

## **Deed**

relating to Shares in the

**Police & Families Credit Union  
Incorporated**

**The Police & Families Credit Union  
Incorporated**

as the issuer of the Shares

**and**

**Public Trust**

as Supervisor

**Date**

*1 January 2020*

## CONTENTS

1.	Interpretation	1
2.	Appointment Of And Powers And Discretions Of Supervisor	5
3.	Retirement, Removal And New Appointment Of Supervisor	9
4.	Security	10
5.	Supervisor's Remuneration And Expenses	12
6.	Covenants By Credit Union	13
7.	Reports And Information For Supervisor	16
8.	Event Of Review	19
9.	Events Of Default	22
10.	Distribution Of Proceeds Of Realisation Of Secured Property, And Priority	27
11.	Waiver By Supervisor	28
12.	Amendments To Deed	28
13.	Meetings	28
14.	Reconstruction	29
15.	Notices	29
16.	Liability Of Previous Trustees	30
17.	Governing Law	30
18.	Registration Of Deed	30
19.	Execution	30

## SCHEDULE 1: Meetings of Members

The **DEED** is made to take effect from 1 January 2020

## **PARTIES**

1. **The** Police & Families Credit Union Incorporated, a Credit Union registered as number 610 under Part III of the Friendly Societies and Credit Unions Act 1982 (**Credit Union**), and
2. **Public Trust** of Auckland (**Supervisor**)

## **INTRODUCTION**

- A. The Credit Union is registered under the Act and is governed by a trust deed dated 12 December 2017 as amended from time to time (**Former Deed**).
- B. The Credit Union offers Shares to its Members in accordance with the Former Deed and its Rules. Shares are debt securities for the purposes of the FMC Act.
- C. The Supervisor is the supervisor in respect of the Shares on the terms of the Former Deed.
- D. The Credit Union will become incorporated under the Act on 1 January 2020, under amendments to the Act. As a consequence of incorporation and under the related amendments to the Act, provisions in the Former Deed relating to the previous role of trustees under the Former Deed are required under the Act to be deleted as from 1 January 2020 (the **Required Amendments**).
- E. The Credit Union is of the opinion that the Required Amendments can be made by the Credit Union and the Supervisor, pursuant to sections 108(1)(a) and 2(a)(ii) of the FMC Act, without the need to obtain the approval of a special resolution of members of the Credit Union (being the holders of the debt securities under the Former Deed) on the basis that the Required Amendments to the Former Deed will not have a material adverse effect on members of the Credit Union (being the holders of debt securities under the Former Deed). The Supervisor has accepted the Credit Union's position on this matter.

## **IT IS AGREED**

Effective on and from the date of this Deed, being 1 January 2020, the Former Deed is amended by revoking all of its provisions and replacing them with the provisions of this Deed.

### **1. Interpretation**

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#### **1.1 Definitions**

In this Deed, (including the Introduction) unless the context otherwise requires:

**Act** means the Friendly Societies & Credit Unions Act 1982;

**Annual Return** has the meaning given to that term in the Act;

**Assets** mean all assets of the Credit Union, whether tangible or intangible;

**Asset Class** means those asset classes defined in the Reserve Bank of New Zealand, "Banking Supervision Handbook, Section 2, Capital Adequacy Framework" as amended from time to time or, in the absence of such a definition, its nearest equivalent in the relevant supervisory regime applicable generally to banks and/or financial institutions in New Zealand and held by the Credit Union as part of Total Assets;

**Auditor** means the person who for the time being is appointed as the auditor of the Credit Union under section 123 of the Act;

**Capital Ratio** has the meaning given to that term in clause 6(c) of this Deed;

**Cash** means cash, term and bank deposits with reputable financial institutions and any other similar assets that would be considered to be "cash" for the purposes of GAAP;

**Committee of Management** has the meaning given to that term in the Rules;

**Creditor Liabilities** means liabilities to creditors, contingent liabilities and includes provision for income and other taxes, long service leave, holiday and retirement leave provisions, but excluding liabilities to bona fide reputable financial institutions lending money to the Credit Union and the amount that the Credit Union would be required to pay to Members if all of the Shares on issue were withdrawn at the relevant time;

**Deed** means this deed of trust, including the Schedule;

**Default Date** means the date on which written notice is given under clause 9.2;

**Deposit Takers Regulations 2010** means the regulations relating to Deposit Takers made under the NBDT Act being the Deposit Takers (Credit Ratings, Capital Ratios and Related Party Exposures) Regulations 2010 and the Deposit Takers (Liquidity Requirements) Regulations 2010;

**Director** means a person who, at the relevant time, occupies the position of director of the Credit Union under the Rules;

**Directors' Reporting Certificate** means a certificate required under clause 7.1(c);

**Event of Default** means the occurrence of any one or more of the events specified in clause 9.1;

**Event of Review** means an event of review declared by the Supervisor under clause 8.1;

**FMC Act** means the Financial Markets Conduct Act 2013, and where the context permits, includes the FMC Regulations;

**FMC Regulations** means the Financial Markets Conduct Regulations 2014, and where the context permits, any other regulations made under the FMC Act;

**Financial Reporting Act** means the Financial Reporting Act 2013;

**GAAP** means generally accepted accounting practice in terms of section 8 of the Financial Reporting Act;

**General Meeting** has the meaning given to that term in the Rules;

**Indebtedness** includes any obligation (whether present or future, actual or contingent, secured or unsecured, joint or several, as principal, surety or otherwise) for the payment or repayment of money.

**Interest** means all payments in respect of the Shares that are properly characterised as interest or dividend payments, whether characterised by the Credit Union as interest or as a return of another nature;

**Issuer Obligation** has the definition set out for that term in the FMC Act;

**Liabilities** means:

- (a) the amount that the Credit Union would be required to pay to Members (including any Interest) if all of the Shares on Issue on the relevant date were withdrawn on the relevant date; plus
- (b) liabilities to creditors,

and includes provisions for income and other taxes, long service leave, holiday and retirement leave provisions, but does not include contingent liabilities;

**Member** means a person who, for the time being, is entered in the Register as a member for the purposes of section 130 of the Act;

**NBDT Act** means the Non-bank Deposit Takers Act 2013;

**Principal Moneys** means in relation to any Share the amount (other than Interest) payable upon the withdrawal of the Share including any premium payable in accordance with its terms of issue;

**Proxy Closing Time** means 48 hours before the time at which the relevant meeting is to commence;

**Receiver** means the receiver or receiver and manager appointed under this Deed of all or any part of the Secured Property, and includes any duly appointed agent, attorney or representative of such receiver;

**Reference Balance Sheet** means a balance sheet of the Credit Union prepared as at the date in question on a basis that complies with the Financial Reporting Act and the FMC Act, and that applies the accounting principles and practices on a basis that is consistent with the most recently prepared audited financial statements of the Credit Union provided that the Credit Union may make a material change in an accounting principle or practice if that change is approved by the Credit Union's auditors;

**Register** means the register of members set up and maintained under section 130 of the Act and section 215 of the FMC Act;

**Registrar** has the meaning given to that term in the Act;

**Regulations** means the regulations relating to Deposit Takers made under the NBDT Act and includes the Deposit Takers (Credit Ratings, Capital Ratios, and Related Party Exposures) Regulations 2010 and the Deposit Takers (Liquidity Requirements) Regulations 2010;

**Risk Weighting** means the Risk Weighting applied to an Asset Class as defined in the Deposit Takers Regulations 2010 Table 1, as amended from time to time or, in the absence of such a definition, its nearest equivalent in the relevant supervisory regime applicable generally to banks and/or financial institutions in New Zealand;

**Risk Weighted Total Assets** means Total Assets adjusted after applying a Risk Weighting to each Asset Class within Total Assets;

**Rules** mean the rules of the Credit Union from time to time as registered under the Act;

**Schedule** means the Schedule attached to and forming part of this Deed;

**Secured Moneys** means in relation to the Shares, the Principal Moneys outstanding at any time and Interest or other amounts payable to the Members by the Credit Union and includes all expenses, fees and other moneys owing or payable to the Supervisor under this Deed;

**Secured Property** means all of the Credit Union's present and future undertaking, assets and revenues including the proceeds of all Shares and a reference to "Secured Property" includes part of it;

**Security Interest** means a security interest (as defined in the Personal Property Securities Act 1999), mortgage, charge, encumbrance, lien, pledge, finance lease, sale and lease back, sale and repurchase, deferred purchase of title retention agreement, flawed asset arrangement and any other security or arrangement having economic effect over any property, assets or revenues;

**Special Resolution** means a resolution approved by a majority of at least 75 percent of the votes of those Members entitled to vote and voting on the question;

**Statement of Financial Position** means a statement of financial position in respect of the Credit Union prepared in accordance with GAAP, provided that if the Credit Union wishes to make a material change in any accounting principle or practice applied in the most recent audited financial statements, such change shall be made only if it is approved by the Auditor;

**Share** has the meaning given to that term in the Act;

**Total Assets** means the book value of the Assets that would be disclosed by a Reference Balance Sheet if one were prepared at the relevant date;

**Total Equity** means the amount by which the Total Assets exceed the Total Liabilities;

**Total Liabilities** means the book value of the liabilities that would be disclosed if a Reference Balance Sheet were prepared at the relevant date;

**Total Tangible Assets** means, at any date, Total Assets less the value of all of the Credit Union's intangible assets that would be disclosed by a Reference Balance Sheet if one was prepared at the relevant date;

## 1.2 Construction of certain references

In this Deed, unless the context otherwise requires, any reference to:

- (a) a business day means a day on which registered banks are open for general banking business in Wellington;
- (b) a clause is a reference to a clause in this Deed;
- (c) a month means a calendar month;
- (d) a paragraph is a reference to a paragraph in the relevant Schedule;
- (e) a person includes a company, corporation, corporation sole, firm, government or body of persons (whether incorporated or unincorporated);
- (f) the singular includes the plural and vice versa;
- (g) a gender includes each other gender;
- (h) a statute or regulation includes all amendments to that statute or regulation, whether by subsequent statute or otherwise, and a statute or regulation passed in substitution for that statute or regulation referred to or incorporating any of its provisions;
- (i) any act, matter or thing being done on a day that is not a business day means that such act, matter or thing shall be done on the next following business day;
- (j) headings and the table of contents shall be disregarded in construing this Deed.

## 1.3 References to "Credit Union"

In this Deed, references to "Credit Union" shall be read as references to the Police and Families Credit Union Incorporated, a credit union registered as number 610 under Part III of the Friendly Societies and Credit Unions Act 1982 Deposit Takers Regulations 2010.

Except where the context otherwise requires words and expressions defined in the Deposit Takers Regulations 2010 shall have the same meaning when used in this Deed.

## 1.4 FMC Regulations

The provisions required to be incorporated into this trust deed under regulation 75 of the FMC Regulations are set out or described under Schedule 10 of the FMC Regulations, as amended from time to time.

# 2. Appointment of and Powers and Discretions of Supervisor

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## 2.1 Appointment

The Credit Union hereby appoints the Supervisor, and the Supervisor accepts appointment, as Supervisor for the Members in respect of the Shares, with the rights, powers, duties and obligations set out in this Deed, and the FMC Act and the FMC Regulations.

## 2.2 Duties

The Supervisor's functions and duties under this Deed will be those of a supervisor of debt securities as set out in the FMC Act, the FMC Regulations and the Financial Markets Supervisors Act 2011.

## 2.3 Powers

In addition to the provisions of the law relating to the Credit Union and supervisors of debt securities under the FMC Act and the FMC Regulations, and to facilitate the discharge of its duties under this Deed, it is expressly declared that:

### (a) Reliance on advice

the Supervisor may, subject to the provisions of this Deed and the FMC Act, without liability for loss, obtain, accept and act on, or decline and elect not to accept and act on:

- (i) the opinion or advice of, or any Information obtained from, any barrister, solicitor, valuer, stockbroker, financial adviser, auditor, chartered accountant or other expert, (whether or not obtained by the Supervisor) even though the opinion, advice or Information may subsequently be found to contain some error or not be authentic;
- (ii) a certificate or report signed by any two Directors, as to any fact or matter prima facie within their knowledge or that any transaction or thing is expedient or commercially desirable and not detrimental to the Interests of the Members, as sufficient evidence of such fact or matter or the expediency or desirability of such transaction or thing; and
- (iii) the statements contained in any certificate or report given pursuant to the provisions of this Deed as conclusive evidence of the facts stated in the certificate or report;

### (b) Resolution of Members

the Supervisor will not be responsible for acting or relying upon any resolution purporting to have been passed at any meeting of the Members in respect of which a proper record has been made and which the Supervisor believes to have been properly passed, even if it afterwards appears that such resolution is not binding or valid by reason of a defect in the convening of the meeting or in the proceedings conducted at the meeting or otherwise;

### (c) Receipt of proceeds

the Supervisor will not be responsible for the receipt or application by the Credit Union of any amounts paid by Members for Shares;

### (d) Ascertain breach

the Supervisor will be bound to take steps to ascertain whether or not the Credit Union has committed any breach of the provisions of this Deed and cease to be entitled to assume without enquiry that no such breach is occurring or has occurred only upon:



- (i) the Supervisor receiving specific advice that a breach has, or appears to have, occurred or threatens to occur, from the Directors, the Auditors or the Registrar or otherwise becoming aware of it pursuant to a report received by it in its capacity as Supervisor under this Deed; or
- (ii) the Supervisor receiving notice of the commencement of the winding up of the Credit Union;

**(e) Limitation of liability**

the Supervisor will not be under any liability to the Credit Union or the Members unless the Supervisor has failed to show the degree of care and diligence required of it having regard to the powers, authorities, discretions or responsibilities conferred or Imposed upon it by this Deed or by law and the limitations thereon contained in and implied by this Deed;

**(f) Discretion to exercise**

except as otherwise expressly provided in this Deed, the Supervisor, as regards all trusts, powers, authorities and discretions vested in it by this Deed, will have absolute discretion as to their exercise or non-exercise and as to the commencement, variation, discontinuance, compromise or conduct of any action, proceeding or claim, and provided it acts in accordance with sections 112 and 113 of the FMC Act, it will not be responsible for any loss, damage or expense that may result;

**(g) Delegation**

the Supervisor may, whenever it thinks it expedient in the interests of the Members to do so:

- (i) delegate at any time to any person any of the trusts, powers, authorities or discretions vested in the Supervisor by this Deed that cannot conveniently be exercised by it or through its employees upon such terms and conditions (including the power to sub-delegate) as the Supervisor may reasonably think fit;
- (ii) authorise such person as it thinks fit to act as its representative at any meeting; and
- (iii) apply to the Court at any time for directions in relation to any matter, or consent to, approve or oppose any application to the Court by the Credit Union or by or at the Instance of any Member;

**(h) Limited power to remedy**

the Supervisor's powers to cause the remedying of any breach of the provisions of this Deed shall be subject to any other provision of this Deed that is inconsistent with the exercise of such powers;

**(i) Conditional consents**

any consent given by the Supervisor for the purposes of this Deed may be given on such terms and conditions (if any) as the Supervisor reasonably thinks fit;

(j) **Confidentiality**

subject to clause 2.4, the Supervisor will not (unless ordered so to do by a Court of competent jurisdiction or required to do so under any law) disclose to any Member:

- (i) any confidential or financial information made available to the Supervisor by or on behalf of the Credit Union in connection with this Deed; or
- (ii) any information where it would be unlawful to do so,
- (iii) and no Member will be entitled to take any action to obtain from the Supervisor any such information;

(k) **Supervisor's opinion**

the Supervisor may determine whether or not a failure by the Credit Union to perform any obligation under the provisions of this Deed is, in its opinion, capable of remedy and/or will have a material adverse effect on the Members and any such determination shall be conclusive and binding upon the Credit Union and the Members;

(l) **Construction of certain obligations**

the Supervisor has entered into this Deed on the basis that the duties of the Supervisor, are as prescribed in this Deed and any applicable law and shall be construed and Interpreted to recognise and take into account the following characteristics of the Shares:

- (i) while the Financial Markets Authority has taken the view that they are debt securities for the purposes of the FMC Act, the Shares have certain characteristics more analogous to shareholders' equity;
- (ii) the Credit Union may incur further Indebtedness only in accordance with the Act;
- (iii) the limitations on the rights of the Members, and the Supervisor on behalf of the Members, to compel or enforce payment of any principal, interest or other sums, and the other limitations on the rights of the Members or the Supervisor (including in respect of any breach by the Credit Union) provided in this Deed; and
- (iv) the limitations on the rights of the Supervisor to interfere in the conduct of the Credit Union's business,

and shall, to the maximum extent possible, be limited accordingly.

**2.4 Fiduciary Relationship**

The Supervisor shall not be entitled to be a Member on its own account. However, nothing in this Deed prohibits the Supervisor or its holding company or any of their subsidiaries or their officers or shareholders (all of whom are, for the balance of this clause included, where the context permits, in the expression "the Supervisor") from being a Member in any trustee, agency, nominee or other representative capacity or from being a creditor or shareholder of, or having any other interest in, the Credit Union or from acting in any other fiduciary, contractual, agency or representative capacity for a Member or the Credit Union without

breach of any obligations established by this Deed or otherwise imposed or Implied by law arising out of any such relationship. The Supervisor may enter into any transactions with the Credit Union in the ordinary course of business and will not be accountable to the Members for any profits arising from such transactions.

## **2.5 Enforcement of Members' rights**

- (a) The Supervisor holds the following in trust for, and for the benefit of, the Members:
  - (i) the right to enforce the Credit Union's duty to repay the Shares, or to pay interest on the Shares, issued to Members;
  - (ii) any charge or security for repayment; and
  - (iii) the right to enforce any other duties that the Credit Union has under:
    - (A) the terms of each Share; or
    - (B) the provisions of this Deed or the FMC Act in relation to each Share;
- (b) No Member may proceed directly against the Credit Union in respect of rights given under this Deed unless the Supervisor fails to enforce any rights and remedies against the Credit Union after having become bound to do so in accordance with the provisions of this Deed;
- (c) The Credit Union will not issue a certificate in respect of ownership of a share.

## **3. Retirement, Removal and New Appointment of Supervisor**

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### **3.1 Retirement of Supervisor**

Subject to section 122 of the FMC Act:

- (a) **Retirement**

the Supervisor may retire at any time without assigning any reason upon giving 90 days' notice (or such lesser period of notice as the Credit Union may agree) in writing to the Credit Union, subject to the due appointment of a new Supervisor; and
- (b) **Removal**

the Credit Union may at any time, without assigning any reason, upon giving at least 90 days' notice in writing to the Supervisor (or such lesser period of notice as the Supervisor may agree) discharge the Supervisor including any new Supervisor appointed upon the retirement or discharge of any previous Supervisor).

### **3.2 Appointment of New Supervisor**

The power of appointing a new Supervisor of this Deed is vested in the Credit Union, upon the recommendation of the Committee of Management, subject to section 122 of the FMC Act.

## **4. Security**

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### **4.1 Assignment**

In consideration of the Supervisor accepting appointment under this Deed and in order to better secure the performance of the Credit Union's obligations under this Deed for the benefit of the Members, and any other obligations undertaken under this Deed in favour of the Supervisor, the Credit Union hereby agrees to assign, set-over and transfer by way of security to the Supervisor all the Credit Union's Secured Property.

### **4.2 Continuing Security**

This Deed is a continuing security and shall remain in full force and effect until an unconditional release has been signed by the Supervisor and delivered to the Credit Union.

### **4.3 Nature of Security**

#### **(a) Assignment**

The security created by this Deed is an equitable assignment of the Secured Property. However, the Credit Union may exercise all rights, powers and remedies in relation to the Secured Property for the purposes of complying with its obligations in relation to the Shares or for any other purpose in its ordinary business having regard to the restrictions applicable to it under this Deed and section 112 of the Act. In addition, any property or assets comprising part of the Secured Property shall be deemed to be released from the security created by this Deed without any further action or consent on the part of the Supervisor to the extent necessary for the conduct of the Credit Union's ordinary business.

#### **(b) Automatic revocation**

The rights of the Credit Union to deal with the Secured Property under clause 4.3(a) shall, upon the declaration by the Supervisor of an Event of Default, be automatically revoked and withdrawn without further notice or other action on the part of the Supervisor or any other person.

#### **(c) Optional revocation**

If an Event of Review has occurred, the Supervisor may, by giving written notice to the Credit Union, revoke and withdraw the Credit Union's rights to deal with the Secured Property under clause 4.3(a) in respect of all or any part of the Secured Property.

#### **(d) Re-grant of rights**

At any time after the revocation or withdrawal of the Credit Union's right to deal with the Secured Property under clause 4.3(a) such rights may be re-granted to the Credit Union by the Supervisor by it giving written notice to that effect to the Credit Union on the same or such other reasonable terms as the Supervisor in its sole discretion thinks fit. The Supervisor shall re-grant those rights upon making a declaration under clause 8.5(a).

(e) **Partial release**

At any time prior to the occurrence of an Event of Review and subject always to the Credit Union's right to deal with the Secured Property under clause 4.3(a), the Supervisor may agree to release any Secured Property from the restrictions to which it is subject if it is necessary to do so for the convenient administration of the Credit Union. However, the Supervisor shall do so only if it reasonably considers that the interests of the Members will not be materially prejudiced by such release.

(f) **Restrictions on dealing with Secured Property**

The Credit Union shall not, without the prior written consent of the Supervisor, dispose, or permit the disposal, of any Secured Property except in accordance with clause 4.3(a) or as approved by the Supervisor, whose consent may be withheld if it reasonably considers that the interests of Members will be materially prejudiced by such disposal.

(g) **First ranking**

The security created by this Deed is intended to be a first ranking security and shall, to the maximum extent permitted by law, rank for payment ahead of all other claims regardless of whether those claims are secured or unsecured.

**4.4 Further assurances**

The Credit Union shall execute, do, and deliver to the Supervisor any transfer, assignment, security, Instrument, or other deed or document and shall do any other thing that the Supervisor may reasonably require to enable it to:

- (a) perfect the Supervisor's title to any Secured Property; or
- (b) perfect the security intended to be created by this Deed for the purposes of the Personal Properties Securities Act 1999 and any other relevant legislation; or
- (c) more satisfactorily secure to the Supervisor the performance of the Credit Union's obligations under this Deed; or
- (d) transfer to, or vest in, the Supervisor (or any purchaser from the Supervisor or a Receiver) any Secured Property; or
- (e) facilitate the realisation of any Secured Property; or
- (f) exercise all or any of the rights, powers and remedies conferred by this Deed on the Supervisor or a Receiver; or secure to the Supervisor the full benefit of the provisions of this Deed.

**4.5 Appointment of Attorney**

The Credit Union irrevocably appoints the Supervisor and any Receiver and each of the Supervisor's officers for the time being severally to be its and their attorney or attorneys and in its name and on its behalf to enter into, execute, sign and do all assurances, deeds, instruments, acts and things which shall, in the opinion of the attorney, be necessary or expedient, or which it or they ought to execute, sign and do for the purposes of giving to the Supervisor the full benefit of any of the provisions of this Deed, and generally to use its or their

name in the exercise of all or any of the powers, rights and remedies conferred by this Deed on the Supervisor or any Receiver, including, without limitation, the power to sell and take possession of the Secured Property, or the powers, rights and remedies conferred upon it at law in relation to the Secured Property, as the case may be, with full power to delegate power of attorney to any person for any period and to exercise or concur the exercise of its powers even if the attorney has a conflict of duty or a direct or personal interest in the means or result of the exercise of such powers, provided that such powers shall be exercisable only after an Event of Default has occurred and is continuing in respect of the Credit Union or the Supervisor otherwise reasonably determines that the circumstances justify the exercise of such power. The Credit Union hereby ratifies and confirms and agrees to ratify and confirm whatever any such attorney or attorneys may do or purport to do in accordance with the powers conferred by this clause.

## **5. Supervisor's Remuneration and Expenses**

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### **5.1 Basic Remuneration**

The Credit Union shall pay the Supervisor remuneration for services as Supervisor in accordance with the terms of any current agreement contained in letters exchanged between the Credit Union and the Supervisor.

### **5.2 Expenses**

The Credit Union will also pay all reasonable expenses on a full indemnity basis (including travelling expenses) and other reasonable costs, charges, taxes or duties (including legal expenses) incurred in good faith by or on behalf of the Supervisor in connection with:

**(a) Deed preparation**

the preparation, execution and variation (and release when applicable) of this Deed and any registration costs in connection with it in accordance with any agreement previously reached between the Credit Union and the Supervisor in this regard;

**(b) Exercise of powers**

the exercise or attempted or purported exercise by the Supervisor of any power or discretion conferred on the Supervisor by this Deed or in respect of any Shares, or the performance of its duties, including the taking of any expert advice deemed necessary or expedient by the Supervisor, subject to clause 9.9;

**(c) Breach by Credit Union**

any breach, default or non-compliance by the Credit Union of or with any obligation under this Deed;

**(d) Meetings of members**

the convening of any meeting of Members in relation to this Deed and the carrying out of any directions or resolutions of such meeting.

### 5.3 **Liability not terminated**

The remuneration and payments payable under this clause 5 shall continue to be payable until the Credit Union is finally wound-up.

## 6. **Covenants by Credit Union**

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The Credit Union covenants with the Supervisor that:

(a) **Borrow money**

it will not borrow money or lend other than as permitted by the Act;

(b) **Alteration of business**

it will not make any alteration to the nature of its business as carried out at the date of this Deed;

(c) **Deposit Takers Regulations 2010**

(i) **Capital Ratio**

The Credit Union shall ensure that at all times its Capital Ratio is not less than 10% (ten per cent).

(ii) **Definition of Capital Ratio**

The Capital Ratio is the ratio expressed as a percentage of the Credit Union's capital to the sum of:

- (aa) the Credit Union's risk-weighted amount for credit risk; and
- (bb) the Credit Union's aggregate amount for market risk and operational risk;

calculated in accordance with clause 6 (c)(iii).

(iii) **Method of Calculation**

In this Deed all calculations of:

- (aa) Capital; and
- (bb) risk-weighted amount for credit risk; and
- (cc) the aggregate amount for market risk and operational risk,

must be made in accordance with the Deposit Takers Regulations 2010;

(iv) **Related Party Exposures**

The Credit Union covenants to ensure that at all times the aggregate exposure of the Credit Union to all Related Parties of the Credit Union does not exceed a maximum limit ratio of 15% (fifteen per cent) of Capital calculated in accordance with clause 6(c) (v);

(v) **Calculation of Related Party Exposures**

In this Deed for the purposes of clause 6(c) (iv) each calculation of Capital and the aggregate exposure of the Credit Union to all Related Parties must be made in accordance with the Deposit Takers Regulations 2010;

(vi) **Amendment of Regulations**

The Credit Union and Supervisor agree that should the Deposit Takers Regulations 2010 be varied, amended or superseded to provide for amended minimum Capital or Related Party restrictions, or liquidity provisions applicable to the Credit Union, those amended provisions will be deemed to be incorporated into and form part of the Trust Deed but if required by law the Credit Union and the Supervisor will enter into a deed amending this clause 6(c) and clause 6(e), to reflect the amended provisions;

(d) **Liabilities**

it will not permit its Creditor Liabilities to exceed 5% (five per cent) of Total Liabilities;

(e) **Liquidity**

(i) it will not permit the Assets comprising Cash to fall below an amount equal to 10% (ten per cent) of Total Assets;

(ii) **One Month Mismatch Ratio**

the Credit Union shall ensure that the One Month Mismatch Ratio is not less than zero at any time, where:

**One Month Mismatch Ratio** means:

(aa) the sum of:

- (A) Cash and Other Investment Assets; plus
- (B) contractual inflows due on Loan Assets at any time within one (1) month; plus
- (C) 80% (eighty per cent) of committed funding lines available for drawing by the Credit Union within one (1) month; less
- (D) 10% (ten per cent) of callable Member funds and term deposits due within one (1) month (or such higher percentage of callable Member funds and term deposits that the Committee of Management, acting reasonably and in accordance with the Credit Union's Liquidity Policy, expects to be withdrawn within one (1) month); less
- (E) 15% (fifteen per cent) of the gross balance of committed lines granted by the Credit Union and drawable within one (1) month; divided by;

(bb) Total Funding;

**Loan Assets** means loans to Members;



**Other Investment Assets** means securities guaranteed by the New Zealand Government; and

**Total Funding** means total Member Shares.

(iii) **One Year Funding Ratio**

the Credit Union shall ensure that the One Year Funding Ratio is not less than 70% (seventy per cent) at all times, where:

**One Year Funding Ratio** is the ratio, expressed as a percentage, of:

(aa) the sum of:

(A) Member funds and term deposits with a residual maturity of more than one (1) year; plus

(B) 80% (eighty per cent) of Member funds and term deposits able to be withdrawn on demand or which have a scheduled maturity repayment date falling less than 1 year from the test date; plus

(C) Total Equity; divided by;

(bb) Total Assets;

(f) **Comply with Act and Rules**

it will comply with the Act, the Rules and all other relevant New Zealand laws;

(g) **Change to Act**

it will consult the Supervisor if there is any material amendment to the Act, with a view to considering whether the terms of this Deed remain appropriate in light of such amendment;

(h) **Give notice if Total Equity level breached**

it will immediately notify the Supervisor in writing if:

(i) the Total Equity of the Credit Union falls below the amount permitted by clause 6(c); or

(ii) the Credit Union is not complying with any covenant under clause 6(e);

(i) **Notice of Proceedings**

immediately notify the Supervisor in writing of the commencement of any legal proceedings that could materially affect the interests of Members;

(j) **Amalgamation or restructure**

it will not amalgamate with another credit union or other entity or alter its legal status from that of a credit union unless such action is approved by a Special Resolution of Members passed at a General Meeting;

(k) **Risk Management Programme**

the Credit Union has a risk management programme complying with the requirements of the NBDT Act and the Credit Union has taken all practicable steps to comply with that programme;

(l) **Notice of breach or possible breach:**

where the Credit Union has reasonable grounds to believe that it has breached, may have breached, or is likely to breach, any of its Issuer Obligations in a material respect, the terms of this deed or the terms of the issue of the Shares, notify the Supervisor in writing as soon as practicable of:

- (i) the breach or possible breach, and
- (ii) the steps (if any) that the Credit Union has taken or intends to take in light of the breach or possible breach and the date by which the steps were taken or are to be taken.

## **7. Reports and information for Supervisor**

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### **7.1 Financial statements**

The Credit Union covenants with the Supervisor that, from time to time for the duration of this Deed:

(a) **Audited annual financial statements**

it will provide or cause to be provided directly by the Auditors, to the Supervisor within three months after the close of each financial year of the Credit Union (or such further time as the Supervisor agrees in writing), a copy of the Annual Return of the Credit Union prepared in accordance with section 127 of the Act together with all documents and reports required by the Act to be annexed to or to accompany that Annual Return;

(b) **Half-yearly unaudited financial statements**

it will provide to the Supervisor, within four months after the close of each financial half year of the Credit Union (or such further time as the Supervisor agrees in writing), a copy of the statement of financial position and statement of financial performance of the Credit Union in respect of the previous financial half year, but such financial statements need not be audited;

(c) **Directors' Reporting Certificates**

it will, within two months after the end of each quarter in each financial year of the Credit Union (or within such further time as the Supervisor may agree) provide to the Supervisor a certificate (with the form of such certificate to be amended and/or delivered with different timing requirements if required to comply with New Zealand law or agreed in writing by the Credit Union and Supervisor) signed by any two directors of the Credit Union on behalf of the Committee of Management:

- (i) stating to the best of their knowledge and belief, after having made due inquiry, whether or not, since the date at which the last certificate was given

or, in the case of the first such certificate, since the date of this Deed (each such date being referred to in this clause as a "certification date"):

- (A) any matters in their opinion have occurred that materially and adversely affect the interests of the Members, and if so giving particulars of such matters;
  - (B) all amounts payable to Members who have withdrawn their Shares have been paid in accordance with the Act;
  - (C) the Credit Union has maintained the Register and had the Register audited as required by relevant legislation;
  - (D) the Credit Union has duly observed and performed its obligations under this Deed;
  - (E) any event has occurred that has caused or could cause the Credit Union to be unable to pay any Interest or to repay amounts as they fall due in respect of withdrawn Shares;
  - (F) any material trading or capital loss has been sustained by the Credit Union that is a material loss to the Credit Union and, if so, particulars of that loss;
  - (G) any material contingent liabilities have been incurred by the Credit Union and, if so, the amount of such contingent liabilities and whether or not any contingent liability has or is likely to mature within the succeeding 12 months that will materially affect the Credit Union and its ability to repay any amounts in respect of withdrawn Shares;
  - (H) there has been any material change in accounting method or method of valuation of Total Assets or Total Liabilities and whether any circumstances have arisen that render adherence to the existing method of valuation of Total Assets or Total Liabilities misleading or inappropriate and if so particulars of those circumstances;
  - (I) there has been any substantial change to the nature of the Credit Union's business and, if so, particulars of the change;
- (ii) stating, as at the relevant certification date, the total number of Shares on issue;
  - (iii) confirming, to the best of the Directors' knowledge and belief, as at the close of business on the relevant certification date that the financial covenants in clauses 6(c) to 6(e) have been complied with at all times, and setting out all relevant calculations as at that certification date;
  - (iv) stating whether having considered the financial position of the Credit Union and such budgets, reports, projections, certificates and assurances as they deem necessary, to the best of their information, knowledge and belief they are of the opinion that the Credit Union will be able to meet or otherwise satisfy, in accordance with accepted commercial practice, all of its liabilities (including liabilities to Members in respect of Shares that are withdrawn) that

fall due or that the Committee of Management anticipates will become payable during the six month period that follows the certification date;

- (v) confirming, to the best of the Directors' knowledge and belief, that the Credit Union has been in compliance with its Risk Management Programme at all times during the relevant period (and in the event of any breach, identifying the nature of that breach and outlining the steps the Credit Union has taken to remedy it);

(d) **Auditor's report**

it will provide, or cause to be provided to the Supervisor, at the same time as the Annual Return is provided under clause 7.1(a), a separate report by the Auditors stating:

- (i) whether or not in the performance of their duties as Auditors, they have become aware of any matter which, in their opinion, is relevant to the exercise or performance of the powers or duties conferred or imposed on the Supervisor by this Deed or by the FMC Act or any other Statute or Regulation and, if so, giving particulars of such matters;
- (ii) whether or not the audit has disclosed any matter calling, in their opinion, for further investigation by the Supervisor in the Interests of the Members and, if so, giving particulars of such matters as per the obligations as defined in Section 199 of the FMC Act;
- (iii) that they have perused the certificates given by the Directors under clause 7.1(c) since the last report by the Auditors and that so far as matters which they have observed and the performance of their duties are concerned, the statements made in those certificates are correct;
- (iv) whether or not there has been any material change in the method of valuation of Total Assets or Total Equity;
- (v) whether or not the Credit Union has duly maintained the Register of Members and whether or not the same has been audited as required by this Deed;
- (vi) as at the end of the financial year covered by the relevant statement of financial position and statement of financial performance:
  - (A) the number of Shares on issue;
  - (B) the amount of Total Assets;
  - (C) the amount of Total Equity; and
- (vii) whether or not the Credit Union has complied with the financial covenants in clauses 6 (c) to 6(e);

With the form of such report able to be amended by agreement between the Credit Union and Supervisor;

(e) **Product Disclosure Statement**

it will provide the Supervisor with a reasonable opportunity to comment on each Product Disclosure Statement issued by the Credit Union before they are registered.

It will also provide the Supervisor with an opportunity to comment on key ratio tables and other material documents relating to the Credit Union prior to them being uploaded to the Disclose Register.

**7.2 Other Information**

(a) **Information to Members**

The Supervisor shall be entitled to receive all notices of and other communications relating to any general meeting of Members that any Member is entitled to receive.

(b) **Attendance at general meetings**

Any duly authorised representative of the Supervisor shall be entitled to attend any general meeting of Members, and to be heard at any such meeting that he or she attends on any part of the business of the meeting concerning the Supervisor as such or the Members.

(c) **Other Information**

The Credit Union shall, from time to time:

- (i) at the request in writing of the Supervisor, make available for its inspection the whole of the accounting and other records of the Credit Union; and
- (ii) give to the Supervisor such information as it requires with respect to all matters relating to such records.

## **8. Event of Review**

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**8.1 Declaration**

The Supervisor may, by written notice to the Credit Union, declare an Event of Review if:

(a) **Event of Default**

an Event of Default has occurred;

(b) **Obligations in jeopardy**

an event has occurred that, in the reasonable opinion of the Supervisor, could have a material adverse effect on the Credit Union's ability to perform its obligations under this Deed or the Act as those obligations fall due; or

(c) **Protect financial structure**

the Supervisor reasonably considers that such a declaration is necessary to protect the financial structure of the Credit Union.

## 8.2 Powers of Supervisor

From the time that the Supervisor declares an Event of Review, it may give written notice to the Credit Union, advising that a nominee of the Supervisor is, with effect from the date of the notice, appointed as an observer at meetings of the Committee of Management until the matters giving rise to the Event of Review have been rectified. The Supervisor will allow the Committee of Management up to 20 business days to explain to the Supervisor what will be done to rectify the matters giving rise to the Event of Review. If the Supervisor is not reasonably satisfied that the Credit Union's explanation will rectify the matters giving rise to the Event of Review the Supervisor may:

(a) **Refer to Registrar**

refer the matter to the Registrar for the exercise of his or her powers under sections 137 to 140 of the Act; and

(b) **Give directions**

give directions to the Credit Union under clause 8.3; or

(c) **Remove Directors**

remove the existing Directors and appoint new Directors under clause 8.4.

## 8.3 Directions

The Supervisor may give a direction to the Credit Union under clause 8.2(b) relating to the management and administration of its business or prohibiting the Credit Union from carrying on all or any part of its business activities. Such direction may:

(a) **Transfer engagements**

require the Credit Union to begin negotiation to transfer engagements on terms and conditions to be agreed by the Supervisor;

(b) **Prohibitions**

prohibit the Credit Union from:

- (i) borrowing money;
- (ii) accepting a payment due by way of subscription for a Share (other than a payment that became due before the giving of the direction);
- (iii) lending money;
- (iv) paying amounts due on Shares for a period of up to 90 days (provided that acting upon a direction to do this shall not, of itself, constitute an Event of Default);
- (v) accepting new Members;

(c) **Convene meeting of members**

require the Credit Union to convene a meeting of Members for the purposes of considering a resolution that proposes the removal of the incumbent Directors and the appointment of new Directors in their place.

At least 10 business days' notice of a direction must be given under this clause and such direction must be in writing and must explain why the direction is being given and what the Supervisor expects to achieve by it.

**8.4 Removal and Appointment of Directors**

In addition to the powers conferred on the Supervisor under clause 8.3, the Supervisor may, following the expiration of the 20 business day period referred to in clause 8.2, give written notice to the Credit Union directing the removal of some or all of the Directors and the appointment of new Directors in their place. A removal under this clause will be void and of no effect if, as a consequence, there would be less than three Directors holding office.

**8.5 Cessation of Event of Review**

(a) **Supervisor to declare**

If the Supervisor has not exercised its powers under clause 9.2, it shall declare that an Event of Review has ceased when it is satisfied that the events giving rise to the declaration of the Event of Review no longer exist or are no longer having a material adverse effect on the interests of the Members.

(b) **Members may request**

If the Committee of Management receives a written request, signed by 5 per cent of the Members; that the Supervisor make a declaration under clause 8.5(a), the Committee of Management shall immediately ask the Supervisor to make a declaration, within 20 business days of the written request, either that the Event of Review has ceased or that It has not ceased, If the Supervisor declares that the Event of Review has not ceased, the Committee of Management shall immediately request the President for the time being of the Institute of Chartered Accountants to appoint a suitably qualified and independent expert to investigate the affairs of the Credit Union for the purposes of determining whether the Supervisor should declare that the Event of Review has ceased.

(c) **Independent Expert determination**

Any independent expert appointed under clause 8.5(b) shall have regard to information provided to him or her by the Committee of Management and by the Supervisor for the purposes of making a determination. The Independent expert must make a determination within 20 business days of his or her appointment. If the expert determines that the Event of Review has ceased, the Supervisor shall make a declaration pursuant to clause 8.5(a) but only if, prior to the receipt of the request from Members, the Supervisor has not exercised its powers under clause 9.2.

(d) **Effect of declaration or determination**

A declaration by the Supervisor under clause 8.5(a) or a determination by an Independent expert under clause 8.5(c) shall have the effect of revoking the powers of

the Supervisor under clause 8.2 in relation to the Event of Review that has occurred and:

- (i) any direction given shall be of no further effect;
- (ii) the Supervisor shall no longer have the authority to appoint someone as an observer at meetings of the Committee of Management; and
- (iii) the Supervisor shall no longer have the right to appoint Directors in relation to that Event of Review.

## **9. Events of Default**

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### **9.1 Events of Default**

The Credit Union will be considered to have committed an Event of Default under this Deed if:

**(a) Non repayment of Shares**

the Credit Union fails to repay promptly an amount to a Member in respect of Shares that have been duly withdrawn (other than a failure that is due to or caused by a breakdown or error in the banking or payment system and which is remedied within two business days of the cessation of such breakdown or error);

**(b) Inability to pay debts**

the Credit Union is unable to pay its debts (including, without limitation, any Interest due) as they fall due;

**(c) Breach of clause 6**

any of the covenants set out in clause 6 is breached and, (in the case of a breach that is capable of remedy), remains unremedied for a period of 10 business days;

**(d) Revocation of consent**

any authorisation of or registration with a governmental or public body or consents required to be obtained and maintained by the Credit Union in connection with its business is not granted, is revoked, lapses or otherwise ceases to be in full force and effect without the position being rectified to the satisfaction of the Supervisor within 10 business days' of notice from the Supervisor to do so;

**(e) Failure to report**

the Credit Union fails to provide a Directors' Reporting Certificate by the due date;

**(f) Content of Certificate**

a Directors' Reporting Certificate indicates that the Credit Union may be unable to satisfy amounts owing in respect of withdrawn Shares or any Interest during the six months after the Directors' Reporting Certificate;



(g) **Misleading Information**

material information provided by the Credit Union to the Supervisor or to Members under a Product Disclosure Statement is found to be misleading in any material particular;

(h) **Breach of Act**

the Credit Union borrows or attempts to borrow money or mortgages, or secures or attempts to secure any borrowings over its assets in breach of the Act or this Deed;

(i) **Audit report**

an Auditor's report provided under clause 7.1(d) contains a statement which, in the reasonable opinion of the Supervisor, indicates that the interests of Members may be materially prejudiced In the ensuing six months;

(j) **Cross Default**

as a result of the occurrence of any default, event of default, repayment event or cancellation event (in each case howsoever described and whether or not involving culpability on the part of any person), any borrowed money indebtedness of the Credit Union is declared to be or otherwise becomes, or becomes capable of being declared, due and payable prior to its scheduled maturity date.

**9.2 Supervisor's Powers**

At any time after an Event of Default has occurred, the Supervisor may refer the matter to the Registrar for the exercise of his or her powers under sections 137 to 140 of the Act and by giving written notice to the Credit Union:

- (a) exercise any of the powers conferred on the Receiver by clause 9.3 as if any reference to a Receiver in that clause were a reference to the Supervisor;
- (b) appoint a person or persons as Receiver;
- (c) remove any Receiver from office, and appoint another Receiver in place of one who has ceased for any reason to hold office, or in addition to a Receiver already appointed; and
- (d) from time to time fix the remuneration of the Receiver,

and any Receiver appointed under this clause shall be the agent of the Credit Union, and the Credit Union alone shall be responsible for the acts and defaults of the Receiver for the avoidance of doubt, the Supervisor may at any time appoint a Receiver if requested to do so by the Credit Union.

**9.3 Powers and Duties of Receiver**

(a) **Powers**

Every Receiver shall, in addition to the powers that a receiver, or receiver and manager, has at law, have power to do all or any of the following things, in such manner and on such terms and conditions as the Receiver thinks fit, in relation to the Credit Union:

- (i) enter upon and take possession of the Secured Property;
- (ii) carry on, or concur in carrying on, any business of the Credit Union;
- (iii) carry out repairs, effect insurances, and do anything else that the Credit Union could do in the conduct of its business including effect a transfer of engagements of the Credit Union's business or any part thereof to another Credit Union;
- (iv) employ, appoint and terminate the employment or appointment of, any officer, manager, employee or agent;
- (v) dispose, or agree to the disposal of, any interest in any Secured Property and, if necessary, give directions to the Credit Union to dispose of the Secured Property;
- (vi) give receipts for money, and do all acts, matters and things that the Receiver thinks proper for realising the Secured Property;
- (vii) acquire an interest in any asset to form part of the Secured Property;
- (viii) compromise, settle or submit to arbitration any accounts, claims, questions or disputes that may arise in connection with the business of the Credit Union;
- (ix) bring, take, defend or compromise any proceedings in the name of the Credit Union or otherwise;
- (x) sign in the name and on behalf of the Credit Union all documents that the Receiver considers necessary or expedient including to effect a transfer of engagements to another credit union;
- (xi) vary, or agree to the variation of, any contract or arrangement to which the Credit Union is a party;
- (xii) make calls upon Members in respect of any uncalled amounts on Shares and enforce payment of all unpaid calls, for which purpose the provisions contained in the Rules, or otherwise provided by law, in respect of calls shall (with all necessary modifications) apply, and shall continue to subsist notwithstanding any change in Directors, and shall be exercisable to the exclusion of the powers of the Directors;
- (xiii) exercise and enforce all rights, powers and remedies that the Credit Union could exercise over or in relation to its assets while a going concern, whether or not the Credit Union is then in liquidation including the writing down of share capital to the extent necessary to restore the Credit Union to solvency;
- (xiv) raise or borrow money and secure that money with interest by any form of security over any Secured Property;
- (xv) generally do, procure or allow such acts and things in respect of the Secured Property as could the Receiver if he or she had absolute ownership of the Secured Property and carried on the business of the Credit Union for the Receiver's own benefit, without being answerable for any consequent loss or damage;

- (xvi) delegate any of the Receiver's powers to any person or persons for such time as the Supervisor approves; and
- (xvii) do all or any of the foregoing things alone or in conjunction with any receiver or receiver and manager appointed by the holder or holders of any other security over any Secured Property.

(b) **Directions from Supervisor**

The Receiver shall, in the exercise of his or her powers, authorities and discretions, comply with any directions given by the Supervisor, including in particular any such directions relating to arrangements and transfers of engagements of the Credit Union's business or any part thereof to another credit union (or the putting into place of such arrangements or effecting of such transfers).

9.4 **Additional Powers of Supervisor**

In addition to the powers, authorities and discretions conferred upon the Supervisor by this Deed, the Supervisor may, without giving any notice to the Credit Union, enter into possession of and hold, or appoint a Receiver to take possession of, any part of the Secured Property that may at any time appear to the Supervisor to be in danger of being taken under any process of law by any creditor of the Credit Union or to be otherwise in jeopardy, and the Supervisor may at any time give up possession or withdraw the receivership. When a Receiver is appointed under this clause, the provisions of clauses 9.2 and 9.3 shall apply with all necessary modifications.

9.5 **Protection of Supervisor or Receiver**

(a) **Proceeds of Sale**

If the Supervisor or a Receiver sells any Secured Property under this Deed or otherwise, the Supervisor or Receiver shall, to the maximum extent permitted by law, be accountable only for any purchase money actually received.

(b) **Not mortgagee in possession**

If the Supervisor or a Receiver enters into possession of any Secured Property, to the maximum extent permitted by law, neither of them shall be liable to account as mortgagee in possession in respect of that Secured Property or for anything except actual receipts, or be liable for any loss on realisation or for any default or omission for which a mortgagee in possession might be liable.

(c) **No liability**

To the maximum extent permitted by law, but subject to the provisions of this Deed, neither the Supervisor nor the Receiver shall be accountable for any losses that may occur in, or as a result of, the exercise, purported exercise or non-exercise of any of their rights, powers and remedies.

(d) **Indemnity**

Subject to clause 9.9, and any limitations placed on rights of indemnity under the FMC Act, the Supervisor and any Receiver shall be entitled to be indemnified out of the revenue from, or proceeds of sale of, the Secured Property against all costs, losses,

expenses or liabilities sustained or incurred in the exercise, purported exercise or non-exercise of any of their rights, powers or remedies, other than a claim arising out of a wilful default, gross negligence or wilful breach of trust by the Supervisor or Receiver.

**9.6 Protection of Persons Dealing with Supervisor and Receiver**

No person dealing with the Supervisor or any Receiver, or with any agent or attorney of the Supervisor or a Receiver, as the case may be, shall be concerned:

**(a) Make enquiry**

to enquire:

- (i) whether the security created by this Deed has become enforceable;
- (ii) whether a Receiver has been properly appointed;
- (iii) whether the powers that the Supervisor, Receiver, agent or attorney, as the case may be, is purporting to exercise have become exercisable;
- (iv) as to the necessity for, or expediency of, the stipulations or conditions subject to which any sale, lease or security is made or given; or
- (v) otherwise as to the propriety or regularity of any exercise of the powers of enforcement; or

**(b) Apply money**

to see to the application of any money paid to the Supervisor or a Receiver, agent or attorney, as the case may be.

In the absence of fraud on the part of any person, that person's dealing with the Supervisor and any Receiver shall be deemed, so far as regards the safety and protection of that person, to be within the powers conferred by this Deed and to be valid and effective accordingly.

**9.7 Receipt of Supervisor or Receiver**

Upon exercise of the powers of enforcement, and upon any other dealing or transaction under the provisions of this Deed, the receipt of the Supervisor or the Receiver of any amount shall discharge the payer's obligation to pay that amount.

**9.8 Supervisor's Power to Apply to Court**

The Supervisor may at any time apply to the High Court for an order that the powers and trusts contained in this Deed be exercised and carried out under the direction of the Court and for the appointment of a receiver and/or manager of the assets and/or undertaking of the Credit Union or any part thereof and for any other order or direction in relation to the execution and administration of the powers and trusts hereof as the Supervisor shall deem expedient and it may assent to or approve of or oppose any application to the Court made by or at the instance of any of the Members and shall be indemnified by the Credit Union against all the costs, charges and expenses incurred by and in relation to any such application or proceedings.

## **9.9 Liability of Supervisor and limitation on Indemnity**

No provision of this Deed has the effect of indemnifying the Supervisor against liability where the Supervisor fails to:

- (a) act honestly in acting as a supervisor,
- (b) in exercising its powers and performing its duties as a supervisor, act in the best interests of Members' owning Shares;
- (c) exercise reasonable diligence in carrying out its functions as a supervisor, or
- (d) in exercising its powers and performing its duties as a supervisor, exercise the care, diligence, and skill that a prudent person engaged in the business of acting as a licensed supervisor, under the Financial Markets Supervisors Act 2011, would exercise in the same circumstances.

## **10. Distribution of proceeds of realisation of Secured Property, and priority**

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### **10.1 Priority**

All amounts received after enforcement by the Supervisor or the Receiver by virtue of this Deed shall be applied (subject to any other interests having a prior claim in law and subject always to any direction made by any Court):

- (a) first in satisfaction of all costs, charges, expenses and liabilities incurred and payments made by or on behalf of the Supervisor or any Receiver under the provisions contained in this Deed or pursuant to the directions given under any order of the Court and of all remuneration payable to the Supervisor or any Receiver under this Deed (including any interest payable).
- (b) secondly in or towards payment to the Members equally amongst themselves in proportion to the Principal Moneys owing to them respectively in respect of the Shares held by them; and
- (c) thirdly to the Credit Union.

### **10.2 Payment of Principal before Interest**

If the Supervisor considers that, in the interests of Members, it is expedient to do so, payment may be made on account of Principal before Interest or the whole of the Interest has been paid, but such alteration in the order of payment shall not prejudice the right of such Members to receive the whole amount to which they would have been entitled if the ordinary order of payment had been observed or any lesser amount that the sum ultimately realised from the exercise of the Supervisor's powers or discharge of any Court order would be sufficient to pay.

### **10.3 Notice of Distribution**

The Supervisor must give not less than fourteen (14) days' notice to the Members of the day, place and time fixed for any payment to them under the provisions of clause 10.1 and after the day so fixed the Members shall be entitled to interest only on the balance (if any) of the

Principal Moneys owing on the Shares held by them and on the amount (if any) payable in respect of those Shares on that day.

## **11. Waiver by Supervisor**

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Subject to any direction or request given to the Supervisor by Members, the Supervisor may at any time and from time to time by written notice to the Credit Union waive in whole or In part and for a specified period or completely on such terms and conditions (if any) as it deems expedient, any Event of Review or Event of Default or any anticipated Event of Review or Event of Default, breach or anticipated breach by the Credit Union of any covenant, condition, agreement or other provision expressed or implied in this Deed (other than an Event of Default of the kind referred to in clause 9.1(a)), (which may be waived only with the consent of the Member concerned) provided the Supervisor is satisfied that the interests of the Members will not be materially adversely affected.

## **12. Amendments to Deed**

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### **12.1 Amendments**

The Supervisor and the Credit Union may at any time make any alteration, modification, variation or addition to the provisions of this Deed (by means of a Deed executed by the Supervisor and the Credit Union) in accordance with the provisions set out in section 108 of the FMC Act.

### **12.2 Notification**

The Credit Union will notify the Members in writing (in summary form) of all material amendments made to this Deed under clause 12.1, when the Credit Union next mails information to all Members.

## **13. Meetings**

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### **13.1 Supervisor may Request**

At the request in writing of the Supervisor or by the percentage of the holders of debt securities in the Credit Union prescribed in the FMC Act or FMC Regulations, the Credit Union must summon a meeting of the Members for any purpose including:

(a) **Considering financial statements**

considering the financial statements of the Credit Union for its last preceding financial year; or

(b) **Giving directions**

giving directions to the Supervisor in relation to the exercise of its powers.

### **13.2 Method of Convening Meeting**

Every meeting summoned under clause 13.1 must be summoned by sending by post a notice, specifying the time and place of the meeting to every Member at his or her last known address

not later than 15 business days before the date of the proposed meeting. The meeting must be held under the Chairmanship of a person nominated by the Supervisor or such other person as may be appointed in that behalf by the Members present at the meeting.

### 13.3 **Schedule to Apply**

The provisions of the Schedule shall govern any meeting of Members convened under this Deed.

## 14. **Reconstruction**

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### 14.1 **Reconstruction**

Nothing in this Deed shall be construed as preventing the reconstruction of the Credit Union from a Credit Union registered under the Act into a company registered under the Companies Act 1993.

### 14.2 **Supervisor to assist**

If the Members, by Special Resolution, approve a reconstruction of the nature referred to in clause 14.1, the Supervisor and the Credit Union shall use all reasonable endeavours to assist with such reconstruction, having regard to the duties and powers of each party under this Deed.

## 15. **Notices**

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All notices to be given pursuant to this Deed shall be deemed effective if made in writing, delivered or posted by prepaid mail or sent by facsimile addressed to:

(a) **in the case of the Credit Union:**

Police & Families Credit Union Incorporated  
Level 11  
57 Willis Street  
Wellington  
Attention: Chief Executive Officer  
Facsimile: (04) 499 2006

(b) **in the case of the Supervisor:**

Public Trust  
Ground Floor, 100 Molesworth Street  
Thorndon  
Wellington  
Attention: General Manager, Corporate Trustee Services  
Facsimile: (04) 978 4480

(c) in the case of (a) or (b), such other address as the Credit Union or the Supervisor may from time to time in writing nominate to the other party. Notices will be deemed to be given, in the case of personal delivery, when delivered and in the case of post, two business days after the date of posting. If sent by facsimile, notices will be deemed to

be given when sent or, if sent on other than a business day or after 5 p.m. on any business day, the next business day.

## 16. Liability of Previous Trustees

The Previous Trustees executed the Former Deed solely as trustees of the previous unincorporated Credit Union (but not further in any personal capacity) and with the intent to bind the Trustees while they fill the offices of trustees of the previous unincorporated Credit Union and not after that period. Accordingly, all liabilities and obligations of the Trustees under the Previous Deed shall, for all purposes be construed not as unlimited personal liabilities but only as liability to perform and observe the provisions under the Previous Deed out of the property and funds belonging to the previous unincorporated Credit Union and coming into the hands of the Trustees in the proper and normal course of their administration of the previous unincorporated Credit Union, and property applicable to the purpose for which such property and funds, but for the Trustees' breach, fraud or other default, would be in their hands for the time being.

## 17. Governing Law

This Deed is governed by the laws of New Zealand.

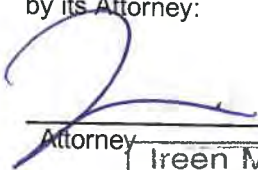
## 18. Registration of Deed

The Credit Union shall immediately, and at its own cost, register or procure all necessary registrations and recordings of this Deed and any security interests created by it as may be required by law and as may be necessary to give full legal effect to this Deed and shall pay all registration fees and other expenditure incidental to the registration and cost of registration.

## 19. Execution

**Executed as a Deed.**

Signed for and on behalf of **Public Trust**  
by its Attorney:



Attorney

Ireen Muir  
Head of Client Services  
Corporate Trustee Services  
Public Trust  
Wellington

Print Name



Signature of Witness

Leszek Lendnal  
Manager Client Services  
Corporate Trustee Services  
Public Trust  
Wellington

Name of Witness

Occupation of Witness

Address of Witness

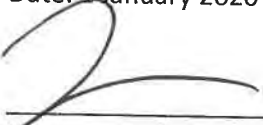


**CERTIFICATE OF NON-REVOCATION  
OF POWER OF ATTORNEY**

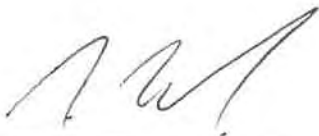
I, Ireen Muir of Wellington, hold the office of Head of Client Services, Corporate Trustee Services at Public Trust, an entity established under the Public Trust Act 2001, and certify that:

- 1 by deed dated 28 August 2019, Public Trust appointed me its attorney on the terms and conditions set out in the deed of appointment of attorneys which is deposited at Land Information New Zealand; and
- 2 at the date hereof I hold the position of Head of Client Services, Corporate Trustee Services with Public Trust; and
- 3 at the date of this certificate I have not received any notice of the revocation of that appointment.

Date: 1 January 2020

  
\_\_\_\_\_  
Ireen Muir

Signed by two authorised  
**Directors of the Police &  
Families Credit Union**  
Incorporated, on behalf of the  
Credit Union:



Director



Director



Print Name



Print Name



Signature of Witness



Name of Witness



Occupation of Witness



Address of Witness

## **SCHEDULE 1: Meetings of Members**

### **1. Convening Meetings**

- (a) Notwithstanding clause 13.1, the Credit Union may convene a meeting of Members at any time.
- (b) Meetings will be held in Wellington, or such other place as the Supervisor approves.
- (c) Any request by Members under clause 13.1 to convene a meeting must state the nature of the business proposed to be dealt with at the meeting.

### **2. Notice to Members**

Notice must be given to every Member entered in the Register at the close of business 15 business days prior to the date of dispatch of the notice by ordinary post to the address last entered in the Register.

### **3. Notice of Meeting**

Notice must be given in accordance with clause 13.2 of this Deed. Such notice need not contain the agenda of the meeting, or specify the terms of the resolutions to be proposed (except in the case of a resolution which is to be an Special Resolution) but must indicate the general nature of the business to be transacted at the meeting, with such meeting and notice of meeting being otherwise conducted in accordance with the provisions of the FMC Regulations.

### **4. Chairman**

A person (who may, but need not, be a Member) nominated in writing by the Supervisor will be entitled to chair every such meeting, but if no such nomination is made, or if at any meeting the person nominated is not present within 15 minutes after the time appointed for the holding of such meeting, the Members present must choose one of their number to chair the meeting.

### **5. Quorum**

At any such meeting 15 or more Members present in person or by proxy will form a quorum (or such other number of Members as required by New Zealand law) for the transaction of business, and no business (other than the choosing of chairman) may be transacted at any meeting unless the requisite quorum is present at the commencement of business.

### **6. Lack of Quorum and Adjournment**

If, within 30 minutes after the time appointed for any such meeting, a quorum is not present the meeting will stand adjourned for such period as is provided for in the FMC Regulations and such adjourned meeting will be conducted in accordance with the provisions of the FMC Regulations.

## **7. Attendance and Voting at Meetings**

- (a) Except for the Supervisor, the Credit Union and their representatives (who may attend but may not vote, except in the case of the Supervisor where it is acting on behalf of a Member), no person will be entitled to attend and vote at any meeting of the Members or to join with others in requesting the convening of any such meeting unless he is a person registered as a Member on the Register or is a representative of such person.

In this clause, a representative of a Member means:

- (i) in the case of a Member being an individual a person appointed by an instrument by way of proxy or by power of attorney (in either case, in a form satisfactory to the Supervisor);
  - (ii) a person upon whom the ownership of a Member's Share has devolved by reason of his being a legal representative or an assignee in bankruptcy or liquidator of the Member, or such person's representative appointed or authorised under (i) above.
- (b) At a meeting, the persons registered as Members in the Register at the Proxy Closing Time will be exclusively entitled to vote in respect of Shares recorded in their name, in person or by representative. For the purpose of establishing voting entitlements at a meeting, the Register will be closed as of close of business on the business day immediately preceding the day on which the Proxy Closing Time falls and will remain closed until after the relevant meeting has been closed or adjourned.
- (c) The Supervisor, or any of its officers or employees, may be appointed a representative of a Member.

## **8. Proxies**

- (a) The instrument appointing a proxy must be in writing signed by the appointor or the appointor's attorney.
- (b) A person appointed to act as a proxy need not be a Member and a proxy of a Member shall have the right to speak at the meeting.
- (c) The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a copy of such power or authority certified in such manner as the Supervisor approves must be deposited at such place as (or a facsimile copy of such proxy and power of attorney must be received at such facsimile number as) the Supervisor or the Credit Union with the approval of the Supervisor may in the notice convening the meeting direct or (if no such place is appointed) at the registered office of the Credit Union not later than the Proxy Closing Time.
- (d) An Instrument of proxy may be in any usual common form or in such other form as the Supervisor approves and may make provision for directions to be given by the appointor to vote in favour of or against any proposed resolution.
- (e) A proxy will, unless it states otherwise, be valid for any adjournment of the meeting as well as for the meeting to which it relates and need not be witnessed. Notwithstanding any provision contained in an instrument of proxy no instrument of proxy will be valid

after the expiration of 12 months from the date of its execution, although this provision does not apply to the appointment of an attorney or representative otherwise than by an Instrument of proxy.

- (f) An Instrument of proxy in favour of:
  - (i) the chairman of the Credit Union; or
  - (ii) the chairman of the meeting, or 'the chairman',

(howsoever expressed) will be valid and effectual as though it were in favour of a named person and shall in the case of subparagraph (i) above constitute the person holding the office of the chairman of the Credit Union and In the case of subparagraph above the person who chairs the meeting for which the proxy is used (whether an adjournment or not) the lawful proxy of the appointor.

## **9. Rights of Representatives**

A representative of a Member will have the right to speak at the meeting and to demand or join in demanding a poll and shall (except and to the extent to which the representative is specifically directed to vote for or against any proposal) have power generally to act at the meeting for the Member concerned.

## **10. Voting Procedure and Polls**

- (a) A resolution put to the vote of a meeting will be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman or the Supervisor or by 5 per cent of the Members or one or more Members holding or representing not less than 5 per cent of the Shares. Unless a poll is so demanded a declaration by the chairman that a resolution has been carried or carried unanimously or by a particular majority or lost will be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- (b) On a show of hands each person present at the meeting and entitled to vote (whether personally, by proxy or as a representative) will have one vote only. On a poll every Member who is present in person, by proxy or by a representative will have one vote.
- (c) If a poll is required, it will be taken in such manner as the chairman may direct and the result of such poll will be deemed to be the resolution of the meeting at which the poll was required.
- (d) In the case of an equality of votes whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded will not be entitled to a casting vote in addition to the votes (if any) to which the chairman may be entitled as a Member or on behalf of Members.
- (e) A poll demanded on the election of a chairman or on a question of adjournment must be taken forthwith. A poll demanded on any other question must be taken either immediately or at such time (not being more than 30 days from the date of the meeting) and place as the chairman may direct. The result of such poll will be deemed to be the

resolution of the meeting at which the poll was demanded. No notice need be given of a poll.

- (f) The demand for a poll will not prevent the continuance of a meeting for the transaction of business other than the question on which the poll has been demanded.
- (g) On a poll, votes may be given either personally or by representative, and a person entitled to more than one vote need not use all such votes or cast all such votes in the same way.
- (h) In the case of joint Members, the vote of the senior who tenders a vote, whether in person or by representative, will be accepted to the exclusion of the votes of the other joint Members and for this purpose seniority will be determined by the order in which the names stand in the Register in respect of the joint holding.
- (i) A vote given in accordance with the terms of an instrument of proxy or power of attorney or other form will be valid notwithstanding the previous death, insanity or (in the case of a corporation) liquidation of the principal or revocation of the proxy or power of attorney or other form of appointment or the authority under which the proxy was executed or the transfer of the Shares in respect of which the vote is given provided that no intimation in writing of such death, insanity, liquidation, revocation or transfer is received by the Supervisor or the Credit Union at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.
- (j) A resolution passed at a meeting of the Members duly convened and held in accordance with this Deed will be binding upon all the Members whether present or not at such meeting.

## **11. Minutes**

Minutes of all resolutions and proceedings at every meeting of Members must be made and duly entered in records to be from time to time maintained for that purpose at the expense of the Credit Union by the Credit Union. Any such minutes signed by the chairman of the meeting at which such resolutions were passed or proceedings transacted, or by the chairman of the next succeeding meeting of the Members, will be prima facie evidence of the matters recorded in them. Until the contrary is proved, every meeting whose proceedings have been so minuted and signed will be deemed to have been duly held and convened and all resolutions passed or proceedings transacted to have been duly passed and transacted. Copies of all minutes must be given by the Credit Union to the Supervisor as soon as possible after each meeting.