

TRUST DEED

**FIRST CREDIT UNION INCORPORATED
COVENANT TRUSTEE SERVICES LIMITED**

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DATED 1 January 2020

PARTIES

- 1 **FIRST CREDIT UNION INCORPORATED ("Credit Union")**
- 2 **COVENANT TRUSTEE SERVICES LIMITED ("Supervisor")**

BACKGROUND

- A The trustees of the First Credit Union ("unincorporated credit union") and the Supervisor executed a trust deed originally dated 2 November 2000, as most recently amended and restated on 9 October 2019 ("Existing Deed") under which the unincorporated credit union issued shares to its members.
- B The unincorporated credit union's committee of management applied for incorporation pursuant to clause 3 of schedule 1AA of the Act. The application for incorporation was accepted by the Registrar and takes effect on and from 1 January 2020.
- C The effect of incorporation is that all of the property, rights, and liabilities of the unincorporated credit union, and of its trustees, including those provided for under the Existing Deed, belongs to, and vests in, the Credit Union with effect on and from 1 January 2020.
- D The Credit Union (having succeeded to the trustees of the unincorporated credit union's rights under the Existing Deed) and the Supervisor wish to amend the Existing Deed on the terms set out in this deed to reflect the incorporation of the unincorporated credit union as the Credit Union.
- E For the purposes of clauses 13.1 and 13.2 of the Existing Deed:
- (a) the amendments in this deed are made with the consent of the Supervisor; and
 - (b) the Credit Union and the Supervisor are satisfied that the amendments in this deed do not have a material adverse effect on the Members (in their capacity as holders of the Shares).

IT IS AGREED THAT:

Operative provision

The parties agree that with effect on and from 1 January 2020 the Existing Deed is amended and restated by rescinding each of the existing clauses of the Existing Deed and by substituting the clauses of this deed so that the Existing Deed is replaced by the clauses of this deed.

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this deed unless the context requires otherwise:

"**Act**" means the Friendly Societies and Credit Unions Act 1982;

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

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

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

"**Credit Union Security**" means a credit union security issued under section 107A of the Act;

"Creditor Liabilities" means, at any date, all liabilities of the Credit Union to creditors of the Credit Union including contingent liabilities, and further includes provision for income and other taxes, long service leave, holiday and retirement leave, in each case to the extent that they would be disclosed by a Reference Balance Sheet if one was prepared at the relevant date, but excludes the amount that the Credit Union would be required to pay to Members (including any Interest) if all of the Shares and Credit Union Securities on issue on the relevant date were withdrawn by Members;

"Deposit Taker" or **"NBDT"** shall have the meaning given to "NBDT" in the NBDT Act;

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

"Electronic Communication" means a transmission of an instruction, request, notice or information by telephone, computer, videophone, skype or other electronic medium approved by the Board, subject to such conditions as the Board considers appropriate as to identification of the person making the communication or verification of the content of the communication;

"Event of Default" means the occurrence of any one or more of the events specified in clause 10.1;

"Event of Review" means an event of review declared by the Supervisor under clause 9.1;

"Financial Markets Supervisors Act" means the Financial Markets Supervisors Act 2011;

"FMA" means the Financial Markets Authority, or any successor authority or person;

"FMC Act" means the Financial Markets Conduct Act 2013;

"FMC Regulations" means the Financial Markets Conduct Regulations 2014;

"Financial Reporting Act" means the Financial Reporting Act 2013;

"GAAP" means the matters required for financial statements to comply with generally accepted accounting practice under section 8 of the Financial Reporting Act;

"Interest" means all payments in respect of the Shares and Credit Union Securities 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 Obligations" has the meaning given to 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 by Members; plus
- (b) the amount that the Credit Union would be required to pay to Members (including any Interest) if all of those Credit Union Securities, which are not able to be categorised as capital of the Credit Union, on issue on the relevant date were withdrawn by Members; plus
- (c) Creditor Liabilities;

"Liquid Assets" means:

- (a) cash deposits with any Registered Bank;
- (b) term deposits with any Registered Bank with remaining maturities of 90 days or less;

- (c) callable securities held with any Registered Bank;
- (d) New Zealand government stock able to be converted to cash within 90 days;
- (e) term deposits with any wholly owned subsidiary of any Registered Bank which itself is a financial intermediary;
- (f) New Zealand local authority securities able to be converted to cash within 90 days; and
- (g) any committed undrawn bank facility on terms and conditions approved by the Supervisor;

"**Meeting**" means a meeting of the Members or a class of Members convened under this deed;

"**Member**" means a person who, for the time being, is entered in the Register;

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

"**Other Property**" means all of the Secured Property that is not Personal Property;

"**Personal Property**" means personal property to which the PPSA applies;

"**PLA**" means the Property Law Act 2007;

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

"**Principal Moneys**" means, in relation to any Share or Credit Union Security, the amount (other than Interest) payable upon the withdrawal of the Share or Credit Union Security by the relevant Member, including any premium payable in accordance with its terms of issue;

"**Prior Security Interest**" means any Security Interest on the Secured Property or any part thereof ranking in priority to the Security Interests in favour of the Supervisor created by or pursuant to this Deed or, as the case requires, the Secured Moneys;

"**Product Disclosure Statement**" includes a product disclosure statement or other disclosure document (including any supplemental document) required by the FMC Act, however described;

"**Proxy Closing Time**" means 24 hours before the time at which the relevant Meeting is to commence;

"**Receiver**" means any receiver, manager or receiver and manager appointed under this deed in respect 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 statement of financial position of the Credit Union prepared as at the date in question on a basis that complies with the FMC Act and that applies accounting principles and practices on a basis that is consistent in all material respects 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 Auditor;

"**Register**" means the register of Members set up and maintained by the Credit Union in accordance with section 130 of the Act, sections 215 to 217 of the FMC Act and clause 7.7 of this deed;

"**Registered Bank**" means a bank registered under the Reserve Bank of New Zealand Act 1989;

"**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;

"Reporting Certificate" means a certificate required under clause 8.1(c);

"Rules" means the rules of the Credit Union from time to time as registered under the Act;

"Secured Moneys" means, in relation to the Shares and Credit Union Securities, the Principal Moneys outstanding at any time and Interest or any other amounts payable to the Members by the Credit Union in relation to Shares and Credit Union Securities 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, property, assets and revenues, including amounts uncalled on the Shares and Credit Union Securities and amounts called but unpaid, and a reference to "Secured Property" includes a reference to any part of it;

"Security Interest" includes a security interest (as defined in the PPSA), mortgage, charge, encumbrance, lien, pledge, finance lease, sale and lease back, sale and repurchase, deferred purchase or title retention arrangement, flawed asset arrangement, and any other security or arrangement having like economic effect over any property, assets or revenues;

"Share" means a share in the capital of the Credit Union;

"Special Resolution" means a resolution approved by no less than 75% of the number of Members who are entitled to vote and who vote on the question;

"Supervisor" means the person that performs the function of supervisor under this deed from time to time, such person as at the date of this deed being Covenant Trustee Services Limited;

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

"Total Liabilities" means, at any date, the value of the Liabilities that would be disclosed by a Reference Balance Sheet if one was prepared at the relevant date; and

"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 Other references

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

an **"amendment"** includes any replacement, waiver or temporary variation;

an **"approved rating agency"** means any rating agency approved by the Reserve Bank of New Zealand under the NBDT Act;

an **"authorisation"** includes:

- (a) any consent, authorisation, registration, filing, agreement, notarisation, certificate, permission, licence, approval, authority or exemption from, by or with a governmental agency; and
- (b) in relation to anything which will be proscribed or restricted in whole or part by law if a governmental agency intervenes or acts in any way within a specified period after lodgement, filing, registration or notification, the expiry of such period without such intervention or action;

a "**business day**" means a day on which registered banks are open for general banking business in Auckland and Hamilton;

a "**clause**" or "**schedule**" is to a clause of or schedule to this deed;

"**class**", "**insolvent**", "**register entry**" and "**supervisor**" have the meanings given to them in the FMC Act;

any "**governmental agency**" includes any government or any governmental, semi-governmental or judicial entity or authority, or legislative body, or any person or body charged with the administration of any law and also includes any self-regulatory organisation established under statute or any stock exchange;

"**indebtedness**" includes an obligation (whether present or future, actual or contingent, secured or unsecured, as principal or surety or otherwise) for the payment or repayment of money;

a "**law**" includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute or other legislative measure, in each case of any jurisdiction whatever and "lawful" and "unlawful" shall be construed accordingly;

"**payment**" includes satisfaction of a monetary obligation;

a "**person**" includes any individual, firm, company, corporation or unincorporated body of persons, organisation or trust, and any state, government or governmental agency, in each case whether or not having separate legal personality; and

"**regulated offer**" shall be construed in accordance with the FMC Act.

1.3 **Miscellaneous**

- (a) The introduction to and headings in this deed are inserted for convenience only and shall be ignored in construing this deed.
- (b) Unless the context otherwise requires words denoting only the singular number shall include the plural and vice versa and words denoting any gender shall include all genders.
- (c) References to any legislation, including any exemption notice gazetted under the FMC Act (or any legislation replacing the FMC Act), or to any provision of any legislation are deemed to be references to that legislation or provision as from time to time amended, re-enacted, replaced or substituted (including any exemption notice passed or gazetted in substitution for or that refers to or incorporates any of its provisions) and, unless the context otherwise requires, shall also include any statutory instruments issued under any such legislation or provision.
- (d) References to any document (however described) shall include references to such document as modified, novated, supplemented, varied or replaced from time to time.
- (e) References to any party to this deed or any other document or any Member shall include its successors or permitted assigns.
- (f) References to a time of day are references to New Zealand time unless otherwise stated.
- (g) Anything which may be done at any time may also be done from time to time.

2 APPOINTMENT, DUTIES, POWERS AND DISCRETIONS OF THE SUPERVISOR

2.1 **Appointment**

The Credit Union appoints the Supervisor, and the Supervisor accepts appointment, as trustee and supervisor in respect of the Shares and Credit Union Securities, with the rights,

powers, functions, duties and obligations set out in this deed, the FMC Act and FMC Regulations including, without limitation:

- (a) acting on behalf of the Members (in their capacity as holders of Shares or Credit Union Securities) in relation to:
 - (i) the Credit Union;
 - (ii) any matter connected with this deed or the terms of a regulated offer of Shares or Credit Union Securities; and
 - (iii) any contravention or alleged contravention of the Issuer Obligations;
- (b) supervising the Credit Union's performance:
 - (i) of its Issuer Obligations; and
 - (ii) in order to ascertain whether the assets of the Credit Union that are or may be available, whether by way of security or otherwise, are sufficient or likely to be sufficient to discharge the Principal Moneys, interest and other monies payable on, or in relation to the Shares and Credit Union Securities as they become due; and
- (c) performing or exercising any other functions, duties, and powers conferred or imposed on the supervisor by or under the FMC Act, the Financial Markets Supervisors Act and this deed.

2.2 Duties

- (a) **Ascertain breach:** The Supervisor shall exercise reasonable diligence to ascertain whether any breach or alleged breach of the Issuer Obligations or any breach of the terms of this deed or the terms of the offer of the Shares and Credit Union Securities has occurred and, except where it is satisfied that the breach will not have a material adverse effect on Members (in their capacity as holders of the Shares and Credit Union Securities), shall (and shall have the power to) do all such things as it is empowered to do to cause any breach of those terms to be remedied.
- (b) **Carry out functions:** The Supervisor must exercise reasonable diligence in carrying out its functions under clause 2.1.

2.3 Powers

In addition to the powers, authorities and discretions from time to time vested in trustees and supervisors by law and the provisions of the law relating to supervisors of debt securities under the FMC Act and 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, 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 that certificate or report;
- (b) **Resolution of Members:** the Supervisor will not be responsible for any losses, costs, expenses, inconvenience or otherwise that may result from acting or relying upon any resolution purporting to have been passed at any Meeting in respect of which a proper record has been made and which the Supervisor believes to have been properly passed, even if it appears afterwards 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 and, subject to clause 10.9, the Supervisor shall not be bound to act unless first indemnified to its satisfaction against all actions, proceedings, claims and demands to which it may render itself liable and all costs, charges, damages, expenses and liabilities that it may incur by so acting;
- (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 or Credit Union Securities;
- (d) **Ascertain breach:** subject to clause 2.2(a), the Supervisor will be entitled to assume without enquiry that no breach or alleged breach of the Issuer Obligations and no breach of the provisions of this deed or the terms of the offer of the Shares or Credit Union Securities by the Credit Union is occurring or has occurred unless:
 - (i) the Supervisor receives specific notice that a breach has, or appears to have, occurred or threatens to occur, from the Directors, Auditor or the Registrar or otherwise becomes aware a breach has, or appears to have, occurred or threatens to occur pursuant to a report received by it in its capacity as supervisor under this deed; or
 - (ii) the Supervisor receives notice of the commencement of the liquidation of the Credit Union, other than by way of a solvent liquidation voted on by Members;
- (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 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:**
 - (i) subject to sub-clause (ii) below, the Supervisor may, whenever it thinks it expedient in the interests of the Members to do so:
 - (A) 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 provided that the Supervisor will at all times remain responsible for the exercise or performance of its powers and duties under this deed and will be responsible for the acts and omissions of any person appointed under this clause;

- (B) authorise any person as it thinks fit to act as its representative at any meeting (including any Meeting); and
 - (C) 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;
- (ii) notwithstanding any provision of this deed, the Supervisor shall not delegate any of its functions set out in clause 2.1 except as expressly permitted by the FMC Act or as permitted by, and then subject to, conditions imposed under the Financial Markets Supervisors Act;
- (h) **Limited power to remedy:** the Supervisor's power to cause any breach of the provisions of this deed or the terms of the offer of the Shares or Credit Union Securities to be remedied 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 thinks fit;
- (j) **Confidentiality:** subject to clause 2.4, the Supervisor will not (unless ordered to do so 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,

and no Member will be entitled to take any action to obtain from the Supervisor any such information (other than for the purposes of enforcing the Credit Union's duty to repay, or pay Interest, or any other duties that the Credit Union or any other person owes to the Member (in its capacity as holder of the Shares or Credit Union Securities));

- (k) **Supervisor's opinion:** the Supervisor may determine whether or not a failure by the Credit Union to perform any Issuer Obligation or any obligation under the provisions of this deed or in relation to the terms of the offer of the Shares or Credit Union Securities is, in its opinion, capable of remedy and/or will have a material adverse effect on Members in their capacity as holders of Shares or Credit Union Securities;
- (l) **Construction of certain obligations:** the Supervisor has entered into this deed on the basis that the Shares and Credit Union Securities are debt securities for the purposes of the FMC Act;
- (m) **Power to engage expert:** the Supervisor may engage from time to time an expert (for example, an auditor, investigating accountant, valuer or actuary) if it considers, on reasonable grounds, that it requires the assistance of the expert to:
- (i) determine the financial position of the Credit Union; or
 - (ii) review the business, operation, management systems or the governance of the Credit Union.

Where the Supervisor engages an expert pursuant to this clause 2.3(m), the Credit Union shall provide reasonable assistance to the expert to allow the expert to provide the assistance, and the fees and expenses of the expert, which must be reasonable in the circumstances, shall be paid by the Credit Union;

- (n) **Power to inspect premises:** the Supervisor may inspect the business premises of the Credit Union upon 24 hours written notice.

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 2.4 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 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 or 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:** The Supervisor holds the following in trust for the benefit of Members (in their capacity as holders of Shares or Credit Union Securities):

- (a) the right to enforce the Credit Union's duty to repay, or to pay interest, under the terms of the Shares or Credit Union Securities;
- (b) any charge or security for repayment (including the security created by clause 5.1); and
- (c) the right to enforce any other duties that the Credit Union and any other person have under:
 - (i) the terms of the Shares or Credit Union Securities; or
 - (ii) the provisions of this deed or the FMC Act in relation to the Shares or Credit Union Securities.

3 CONSTITUTION AND ISSUE OF SHARES AND CREDIT UNION SECURITIES

3.1 **Issue of Shares and Credit Union Securities**

The Credit Union may at any time constitute and issue Shares and Credit Union Securities pursuant to the Act, the Rules, the FMC Act and the FMC Regulations.

3.2 **Benefit**

Each Share and Credit Union Security issued (whether before or after the date of this deed) shall have the benefit of the terms of this deed.

4 RETIREMENT AND REMOVAL OF, AND APPOINTMENT OF NEW, SUPERVISOR

4.1 **Retirement and removal of Supervisor**

Subject to, in the case of retirement or removal under paragraphs (a) or (b) below, clauses 4.2 and 4.4 below:

- (a) **Retirement:** the Supervisor may retire at any time without giving any reason by giving 120 days' notice (or such lesser period of notice as the Credit Union may agree) in writing to the Credit Union;
- (b) **Removal:**
 - (i) the Credit Union may at any time, without giving any reason, by giving not less than 30 days' notice in writing to the Supervisor (or such lesser period of notice as the Supervisor may agree) remove the Supervisor; and
 - (ii) the Members may at any time, by Special Resolution, remove the Supervisor by giving not less than 30 days' notice in writing to the Supervisor (or such lesser period of notice as the Supervisor may agree); or

- (c) **FMA Removal:** the Supervisor may be removed by the FMA or the Credit Union under Part 2 of the Financial Markets Supervisors Act.

4.2 **Requirements for Retirement and Removal**

The Supervisor may not:

- (a) retire or be removed under subsections 4.1(a) or 4.1(b) unless:
 - (i) all functions and duties of the position have been performed;
 - (ii) another licensed supervisor has been appointed, and accepted the appointment, in its place; or
 - (iii) the court consents; or
- (b) be removed by the Issuer under clause 4.1(b)(i) without the FMA's consent.

4.3 **Appointment of new Supervisor**

If any of the circumstances described in clause 4.1 occur, subject to clauses 4.2(a)(i) and 4.2(a)(iii), 4.2(b) (where applicable) and 4.4, the power of appointing a new supervisor in respect of the Shares and Credit Union Securities under this deed is vested in the Committee of Management. If the Committee of Management fails to appoint a new supervisor within 90 days of receiving notice of the Supervisor's intention to retire or its removal from office (as the case may be) then the Members may exercise such power by Special Resolution. In each case, the new supervisor must hold a licence under the Financial Markets Supervisors Act that covers the Shares and Credit Union Securities and must have accepted such appointment.

4.4 **Removal and appointment by the FMA**

Nothing in clauses 4.2 or 4.3 above shall apply to the removal or appointment of a supervisor by the FMA pursuant to section 22 of the Financial Markets Supervisors Act. The Committee of Management may agree to the continued appointment of the FMA appointed supervisor.

4.5 **Successor Supervisor**

Upon the acceptance of any appointment under this clause 4 by a successor supervisor:

- (a) the successor supervisor will succeed to, and become vested with, all the rights, powers and obligations of the retiring Supervisor under this deed and, as from that time, the retiring Supervisor shall be discharged from its rights, powers and obligations; and
- (b) the retiring Supervisor must transfer to the successor supervisor all moneys, investments, property and books held by the Supervisor under this deed.

4.6 **Execution of documents**

Upon the acceptance of any appointment under this clause 4 by a successor supervisor, the successor supervisor shall execute all such documents which are necessary or appropriate and in such form as may be required by the Credit Union, such that the successor supervisor is bound by all the covenants on the part of the Supervisor under this deed from the date of such appointment. Any appointment of a successor supervisor has no effect until such documents are executed by the successor supervisor.

4.7 **Notice**

The Credit Union shall notify all Members of the appointment of any new supervisor as soon as reasonably practicable following such appointment.

5 SECURITY

5.1 Charging clause

As security for:

- (a) the payment or delivery of the Secured Moneys; and
- (b) the performance and observance by the Credit Union of its obligations under this deed,

the Credit Union:

- (c) grants a first ranking Security Interest in all of its present and after-acquired Personal Property, and all of its present and future rights in relation to any Personal Property, to the Supervisor;
- (d) charges all of its present and future interest in, and all of the Credit Union's present and future rights in relation to, all its Other Property in favour of the Supervisor; and
- (e) agrees to mortgage all of its present and future interests in any land to the Supervisor.

5.2 Nature of charge over Other Property

The charge under this deed is a fixed charge in respect of all Other Property, except where, but only to the extent that, the charge is not legally and fully effective as a fixed charge, in which event the charge shall be a floating charge.

5.3 Automatic crystallisation

Any floating charge in respect of Other Property shall become a fixed charge automatically and immediately in respect of all Other Property subject to the floating charge:

- (a) without the need for any notice or act by the Supervisor, if an Event of Default occurs;
- (b) in respect of all Other Property where the Supervisor issues a notice under clause 5.6(c); and
- (c) in respect of any such Other Property specified in any notice which may be given by the Supervisor to the Credit Union at any time if, in the reasonable opinion of the Supervisor, that Other Property is at risk of being seized, taken or becoming subject to any Security Interest other than any Security Interest expressly permitted under this deed.

5.4 De crystallisation

At any time after the floating charge in respect of Other Property has taken effect as a fixed charge in respect of any Other Property, it shall resume the status of a floating charge in respect of that Other Property if the Supervisor gives written notice to that effect to the Credit Union.

5.5 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.

5.6 Nature of security

- (a) **Rights to deal:** Subject to this clause 5.6, 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 and Credit Union Securities

or for any other purpose in its ordinary business having regard to the restrictions applicable to it under this deed. In addition, any property of the Credit Union 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 5.6(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 written notice to the Credit Union, revoke and withdraw the Credit Union's rights to deal with the Secured Property under clause 5.6(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 5.6(c) 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 terms as the Supervisor in its sole discretion thinks fit. The Supervisor shall re-grant those rights upon making a declaration under clause 9.5(a).
- (e) **Partial release:** At any time before the occurrence of an Event of Review and subject always to the Credit Union's right to deal with the Secured Property under clause 5.6(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 considers that the interests of the Members (as holders of the Shares or Credit Union Securities) 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 5.6(a) as approved by the Supervisor, whose consent may be withheld if it considers that the interests of Members (as holders of the Shares or Credit Union Securities) 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, except for claims secured in accordance with, and solely to the extent provided by, clause 7.5.

5.7 Further assurances

The Credit Union shall execute, do and deliver to the Supervisor any transfer, assignment, security, instrument, document of title 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;
- (b) more satisfactorily secure to the Supervisor the performance of the Credit Union's obligations under this deed;
- (c) ensure the Secured Property is subject to an effective security;
- (d) perfect the security created by this deed, with the same priority required by this deed, including, without limitation, in accordance with the PPSA and the Land Transfer Act 1952;
- (e) transfer to, or vest in, the Supervisor (or any purchaser from the Supervisor or a Receiver) any Secured Property;
- (f) facilitate the realisation of any Secured Property;

- (g) exercise all or any of the rights, powers and remedies conferred by this deed on the Supervisor or a Receiver; or
- (h) secure to the Supervisor the full benefit of the provisions of this deed.

5.8 **Other charges**

The Credit Union shall not create or attempt to create or permit to subsist any Security Interest over its Secured Property other than that expressly provided for by this deed except to secure (whether by way of a first ranking security or otherwise) borrowed money where the borrowing is authorised by, and in accordance with, this deed and the Rules.

5.9 **Appointment of attorney**

- (a) Subject to clause 5.9(d), the Credit Union irrevocably appoints:
 - (i) the Supervisor;
 - (ii) any Receiver; and
 - (iii) each of the Supervisor's officers for the time being,

severally to be its 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 are, in the opinion of the attorney, necessary or expedient for the purposes of giving to the Supervisor the full benefit of any of the provisions of this deed, and generally to use the Credit Union's name in the exercise of all of the powers, rights and remedies conferred by this deed or at law on the Supervisor or any Receiver including in relation to the Secured Property. These powers include, without limitation, the power to sell and take possession of the Secured Property.
- (b) Each such attorney has full power to delegate a power of attorney to any person for any period.
- (c) Subject to clause 5.9(d), each such attorney may exercise or concur in 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.
- (d) Each such attorney may only exercise its powers conferred by this clause 5.9 if:
 - (i) an Event of Default has occurred and is continuing in respect of the Credit Union; or
 - (ii) the Supervisor otherwise reasonably determines that the circumstances justify the exercise of such power (and, except where impractical to do so, notifies the Credit Union prior to the exercise of such power; if prior notice is not given, the Supervisor must provide such notification as soon as practical thereafter).
- (e) Subject to clause 5.9(d), the Credit Union 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 5.9.

6 SUPERVISOR'S REMUNERATION AND EXPENSES

6.1 **Basic remuneration**

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

6.2 Expenses

The Credit Union will also pay all reasonable expenses (including travelling expenses) and other reasonable costs, charges, taxes or duties (including legal expenses on a full indemnity basis) 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;
- (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 Credit Union Securities, or the performance of its duties, including the taking of any expert advice deemed necessary or expedient by the Supervisor;
- (c) **Breach by Credit Union:** any breach, default or non-compliance by the Credit Union of or with any obligation under this deed; and
- (d) **Meetings of members:** the convening of and attendance at any Meeting and the carrying out of any directions or resolutions of such Meeting.

6.3 Payable on demand

All expenses payable under clause 6.2 shall be payable on demand.

6.4 Liability not terminated

The remuneration and payments payable under this clause 6 shall continue to be payable until the Credit Union is finally wound-up.

6.5 Regulatory levies

The Credit Union shall reimburse the Supervisor for any levies payable to the FMA, in such amounts as the Supervisor calculates, acting reasonably, as attributable to the Credit Union.

7 COVENANTS BY CREDIT UNION

7.1 Covenants

The Credit Union covenants with the Supervisor that it will:

- (a) **Pay Secured Moneys:** pay the Secured Moneys and any other moneys payable in relation to all Shares and Credit Union Securities issued by it when due and payable in accordance with the Rules, the Act, and the terms of issue of the Shares or Credit Union Securities;
- (b) **Borrow money:** not borrow money or lend other than as permitted by this deed and the Rules;
- (c) **Alteration of business:** not make any material alteration to the nature of its business as carried out at the date of this deed;
- (d) **Liabilities:** not at any time permit its Creditor Liabilities to exceed 10% of Total Liabilities;
- (e) **Comply with laws and Rules:** comply with the all laws to which it may be subject including, without limitation, the Act, the NBDT Act, the FMC Act, the FMC Regulations, the Rules and the Regulations;
- (f) **Change to Act:** 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;

- (g) **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 or Credit Union Securities, 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;
- (h) **Notice of proceedings:** immediately notify the Supervisor in writing of the commencement of any legal proceedings that could materially adversely affect the interests of Members;
- (i) **Lending and investment policies:** establish, maintain and operate its business in accordance with:
 - (i) a lending policy that details the nature, terms and procedures to be adopted for lending by the Credit Union; and
 - (ii) an investment policy that details the nature, terms and procedures to be adopted for investment of the Credit Union's property,

and will not materially alter or amend these policies without the prior written consent of the Supervisor, which consent will not be unreasonably withheld and will be given by the Supervisor as soon as is reasonably practicable, and the Supervisor acknowledges that in some circumstances such consent may be required urgently;
- (j) **Amalgamation or restructure:** 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 the Supervisor and a Special Resolution;
- (k) **Provide reports:** in addition, and without prejudice, to its obligations under clause 8, provide any reports, documents, records or information that the Supervisor (or a person authorised by the Supervisor to exercise its powers) requires the Credit Union to provide, which may be about any matter relating to the Credit Union and/or relevant to the performance of the Supervisor's duties and functions and include any forward-looking reports. Such reports, documents, records or information must be provided to the Supervisor (or other authorised person) within the time and in the manner (which must be reasonable in the circumstances) specified by the Supervisor and (in the case of reports) be signed by any two Directors on behalf of the Committee of Management; and
- (l) **Report serious financial problems:** if it becomes aware of information on the basis of which it could reasonably form the opinion that it is, or is likely to become, insolvent, as soon as practicable:
 - (i) disclose to the Supervisor all information relevant to that matter that is in its possession or under its control and that was obtained in the course of, or in connection with, the performance of its functions; and
 - (ii) advise the Supervisor of the steps (if any) that it intends to take in respect of that matter and the date by which the steps are to be taken.

7.2 Minimum capital, related party and liquidity restrictions

- (a) **Definitions:** Except where the context otherwise requires, words and expressions defined in the Regulations shall, for the purposes of this clause 7.2, have the same meanings when used in this clause 7.2 and shall be calculated or determined in accordance with the relevant provisions of the Regulations.

(b) **Covenants:** The Credit Union covenants with the Supervisor as follows:

(i) **Minimum capital:**

- (A) for so long as the Credit Union has no credit rating from an approved rating agency, the Credit Union shall ensure that its capital ratio is not less than 10%; and
- (B) for so long as the Credit Union has a credit rating from an approved rating agency, the Credit Union shall ensure that its capital ratio is not less than 8%,

where, in each case, the capital ratio is the ratio expressed as a percentage of the Credit Union's capital to the sum of:

- (C) the Credit Union's risk weighted amount for credit risk; and
- (D) the Credit Union's aggregate amount for market risk and operational risk.

(ii) **Related party exposures:** the maximum aggregate exposure of the Credit Union to related parties will not exceed 15% of the Credit Union's capital;

(iii) **Liquidity requirements:** it will, at all times:

- (A) ensure that the Liquidity Coverage Ratio shall not fall below 1.3 at any time, where:

"**Liquidity Coverage Ratio**" means, in respect of the immediately following month, the ratio of:

$$\frac{L + LR + SC}{SR}$$

Where:

"**L**" means Liquid Assets for that month;

"**LR**" means expected loan receivables within that month;

"**SC**" means expected gross Share and Credit Union Security contributions within that month; and

"**SR**" means expected gross Share and Credit Union Security redemptions within that month; and

- (B) in any event, ensure to the satisfaction of the Supervisor (acting reasonably), that the Liquid Assets of the Credit Union that are or may be available to it are sufficient or likely to be sufficient to enable the Credit Union to meet its Liabilities to Members when they become due, and shall confirm this in writing to the Supervisor as requested by the Supervisor from time to time.

7.3 **Deposit Takers Regulations amendment**

Should the Regulations be amended or superseded to provide for amended minimum capital, related party restrictions or liquidity requirements, the Credit Union and the Supervisor will enter into a supplemental deed to amend clause 7.2 to appropriately reflect the new minimum (or greater amount as agreed in writing) capital, related party restrictions or liquidity requirements.

7.4 **Benefit of covenants**

Without prejudice to clause 2.5, the Supervisor shall take and hold the benefit of all the covenants given by the Credit Union under this deed for the benefit of the Members, except those relating to the Supervisor's fees and expenses, the indemnification of the Supervisor, and any other matters that are intended to be for the benefit of the Supervisor for its own account.

7.5 **Permitted security**

- (a) The Credit Union may borrow money or obtain facilities from a lender approved by the Supervisor ("**Approved Lender**") for the sole purpose of managing cash flows or to cover the Credit Union's settlement obligations in connection with the issue of Shares or Credit Union Securities (that funding or facility being "permitted prior funding"), provided that such borrowing does not, or will not, cause a breach of clause 7.2 or any laws to which the Credit Union may be subject including, without limitation, the Act, the NBDT Act, the FMC Act, the FMC Regulations, the Rules and the Regulations and provided the principal amount outstanding at any time does not exceed the lower of 10% of the Credit Union's Total Tangible Assets at that time and an amount reasonably determined by the Supervisor to be adequate at that time to cover the Credit Union's day-to-day exposure to the Approved Lender in relation to any permitted prior funding.
- (b) The Credit Union may create and permit to subsist a Security Interest over all or any part of its Secured Property in favour of the Approved Lender for such amounts borrowed from or made available by the Approved Lender in accordance with paragraph (a) above (the "Permitted Security").
- (c) If requested by the Credit Union, the Supervisor will execute a deed of priority (in a form agreed between the Credit Union, the Approved Lender and the Supervisor) to provide for the Permitted Security to rank in priority to the Security Interest in favour of the Supervisor under clause 5.1, subject to the limitation in paragraph (a) above.
- (d) In addition to the Permitted Security, but subject always to the provisions of clause 7.2, the Credit Union may create a Prior Security Interest over any asset to secure any moneys to be borrowed, raised or otherwise owing in purchasing or acquiring such asset if at the time of such borrowing the aggregate of all moneys secured by existing Prior Security Interests together with the money so proposed to be borrowed or raised or to be otherwise owing and secured would not exceed 2% of the Credit Union's Total Tangible Assets.

7.6 **Appointment of Auditor**

- (a) **Consultation with Supervisor:** The Credit Union must:
 - (i) before recommending the appointment or reappointment of a person as an Auditor:
 - (A) consult with the Supervisor on the appointment or reappointment; and
 - (B) ensure that any comments of the Supervisor concerning the proposed auditor are brought to the attention of the person or persons appointing or reappointing the Auditor;
 - (ii) notify the Supervisor if the Auditor resigns from appointment, or declines to accept appointment or reappointment, and must pass on to the Supervisor any explanation provided by the Auditor for resigning from appointment or declining to accept appointment or reappointment; and
 - (iii) not attempt to prevent a person who has resigned from appointment as the Auditor, or declined to accept appointment or reappointment as the Auditor, from offering an explanation, or disclosing to the Supervisor the reason, for resigning or declining appointment or reappointment.

- (b) **Specified Engagement:** The Credit Union must, before recommending the appointment or reappointment of a person as the Auditor:
 - (i) give the Supervisor an opportunity to be a party to an assurance engagement carried out by an auditor in relation to the Credit Union's compliance with this deed for the purpose of the Supervisor obtaining assurance of matters relevant to the exercise or performance of the powers or duties of the Supervisor; and
 - (ii) consult with the Supervisor on the nature and scope of any such engagement.
- (c) **Terms of Appointment:** the Credit Union must ensure that the following terms are included in the terms of appointment of an auditor in its capacity as Auditor:
 - (i) that the Auditor will, at the beginning of the audit, review, or engagement, give the Supervisor an opportunity to meet with the Auditor, without any representative of the Credit Union being present, in order to allow the Supervisor an opportunity to raise any issues or concerns relevant to the exercise or performance of the powers or duties of the Supervisor; and
 - (ii) that the Auditor will give the Supervisor an opportunity to meet with the Auditor, without any representative of the Credit Union being present, to discuss matters arising in the performance of the audit, review, or engagement and to answer any questions the Supervisor may have concerning the audit, review, or engagement.

7.7 Register

The Credit Union shall:

- (a) establish and maintain a Register for the Shares and Credit Union Securities as required by the Act and (if applicable) the FMC Act. The Register shall include all information and matters required by the Act, the FMC Act and all other applicable laws;
- (b) separately record whether each Member holds Shares, Credit Union Securities or both; and
- (c) where the FMC Act requires a Register to be maintained, ensure the Register is audited in accordance with Regulation 109 of the FMC Regulations (or in accordance with Regulation 110 of the FMC Regulations if approved by the Supervisor) by the Auditor or such other auditor as approved by the Supervisor.

7.8 Retention of documents

The Credit Union will in respect of each document required by or for the purposes of the FMC Act in respect of the Shares and Credit Union Securities or any offer of the Shares or Credit Union Securities and which is given, made or provided by or to the Credit Union:

- (a) keep a copy of the document for a period of at least seven years from the date on which the document comes into the possession of the Credit Union; and
- (b) comply with Regulation 112 of the FMC Regulations.

8 REPORTS AND INFORMATION FOR SUPERVISOR

8.1 Information

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

- (a) **Accounting records:** it will keep proper accounting records in accordance with its obligations under the Act, the Financial Reporting Act 2013 or the FMC Act (whichever is applicable) and all other applicable laws or regulations;
- (b) **Annual Return:** it will provide to the Supervisor within four 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;
- (c) **Monthly reporting:** it will, within one calendar month of the end of the reporting month (or such further time as the Supervisor may agree), provide to the Supervisor a certificate signed by any two Directors on behalf of the Committee of Management in such form as may be agreed from time to time between the Supervisor and the Credit Union in writing and attaching copies of the Credit Union's monthly management accounts including an unaudited statement of financial position, statement of financial performance and statement of cash flows;
- (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 8.1(b), a separate report by the Auditor containing the confirmations set out in Schedule 2 and any other matters required by the FMC Act to be set out in the Auditor's report;
- (e) **Product Disclosure Statement:** it will:
 - (i) provide the Supervisor with an advanced draft copy of each Product Disclosure Statement or other offer document in respect of the Shares or Credit Union Securities to be issued by the Credit Union at least three weeks (or such shorter period as the Supervisor may agree) before it is registered or distributed, as the case may be; and
 - (ii) promptly consider, address and/or action any feedback given by the Supervisor in relation to each Product Disclosure Statement, replacement Product Disclosure Statement or other offer document in respect of the Shares and Credit Union Securities;
- (f) **Other documents and information:** unless otherwise provided under this deed, it will provide the Supervisor with a copy of any information or document that:
 - (i) it intends to supply the Registrar of Financial Service Providers for registration on the register entry for each regulated offer of Shares or Credit Union Securities;
 - (ii) is made publicly available pursuant to the requirements of the FMC Act; or
 - (iii) is provided to all or a class of Members (in their capacity as holders of the Shares or Credit Union Securities) unless such information or document is not relevant to the performance of the Supervisor's duties and functions,at least five business days (or such shorter period as the Supervisor may agree) before such information or document is supplied, made publicly available, or provided.

8.2 Other Information

- (a) **Information to Members:** The Supervisor shall be entitled to receive all notices of, and other communications relating to, any Meeting that any Member is entitled to receive.
- (b) **Attendance at Meetings:** Any representative of the Supervisor, being a person authorised to act for the purposes of this clause by resolution of the directors or other governing body of the Supervisor, shall be entitled to:
 - (i) attend any Meeting and any meeting of the Committee of Management; and
 - (ii) be heard at any Meeting that he or she attends on any part of the business of the Meeting that concerns the Supervisor as trustee in respect of the Shares or Credit Union Securities or the Members.
- (c) **Other information:** The Credit Union shall, from time to time and within the time and in the manner (which must be reasonable in the circumstances) specified by the Supervisor:
 - (i) make available for its (or the Supervisor's authorised person's) inspection the whole of the accounting and other documents and records of the Credit Union (including the Register);
 - (ii) give to the Supervisor (or the Supervisor's authorised person) such information as it requires with respect to all matters relating to those documents or records; and
 - (iii) give to the Supervisor copies of any reports or information required to be provided to the Reserve Bank of New Zealand, at the same time such information is provided to the Reserve Bank of New Zealand.

9 EVENT OF REVIEW

9.1 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; or
- (b) **Obligations in jeopardy:** an event has occurred that, in the reasonable opinion of the Supervisor, is likely to 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 stability:** the Supervisor reasonably considers that such a declaration is necessary to protect the financial stability of the Credit Union.

9.2 Powers of Supervisor

At any time after 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 satisfied, acting reasonably, that the Credit Union's explanation will rectify the matters giving rise to the Event of Review, the Supervisor may, having regard to the interests of Members:

- (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; or

- (b) **Give directions:** give directions to the Credit Union under clause 9.3; or
- (c) **Remove directors:** remove the existing Directors and appoint new Directors under clause 9.4.

9.3 Directions

The Supervisor may give a direction to the Credit Union under clause 9.2(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; or
 - (ii) accepting a payment due by way of subscription for a Share or Credit Union Security (other than a payment that became due before the giving of the direction); or
 - (iii) lending money; or
 - (iv) paying amounts due on Shares or Credit Union Securities 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); or
 - (v) accepting new Members.

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.

9.4 Removal and appointment of Directors

In addition to the powers conferred on the Supervisor under clause 9.3, the Supervisor may, following the expiration of the 20 business day period referred to in clause 9.2, 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 the minimum number of Directors holding office as required by the Rules.

9.5 Cessation of Event of Review

- (a) **Supervisor to declare:** Unless the Supervisor has exercised its powers under clause 10.2, it shall declare that an Event of Review has ceased when it is satisfied, acting reasonably, that the events giving rise to the declaration of the Event of Review no longer exist or will no longer have a material adverse effect on the Members (as holders of the Shares or Credit Union Securities).
- (b) **Committee of Management may request:** The Committee of Management may request in writing the Supervisor to make a declaration under clause 9.5(a), 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 may immediately request the President for the time being of the New Zealand Law Society to appoint a suitably qualified and independent expert to investigate the affairs of the Credit Union for the purposes of recommending whether the Supervisor should declare that the Event of Review has ceased.
- (c) **Independent expert recommendation:** Any independent expert appointed under clause 9.5(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

recommendation. The independent expert must make a recommendation within 20 business days of his or her appointment. If the independent expert recommends that the Event of Review should cease, the Supervisor will take into account, but shall not be bound by, that recommendation. Following that recommendation, the Supervisor may (but is not obliged to) make a declaration pursuant to clause 9.5(a) but only if the Supervisor has not exercised its powers under clause 10.2.

- (d) **Effect of declaration:** A declaration by the Supervisor under clause 9.5(a) shall have the effect of revoking the powers of the Supervisor under clause 9.2 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 in relation to that Event of Review; and
 - (iii) the Supervisor shall no longer have the right to appoint Directors in relation to that Event of Review and will remove any Directors appointed by it, provided that such removal shall not be effective until such time as a sufficient number of new Directors are appointed (if necessary) to ensure that there are not less than five Directors holding office.

10 EVENTS OF DEFAULT

10.1 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 or Credit Union Securities:** the Credit Union fails to repay promptly when due an amount to a Member in respect of Shares or Credit Union Securities that have been duly withdrawn in accordance with their terms of issue (other than a failure that is due to or caused by a breakdown or error in the banking or payment system, that is not caused by and is outside the control of the Credit Union, and that is remedied within three business days of the cessation of that breakdown or error); or
- (b) **Inability to pay debts:** the Credit Union is unable to pay its debts (including, without limitation, any Interest due on the Shares or Credit Union Securities) as they fall due (other than a failure that is due to or caused by a breakdown or error in the banking or payment system, that is not caused by and is outside the control of the Credit Union, and that is remedied within three business days of the cessation of that breakdown or error); or
- (c) **Breach of clause 7:** any of the covenants set out in clause 7 is breached and, in the case of a breach that is capable of remedy, remains unremedied for a period of 15 business days from the earlier of the Credit Union becoming aware of the breach or the Supervisor requiring the Credit Union to take steps to remedy it; or
- (d) **Breach of other obligations:** the Credit Union fails to perform or comply with any of its other material obligations under this deed and, in the case of a failure that is capable of remedy, that failure remains unremedied for a period of 20 business days from the earlier of the Credit Union becoming aware of the breach or the Supervisor requiring the Credit Union to take steps to remedy it; or
- (e) **Revocation of consent:** any authorisation of or registration with a governmental or public body or consent 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 the Supervisor giving the Credit Union notice to do so; or

- (f) **Failure to report:** the Credit Union fails to provide any Reporting Certificate by its due date (or such later date as agreed between the Credit Union and Supervisor in writing); or
- (g) **Content of certificate:** any Reporting Certificate indicates that the Credit Union is reasonably likely to be unable to satisfy amounts owing in respect of Shares or Credit Union Securities withdrawn in accordance with their terms of issue or any Interest during the six month period after that Reporting Certificate; or
- (h) **Misleading information:** There is:
 - (i) a statement in a Product Disclosure Statement for the Shares or Credit Union Securities, any application form that accompanies that Product Disclosure Statement or the register entry for an offer of Shares or Credit Union Securities that is false or misleading or is likely to mislead;
 - (ii) an omission from a Product Disclosure Statement for the Shares or Credit Union Securities or the register entry for an offer of Shares or Credit Union Securities, of information required to be contained in either of them by the FMC Act or the FMC Regulations; or
 - (iii) a circumstance that has arisen since the Product Disclosure Statement was lodged with the "Registrar" (in this clause, as defined in the FMC Act) that would have been required by the FMC Act or FMC Regulations to be disclosed or otherwise contained in the Product Disclosure Statement or the register entry, if it had arisen before the Product Disclosure Statement was lodged, and the circumstance is not disclosed or otherwise contained in the Product Disclosure Statement or the register entry,

and the matter is materially adverse from the point of view of the Member, provided that the Credit Union will not be considered to have committed an Event of Default if:

 - (iv) section 80 of the FMC Act applies to all the affected Shares or Credit Union Securities; and
 - (v) the Credit Union promptly complies with section 80 of the FMC Act in respect of all the affected Shares or Credit Union Securities; or
- (i) **Breach of Act:** the Credit Union borrows or attempts to borrow money, or mortgages, or secures or attempts to secure any borrowings over, its property in breach of the Act, the Rules or this deed; or
- (j) **Breach of NBDT Act:** the Credit Union breaches any of its obligations under the NBDT Act or any regulations made under the NBDT Act; or
- (k) **Audit report:** an Auditor's report provided under clause 8.1(d) contains a statement which, in the reasonable opinion of the Supervisor, indicates that the interests of Members (as the holders of Shares or Credit Union Securities in each case in accordance with their terms of issue) may be materially prejudiced in the six months after the date of that report.

10.2 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 may, on giving written notice to the Credit Union:

- (a) exercise any of the powers conferred on a Receiver by clause 10.3 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 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.

10.3 Powers and duties of Receiver

- (a) **Powers:** Every Receiver shall, in addition to the powers that a receiver, manager 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 to 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 property 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 or Credit Union Securities 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 property while a going concern, whether or not the Credit Union is then in liquidation;

- (xiv) raise or borrow money and secure that money with interest by any form of Security Interest 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, manager or receiver and manager appointed by the holder or holders of any other Security Interest 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).

10.4 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 in the opinion of the Supervisor, acting reasonably, is in danger of being taken under any process of law by any creditor of the Credit Union or to be otherwise "at risk" (as defined in section 109(2) of the PPSA but as if the relevant property included Other Property), 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 10.2 and 10.3 shall apply with all necessary modifications.

10.5 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, 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:** To the maximum extent permitted by law and (in the case of the Supervisor) subject to clause 10.9, 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 and (in the case of the Supervisor) in relation to the performance of the Supervisor's "licensee obligations" (as defined in the Financial Markets Supervisors Act), including any cost, loss, expense or liability consequent upon any mistake or error of judgement by the Supervisor or Receiver.

10.6 **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 Interest 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.

10.7 **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 a Receiver of any amount shall discharge the payer's obligation to pay that amount.

10.8 **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 of all or any part of the property of the Credit Union and for any other order or direction in relation to the execution and administration of the powers and trusts contained in this deed 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, subject to clause 10.9 be indemnified by the Credit Union against all the costs, charges and expenses incurred by and in relation to any such application or proceedings.

10.9 **Supervisor's liability**

No provision of this deed shall have 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 the Members (as holders of the Shares or Credit Union Securities);
- (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 would exercise in the same circumstances.

11 DISTRIBUTION OF PROCEEDS AND PRIORITY

11.1 Priority

All amounts received after enforcement by the Supervisor or a Receiver of any of its powers under 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 in accordance with the provisions contained in this deed or pursuant to any directions given in any court order 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 as the holders of Shares equally amongst themselves in proportion to the Secured Moneys owing to them respectively in respect of the Shares held by them;
- (c) thirdly, in or towards payment to Members as the holders of Credit Union Securities equally amongst themselves in proportion to the Secured Moneys owing to them respectively in respect of the Credit Union Securities held by them; and
- (d) fourthly, to the Credit Union.

11.2 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 the Principal Moneys before any or all Interest is paid, but any such alteration in the order of payment shall not prejudice the right of any Member to receive the whole amount to which it would have been entitled if the ordinary order of payment had been observed.

11.3 Notice of distribution

The Supervisor must give not less than 10 business days' notice to the Members of the time fixed for any payment to them under the provisions of clause 11.1 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 or Credit Union Securities held by them and on the amount (if any) payable in respect of those Shares or Credit Union Securities on that day.

12 WAIVER BY SUPERVISOR

Subject to clause 13 (if applicable) and to any written direction or request given to the Supervisor by a majority of 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 sees fit, any Event of Review or Event of Default or any anticipated Event of Review or Event of Default or any 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 10.1(a), which may be waived only with the consent of the Member concerned) provided the Supervisor is satisfied that such waiver will not have a material adverse effect on the Members (in their capacity as holders of the Shares or Credit Union Securities).

13 AMENDMENTS TO DEED

13.1 Amendments

Any amendment to or replacement of this deed must be made by means of a deed executed by the Supervisor and the Credit Union. The provisions of this deed may not be amended or replaced unless the amendment or replacement is made:

- (a) with the consent of the Supervisor; or

- (b) under section 109 of the FMC Act (despite anything to the contrary in this deed or in any enactment, rule of law, or agreement, including anything relating to the consent of any person to the making of amendments to this deed), or under sections 22(7) or 37(6) of the Financial Markets Supervisors Act or any other power to amend or replace this deed under an enactment.

13.2 **Supervisor consent**

The Supervisor must not consent to an amendment to, or a replacement of, this deed unless:

- (a) either:
 - (i) the amendment or replacement is approved by, or is contingent on approval by, the Members in accordance with clause 13.3; or
 - (ii) the Credit Union and the Supervisor are satisfied that the amendment or replacement does not have a material adverse effect on the Members (in their capacity as holders of the Shares or Credit Union Securities); and
- (b) the Supervisor certifies to that effect and certifies, or obtains a certificate from a lawyer, that this deed, as amended or replaced, will comply with sections 104 to 106 of the FMC Act on the basis set out in the certificate.

13.3 **Member consent**

The approval of the Members for the purposes of clause 13.2(a)(i) must be the approval of a Special Resolution of:

- (a) the Members who are holders of Shares; or
- (b) each class of Members who are holders of Shares, that is or may be adversely affected by the amendment or replacement.

13.4 **Notification**

Notice of any such amendment made to this deed under clause 13.1, including a description of the amendment, shall be provided by the Credit Union to the Members within 10 business days of the amendment being made, unless the Supervisor notifies the Credit Union that such notification is not required to be provided to the Members or that it would be appropriate to give notice of the amendment in some other manner.

14 **MEETINGS**

14.1 **Supervisor may request**

At the request in writing of the Supervisor or of not less than 5% of the number of Members that hold Shares in a class, the Credit Union must summon a Meeting of that class of 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.

14.2 **Credit Union may convene**

The Credit Union may of its own volition convene a Meeting of Members or any class of Members at any time.

14.3 **Schedule to apply**

The provisions of Schedule 1 shall govern any Meeting convened under this deed.

14.4 **FMC Regulations**

Regulation 78 and Schedule 11 of the FMC Regulations (other than clauses 2 and 5 (so long as each applies to credit unions) of Schedule 11 of the FMC Regulations) do not apply to this deed.

15 **RECONSTRUCTION**

15.1 **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.

15.2 **Supervisor to assist**

If the Members, by Special Resolution, approve a reconstruction of the nature referred to in clause 15.1, the Supervisor and the Credit Union shall use all reasonable endeavours to assist with such reconstructions having regard to the duties and powers of each party under this deed.

16 **NOTICES**

16.1 **Method**

Each notice, agreement and other communication (each a "communication") to be given, delivered or made to a party under this deed is to be in writing but may be sent by personal delivery, post, or Electronic Communication.

16.2 **Addresses**

Each communication to a party under this deed is to be sent to the address or email address of the relevant party set out below or to any other address from time to time designated for that purpose by at least five business days' prior notice to the other. The initial details of the parties are:

Supervisor: Covenant Trustee Services Limited
Level 6, Crombie Lockwood House
191 Queen Street
Auckland 1010

PO Box 4243
Auckland 1140

Email address: team@covenant.co.nz
Attention: General Manager

Credit Union: First Credit Union Incorporated
111 Collingwood Street
Hamilton 3204

PO Box 585
Hamilton 3240

Email address: compliance@firstcu.co.nz
Attention: Compliance Officer

16.3 **Notices to Members**

Any notice to be given to a Member may (without prejudice to any other method of delivery or notification under the Rules) be given either personally or by sending it by post to the address of the Member shown in the Register or by Electronic Communication. A notice may be given to joint holders of a Share or Credit Union Security by giving notice to any of them.

16.4 **Receipt**

A communication under this deed will only be effective:

- (a) **Delivery:** in the case of personal delivery, when delivered;
- (b) **By post:** if posted, five business days after being deposited in the post postage prepaid in an envelope addressed to it at that address; and
- (c) **By Electronic Communication:** if made by Electronic Communication, on the date the Electronic Communication was transmitted.

provided that any communication received or deemed received after 5 pm or on a day that is not a business day in the place to which it is delivered, posted or sent shall be deemed not to have been received until the next business day in that place.

17 **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.

18 **APPLICATION OF PPSA**

18.1 **Verification statement**

The Credit Union waives its right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the Security Interests created by this deed.

18.2 **Contracting out of PPSA rights**

The Credit Union:

- (a) agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to this deed, or the Security Interests created by this deed; and
- (b) waives its right to:
 - (i) receive a statement of account under section 116 of the PPSA;
 - (ii) receive notice of the Supervisor's proposal to retain personal property under section 120(2) of the PPSA;
 - (iii) object to the Supervisor's proposal to retain any Secured Property under section 121 of the PPSA;
 - (iv) not have goods damaged when the Supervisor (or any person on its behalf) removes an accession under section 125 of the PPSA;
 - (v) receive notice of the removal of an accession under section 129 of the PPSA; and
 - (vi) apply to the court for an order concerning the removal of an accession under section 131 of the PPSA.

19 **APPLICATION OF PLA AND OTHER LAWS**

19.1 **Mortgage debenture**

This deed is intended to take effect as a mortgage debenture.

19.2 Relationship with PLA

- (a) The covenants, conditions and powers implied in mortgages of goods by section 96 of the PLA do not apply to this deed.
- (b) The covenants, conditions and powers implied in mortgages of land by section 95 of the PLA do not apply to this deed, other than the following sections of Part 1 of the Schedule 2 to the PLA (which will continue to apply):
 - (i) sections 4 to 10 (inclusive); and
 - (ii) sections 14 to 17 (inclusive).

19.3 Relationship with other laws

- (a) Subject to clause 19.2, the rights, powers and remedies provided in this deed are in addition to, and not exclusive of, any rights, powers or remedies provided by law.
- (b) If any provision in this deed conflicts with the provisions of any law or any provisions implied by any law (after taking account of the implied covenants, conditions and powers negated by clause 19.2) then:
 - (i) if the provisions of or implied by that law may be varied or negated, the provisions of this deed will take precedence and the provisions of or implied by that law will be deemed not to apply to this deed or to apply only as varied by the provisions of this deed; or
 - (ii) if the provisions of or implied by that law may not be varied or negated, then the provisions of this deed shall be read subject to the provisions of or implied by that law.

19.4 Contract and Commercial Law Act 2017

For the purposes of subpart 1 of part 2 of the Contract and Commercial Law Act 2017 a Receiver may enforce against the Credit Union any provision of this deed which confers a benefit on the Receiver. However, the consent of a Receiver is not needed to amend this deed.

20 DELIVERY

For the purposes of section 9 of the PLA and without limiting any other mode of delivery, this deed will be delivered by the Credit Union immediately on the earlier of:

- (a) physical delivery of an original of this deed, executed by the Credit Union, into the custody of the Supervisor or the Supervisor's solicitors; or
- (b) transmission by the Credit Union or its solicitors of a facsimile, photocopied or scanned copy of an original of this deed, executed by the Credit Union, to the Supervisor or the Supervisor's solicitors.

21 INVALIDITY

If any provision of this deed shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

22 COUNTERPARTS

This deed may be signed in any number of counterparts, all of which together constitute one and the same instrument, and any of the parties may execute this deed by signing any such counterpart.

23 GOVERNING LAW

23.1 Governing law

This deed is governed by the laws of New Zealand.

23.2 Jurisdiction

The courts in New Zealand have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this deed (including a dispute regarding the existence, validity or termination of this deed).

EXECUTED by the parties as a deed on the date specified at the beginning of this Deed.

SIGNED by
**FIRST CREDIT UNION
INCORPORATED**

)
)
) J R Harvey Director
) J.A. Taane Director

John Rowland Harvey Name of Director
Judith Anne Taane Name of Director

SIGNED for and on behalf of
**COVENANT TRUSTEE SERVICES
LIMITED** by the affixing of its
common seal in the presence of:
in the presence of

)
)
)
) [Signature]
Authorised Signatory

RICHARD SPONG
Name of Authorised Signatory

[Signature]
Authorised Signatory

STEPHANIE CROSS
Name of Authorised Signatory



[Signature]
Witness signature

Full Name PAMELA WONG
SOLICITOR
AUCKLAND
Address _____
Occupation _____

SCHEDULE 1

MEETINGS OF MEMBERS

1 CONVENING MEETINGS

- (a) Notwithstanding clause 14.1 of this deed, the Credit Union may convene a Meeting at any time.
- (b) Meetings will be held in Hamilton, or such other place as the Supervisor approves.
- (c) Any request by Members under clause 14.1 to convene a Meeting must state the nature of the business proposed to be dealt with at the Meeting.

2 NOTICE TO MEMBERS

The Credit Union must ensure that written notice of the time and place of a Meeting is sent to the following at least 15 business days before the Meeting:

- (a) every Member entitled to receive notice of the meeting;
- (b) the Supervisor; and
- (c) every Director and an Auditor of the Credit Union.

3 NOTICE OF MEETING

- (a) The notice given under regulation 2 must state:
 - (i) the nature of the business to be transacted at the Meeting in sufficient detail to enable a Member to form a reasoned judgment in relation to it;
 - (ii) the text of any Special Resolution to be submitted to the Meeting; and
 - (iii) the right of a Member to appoint a proxy.
- (b) If a Special Resolution is to be submitted to the Meeting:
 - (i) a draft of the proposed notice of the meeting must be given to the Supervisor at least 10 business days before the notice is given under regulation 2 (or any lesser period approved by the Supervisor); and
 - (ii) the notice of the meeting must be accompanied by a document containing the Supervisor's comments on the proposed Special Resolution (but only if the Supervisor has provided those comments in writing to the Credit Union at least 5 business days before the notice is given under regulation 2).
- (c) An irregularity in a notice of a meeting is waived if:
 - (i) all Members entitled to attend and vote at the Meeting attend the Meeting without protest as to the irregularity, or if all such Members agree to the waiver; or
 - (ii) the Supervisor indicates at the Meeting that the Supervisor is satisfied that the irregularity has not resulted in and is unlikely to result in any material prejudice to the Members.
- (d) The accidental omission to give notice of a Meeting to, or the failure to receive notice of a meeting by, a Member does not invalidate the proceedings at that Meeting.

- (e) If a Meeting is adjourned for less than 30 days, it is not necessary to give notice of the time and place of the adjourned Meeting other than by announcement at the Meeting that is adjourned.

4 CHAIR

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

- (a) Subject to regulations 5(b) and (c), clause 5 of Schedule 11 of the FMC Regulations shall apply to all Meetings.
- (b) In relation to a Meeting at which a Special Resolution is to be submitted, if the Credit Union is permitted (under the FMC Act or the FMC Regulations) to set a quorum for such Meeting which is different to that prescribed by clause 5(2)(a) of Schedule 11 of the FMC Regulations, then the quorum for such Meeting shall be 15 Members who are the holders of Shares (present in person or by proxy) and clause 5(2)(a) of Schedule 11 of the FMC Regulations shall not apply.
- (c) The quorum for any other Meeting shall be 15 Members who are the holders of Shares (present in person or by proxy) and clause 5(4) of Schedule 11 of the FMC Regulations shall not apply.

6 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 or to join with others in requesting the convening of any such Meeting unless he is a person registered as a Member who is the holder of Shares on the Register or is a representative of such person. Credit Union Securities do not have any voting rights so that while Members holding Credit Union Securities will be entitled to attend and to speak at meetings of Members, the Members, in their capacity as the holders of Credit Union Securities, will have no voting rights at any Meeting.

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); and
 - (ii) a person upon whom the ownership of a Member's Share has devolved by reason of them 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 being the holders of Shares in the Register at the Proxy Closing Time will be exclusively entitled to vote, 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.

7 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.
- (c) A proxy of a Member shall have the right to speak at the Meeting.
- (d) 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 scanned copy of such proxy and power of attorney must be received by Electronic Communication 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.
- (e) 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.
- (f) 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.
- (g) An instrument of proxy in favour of:
 - (i) the chair of the Credit Union; or
 - (ii) the chair of the Meeting, or "the chair",(howsoever expressed) will be valid and effectual as though it were in favour of a named person and shall in the case of sub-paragraph (i) above constitute the person holding the office of the chair of the Credit Union and in the case of sub-paragraph (ii) above the person who chairs the Meeting for which the proxy is used (whether an adjournment or not) the lawful proxy of the appointor.

8 RIGHTS OF REPRESENTATIVES

A representative of a Member will have the right to speak at the Meeting and, in the case of a Member holding Shares, 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.

9 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 chair or the Supervisor or by not less than 10 per cent of the Members entitled to vote. Unless a poll is so demanded a declaration by the chair 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 for every Share.

- (c) If a poll is required, it will be taken in such manner as the chair 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 chair 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 chair may be entitled as a Member or on behalf of Members.
- (e) A poll demanded on the election of a chair or the Supervisor 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 chair 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 duly convened and held in accordance with this deed will be binding upon all the Members whether present or not at such Meeting.

10 MINUTES

Minutes of all resolutions and proceedings at every Meeting 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 chair of the Meeting at which such resolutions were passed or proceedings transacted, or by the chair of the next succeeding Meeting, 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.

11 METHOD OF NOTICE

Except where notice by post is required by law and provided the relevant Member has consented in writing to receive notices electronically, notice may be given to Members by electronic means at the email address last entered in the Register.

12 ADJOURNMENT BY CHAIR

In addition to an adjournment under clause 5(5)(b) of Schedule 11 of the FMC Regulations, the chair may, with the consent of (and shall if directed by) any Meeting, adjourn the same from time to time and from place to place, but no business may be transacted at any adjourned Meeting except business that might lawfully have been transacted at the Meeting from which the adjournment took place.

SCHEDULE 2

FORM OF AUDITOR'S REPORT

In accordance with clause 8.1(d) of the trust deed dated 1 January 2020 between First Credit Union Incorporated ("Credit Union") and Covenant Trustee Services Limited ("Supervisor"), as Auditor of the Credit Union for the year ended [] we report that to our best knowledge and belief, in the performance of its duties as Auditor:

- (a) whether or not, the Auditor has become aware of any matter which, in its opinion, is relevant to the exercise or performance of the powers or duties of the Supervisor and, if so, giving particulars of such matters;
- (b) 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;
- (c) subject to section 200(2) of the Financial Markets Conduct Act 2013 ("FMC Act"), whether or not, the audit has disclosed any serious problem (as defined in section 199 of the FMC Act);
- (d) that the Auditor has perused the certificates given by the Committee of Management under clause 8.1(c) since the last report by the Auditor and whether or not, so far as matters which observed and the performance of the Auditors duties are concerned, the statements made in those certificates are not unreasonable;
- (e) whether or not the method of valuation of assets and liabilities disclosed in the annual financial statements have been made on a consistent basis with the stated policies in prior periods;
- (f) that for the financial year the Register has been audited and whether or not the Credit Union has duly maintained the Register required by the Trust Deed and the FMC Act;
- (g) as at the end of the financial year covered by the relevant statement of financial position and statement of financial performance:
 - (i) the number of Shares and Credit Union Securities on issue;
 - (ii) the capital ratio of the Credit Union calculated in accordance with clause 7.2(b);
and
 - (iii) the amount of Total Assets and the amount of Total Assets that are held as Liquid Assets.