



## **OVERDRAFT FACILITY AGREEMENT**

**PARTIES:**

**MEMBER NUMBER:**

**Member(s):**

**Address:**

**E-mail address**

**THE POLICE AND FAMILIES CREDIT UNION**, Level 11, 57 Willis Street, Wellington (**Credit Union**)

Telephone: 0800 429 000, Fax 04 499 2006, E-mail: info@policecu.org.nz.

The Credit Union offers and the Member accepts an Overdraft Facility (**the Facility**) on the terms and conditions of this Agreement and the annexed Schedule of Overdraft Terms.

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### **1.0 DEFINITIONS AND INTERPRETATION**

**Agreement:** means this Overdraft Facility Agreement.

**Advance:** means money paid to the Member or another person to the order of the Member

**Annual Interest Rate:** means the interest rate set out in the Schedule of Overdraft Terms.

**CCCF:** means the Credit Contracts and Consumer Finance Act 2003.

**Commencement Date:** the date of first advance.

**Daily Interest Rate:** means the interest rate determined by dividing the Annual Interest Rate by 365.

**Default Fees:** means those fees which may be payable by the Member, to the Credit Union, on a breach of the Agreement by the Member, or on the enforcement of the Agreement by the Credit Union.

**Facility Account:** the Member's Overdraft Facility, Account Number #

**Facility Amount (Credit Limit):** \$ or such other sum as may be varied in accordance with this Agreement.

**Facility Term:** Until further notice. The Credit Union may Upon Demand and without notice request immediate repayment of the Unpaid Balance in accordance with clause 5.0 of this Agreement.

**Fees:** means those fees payable by the Member to the Credit Union to cover the costs incurred by the Credit Union in connection with the Facility and this Agreement.

**Interest:** means interest at the Annual Interest Rate payable to the Credit Union in respect of this Agreement as varied from time to time.

**Obligations:** means the duties and commitments that the Member is required to fulfil under this Agreement, as legally bound.

**Overdrawn Facility Amount:** the amount by which the Unpaid Balance is in excess of the Facility Amount.

**Payment:** shall be the sum specified in item 6.0 of the annexed Schedule of Overdraft Terms, subject to review pursuant to clause 5 of this Agreement.

**Payment Date:** as specified in the Schedule of Overdraft Terms.

**Payment Default:** the Member fails to meet its Payment obligations.

**Unpaid Balance:** means the amount owing under this Agreement at a particular time, and includes any interest which has accrued, and any Fees or Default Fees payable by the Member.

**Upon Demand:** demand made in writing.

**Variable:** means, in relation to the interest rate, an annual interest rate that is subject to change at the discretion of the Credit Union.

**Working Day:** means a day other than a Saturday or Sunday or nationally observed holiday or the Wellington regional anniversary.

1.1 Where there is more than one person named as Member:

- (a) each of them is jointly and severally liable for the obligations under this Agreement;
- (b) each reference in this Agreement to the Member is a reference to each such person individually or to any combination of two or more such persons (in any legal relationship, whether joint or otherwise) or to both; and
- (c) each reference to an account of the Member includes all accounts of each of the Members.

1.2 In this Agreement:

- (a) the singular includes the plural and vice versa; and
  - (b) references to a document or agreement include all variations, novations or replacements;
  - (c) references to any person (including the Credit Union and Member) include the person and the successors in title, transferees or executors of the person;
  - (d) where a Member is required to fulfil an obligation by a certain time or within a certain timeframe, time will be of the essence;
  - (e) a reference to a person includes a natural person and a corporation;
  - (f) where any word or expression has a special meaning, any other part of speech or other grammatical form of that word or expression has a corresponding meaning; and
  - (g) headings are for convenience only and do not affect interpretation.
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## **2.0 THE FACILITY**

2.1 The Member may from the Commencement Date and from time to time thereafter draw down an amount or amounts of the Facility Amount, subject to the prior receipt by the Credit Union of this Agreement duly executed by the Member.

2.2 The Credit Union may refuse to advance the Facility Amount (or any part of it) if:

- (a) there occurs any event/circumstance which in the opinion of the Credit Union may detrimentally alter the financial status of the Member.
- (b) the Credit Union becomes aware:
  - (i) of any material non-disclosure of information relevant to this Agreement and the approval of the overdraft; and
  - (ii) that any material statement or information provided to the Credit Union by or on behalf of the Member is false or incomplete.

2.3 The Credit Union may at any time increase, reduce or cancel the Facility Amount in accordance with clause 8.0 of this Agreement.

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## **3.0 INTEREST**

3.1 The Annual Interest Rate may be varied from time to time in accordance with the terms and conditions of this Agreement.

3.2 Interest is calculated by multiplying the Unpaid Balance by the Daily Interest Rate at the end of end day. Interest is debited on the last calendar day of each month.

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## **4.0 FEES & OTHER COSTS**

4.1 The following credit fees (which are included as appropriate in the initial unpaid balance) are, or may become, payable under, or in connection with, this Agreement and will be made in addition and capitalised to the Facility Amount drawn down:

(a) Overdraft establishment fee of \$15.00, which will be charged to the Member's Transaction Account at the establishment of the Overdraft Facility;

4.2 The Member must pay all costs and expenses incurred by the Credit Union pursuant to and in connection with this Agreement including reasonable legal fees (on a solicitor/client basis), incurred in connection with this Agreement, the preservation or attempted preservation of any rights under this Agreement or the Security, any approvals hereunder or variations thereof and all duties, fees and taxes, if any, to which this Agreement or the Security or any acceptance thereof may be subject or give rise.

4.3 Without limiting the generality of clause 4.2, if the Member is in default, the Credit Union is entitled to pass on to the Member, and the Member must pay on demand, any reasonable costs which the Credit Union incurs in remedying the default, including any reasonable legal costs it incurs, and if the Credit Union engages a collection agency to recover from the Member any amount that the Member is in default, the Credit Union is entitled to pass on to the Member, and the Member must pay any reasonable costs the Credit Union incurs in recovering the amount in default.

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## **5.0 PAYMENTS**

5.1 The Member shall ensure that the Unpaid Balance does not exceed the Facility Amount.

5.2 The Member must make any payment:

- (a) by Payroll deduction; or
- (b) by direct credit to the Members Loan Account (Facility Account) or such account as advised by the Credit Union from time to time; or
- (c) as otherwise specified by the Credit Union.

5.3 The Credit Union is entitled to Upon Demand and without notice, immediate repayment of the Unpaid Balance. The Credit Union can make demand for full payment at any time, and is not required to provide you with any reason or reasons as to why demand has been made.

5.4 Payments to the Credit Union under this Agreement must be made, without any set off, deduction, counterclaim or withholding whatsoever.

5.5 Any sum due for payment hereunder on a day which is not a Working Day shall be payable on the next succeeding Working Day.

5.6 The Credit Union may, by providing to the Member any notice legally required, combine, consolidate or merge all or any of the Member's accounts with, and liabilities to, the Credit Union and may set-off or transfer any sum standing to the credit of the Member in any such accounts in or towards the satisfaction of any of the Member's liabilities to the Credit Union under this Agreement.

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## **6.0 PREPAYMENTS**

6.1 The Member may repay the Unpaid Balance in full or in part at any time.



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## **7.0 DEFAULT**

7.1 The Credit Union may, by providing written notice to the Member:

(a) cancel any undrawn part of the Facility Amount (any amount cancelled will not be available to the Member); and/or  
(b) require the Member to repay the Unpaid Balance if:

(i) the Member is in breach of the Agreement, defaults on any Payment due under this Agreement or on any of the Member's accounts with the Credit Union, or breaches any obligation the Member has to the Credit Union; or

(ii) the Member breaches any term or condition of this Agreement, or any term or condition of any Security held by the Credit Union from the Member; or

(iii) the Member sells or otherwise disposes of any Property subject to any Security held by the Credit Union from the Member without the Credit Union's prior written consent; or

(iv) the Member does any of the following things, or are the subject or focus (alone or with others) of any of the following events, actions or things, under the Insolvency Act 2006 (the "Insolvency Act") or another law, statutory or otherwise:

(A) is adjudicated bankrupt;

(B) makes a proposal to creditors;

(C) pays creditors in instalments under a summary instalment order;

(D) enters the no asset procedure;

(E) commits, or is charged with, an offence under Part 7 of the Insolvency Act; or

(F) if an order is made or any step is taken toward dissolution or a receiver, liquidator, trustee, administrator or similar officer is appointed in respect of any of the Member or any Guarantor or their assets; or

(v) the Member is unable to pay, or does not pay, debts as they become due and payable, or becomes insolvent, or the financial position of the Member or the value of any Security held by the Credit Union changes adversely to a material extent, in each case in the Credit Union's reasonable opinion; or

(vi) in the reasonable opinion of the Credit Union, an unsatisfactory feature develops in the financial affairs of the Member, or the Member does not conduct its financial affairs to the Credit Union's satisfaction; or

(vii) any representation, warranty or statement made by or on behalf of the Member in the Overdraft Facility Application or in or pursuant to this Agreement proves to be incorrect.

7.2 The Member must immediately comply with any notice given under this clause.

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## **8.0 VARIATIONS TO THE FACILITY AGREEMENT**

8.1 The Credit Union may at any time:

(a) review and vary the Annual Interest Rate and /or Fees;

(b) alter the timing or frequency of Payment requirements;

(c) increase, reduce or cancel the Facility Amount;

(d) require any Unpaid Balance to be paid by regular instalments.

8.2 If the Credit Union exercises its power in accordance with clause 8.1, the Credit Union will provide the Member with a disclosure statement which sets out the change to the Agreement, within five working days of the change becoming effective.

8.3 The cancellation by the Credit Union of the Facility will not affect any of the Credit Union's rights that may have arisen before cancellation.

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## **9.0 NOTICE, DEMANDS AND ENFORCEMENT**

9.1 Any notice to be given to the Member under this Agreement and for the purposes of all disclosure required by the CCCFA may be, at the Credit Union's discretion:

(a) given to the Member personally; or

(b) sent by post to the Member at the address shown on the first page of this Agreement or any other address notified in writing to the Credit Union by the Member; or

(c) sent as an electronic communication to the e-mail address on the first page of this Agreement or any other e-mail address notified in writing to the Credit Union by the Member.

9.2 Notice by:

(a) post shall be deemed to have been received by the Member on the fourth Working Day after the date of posting; and

(b) e-mail shall be deemed to have been received by the Member on the second Working Day after the date of sending.



9.3 The Credit Union will provide the Member with disclosure statements at least every 45 working days.

9.4 If disclosure or notice is sent to the Member by an electronic communication, the Member and any Guarantor acknowledge that, in respect of such disclosure, neither the Member nor the Guarantor has imposed any conditions regarding the form of the information or the means by which the information is produced, sent, received, processed, stored or displayed. The Member and any Guarantor must specify their respective information systems from time to time for any such electronic communication. The Member and any Guarantor agree that the Credit Union may make disclosure by sending the relevant person an electronic communication that allows a disclosure statement to be accessed from a website or by means of the Internet.

9.5 The Member must immediately give notice to the Credit Union of any change of address or e-mail address.

9.6 The Member will not have any right of action, claim or demand against the Credit Union for any error or omission in a notice or because of the exercise or enforcement by the Credit Union of its rights (express or implied) under this Agreement.

9.7 In any proceedings relating to this Agreement a statement as to any amount due to the Credit Union, which is certified as being correct by one of the Credit Union's officers, shall be prima facie evidence that such amount is in fact due and payable.

9.8 Any one Member that is party to the joint Agreement can operate and instruct the Credit Union to act in respect of the joint Agreement.

9.9 This Agreement will be treated as having been "delivered" by the Credit Union immediately on physical or electronic delivery of an original or copy of the Agreement.

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## **10.0 CANCELLATION**

10.1 The Member may cancel this Agreement at any time by written notice to the Credit Union.

10.2 If the Member cancels this Agreement in accordance with this clause, the Member shall immediately make payment to the Credit Union of the Unpaid Balance.

10.3 If the Member cancels this Agreement in accordance with this clause, the Credit Union can charge the Member:

(a) the amount of any reasonable expenses the Credit Union had to pay in connection with the contract and its cancellation (including legal fees and fees for credit reports, etc.); and

(b) interest for the period from the day the Member received the Facility Amount until the day that Facility Amount is repaid in full.

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## **11.0 UNFORESEEN HARDSHIP**

11.1 If the Member is unable to reasonably meet the conditions of this Agreement or other obligations because of illness, injury, loss of employment, the end of a relationship, or other reasonable cause, the Member can apply to the Credit Union for an unforeseen hardship variation

11.2 To apply for an unforeseen hardship variation, the Member must send to the Credit Union a written request which explains the Member's reasons for the application.

11.3 The Member should make this application as soon as the Member becomes aware of any unforeseen hardship.

11.4 The Credit Union will acknowledge receipt of hardship applications within 5 working days and make a decision on the hardship application within 20 working days.

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## **12.0 INFORMATION**

12.1 The Member authorises the Credit Union to make such enquiries and obtain such information as to the Member's credit worthiness from any person or company as the Credit Union thinks fit.

12.2 The Member, if required, will promptly provide the Credit Union with such information as to the Member's financial position, as the Credit Union may from time to time request.

12.3 The Member authorises the Credit Union to disclose any information provided, on a confidential basis, for the purposes of approval or enforcement of the Facility.

12.4 The Credit Union may disclose, on a confidential basis, to a potential assignee, transferee or other person with whom contractual relations in connection with the contract are contemplated, any information about the Member whether or not that information was obtained in confidence and whether or not that information is publicly available.



### **13.0 CONSUMER GUARANTEES ACT 1993**

13.1 The Member acknowledges that:

- (a) no representation or warranties in relation to the Facility have been made by or on behalf of the Credit Union except those in this Agreement;
- (b) the Member has not relied on any advice given by or on behalf of the Credit Union when deciding to enter into this Agreement; and
- (c) the guarantee provisions of the Consumer Guarantees Act 1993 do not apply to this Agreement if the Facility is used for business purposes.

13.2 The Member warrants that:

- (a) all statements and representations made by or on behalf of the Member to the Credit Union in relation to the granting of the Facility are correct in every material respect; and
- (b) the Member will repay on demand the Unpaid Balance then owing by the Member to the Credit Union if the Member is in breach of this warranty.

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### **14.0 MISCELLANEOUS**

14.1 No failure to exercise, or delay in exercising, any of the Credit Union's rights, powers or privileges hereunder will operate as a waiver thereof nor will any single or partial exercise of any right, power or privilege preclude the further exercise of such one or any other right, power or privilege.

14.2 The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

14.3 Each Member who is a party to the Agreement is jointly and severally liable, including in respect of any amount owing to the Credit Union for that Agreement.

14.4 The Credit Union may assign any of its rights under this Agreement. An Assignee may exercise the Credit Union's rights under this Agreement.

14.5 The Member shall have no right of assignment.

14.6 Except as otherwise provided by the terms of the Agreement, this Agreement may only be varied in writing between the Credit Union and the Member.

14.8 If any provision of this Agreement is invalid or unenforceable in whole or in part, the remaining provisions of this Agreement shall remain valid and enforceable.

14.8 The Member acknowledges that the Facility is acquired solely for the Member's personal use and not for any business purpose.

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### **15.0 ANTI-MONEY LAUNDERING AND COUNTERING FINANCING OF TERRORISM ACT 2009 (AML/CFT)**

15.1 The Member agrees to provide all information to the Credit Union which the Credit Union requires in order to manage its AML/CFT obligations, and to comply with any laws, rules or regulations in New Zealand.

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### **16.0 GOVERNING LAW**

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

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### **17.0 ACKNOWLEDGEMENT**

17.1 Each of the Member, the Guarantor and the Credit Union agrees that they will be bound by the Agreement.

17.2 The Member's obligations under the Agreement have been explained to them and the member understands those obligations.

17.3 A copy of the Agreement was disclosed to the Member, and the Guarantor before the Member entered into the Agreement.

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### **18.0 POWER OF ATTORNEY**

18.1 The Member agrees to irrevocably appoint the Credit Union, and each of the Credit Union's directors or managers, at the relevant time, as the Member's attorney with the power to act on the Member's behalf to do anything which the Member agrees to do under this Agreement, or which in the Credit Union's opinion is reasonably necessary to protect the Credit Union's interest under this Agreement or give effect to any right, power or remedy conferred on the Credit Union by this contact, by law or otherwise. The Member agrees to indemnify the Credit Union when acting as the Member's attorney against any loss, cost or expense reasonably incurred or suffered as a result of any acts or omissions while acting as the Member's attorney.



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**19.0 SPECIAL CONDITIONS**

19.1 This Agreement will be interest free (0.00%pa) until <graduation date> when it will revert to the Annual Interest Rate specified in item 5.0 of the annexed Schedule of Overdraft Terms.

19.2 The Member agrees not to enter into any additional debt obligations for a period of X months from the date of Advance

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I certify that I am not currently the subject of any proceeding under the Insolvency Act 2006 and I can pay my debts as they become due from my own money.

SIGNED by \_\_\_\_\_ Date \_\_\_\_ / \_\_\_\_ / \_\_\_\_

SIGNED by \_\_\_\_\_ Date \_\_\_\_ / \_\_\_\_ / \_\_\_\_  
Police and Families Credit Union



**SCHEDULE OF OVERDRAFT TERMS**

**1.0 MEMBER:**

**2.0 CREDIT UNION:** The Police and Families Credit Union, Level 11, 57 Willis Street, Wellington.  
Telephone: 0800 429 000, Fax 04 499 2006, Email: info@policecu.org.nz.

<b>3.0 FACILITY AMOUNT:</b>	\$X	<b>5.0 ANNUAL INTEREST RATE:</b>	p.a variable
<b>4.0 ESTABLISHMENT FEE:</b>	\$		

**6.0 PAYMENTS**

- 6.1 The Member must pay any interest charges, to keep within the Credit Limit.
- 6.2 The Member will be charged interest on the outstanding overdrawn balance.
- 6.3 The interest will be calculated on a daily basis and charged monthly to the Member’s Transaction Account on the last calendar day of the month.
- 6.4 The Member’s Overdraft Facility will reduce by \$X per fortnight.

**DISCLOSURE STATEMENTS**

**7.0 STATEMENT OF RIGHT TO CANCEL**

- 7.1 The CCCFA gives the Member a right for a short time after the terms of this Agreement have been disclosed to cancel the contract.
- 7.2 The Member must give written notice to the Credit Union, of the intention to cancel the Agreement:
  - (a) within 5 working days of the date of signing this Agreement, if this document was provided in person and on the date of this Agreement; or
  - (b) within 7 working days of receiving this Agreement, if this document was sent via electronic communication; or
  - (c) within 9 working days of receiving this Agreement, if this document was mailed.
- 7.3 To cancel, the Member must give the Credit Union written notice of intention to cancel by:
  - giving notice to the Credit Union at the Credit Union’s specified premises; or
  - posting the notice to the Credit Union; or
  - emailing the notice to the Credit Union’s email address; or
  - sending the notice to the Credit Union’s fax number.
- 7.4 The Member must also return to the Credit Union any Advance or Advances made under the Agreement, within the same timeframes.
- 7.5 Upon cancellation, the Credit Union can charge the Member:
  - (a) the amount of any reasonable expenses the Credit Union had to pay in connection with the contract and its cancellation (including legal fees and fees for credit reports, etc.); and
  - (b) interest for the period from the day the Member received the Advance until the day that Advance is repaid.
- 7.6 This statement only contains a summary of the Member’s rights and obligations in connection with the right to cancel. If there is anything about the Member’s rights or obligations under the CCCFA that the Member does not understand, if there is a dispute about the Member’s rights, or if the Member thinks that the Credit Union is being unreasonable in any way, the Member should seek legal advice immediately.

**8.0 COMPLAINT RESOLUTION**

8.1 If the Member is not satisfied with the services from the Credit Union, or if the Member has a complaint about the Agreement or the Credit Union, the Member should contact the Credit Union at the address given above or by phone on 0800 429 000. Complaints can be made by telephone, email, or in writing. If after discussing the complaint with the Credit Union, the Member is still not satisfied, the Member may contact the Independent Dispute Resolution Scheme. The Credit Union is a member of the Independent Dispute Resolution Scheme operated by the Financial Services Complaints Limited (FSCL) which is approved by the Ministry of Consumer Affairs. This service is free. The Member can refer the matter to FSCL on 0800 347 257, email info@fscl.org.nz, PO Box 4567, Wellington 6145 or their physical address 4<sup>th</sup> Floor, 101 Lambton Quay, Wellington. For more details see their website www.fscl.org.nz.

**9.0 SCHEDULE OF OVERDRAFT TERMS**

This Schedule forms part of the Agreement.



Te Uniana Whakanama Pirihimana

**POLICE HELPING POLICE**

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**10.0 REGISTRATION ON FINANCIAL SERVICE PROVIDERS REGISTER**

Credit Union registration name: Police and Families Credit Union

Registration number: FSP28032

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<name> acknowledges having received a copy of this Agreement and the Schedule of Overdraft Terms referred to in the Agreement (being initial disclosure as at the date of the Contract under Credit Contracts and Consumer Finance Act 2003).

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**Signature**

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**Date**