

The Treasury

South Canterbury Finance Limited Information Release

Release Document

April 2011

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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.

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DATED2009

HER MAJESTY THE QUEEN

the Crown

- and -

KORDAMENTHA

the Contractor

AGREEMENT FOR INSPECTION & RELATED SERVICES

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THIS AGREEMENT is made on 2009

BETWEEN:

- 1 **HER MAJESTY THE QUEEN ACTING BY AND THROUGH THE SECRETARY TO THE TREASURY** (the "Crown")
- 2 **KORDAMENTHA, a partnership carrying business in New Zealand** (the "Contractor")

RECITALS:

- A. The Crown requires consultancy services from time to time in relation to projects undertaken by the Treasury on its behalf.
- B. The Contractor specialises in providing consultancy services.
- C. The parties have agreed that the Contractor will provide services to the Crown on the terms and conditions set out in this Agreement.

IT IS AGREED:

1. INTERPRETATION AND PRECEDENCE

1.1 In this Agreement, unless the context otherwise requires:

"Appointment Letter" means that letter of even date from the Crown to the Contractor, the terms of which are set out in part 2 of the Schedule;

"Contractor Sourced Information" means any knowledge, information or data that may be made available to the Contractor, its employees or contractors by any third party or that may be derived from any third party as a result of the Contractor's engagement by the Crown or that is otherwise created by the Contractor its employees or contractors in the course of the provision of the Services (including without limitation any document, records, papers or other material produced in connection with this Agreement or relating in any way to the Services but does not include any information which:

- a) is generally available to, and known by, the public; or
- b) was available to, and legally and properly obtained by, the Contractor on a non-confidential basis from the Crown or any other source (provided that such source was not bound by a confidentiality obligation to the Crown);

"Crown Sourced Information" means any knowledge, information or data provided to the Contractor by or on behalf of the Crown in connection with this Agreement, or any information concerning the content and terms of this Agreement but does not include any information which:

- a) is generally available to, and known by, the public; or

COMMERCIAL-IN-CONFIDENCE

- b) was available to, and legally and properly obtained by, the Company on a non-confidential basis from the Crown or any other source (provided that such source was not bound by a confidentiality obligation to the Crown);

"Nominated Persons" means those personnel provided by the Contractor and approved by the Crown under clause 4.2;

"Services" means the work to be performed by the Contractor as described in the Schedule, the Appointment Letter and the Scoping Document;

"Schedule" means the schedule to this Agreement;

"Scoping Document" means that scoping document referenced in the Appointment Letter, which once signed by both the Crown and Contractor will:

- (a) constitute part of the description of the Services; and
- (b) form part of this Agreement;

a "person" includes an individual, body corporate, an association of persons (whether corporate or not), a trust and a state and agency of a state (in each case, whether or not having a separate legal personality);

a gender includes each other gender;

singular includes the plural and vice versa;

any legislation includes a modification and re-enactment of legislation enacted in substitution for a regulation, order-in-council and other instrument from time to time issued or made under, that legislation; and

headings are to be ignored in construing this Agreement.

- 1.2 This Agreement comprises the terms contained in the body of this Agreement, the Appointment Letter and the Scoping Document (once signed off by the Contractor and the Crown). In the event of a conflict or inconsistency between the terms comprising the body of this Agreement, the Appointment Letter and the Scoping Document:

- (a) the terms comprising the body of this Agreement will prevail over the terms of the Appointment Letter and the Scoping Document;
- (b) the terms comprising the body of this Agreement and the Appointment Letter will prevail over the terms of the Scoping Document.

2. APPOINTMENT

- 2.1 The Crown agrees to engage the Contractor to provide, and the Contractor agrees to provide, the Services.

3. TERMS

- 3.1 Subject to the provisions of this Agreement, this Agreement will remain in force

COMMERCIAL-IN-CONFIDENCE

for the term of this Agreement specified in part 1 of the Schedule ("Term of Agreement"), unless terminated earlier under clause 9 of this Agreement.

- 3.2 This Agreement may be extended for a further period if mutually agreed between the parties before the end of the Term of Agreement, in which case the provisions of this Agreement shall continue to apply until otherwise agreed.

4. RESPONSIBILITIES

- 4.1 The Contractor shall devote such time, attention, skill and resources as is reasonably necessary for the proper and efficient provision of the Services. For this purpose, the Contractor agrees to provide its Services for the average minimum period specified in part 1 of the Schedule.
- 4.2 If the Contractor is a company or a partnership, for the purpose of providing the Services, the Contractor agrees to provide such experienced and suitable personnel as the Crown may from time to time approve. The initial personnel to be so provided with the Crown's approval are specified in part 1 of the Schedule.
- 4.3 Except as otherwise specified in this Agreement or agreed from time to time between the Contractor and the Crown, the Contractor will work from the Contractor's own premises and will be responsible for supplying all equipment necessary in order to enable the Contractor to provide the Services.
- 4.4 The Crown and the Contractor will designate representatives as their respective points of contact for the administration of this Agreement. The first such representatives are specified in part 1 of the Schedule. Either party may vary the identity or contact details of that party's representative by giving the other party written notice.
- 4.5 The Contractor will report to the Crown outlining the Contractor's progress on the provision of the Services in accordance with the terms of the Scoping Document. Except as otherwise specified in this Agreement or agreed from time to time between the Contractor and the Crown, the Contractor shall not be under the day to day control or supervision of the Crown or any of its representatives in respect of the performance of the Contractor's obligations under this Agreement.
- 4.6 The Contractor, at its own cost, shall correct any errors, omissions, defects or faults relating to the Contractor's provision of the Services of which the Crown notifies the Contractor in writing during the term of this Agreement or within the period specified in part 1 of the Schedule.
- 4.7 The Contractor will comply with and observe, all applicable laws and regulations in its performance of the Services (including without limitation the Securities Markets Act 1988) and shall ensure that its employees and contractors do likewise.
- 4.8 Subject to the limits specified in the Schedule, the Contractor will indemnify the Crown against any losses, together with all costs and expenses (including legal expenses) which the Crown incurs ("Crown Loss") arising out of the wilful or negligent act or omission of the Contractor or its employees in breach of this Agreement. For the avoidance of doubt this indemnity shall not otherwise than in

COMMERCIAL-IN-CONFIDENCE

accordance with this clause place the Contractor in the position of an insurer of a Crown Loss.

- 4.9 The amounts specified in part 1 of the Schedule to be paid by the Crown to the Contractor are inclusive of any taxes, duties, fees or other similar charges of any kind whatsoever (including, without limitation, non-resident contractors' withholding tax and any other withholding taxes). In the event that the Crown is required to deduct or withhold from any such payment to the Contractor any such taxes, duties or fees or other similar charges, then the Crown will be under no obligation whatsoever to pay the Contractor any additional amount to ensure the Contractor receives an amount equal to the amount which it would have received had such taxes, duties, fees or other similar charges not been deducted or withheld.
- 4.10 The Contractor will indemnify the Crown against any loss, liability, cost or expense (including, without limitation, any taxes, penalties or interest levied against the Crown and any legal expenses incurred by the Crown) which the Crown may suffer or incur as a result of the Crown failing to deduct or withhold the correct amount of any taxes, duties, fees or other similar charges from any payments to the Contractor under this Agreement, whether by reason of the Contractor being held to be a non-resident or an employee of the Crown or otherwise howsoever.

5. CONDITIONS

- 5.1 The Crown will pay the Contractor the amounts specified in part 1 of the Schedule.
- 5.2 In addition to the payments set out in clause 5.1, the Crown will reimburse the Contractor for those expenses, incurred in connection with the provision of the Services, specified in part 1 of the Schedule.
- 5.3 The Contractor and the Crown agree and declare that the Contractor is engaged to provide the Services as an independent contractor and is not an employee of the Crown. Nothing in this Agreement creates an employment, fiduciary, partnership, agency or joint venture relationship either between the Crown and the Contractor, or between the Crown and any of the Contractor's employees or contractors.
- 5.4 Without limiting the generality of clause 5.3, at no time and under no circumstances will the Crown have any liability to pay or be called upon by the Contractor to pay to the Contractor any sum or sums in respect of:
- 5.4.1 holiday pay;
 - 5.4.2 sick pay;
 - 5.4.3 redundancy or any other form of severance pay;
 - 5.4.4 superannuation; or
 - 5.4.5 taxes or levies under the Injury Prevention, Rehabilitation, and Compensation Act 2001.

COMMERCIAL-IN-CONFIDENCE

6. CONFIDENTIALITY

- 6.1 The Contractor acknowledges that the information contained in this Agreement is official information in terms of the Official Information Act 1982 and, in line with the policy of that Act, such information may be released to the public unless there is good reason, in terms of that Act, to withhold the information.
- 6.2 The Contractor acknowledges also that, in accordance with the New Zealand Government's policy of improved transparency of information on government contracts, the Crown may disclose:
- 6.2.1 the existence of this Agreement;
 - 6.2.2 the nature and quantity of the Services provided by the Contractor under this Agreement;
 - 6.2.3 the name and contact details of the Contractor;
 - 6.2.4 the value of any amount paid by the Crown to the Contractor under this Agreement; and
 - 6.2.5 the Term of Agreement.
- 6.3 Except to the extent required by law and as otherwise permitted pursuant to the terms of this Agreement, the Contractor will not, and will procure that its employees or contractors do not, at any time disclose to any third party, including (without limitation) any of the Contractor's employees or contractors, Crown Sourced Information unless previously authorised in writing by the Crown to do so. For the avoidance of doubt, any existing confidentiality agreement entered into between the Crown and the Contractor shall continue to apply.
- 6.4 Any Contractor Sourced Information is not to be disclosed to any person other than the Crown, unless previously authorised in writing by the Crown to do so except to the extent required by law.
- 6.5 The Contractor may only:
- (a) disseminate or otherwise make Crown Sourced Information and Contractor Sourced Information available to the Nominated Persons and not to any other of the Contractor's employees or contractors without the Crown's prior written consent;
 - (b) use the Crown Sourced Information and Contractor Sourced Information for the purpose of fulfilling the Contractor's obligations under this Agreement.
- 6.6 This clause 6 will continue to have effect even after this Agreement has been terminated or has expired but will cease to apply to any knowledge, information or data which is generally known by the public otherwise than by a breach of this clause 6.
- 6.7 Employees and contractors of the Contractor are deemed to be bound by this clause 6, and, if required by the Crown, the Contractor will procure all or any of its employees and contractors (including Nominated Persons) to execute a deed stating that they understand the terms of this clause 6 and will abide by those terms.

7. OTHER BUSINESS ACTIVITY

- 7.1 Subject to the provisions of this Agreement, during the term of this Agreement, the Contractor shall not offer or provide services to any company, firm or person other than the Crown in respect of any matter where in the Contractor's reasonable opinion the interests of that company, firm or person may or do conflict with the interests of the Crown regarding the subject matter of this Agreement.
- 7.2 Where the Contractor is of the reasonable opinion that such a conflict of interest has arisen or may arise, the Contractor may, with the prior written consent of the Crown, act for that person regarding that subject matter. The Crown's consent to the Contractor so acting will not be unreasonably withheld.
- 7.3 Neither the Crown nor the Contractor shall at any time during the continuance of this Agreement or for a period of 12 months after this Agreement is terminated or has expired, solicit or endeavour to entice away or encourage any other person to solicit or endeavour to entice away any person who was an employee of the other party at the date of termination of this Agreement or during the preceding 6 months.

8. DISPUTES

- 8.1 If any dispute or difference arises between the parties concerning the construction or performance of this Agreement or the rights and liabilities of the parties, the parties will actively, openly and in good faith discuss that dispute or difference with a view to resolving it by mutual agreement. If, however, the dispute or difference is not resolved within a reasonable time, either party may refer the matter to arbitration for determination in accordance with the Arbitration Act 1996.
- 8.2 In the event that any dispute or difference is referred to arbitration under clause 8.1, the parties will appoint the President of the New Zealand Law Society or a person nominated by him or her as arbitrator.

9. TERMINATION

- 9.1 Either party may terminate this Agreement before the end of the Term of Agreement:
 - 9.1.1 immediately, by written notice to the other party, if the other party does not remedy any material breach of this Agreement which is capable of being remedied within 7 days after the date on which the defaulting party receives notice from the other party requiring it to remedy the breach; or
 - 9.1.2 immediately, by written notice to the other party, if that other party materially breaches this Agreement and that breach is incapable of remedy; or
 - 9.1.3 by giving the other party not less than one (1) month notice in writing.

10. RETURN OF DOCUMENTS AND COPYRIGHT

- 10.1 Ownership of and copyright in any document, records, papers or other material produced in connection with this Agreement or relating in any way to the Services or the Crown is the exclusive property of the Crown.
- 10.2 Upon termination of this Agreement the Contractor:
- 10.2.1 shall promptly deliver on request to the Crown or its authorised representative all documents, records, papers or other material in the Contractor's possession or under its direct or indirect control and which are referred to in clause 10.1; and
 - 10.2.2 shall be entitled to retain a copy of any documents, records, papers or other material, but only for the purposes of issues arising between the Crown and the Contractor.

11. AMENDMENT TO AGREEMENT

- 11.1 The parties may at any time by supplemental agreement in writing vary, amend, add to, make substitutions in, or alter, this Agreement including the Schedule and the Scoping Document and after the execution of any such supplemental agreement this Agreement shall take effect accordingly. No amendment to the terms of this Agreement will be binding on either party unless both parties agree to that amendment in writing.

12. NOTICES

- 12.1 Notices may be given by either party by letter addressed to the other party. The initial addresses of each party are specified in the Schedule. Any such notice may be sent by mail or left at such office or address and if sent by mail shall be deemed to have been given on the day after the day on which the letter is posted.

13. MISCELLANEOUS

- 13.1 Time is of the essence in respect of all dates and times for performance by the Contractor of its obligations under this Agreement. No failure to exercise, and no delay in exercising, any right under this Agreement by either party will operate as or be deemed to be a waiver of that right, nor will a single or partial exercise of any right under this Agreement preclude an additional or further exercise of that right or the exercise of another right. No waiver of a right under this Agreement will be effective unless it is signed by the party waiving the right.
- 13.2 The Contractor may not assign or transfer any of its rights or obligations under this Agreement to any person without the prior written consent of the Crown.
- 13.3 As the Contractor is, under the provisions of the Protected Disclosures Act 2000, included in the definition of an employee any disclosure under that Act must be made in accordance with the internal procedures as set out at: <http://www.treasury.govt.nz/careers/protecteddisclosures>.
- 13.4 The illegality, invalidity or unenforceability of a provision of this Agreement under any law will not affect the legality validity or enforceability of that provision under

COMMERCIAL-IN-CONFIDENCE

another law or the legality, validity or enforceability of another provision.

13.5 This Agreement may be signed in any number of counterparts all of which, when taken together, will constitute one and the same instrument. A party may enter into this Agreement by executing any counterparts.

13.6 This Agreement is governed by and is to be construed in accordance with New Zealand law.

EXECUTED as an agreement.

SIGNED for and on behalf)
of the Crown by)
)
in the presence of)

Witness:

Occupation:

Address:

SIGNED for and on behalf of)
KORDAMENTHA by two Partners)
)
)

Name:

Name:

SCHEDULE

Part 1

Description of Services (clause 1.1):

The Contractor will provide services as inspector appointed under clause 6.5(a) of the Crown Deed of Guarantee with South Canterbury Finance Limited dated 19 November 2008. Such services are detailed in the Appointment Letter and more particularly described in the Scoping Document. .

Term of Agreement (clause 3.1):

From execution of the Agreement until completion of the Services to the satisfaction of the Crown.

Average minimum period during which services will be provided (clause 4.1):

Not applicable

Initial Nominated Persons (clause 4.2):

[1]

Representatives (clause 4.4):

- (a) For the Crown: Jeremy Corban
- (b) For the Contractor: [1]

Period after completion within which Contractor must be notified of errors, omissions, defects or faults (clause 4.6):

2 weeks

Payments (clause 5.1):

To be set out in the scope document which is required to be provided as part of the Letter of Appointment, attached in Part 2 of this Schedule.

Payment will be by the 20th of the month following completion of the Services to the satisfaction of the Crown, following receipt by the Crown of a detailed and itemised tax invoice.

Expenses to be reimbursed (clause 5.2):

Nil

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Addresses for notices (clause 12.1):

Crown: 1 The Terrace
(PO Box 3724)
Wellington

Contractor: Level 16, Tower Centre, 45 Queen Street
(PO Box 982)
Auckland

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Part 2 – Letter of Appointment

12 June 2009

[1]

Kordamentha
Level 16, Tower Centre, 45 Queen Street
PO Box 982
Auckland 1140

Dear [1]

APPOINTMENT OF KORDAMENTHA AS AN INSPECTOR UNDER CLAUSE 6.5 OF THE CROWN DEED OF GUARANTEE IN RELATION TO SOUTH CANTERBURY FINANCE LIMITED.

South Canterbury Finance Limited (“SCF”) and Her Majesty the Queen in right of New Zealand, acting through the Minister of Finance (the “Crown”) have entered into a Crown Deed of Guarantee (Non-Bank Deposit Taker) dated 19 November 2008 (the “Deed”).

As part of the Crown’s ongoing management of its contingent liability under the Deposit Guarantee Scheme, the Crown has sought additional information from SCF under clauses 4.1 and 6.4 of the Deed, which I will forward to you separately.

The Crown requires more detailed information in regard to SCF. Accordingly the Crown wishes to appoint Kordamentha (“Kordamentha”) as an inspector under clause 6.5 of the Deed. This appointment is to be subject to the terms of the attached Agreement For Inspection & Related Services and the terms of this letter.

The key issues that the Crown requires to be investigated are outlined in this letter, and are to be used in conjunction with a verbal briefing from the Crown. After the verbal briefing Kordamentha is to compile a detailed scope document for the inspection within three business days of the verbal briefing. The scope document is to outline:

- The detailed deliverables of the report;
- The required external consultants;
- Key milestones dates, including a completion date for the inspection;
- Key personnel conducting the inspection;
- Estimated expected costs associated with the report; and
- The format of the report.

The scope document is to be approved by the Crown, and the Agreement for Inspection and Related Services signed prior to the commencement of the investigation.

During the course of the investigation as a result of information provided to the Crown (whether by the Kordamentha, SCF or third parties) the Crown may notify Kordamentha of other matters in respect of which it wishes Kordamentha to report to it.

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The Crown anticipates that Kordamentha will have discussions with the directors and senior officers of SCF. Kordamentha may instruct professional advisors in areas that require specialist skills, subject to Crown approval.

The Crown recognises that Kordamentha's ability to complete the above tasks will be limited by the availability of information and cooperation of SCF, and the third party reporting. Please advise the Crown immediately if you should experience any problems in sourcing information from SCF or in the level of co-operation Kordamentha is receiving from SCF.

The key issues that the report is to focus on are:

I. General Business Practices;

- Prepare a company profile of SCF, its shareholders, key staff, directors and related parties (listed investments, or listed shareholders etc);
- Prepare a company profile of SCF's corporate metrics over the past three years in six monthly intervals;
- Review SCF in respect to its:
 - Asset write strategy;
 - Funding strategy;
 - Trust Deed;
 - The effect of the proposed regulatory changes proposed by the RBNZ;
 - The business model of SCF; and
 - The governance model of SCF.
- Outline what steps are being taken to reorganise SCF to improve its liquidity and financial stability.

II. Credit Quality;

- In regard to the property book, we would like you to undertake a due diligence style review of those material assets that:
 - Are impaired, past due, in arrears by more than 60 days or otherwise at risk;
 - Are related party lending; and
 - Do not "cash flow".
- The valuations on file should be reviewed and a desktop valuation as at today undertaken based on a "willing buyer and willing seller" and a "forced seller" basis for the material impaired, related party and non-cash flow assets.
- On the balance of the property book, a due diligence style review should be conducted on a sample only basis, unless initial investigation warrants further enquiry;

COMMERCIAL-IN-CONFIDENCE

- In regard to the other books, we would like you to undertake a due diligence style review on a sample only basis, unless initial investigation warrants further investigation;
- Review the arrears, past due and impaired assets and provisioning across the portfolios: and

III. Market Position;

Given the large loan book of SCF, and the level of new lending that SCF has historically undertaken is there any sector, or geography that will be significantly affected if SCF was to shrink their loan book and or stop lending.

IV. Liquidity;

The general liquidity position of SCF should be reviewed, with investigation and analysis centred around:

- SCF's current liability profile (maturity profile, amounts raised, interest rates etc);
- SCF's current asset profile (maturity profile, concentration risk etc);
- An outline of the depositor mix (number of depositors, quantum invested etc);
- The level of parent support available; and
- A full analysis of banking facilities held by SCF should be conducted, including outlining the key covenants and default / review events. Any changes to key terms, conditions or facility limits over the past year should be outlined. The level of additional bank support available, including undrawn lines and SCF's capacity for further debt should also be explored.

V. Proposed Restructure of Southbury Group Limited and SCF (the "Restructure");

- SCF have engaged the services of an independent expert in regard to the Restructure of Southbury Group Limited and SCF, this report will be made available to you.
- It is expected that the reporting on SCF will include an analysis of the proposed Restructure.
- Reasonable steps should be undertaken to ensure the accuracy of any information gained from the independent expert.

If you have any questions or require clarification, about any of the matters contained in this letter please do not hesitate to contact Craig Murphy on [1]

Yours sincerely

Jeremy Corban
Assistant Secretary, Economic Performance Group