of the *Credit (Repossession) Act 1997* to the extent that this is prohibited by law.

19. Assignment

19.1 By Debtors

No Debtor may assign, transfer or otherwise deal with its rights, interests or obligations under this document or any other Relevant Document without the Secured Party’s prior written consent.

19.2 By Secured Party

Subject to the Relevant Documents, the Secured Party may:

- (a) assign, transfer, novate or otherwise deal with its rights, interests and obligations under this document without the consent of, or notice to, any Debtor; and
- (b) disclose to a proposed party to such assignment, transfer, novation or other dealing any information the Secured Party considers appropriate about any Debtor, the Relevant Documents and any transaction in connection with any of them.

19.3 Assistance

Each Debtor agrees to do or execute anything requested by the Secured Party to effect an assignment, transfer, novation or other dealing under this clause 19.

20. Notices and communications

20.1 Form of Notice

Each notice, demand, consent, approval or other communication (**Notice**) under this document:

- (a) must be in writing, in English and signed by an Authorised Representative of the party; and
- (b) must be hand delivered or sent by prepaid post (or airmail if applicable) or facsimile to the recipient’s address for notices specified in the ‘Details’ section of this document (as varied by any Notice given by the recipient to the party).

20.2 Effective on receipt

A Notice given in accordance with this clause 20 takes effect when received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting; or

- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight hours after the transmission (being counted as hours from 9:00a.m. to 5:00p.m. on a Business Day), the recipient informs the sender that it has not received the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm (addressee's time) on a Business Day, the Notice is taken to be received at 9:00a.m. (addressee's time) on the next Business Day.

20.3 Notice to Debtors

Notwithstanding anything in this clause 20, any Notice given to the Principal Debtor will be deemed to be given to all Debtors.

20.4 Validity

A Notice is validly given by the Secured Party even if returned unclaimed or if the recipient has been wound up or is absent from the place the Notice is delivered or sent to.

20.5 Other methods

This clause 20 does not limit any provision for giving Notices in another Relevant Document, or any other method for giving Notices or serving demands provided for by law.

21. Appointment of attorney by Debtors

21.1 Appointment

Each Debtor irrevocably appoints the Principal Debtor and any director or authorised signatory of the Principal Debtor for valuable consideration, to be its attorney on its behalf and in its name with power to agree to, and to execute, any amendment to the Relevant Documents, and any other document or deed to be delivered in relation to the Relevant Documents which may, in the opinion of the Principal Debtor, be necessary or desirable.

21.2 Ratification

Each Debtor agrees to ratify any action taken or document executed by the Principal Debtor pursuant to the power conferred under this clause 21.

22. Receivers

The Secured Party acknowledges and agrees that:

- (a) this document has been signed on behalf of each Debtor by one of the receivers as joint and several receivers appointed to the relevant Debtor;
- (b) other than solely to the extent necessary to ensure that the receivers have a claim to the Secured Property to repay the Secured Money, no personal liability is undertaken or incurred by the receivers, their agents or employees, to the Secured Party or to any other person, whether in contract, tort or otherwise, in respect of any obligation undertaken by the Debtors pursuant to this document or in relation to the subject matter of this document, or in relation to any statements, actions, representations, or other events leading up to the formation of this document, nor any claims arising consequent upon formation of this document;
- (c) if the Secured Party or any other party is entitled to exercise any rights of action in relation to this document, those rights will be exercised against any Debtor alone and not against the receivers (or their agents or employees); and

- (d) the Secured Party will have no recourse to the receivers' personal assets, nor will it seek adjudication for bankruptcy of the receivers, in respect of any liability, claim or judgment thereon under, pursuant to or in connection with this document.

23. General

23.1 No implied waivers

- (a) Time is of the essence in any Relevant Document, but no failure to exercise, or delay in exercising, a Power operates as a waiver of that Power. The single or partial exercise of a Power does not prevent a further exercise of that or any other Power. Unless expressly provided in a Relevant Document, no Power or Relevant Document merges in, limits or excludes any other Power, Relevant Document or judgment which the Secured Party or a Receiver (or anyone claiming through it) may have or obtain.
- (b) A consent or waiver by the Secured Party or a Receiver in relation to this document is effective only if in writing.

23.2 Discretions

Except to the extent otherwise expressly provided, the Secured Party or any Receiver may act in its absolute and sole discretion when forming any opinion, exercising (or not exercising) any Power, taking (or not taking) any action, giving or withholding consents or releases, dealing with any other matter, or imposing any terms in respect of any such matter.

23.3 Remedies cumulative

Powers under the Relevant Documents are cumulative and do not limit or exclude Powers under law.

23.4 Partial invalidity

If at any time a provision of any Relevant Document is illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that provision will be ineffective in that jurisdiction to the extent of the illegality, invalidity or unenforceability. This does not affect the validity or enforceability of that provision in any other jurisdiction, nor the validity or enforceability of the remainder of this document in any jurisdiction.

23.5 Amendment

No amendment to any Relevant Document is effective unless it is in writing and signed by or on behalf of each party to it.

23.6 Certificates

A certificate of the Secured Party as to any amount, fact or determination relevant to the rights or obligations of the Secured Party or a Debtor under a Relevant Document is taken to be correct unless proved incorrect.

23.7 Exclusion of laws

To the extent permitted by law:

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

23.8 Contracts (Privity) Act

For the purposes of the *Contracts (Privity) Act 1982*, each Receiver and each Attorney is entitled to enforce against each Debtor each provision of this document which confers a benefit on a Receiver or Attorney (as the case may be). However, none of them need consent to any amendment made to this document.

23.9 Conflicts

In the event of a conflict between a provision of this document and any other Relevant Document, the Secured Party may, in its absolute discretion, determine which provision will prevail.

23.10 Counterparts

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

23.11 Governing law and jurisdiction

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

23.12 Delivery

For the purposes of section 9 of the PLA, and without limiting any other mode of delivery, this document will be delivered by each of the parties (each a **Delivering Party**) immediately on the earlier of:

- (a) physical delivery of an original of this document (or a counterpart of it), executed by the relevant Delivering Party, into the custody of each other party or the solicitors of each other party; and
- (b) transmission by the relevant Delivering Party or its solicitors (or any other person authorised in writing by the relevant Delivering Party) of a facsimile or scanned copy of an original of this document (or a counterpart of it), executed by the relevant Delivering Party, to each other party or the solicitors of each other party.

Signing page

EXECUTED AND DELIVERED as a deed

HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND acting by and through Gabriel Makhlof, **Deputy Chief Executive** acting under delegation from John Whitehead, **Secretary to the Treasury** for and on behalf of the **Minister of Finance** in the presence of:

[Withheld under s9(2)(a)]

[Withheld under s9(2)(a)]

Signature of Gabriel Makhlof, Deputy Chief Executive

Signature of witness

Andre Anderson

Name of witness

Solicitor

Occupation of witness

Wellington

City/town of residence

Date: 31 August 2010

SOUTH CANTERBURY FINANCE LIMITED (IN RECEIVERSHIP) by its receivers and duly authorised agents:

Signature of receiver

Name of receiver

Signature of receiver

Name of receiver

BELFAST PARK LIMITED (IN RECEIVERSHIP) by its receivers and duly authorised agents:

Signature of receiver

Name of receiver

Signature of receiver

Name of receiver

BRAEBROOK PROPERTIES LIMITED (IN RECEIVERSHIP) by its receivers and duly authorised agents:

Signature of receiver

Name of receiver

Signature of receiver

Name of receiver

FACE FINANCE LIMITED (IN RECEIVERSHIP) by its receivers and duly authorised agents:

Signature of receiver

Name of receiver

Signature of receiver

Name of receiver

FAIRFIELD FINANCE LIMITED (IN RECEIVERSHIP) by its receivers and duly authorised agents:

Signature of receiver

Name of receiver

Signature of receiver

Name of receiver

FLEXI LEASE LIMITED (IN RECEIVERSHIP) by its receivers and duly authorised agents:

Signature of receiver

Name of receiver

Signature of receiver

Name of receiver

GALWAY PARK LIMITED (IN RECEIVERSHIP) by its receivers and duly authorised agents:

Signature of receiver

Name of receiver

Signature of receiver

Name of receiver

HELICOPTER NOMINEES LIMITED (IN RECEIVERSHIP) by its receivers and duly authorised agents:

Signature of receiver

Name of receiver

Signature of receiver

Name of receiver

HORNCHURCH LIMITED (IN RECEIVERSHIP) by its receivers and duly authorised agents:

Signature of receiver

Name of receiver

Signature of receiver

Name of receiver

RENTAL CARS LIMITED (IN RECEIVERSHIP) by its receivers and duly authorised agents:

Signature of receiver

Name of receiver

Signature of receiver

Name of receiver

SCFG SYSTEMS LIMITED (IN RECEIVERSHIP) by its receivers and duly authorised agents:

Signature of receiver

Name of receiver

Signature of receiver

Name of receiver

SOPHIA INVESTMENTS LIMITED (IN RECEIVERSHIP) by its receivers and duly authorised agents:

Signature of receiver

Name of receiver

Signature of receiver

Name of receiver

SOUTHBURY INSURANCE LIMITED (IN RECEIVERSHIP) by its receivers and duly authorised agents:

Signature of receiver

Name of receiver

Signature of receiver

Name of receiver

TYRONE ESTATES LIMITED (IN RECEIVERSHIP) by its receivers and duly authorised agents:

Signature of receiver

Name of receiver

Signature of receiver

Name of receiver

Schedule 1 – Debtors

Name: Belfast Park Limited (in receivership)

Notice details: C/- McGrath Nicol

Level 17, 34 Shortland Street

PO Box 91644, Victoria Street West

Auckland

New Zealand

Name: Braebrook Properties Limited (in receivership)

Notice details: C/- McGrath Nicol

Level 17, 34 Shortland Street

PO Box 91644, Victoria Street West

Auckland

New Zealand

Name: Face Finance Limited (in receivership)

Notice details: C/- McGrath Nicol

Level 17, 34 Shortland Street

PO Box 91644, Victoria Street West

Auckland

New Zealand

Name: Fairfield Finance Limited (in receivership)

Notice details: C/- McGrath Nicol

Level 17, 34 Shortland Street

PO Box 91644, Victoria Street West

Auckland

New Zealand

Name: Flexi Lease Limited (in receivership)

Notice details: C/- McGrath Nicol

Level 17, 34 Shortland Street

PO Box 91644, Victoria Street West

Auckland

New Zealand

Name: Galway Park Limited (in receivership)

Notice details: C/- McGrath Nicol

Level 17, 34 Shortland Street
PO Box 91644, Victoria Street West
Auckland
New Zealand

Name: Helicopter Nominees Limited (in receivership)

Notice details: C/- McGrath Nicol

Level 17, 34 Shortland Street
PO Box 91644, Victoria Street West
Auckland
New Zealand

Name: Hornchurch Limited (in receivership)

Notice details: C/- McGrath Nicol

Level 17, 34 Shortland Street
PO Box 91644, Victoria Street West
Auckland
New Zealand

Name: Rental Cars Limited (in receivership)

Notice details: C/- McGrath Nicol

Level 17, 34 Shortland Street
PO Box 91644, Victoria Street West
Auckland
New Zealand

Name: SCFG Systems Limited (in receivership)

Notice details: C/- McGrath Nicol

Level 17, 34 Shortland Street
PO Box 91644, Victoria Street West
Auckland
New Zealand

Name: Sophia Investments Limited (in receivership)

Notice details: C/- McGrath Nicol

Level 17, 34 Shortland Street
PO Box 91644, Victoria Street West
Auckland
New Zealand

Name: Southbury Insurance Limited (in receivership)

Notice details: C/- McGrath Nicol

Level 17, 34 Shortland Street

PO Box 91644, Victoria Street West

Auckland

New Zealand

Name: South Canterbury Finance Limited (in receivership)

Notice details: C/- McGrath Nicol

Level 17, 34 Shortland Street

PO Box 91644, Victoria Street West

Auckland

New Zealand

Name: Tyrone Estates Limited (in receivership)

Notice details: C/- McGrath Nicol

Level 17, 34 Shortland Street

PO Box 91644, Victoria Street West

Auckland

New Zealand

Schedule 2 – Serial numbered goods

Serial numbered goods (including motor vehicle(s)/aircraft) that are equipment or consumer goods:

Motor vehicles

Complete if serial numbered goods consist of any of any motor vehicle(s) other than inventory:

Organisation Name: [●]

| Make or name of manufacturer | Model no. | Model year | Registration no. (if any) | Vehicle id No. (if any) | Chassis no. (if any) | Colour |
|------------------------------|-----------|------------|---------------------------|-------------------------|----------------------|--------|
| | | | | | | |
| | | | | | | |
| | | | | | | |

Serial numbered goods (including motor vehicle(s)/aircraft) that are equipment or consumer goods:

Aircraft

Complete if serial numbered goods consist of any of any aircraft other than inventory:

Organisation Name: [●]

| Make or name of manufacturer | Model no. | Model year | Class of aircraft | *Registration mark | *Nationality mark (if any) | *Serial no. |
|------------------------------|-----------|------------|-------------------|--------------------|----------------------------|-------------|
| | | | | | | |
| | | | | | | |
| | | | | | | |

***THE REGISTRATION MARK, NATIONALITY MARK (IF ANY) AND THE SERIAL NUMBER MUST BE GIVEN AS THEY APPEAR IN THE CERTIFICATE OF REGISTRATION ISSUED BY THE DIRECTOR OF CIVIL AVIATION.**