

Credit Union Trust Deed

Credit Union Baywide (**Credit Union**)

Trustees Executors Limited (**Supervisor**)

Credit Union Trust Deed

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Credit Union Trust Deed

Date

Parties

Name Credit Union Baywide
Short name **Credit Union**
Notice Details 100 St Aubyn Street East,
Hastings 4122
Email ceo@nzcubaywide.co.nz
Phone 06 873 1100
Attention The Board of Directors

Name Trustees Executors Limited
Short name **Supervisor**
Notice Details Level 11
51 Shortland Street
PO Box 4197
Shortland Street, Auckland 1140
Email cts@trustees.co.nz
Attention Client Manager

Background

- A The Credit Union is incorporated under Part 3 of the *Friendly Societies and Credit Unions Act 1982* and is currently governed by a trust deed dated 18 December 2019 as amended from time to time (**Former Deed**).
- B The Credit Union offers Shares and may offer Credit Union Securities in accordance with this Deed and its Rules. Shares and Credit Union Securities are debt securities for the purposes of the FMC Act.
- C The Supervisor agreed to act as trustee in respect of the Shares and Credit Union Securities on the terms of the Former Deed.
- D The Credit Union and the Supervisor wish to replace the Former Deed to take account of changes approved by members, other changes to the law applying to the Credit Union and the Supervisor, and other changes as agreed between the parties.

By this Deed

Effective on and from the Effective Date, the Former Deed is amended by revoking all of its provisions and replacing them with the provisions of this Deed, so that from the Effective Date, the Shares and Credit Union Securities will be operated, administered, and governed in accordance with the provisions of this Deed.

Agreed terms

1. Defined terms and interpretation

1.1 Defined terms

In this Deed, unless the context otherwise requires:

Associate means any type of organisation or legal entity whether incorporated or unincorporated in which the Credit Union or any Subsidiary holds a Substantial Interest.

Attorney means a person (including a Receiver) appointed as attorney under this Deed, and includes any agent or delegate.

Auditor means the person or persons holding a licence under the *Auditor Regulation Act 2011* for the time being appointed to the office of auditor of the Credit Union in accordance with clause 19, the procedure set out in schedule 10 to the FMC Regulations and as provided by the FSCU Act.

Bank means:

- (a) a registered bank as defined in the *Reserve Bank of New Zealand Act 1989*; and
- (b) includes any financial institution domiciled outside New Zealand which the Directors have during the 12 months prior to the date of determination certified to the Supervisor in writing as being accorded by the jurisdiction in which they are domiciled the highest recognition as a banking institution generally available within that jurisdiction.

Business Day means a weekday other than a public holiday in New Zealand and, in relation to business carried on in any particular region of New Zealand, any regional holiday applicable in that region.

Capital Ratio means the capital ratio of the Credit Union, as defined in, and calculated in accordance with, Part 3 of the NBDT Regulations.

Committed Undrawn Borrowing Facility means a facility from a Bank (including by way of a Securitisation Programme) on terms and conditions approved by the Supervisor (which may include a limit on the amount of the facility which may be counted as Liquid Assets).

Committed Undrawn Lending Facilities means, as at the relevant date, and if in relation to a period being the maximum of, the undrawn amounts under the Credit Union's current revolving credit facilities (aggregated if more than one) that are able to be drawn down at the option of the Member or Enterprise.

Contingent Liability means the contingent liability of the Credit Union under any guarantee, indemnity, letter of credit or suretyship, or any other obligation whatever called and of whatever nature to pay, to purchase, to provide funds (whether by the advance of money, the purchase of or subscription for shares or other securities, the purchase of assets, rights or services, or otherwise) for the payment or discharge of, or to indemnify against the consequences of default in the payment of, any obligation or indebtedness, any dividend or other payment in respect of shares or stock, or on the insolvency or because of the financial condition, of any other person which is for the benefit of a person other than the Credit Union.

Credit Rating means a credit rating given by a ratings agency which has been approved under section 86 of the NBDT Act.

Credit Union means Credit Union Baywide as incorporated under Part 3 of the FSCU Act and, where the context permits, includes any Guaranteeing Subsidiary (and a covenant given by the Credit Union is given also on behalf of each Guaranteeing Subsidiary).

Credit Union Security means a credit union security issued under section 107A of the FSCU Act.

Date of Enforcement means any date on which the Security Interest created by this Deed is enforced.

Deed means this Credit Union Trust Deed inclusive of its schedules (if any).

Director means a person who, at the relevant time, has been appointed to the committee of management of the Credit Union or to such other governing body of the Credit Union as the Credit Union may be required to have from time to time and who meets any suitability requirements imposed by the NBDT Act.

Distribution has the meaning given to that term by section 117A of the FSCU Act.

Effective Date means 1 January 2020 or the date on which the Credit Union becomes incorporated under the FSCU Act, whichever occurs later.

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

Enterprise means a party described as such in, and which qualifies for the provision of products, services or lending as contemplated by, section 110 of the FSCU Act.

Event of Default means any of the events specified in clause 11.1.

Event of Review means any of the events specified in clause 10.1.

External Person means any person other than a Member of the Credit Union, except for a Securitisation Trustee.

External Secured Liabilities means liabilities of any kind to any External Person secured by a Security Interest over any asset of the Credit Union.

FMA means the Financial Markets Authority.

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

Financial Product means a financial product as defined in section 7 of the FMC Act.

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

FM Supervisors Act means the *Financial Markets Supervisors Act 2011*.

Former Deed has the meaning given to it in the Background.

FSCU Act means the *Friendly Societies and Credit Unions Act 1982*.

FSCU Amendment Act means the *Friendly Societies and Credit Unions (Regulatory Improvements) Amendment Act 2018*.

Guaranteeing Subsidiary has the meaning given to it in the NBDT Act.

Interest includes all payments called interest whether or not such payments are properly to be characterised as dividends payable on Securities.

Liabilities means liabilities which should be classified as such by NZ GAAP but does not include Contingent Liabilities.

Liquid Assets means, as at any date, any of the following assets beneficially owned by the Credit Union:

- (a) cash at a Bank;
- (b) deposits with any Prime Debtor payable (with or without notice) within 90 days of that date or otherwise able to be converted to cash within 90 days of that date within the reasonable view of the Supervisor. This excludes cash referred to in paragraph (a) above;
- (c) Public Sector Securities which are Listed Securities or which are payable (with or without notice) within 90 days of that date;
- (d) Listed Securities; and
- (e) a Committed Undrawn Borrowing Facility.

Listed Securities means any shares, stock, managed investment products, debentures, notes or other Financial Products which are listed for quotation on any recognised stock exchange or whose prices are listed regularly in daily or weekly newspapers, other than amounts included in Liquid Assets, Prime Debtor Investments or Secured Indebtedness.

Member means any person who, or any charitable entity or registered incorporated society which, qualifies for admission to the membership of the Credit Union in accordance with the FSCU Act and the Rules, and holds at least one fully paid-up Share.

NBDT Act means the *Non-bank Deposit Takers Act 2013* and, where the context permits, includes the NBDT Regulations and any other regulations made under the NBDT Act.

NBDT Regulations means the *Deposit Takers (Credit Ratings, Capital Ratios, and Related Party Exposures) Regulations 2010*.

Non-Guaranteeing Subsidiary means a Subsidiary that is not a Guaranteeing Subsidiary.

NZ GAAP or **GAAP** means generally accepted accounting practice as defined in section 8 of the *Financial Reporting Act 2013*.

Offer Document means any product disclosure statement, material on a *Disclose* register entry, or advertisement which has been prepared by, or on behalf and with the approval of, the Credit Union in relation to the relevant Security.

Other Investments means any lending to, or Financial Products issued by, an External Person to the Credit Union, whether payable or not, other than Prime Debtor Investments and Listed Securities, and which is not otherwise included in Liquid Assets.

Other Property means all of the Credit Union's present and future interests in, and all of the Credit Union's present and future rights in relation to, any land and any other assets, other than any Personal Property.

Permitted Security Interest means any Security Interest:

- (a) created in favour of the Supervisor; or
- (b) consented to by the Supervisor in writing.

Personal Property means, in respect of the Credit Union, all of the Credit Union's present and future interests in, and all of the Credit Union's present and future rights in relation to, any personal property to which the PPSA applies.

PPSA means the *Personal Property and Securities Act 1999*.

Prime Debtor means:

- (a) a Bank;
- (b) any wholly-owned subsidiary of any Bank which is itself a financial intermediary;
- (c) the New Zealand Government; or
- (d) any person incorporated by statute which is directly controlled by the New Zealand Government.

Prime Debtor Investment means that portion of the principal outstanding to the Credit Union under any Financial Product for which a Prime Debtor is liable whether as principal debtor, guarantor, endorser or otherwise and which is not otherwise included in Liquid Assets.

Principal means, in relation to Securities, the amount (other than Interest) actually or contingently owing to a Member payable in accordance with the conditions of issue of the relevant Security.

Prior Security Interest means any Security Interest over the Secured Property ranking in priority to the charges in favour of the Supervisor created by or pursuant to this Deed or, as the case requires, the principal moneys secured by such Security Interest.

Public Sector Securities means New Zealand Government stock issued and registered in New Zealand (including Treasury bills) and other Financial Products issued by any local or other public authority to which the Local Government Act 2002 applies or which are guaranteed as to principal and interest by the New Zealand Government, and any other securities which the Supervisor approves as being of a similar character.

Receiver means a receiver of the Secured Property appointed under this Deed and includes a receiver and manager.

Register means the register of Securities and/or Members to be kept pursuant to this Deed.

Registered Address in respect of a Member means that person's address for the time being recorded in the Register.

Regulatory Agency means the Reserve Bank of New Zealand, the FMA, the Registrar of Friendly Societies and Credit Unions and any other regulator appointed by the government of any jurisdiction in which the Credit Union or the Supervisor operates or where investments are made by or on behalf of the Credit Union, from time to time, which has jurisdiction over the Credit Union.

Related Party Exposures Ratio means the maximum limit ratio of the Credit Union, as defined in, and calculated in accordance with, Part 4 of the NBDT Regulations.

Related Person means:

- (a) a Director or Senior Officer;
- (b) a relative (as defined in the NBDT Act) of a Director or Senior Officer;
- (c) a company of which a Director or Senior Officer or a relative of a Director or Senior Officer is a director or shareholder holding 50% or more of the shares;
- (d) a partnership of which a Director or Senior Officer or a relative of a Director or Senior Officer is a partner;
- (e) any Subsidiary;
- (f) an Associate;
- (g) a director of a Subsidiary or Associate.

Rules means the rules of the Credit Union as registered under the FSCU Act, as may be amended or replaced from time to time.

Secured Indebtedness means all Principal, Interest and other moneys payable on the Securities and all other moneys payable to or at the direction of the Supervisor or to any Member under or pursuant to this Deed or the terms of issue of any Securities.

Secured Loans means loans or other financial transactions, repayment of which is secured by a registered charge or perfected security interest, to the extent the Directors are satisfied the relevant amounts provide reasonable security for such repayment.

Secured Obligations means all present and future obligations which the Credit Union (whether alone or with any other person and in any capacity) has or owes to the Supervisor (whether alone or with any other person and in any capacity) under or in connection with this Deed or the terms of issue of any Securities, other than obligations to pay or deliver any Secured Indebtedness.

Secured Property means the Personal Property and the Other Property, and includes any part of them.

Securitisation Programme means a funding programme with a Bank or other financial institution acceptable to the Supervisor pursuant to which the Credit Union may from time to time transfer its interest in loans and related rights to the Securitisation Trustee, reacquire such loans and related rights and subscribe for notes or other financial instruments issued by the Securitisation Trustee as part of the funding programme.

Securitisation Trustee means the trustee of a trust established under a Securitisation Programme to facilitate the funding programme.

Security means a Share or a Credit Union Security.

Security Interest means any security interest (as defined in the PPSA). It includes any mortgage, trust, pledge, lien, assignment by way of security, transfer pursuant to a Securitisation Programme, hypothecation or encumbrance (including the charge, lien to retained security title of a conditional vendor), sale where settlement is deferred for more than three months, financing lease, sale and repurchase, sale and leaseback or any other security arrangement of whatsoever nature. It does not include any of the foregoing arising by operation of law or the retained title of a vendor of goods sold in the ordinary course of business.

Senior Officer has the meaning given to that term by the NBDT Act.

Share means a share issued by the Credit Union as defined in the FSCU Act and does not include a Credit Union Security.

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 (or as is otherwise defined by the FMC Act at any time).

Statement of Financial Position and **Statement of Financial Performance** means financial statements for the Credit Union as at the balance date, or in relation to the accounting period ending at the balance date, that are required to be prepared in respect of the Credit Union by an applicable financial reporting standard or a non-GAAP standard. They include any notes giving information relating to those statements that are required by an applicable financial reporting standard or a non-GAAP standard.

Subordinated Debt means a liability which on a liquidation of the debtor company concerned is to the satisfaction of the Supervisor either to be deferred in point of payment to all other liabilities (not being liabilities which are similarly deferred) whether secured or unsecured, present or future (**Preferred Liabilities**) of the debtor company or in respect of which any distribution to the creditor

on account of the liability will be subject to an express or implied trust to account to any one or more creditors entitled to Preferred Liabilities.

Subsidiary means a company which is for the time being a subsidiary of the Credit Union within the meaning of section 5 of the *Companies Act 1993* (as if the Credit Union were a company within the meaning of that Act) and an “in-substance subsidiary” and any other person to be treated as a subsidiary according to NZ GAAP from time to time.

Substantial Interest has the meaning given to that term in section 6(2) of the NBDT Act.

Supervisor means the person holding the office of Supervisor for the time being under this Deed.

Supervisor Power means, in relation to a Security, the trusts, powers, authorities and discretions vested in the Supervisor by this Deed in relation to that Security.

Tangible Assets means all assets except assets which according to NZ GAAP are considered to be intangible assets.

Total Equity means at any time the aggregate equity of the Credit Union as would be disclosed in a Statement of Financial Position if such a Statement of Financial Position was prepared at that time.

Total Liabilities means at any time the aggregate of the amounts of all Liabilities of the Credit Union as would be disclosed in a Statement of Financial Position if such a Statement of Financial Position was prepared at that time.

Total Tangible Assets means, subject to clause 7.5, at any time the aggregate of the values of all Tangible Assets of the Credit Union as would be disclosed in a Statement of Financial Position of the Credit Union if such a Statement of Financial Position was prepared at that time.

1.2 Other defined terms

Other words and expressions are defined where they are used in this Deed.

1.3 PPSA terms incorporated

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

1.4 FSCU Act terms

Unless otherwise defined in this Deed, words defined in the FSCU Act have the same meanings in this Deed.

1.5 References

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

- (a) **\$ or dollars** means the lawful currency of New Zealand;
- (b) an **agreement** includes any legally enforceable arrangement, understanding, undertaking or representation whether or not in writing;
- (c) **applicable law** includes the FSCU Act, the FMC Act and the NBDT Act;
- (d) an **asset** or **property** includes any real or personal, present or future, tangible or intangible asset or property, and any right, interest, revenue or benefit in, under or derived from the asset or property;

- (e) **at any time** includes from time to time;
- (f) **borrowing** means to borrow money, or to raise money by way of the drawing, acceptance, discount or sale of bills of exchange or promissory notes or other financial instruments, or otherwise howsoever, whether in New Zealand currency or any other currency (but not does not include entry into derivatives) and **borrow** and **borrowed** have a corresponding meaning;
- (g) **company** means any body corporate wherever incorporated or domiciled and where the context admits includes a person;
- (h) one person being **controlled** by another means that that other person (whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise):
 - (i) has the power to appoint and/or remove the majority of the members of the governing body of that person;
 - (ii) otherwise controls or has the power to control the affairs and policies of that person; or
 - (iii) is in a position to derive the whole or a substantial part of the benefit of the existence or activities of that person;
- (i) **costs** incurred by a person include all commissions, charges, losses, expenses (including legal fees on a solicitor and own client basis) and taxes incurred by that person;
- (j) **guarantee** means any guarantee, indemnity or other obligation (whatever called) to pay, purchase, provide funds (whether by the advance of money, the purchase of or subscription for shares or other securities, the purchase of assets or services, or otherwise) for the payment of, indemnify against the consequences of default in the payment of, or otherwise be responsible for, any liability of any other person;
- (k) **indebtedness** includes an obligation (whether present or future, actual or contingent, secured or unsecured, joint or several, as principal, surety or otherwise) relating to the payment or repayment of money;
- (l) **including** and similar expressions do not limit what else may be included;
- (m) **law** includes any common law, equity and any statute, regulation or other enactment of any kind;
- (n) a **month** means a calendar month;
- (o) **notify** means notify in writing;
- (p) **owing** includes unpaid;
- (q) a **person** includes:
 - (i) an individual, body corporate, association of persons (whether corporate or not), trust, state, agency of state and any other entity (in each case, whether or not having separate legal personality); and
 - (ii) that person's successors, permitted assigns, executors and administrators (as applicable); and
- (r) **redemption** includes repayment and **redeem** includes repay, and vice versa.

- (s) **written** and **in writing** include words written, printed, typewritten, lithographed or otherwise represented or reproduced in visible form by any other means, including in an Electronic Communication.

1.6 Interpretation

In this Deed:

- (a) headings are for reference only and do not affect interpretation;
- (b) references to clauses, schedules and annexures are to those in this document, and a reference to this document includes any schedule and annexure;
- (c) any undertaking, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (d) reference to a document or agreement includes that document or agreement as novated, altered, amended, supplemented or replaced from time to time;
- (e) reference to a thing includes any part of it and a reference to a group of things or persons includes each thing or person in that group;
- (f) reference to legislation or other law or a provision of them includes regulations and other instruments under them, and any consolidation, amendment, re-enactment or replacement;
- (g) the singular includes the plural and vice versa, a gender includes other genders and different grammatical forms of defined expressions have corresponding meanings;
- (h) unless stated otherwise, anything required to be done on or by a day which is not a Business Day, must be done on or by the next Business Day;
- (i) reference to time is to New Zealand time unless stated otherwise;
- (j) no provision or expression is to be construed against a party on the basis that the party (or its advisers) was responsible for its drafting;
- (k) if it is necessary for any of the purposes of this Deed to determine the equivalent at any date in New Zealand Dollars of any amount denominated in any other currency (or *vice versa*), that equivalent will be determined by the Credit Union on the basis of such rate of exchange prevailing as at that date as the Credit Union may select; and
- (l) despite any provision of this Deed, where the Credit Union or any other person is required to state or calculate an amount to a specified number of decimal places, the Credit Union or other person may calculate or state such amounts to a greater number of decimal places.

2. Appointment of Supervisor

The Credit Union appoints the Supervisor, and the Supervisor accepts appointment, as supervisor in respect of the Securities on the terms of this Deed and with all the rights, powers, duties and obligations conferred by this Deed or any applicable law.

3. Securities

3.1 Creation and issue of Securities

The Credit Union may create and issue Shares and Credit Union Securities to such persons and on such terms and conditions (not being inconsistent with the provisions of this Deed or any applicable law) as the Credit Union may from time to time determine.

3.2 Shares

- (a) Shares may only be issued to Members.
- (b) Shares rank equally between themselves despite being created or issued at different dates or on different terms.
- (c) No Share may be allotted to a Member until it has been fully paid up.
- (d) Holding a Share or any number of Shares confers the right to one vote on a Member.
- (e) Shares are not transferable.

3.3 Credit Union Securities

- (a) Credit Union Securities may only be issued to Members.
- (b) In the event of the Credit Union being wound up, claims for Credit Union Securities must not be paid until all claims relating to Shares have been paid.
- (c) In the event of the Credit Union incurring losses that exceed its Total Equity, the value of the Credit Union Securities must be written down accordingly.
- (d) Credit Union Securities are transferable only between Members.
- (e) Credit Union Securities confer no voting rights.

3.4 Right to deduct withholding and other taxes

The Credit Union may deduct from any amount payable to a Member the amount of any withholding or other tax or duty required to be deducted in respect of such amount under applicable law. Where any such deduction is or has been made and the amount of the deduction accounted for by the Credit Union to the Commissioner of Inland Revenue or other appropriate authority and the balance of the amount payable has been paid to the Member concerned, the full amount payable to that Member will (subject to any agreement to the contrary with the Member) be deemed to have been duly paid and satisfied by the Credit Union.

3.5 Unclaimed payments

If any payment made to the last Registered Address of a Member or Enterprise is returned unclaimed, it must (unless notice of a change of Registered Address has in the meantime been received by the Credit Union) be retained by the Credit Union and held for that party. The Credit Union has no liability to invest the same or pay interest on it. Any money unclaimed for the applicable period under the *Unclaimed Money Act 1971* will be forfeited in accordance with that Act.

3.6 Validity of Securities

- (a) No Member is concerned or obliged to enquire whether any Security has been issued or any borrowing made or liabilities (actual or contingent) incurred in contravention of any provision of this Deed.
- (b) All Securities issued for valuable consideration will be deemed to be validly issued under this Deed and entitled to the benefit of the provisions of this Deed notwithstanding that it may subsequently be determined that the issue of such Security or any borrowing made,

or liabilities (actual or contingent) incurred in respect of such Security, was in breach of any provision of this Deed but without prejudice nevertheless to the Supervisor's rights under or pursuant to this Deed against the Credit Union in relation to such breach.

3.7 Enforcement of Members' rights

- (a) The Supervisor holds the following in trust for, and for the benefit of, the Members:
 - (i) the right to enforce the duty of the Credit Union to repay Principal, or to pay Interest, under the terms of each Security;
 - (ii) any charge or security for repayment; and
 - (iii) the right to enforce any other duties of the Credit Union under:
 - (A) the terms of each Security; or
 - (B) the provisions of this Deed or the FMC Act in relation to each Security.
- (b) No Member may proceed directly against the Credit Union in respect of rights given to a Member under this Deed unless the Supervisor fails to enforce any rights and remedies against the Credit Union after having become bound to do so in accordance this Deed.

3.8 Certificates

- (a) The Credit Union will not issue a certificate in respect of ownership of a Share.
- (b) The Credit Union may, and must if required by law at any time, issue to a Member a certificate in relation to Credit Union Securities held in a form approved by the Supervisor.

3.9 Register

- (a) The Credit Union must set up and maintain a Register in compliance with all requirements of the Supervisor and applicable law, including those of:
 - (i) the FSCU Act for a register of Members; and
 - (ii) the FMC Act for a register of Securities.
- (b) The Register may be made up of one or more electronic registers or kept in any other reasonable manner as is approved by the Supervisor and the Auditor.
- (c) No notice of any trust, expressed, implied, or constructive, may be entered on the Register.
- (d) The Supervisor, any Receiver, any Member and any person authorised in writing by any of such persons may at all reasonable times inspect the Register and take copies of and extracts from the same, subject to the requirements and limitations under the FMC Act.
- (e) The Credit Union must ensure that the Register is audited by or to the satisfaction of the Auditor at regular intervals of not more than 12 months or upon request in writing by the Supervisor.

4. Grant of security

4.1 Security Interest, charge and agreement to mortgage

To secure to the Supervisor payment or delivery of the Secured Indebtedness and performance of the Secured Obligations, the Credit Union:

- (a) grants to the Supervisor a charge in and over its Secured Property; and

- (b) in addition to the security granted under clause 4.1(a), assigns by way of security to the Supervisor all Secured Property that constitutes present or future rights or things in action (but expressly excluding any leasehold interest in land).

The security granted under this clause 4.1 by the Credit Union in relation to Personal Property is a security interest for the purposes of the PPSA and taken in all of the Credit Union's present and after acquired Personal Property.

4.2 Nature of charge

The charge under this Deed is a fixed charge. If the charge is not legally and fully effective as a fixed charge, then the charge shall be a floating charge. Any floating charge created under this Deed will become a fixed charge automatically, without the need for any notice or action by the Supervisor, immediately prior to or, if that would not result in the fixed charge being legally and fully effective, contemporaneously with, the occurrence of any Event of Default.

5. Dealing with assets

5.1 Ranking of Prior Security Interests

- (a) Any Prior Security Interests permitted in accordance with clause 7.2(c) will rank as Security Interests over the assets subject to them in priority to the Security Interest created by or pursuant to this Deed.
- (b) Whenever it may be necessary to give effect to such intended priority the Supervisor, at the request and expense of the Credit Union, must join in the execution of any memorandum of priority or other relevant document which is in a form satisfactory to the Supervisor.
- (c) No vendor, lender or other person is concerned or obliged to enquire whether any loan to or liability assumed by the Credit Union is in contravention of the provisions of clause 7.2(c) or of this clause nor will the validity and priority of any Security Interest given to or held by any vendor, lender or other person be affected by knowledge on the part of any vendor, lender or other person of any such contravention.

5.2 Partial releases of Guaranteeing Subsidiary or Secured Property

At any time before any Date of Enforcement, upon the request in writing and at the cost of the Credit Union and without approval by the Members (unless in the opinion of the Supervisor the interests of the Members would be materially prejudiced) and upon being satisfied as a result of receiving such valuations or other evidence as the Supervisor may specify that full market or otherwise reasonable value is being received or that the circumstances otherwise justify the release and upon and subject to such terms and conditions as in its discretion the Supervisor may specify, the Supervisor may:

- (a) release any Guaranteeing Subsidiary from its guarantee and other obligations under or pursuant to this Deed;
- (b) release any part of the Secured Property from the operation of any charge over it created by or pursuant to this Deed; and/or
- (c) execute all documents which may be necessary to effect any such release or discharge,
- (d) provided always that:
 - (i) the Supervisor must not agree to the sale and subsequent release of the whole or a major part of the business or undertaking of the Credit Union (viewing the Credit Union and any Guaranteeing Subsidiaries as a single entity) without the sanction of a Special Resolution; and

- (ii) in any other case, where the Supervisor is not satisfied that full market or otherwise reasonable value is being received or that the circumstances otherwise justify the release, the Supervisor may nevertheless agree to the release or discharge with the consent of a Special Resolution.

5.3 Quiet enjoyment

Despite the Security Interests created under this Deed, the Credit Union may:

- (a) hold and enjoy the Secured Property and receive and apply as it thinks fit all rents and income arising from the Secured Property; and
- (b) carry on or with the Secured Property any of the businesses authorised by law, until the security constituted by this Deed becomes enforceable as provided in this Deed and the Supervisor determines or becomes bound to enforce the same.

6. Priority

6.1 Priority of Security Interest in Personal Property

The Security Interest granted in the Personal Property has the same priority in relation to all Secured Indebtedness, including future advances. Nothing in this clause 6.1 restricts the Supervisor from claiming that the Security Interest is a purchase money security interest in respect of all or part of the Personal Property.

6.2 No agreement or consent to subordination, attachment or accessions

Nothing in this Deed means the Supervisor agrees or consents to:

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

6.3 Contrary agreements

This clause 6 is subject to any written agreement to the contrary between the parties, including the overriding provisions of any subordination and/or priority agreement entered into by the Supervisor in respect of any other holder of security.

7. Financial limitations and covenants

7.1 Positive covenants

The Credit Union covenants with the Supervisor that it will:

- (a) **(comply with laws)** carry on and conduct its business at all times in accordance with the FSCU Act, the FMC Act, the NBDT Act and any other applicable laws;
- (b) **(meet obligations)** duly pay all liabilities and comply with all obligations binding on it under this Deed or by law, contract or otherwise;

- (c) (**maintain consents**) maintain in full effect all consents (including its licence under the NBDT Act) required to enable it to perform or comply with its material obligations under this Deed;
- (d) (**maintain incorporation and registrations**) at all times be incorporated as a credit union under the FSCU Act and ensure that any Guaranteeing Subsidiary is registered under any other law if required;
- (e) (**maintain Register**) duly maintain the Register;
- (f) (**risk management framework**) maintain and comply with a risk management framework in accordance with the NBDT Act;
- (g) (**attendance at meetings of Members**) permit the Supervisor through its agent, attorney or representative to attend any meeting of the Members and to be heard on any part of the business of the meeting which concerns the Supervisor's functions or the Members;
- (h) (**information**) whenever requested, give to the Supervisor or any chartered accountant or Receiver or other person appointed by the Supervisor such information as they may require with respect to all matters relating to its affairs and all matters relating to the Members and ensure that all such information is true and accurate in all material respects as at the date when that information is provided and will not omit to state any fact or circumstance which would make that information untrue, inaccurate or misleading in any material respect;
- (i) (**Events of Review and Events of Default**) notify the Supervisor immediately upon becoming aware of:
 - (i) the occurrence of any Event of Review;
 - (ii) the occurrence of any Event of Default; or
 - (iii) any event or circumstance which with the lapse of time, giving of notice or fulfilment of any other requirement may constitute an Event of Default or an Event of Review,giving in each case full details of it and of any action taken (or to be taken) as a result;
- (j) (**material adverse change**) notify the Supervisor immediately upon becoming aware of any event or circumstance which may have a material adverse effect on the Credit Union giving full details of it and of any action taken (or to be taken) as a result;
- (k) (**change of personnel**) upon any change in the Directors or other Senior Officers of the Credit Union:
 - (i) promptly notify the Supervisor of that change; and
 - (ii) provide to the Supervisor a copy of any suitability notice and other information required to be given to any Regulatory Agency in relation to the change;
- (l) (**registration of documents**) ensure that all documents, notices, reports or other documents required to be given, filed, registered or effected by a credit union under the FSCU Act, the FMC Act or other applicable law are so given, filed, registered or effected (as the case may be);
- (m) (**maintain Liquid Assets**) ensure to the satisfaction of the Supervisor (acting reasonably) that the Liquid Assets of the Credit Union that are or may become available are sufficient, or expected to be sufficient, to enable its liabilities to Members to be discharged when they become due in the ordinary course of business on their scheduled maturity dates;

- (n) **(balance date and financial year of Credit Union and Subsidiaries)** ensure that the Credit Union and each of its Subsidiaries, unless the Supervisor otherwise approves in any particular case, have the same balance date and financial year for the purposes of their respective audited annual financial accounts; and
- (o) **(further assurances)** at its own cost, do (and procure that anyone else who has an interest in the Secured Property or who claims under or in trust for that person does) all things that the Supervisor reasonably requires in order to:
 - (i) perfect or improve that person's title to, or other right or interest in, the Secured Property;
 - (ii) perfect, preserve, maintain, protect or otherwise give full effect to the Security Interest created under this Deed, and the priority of that Security Interest required by the Supervisor, including, if requested by the Supervisor:
 - (A) for the Supervisor to register and maintain (including to renew before expiry) one or more financing statements in relation to the Security Interest in Secured Property;
 - (B) to remove any financing statement which is registered against that person in relation to any Security Interest which is not a Permitted Security Interest; and
 - (C) to issue any notice of assignment and obtain any acknowledgements of assignment from third parties in relation to any Security Interest taking effect as an assignment by way of security to the Supervisor;
 - (iii) secure more satisfactorily to the Supervisor payment and delivery of the Secured Indebtedness (including the granting of further specific security in the form reasonably required by the Supervisor);
 - (iv) facilitate the exercise of any right by the Supervisor or any Receiver at any time or the realisation of the Secured Property following the occurrence of an Event of Default and while it remains subsisting, including the exercise of all rights of inspection, requesting all records and taking all necessary copies, which the Credit Union is entitled to exercise, request or take; and
 - (v) otherwise enable the Supervisor to obtain the full benefit of the provisions of this Deed.

7.2 Negative Covenants

The Credit Union covenants with the Supervisor that it will not, without the prior written consent of the Supervisor:

- (a) **(issue Securities when in breach)** offer or issue to any person any Securities whilst the Credit Union is in breach of any of the provisions of this Deed, or is in breach of the provisions of the FMC Act, the NBDT Act, the FSCU Act or any other applicable law regulating the offering or issuing of financial products;
- (b) **(restrictions on business)** whether by a single transaction, or any series of transactions whether related or not, change the nature of its business or transfer, sell, or otherwise dispose of (or propose or agree or negotiate to do any of the same), the whole or a major part of its undertaking (including by way of amalgamation or transfer of engagements);
- (c) **(negative pledge)** create or permit to subsist any Security Interest (other than a Permitted Security Interest) over its Secured Property;

- (d) (**Subsidiaries**) establish any branch or Subsidiary to own or operate any part of its business or incorporate or acquire (or permit any change of ownership or control of) any Subsidiary;
- (e) (**Associates**) establish, acquire or enter into any arrangements with third parties to form (or permit any Subsidiary to establish, acquire or enter into any arrangement with third parties to form) any Associate;
- (f) (**Securitisation Programme**) undertake a Securitisation Programme (and the Credit Union will comply with any conditions imposed as part of any consent for a Securitisation Programme, including in relation to the ratios in clause 7.4);
- (g) (**restriction on transactions with Related Persons**) acquire or dispose of any asset from or to, or engage the services of, or lend to, any Related Person other than:
 - (i) in respect of a Director or Senior Officer acting in their capacity as Director or Senior Officer;
 - (ii) in respect of a director of a Subsidiary or Associate acting in that capacity;
 - (iii) in respect of loans to a Related Person made in the ordinary course of the Credit Union's ordinary business;
 - (iv) in respect of ordinary business conducted between the Credit Union, any Subsidiary or Associate.
- (h) (**references to Supervisor**) name or refer to the Supervisor or refer to any duties or obligations owed by the Supervisor under this Deed in any Offer Document, advertisements, promotional materials or other documents or information to be distributed by or on behalf of the Credit Union to any person;
- (i) (**bearer securities**) issue any securities payable to bearer;
- (j) (**writing up of assets**) write up the value of any asset in its books of account beyond the fair market value of that asset as approved by the Auditor at the time of such writing up;
- (k) (**enter into guarantees**) enter into or permit the subsistence of any guarantee or indemnity;
- (l) (**limit for issuing Securities**) issue any Securities to any person if the total amount of obligations owed to that person exceeds or would exceed 10% of Total Tangible Assets;
- (m) (**limit for unsecured loans**) permit the amount owing to the Credit Union in respect of an unsecured loan (whether wholly unsecured or not) at the time the loan is made to exceed 5% of Total Tangible Assets;
- (n) (**limit for secured loans**) permit the amount owing to the Credit Union in respect of a secured loan (not being a loan secured over the Securities of the Member) at the time the loan is made to exceed 10% of Total Tangible Assets;
- (o) (**Rules**) amend or replace the Rules without obtaining the prior written consent of the Supervisor;
- (p) (**compromise or composition**) enter into or make any proposal for a compromise or composition with or for the benefit of any of its creditors;
- (q) (**location of Secured Property**) move (or allow to be moved) any Secured Property situated in New Zealand outside New Zealand; or

- (r) **(no set-off):**
 - (i) directly or indirectly claim, exercise or attempt to exercise a right of set-off or counterclaim (whether its or any other person's right) against the Supervisor; or
 - (ii) allow any of its accounts receivable or chattel paper to be subject to any right of set-off, combination of accounts or other defence or claim.

7.3 Financial covenants

Subject to clause 7.5, the Credit Union covenants with the Supervisor that:

- (a) **(restrictions on Distributions)** it will not make Distributions to Members other than in accordance with the FSCU Act and any other applicable law;
- (b) **(restrictions on borrowings)** it will not borrow any moneys except on terms and conditions previously consented to in writing by the Supervisor and will not at any time borrow an amount greater than permitted by the FSCU Act or more than 15% of Total Equity. This covenant shall not apply in relation to any borrowings by the Credit Union to fund expenditure of a capital nature where the Supervisor has given its prior written approval, which may be withheld in its sole discretion or given with attaching conditions;
- (c) **(no prior ranking debts)** except as otherwise expressly agreed in writing by the Supervisor, it will ensure that all debts or liabilities owed by it to third parties other than normal trade creditors are Subordinated Debts; and
- (d) **(restrictions on loans to Members and Enterprises)** any loans made to a Member or an Enterprise by the Credit Union will comply with the requirements under section 110 of the FSCU Act.

7.4 Financial ratios

Subject to clause 7.5, the Credit Union covenants with the Supervisor that:

- (a) **(External Secured Liabilities restriction)** except as may otherwise be agreed with the Supervisor in respect of any advances from any Subsidiary or Associate, it will not permit External Secured Liabilities to exceed 1% of Total Tangible Assets;
- (b) **(Minimum Capital Ratio)**
 - (i) if the Credit Union does not have a Credit Rating, it will ensure that at all times its Capital Ratio is not less than 10%; and
 - (ii) if the Credit Union does have a Credit Rating, it will ensure that at all times its Capital Ratio is not less than 8%,

or, in each case, any other capital ratio prescribed by applicable law or agreed as part of any consent given by the Supervisor (including in respect of a Securitisation Programme).

- (c) **(Related Party Exposures Ratio)** it will not permit the Related Party Exposures Ratio to exceed 15%;
- (d) **(Liquidity requirements)**
 - (i) it will not permit Liquid Assets to be less than 8% of Total Tangible Assets;
 - (ii) it will ensure that 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 enable its liabilities to be discharged when they become due;
 - (iii) it will not permit the Liquid Assets to be less than 115% of any deficit arising from:

- (A) the aggregate amount receivable by the Credit Union in cash by way of principal and interest on all moneys due to the Credit Union during the next three months (based on contractual maturities); less
- (B) the aggregate of the total amount payable by the Credit Union in cash by way of:
 - (I) 20% of the Principal of the Securities payable during the next three months (based on contractual maturities);
 - (II) 100% of the Interest on the Securities payable during the next three months (based on contractual maturities); and
 - (III) 20% of Committed Undrawn Lending Facilities available to Members and Enterprises.
- (e) **(Lending and investment quality restrictions)**
 - (i) it will not permit the aggregate of Prime Debtor Investments, Other Investments and Listed Securities, to exceed 15% of Total Tangible Assets; and
 - (ii) except as may otherwise be agreed with the Supervisor in respect of any equity investments or other advances to any Subsidiary or any Associate, it will not permit the aggregate of Other Investments to exceed 5% of Total Tangible Assets.

7.5 Effect of Securitisation Programme on financial ratios

Subject to applicable law, and unless the Credit Union and the Supervisor agree otherwise either generally or in any specific case, where there is a duly authorised Securitisation Programme in place, the financial covenants and ratios in clauses 7.3 and 7.4 (other than clauses 7.4(b) and 7.4(c)) will be calculated by reference to financial statements of the Credit Union excluding the assets and liabilities of the Securitisation Trustee.

7.6 Effect of Non-Guaranteeing Subsidiaries on financial ratios

If a Subsidiary is a Non-Guaranteeing Subsidiary, then the financial covenants and ratios in clauses 7.3 and 7.4 will be calculated by reference to the financial statements of the Credit Union excluding the assets and liabilities of the Non-Guaranteeing Subsidiary.

7.7 Credit Union may hold land

- (a) Subject to the Rules, the Credit Union may purchase, hold, take on lease, or otherwise deal with:
 - (i) any land, and may sell, exchange, mortgage, or lease any such land, and erect, equip, furnish, alter, and maintain, or pull down buildings on it; and
 - (ii) any building or part of a building, and equip, furnish, alter, and maintain, or pull down any such building.
- (b) The Credit Union may also hold any interest in land so far as is necessary for the purpose of making loans to its Members or any Enterprise on the security of an interest in land and of enforcing any such security.

8. Reports and information for Supervisor

8.1 Reports for Supervisor

The Credit Union covenants with the Supervisor that it will:

- (a) **(annual financial statements)** provide to the Supervisor within 4 months (or such further time as the Supervisor agrees in writing) after the end of each financial year copies of its financial statements for that financial year, duly audited and signed by two Directors;
- (b) **(semi-annual financial statements)** provide to the Supervisor within 3 months (or such further time as the Supervisor agrees in writing), after the end of the first half of each financial year copies of its financial statements for that half-yearly period, duly signed by two Directors;
- (c) **(further financial statements)** at the request of the Supervisor, which request must only be made when the Supervisor reasonably considers that special circumstances have arisen which warrant such request and the Supervisor so certifies to the Credit Union, within 3 months after receipt of the request by the Credit Union, provide to the Supervisor copies of:
 - (i) financial statements of the Credit Union made up at a date nominated by the Credit Union (which balance date shall be a date within 30 days of the date of notification of the Supervisor's request);
 - (ii) a report by the Auditor setting out the information referred to in clause 8.1(h), with such adaptations as may be necessary, or such of that information as may be required by the Supervisor;
- (d) **(accounting practice)** ensure that all financial statements delivered to the Supervisor under this clause are prepared in accordance with NZ GAAP, consistently applied except to the extent disclosed in those financial statements;
- (e) **(Directors' quarterly certificates)** within 30 days after the end of each quarter (or within such further time as the Supervisor may agree to in writing) provide to the Supervisor a certificate signed by two Directors, in the form agreed with Supervisor from time to time;
- (f) **(special reports)** notwithstanding any other provision of this Deed, if at any time the Supervisor reasonably forms the opinion that an event has occurred, or may or is likely to occur, which will or may have a material adverse effect on the Members, permit the Supervisor to (and the Supervisor may) appoint any one or more experts to investigate and report to the Supervisor on the matters of potential concern to the and the Credit Union must co-operate fully with and facilitate the expert's investigation and report preparation;
- (g) **(Auditor's report)** provide to the Supervisor at the same time as it provides to the Supervisor in accordance with clause 8.1(a) copies of its financial statements a separate report by the Auditors in the form agreed with the Supervisor from time to time;
- (h) **(monthly internal financial statements)** within 30 days of the end of each calendar month, provide to the Supervisor a copy of the financial statements prepared for the Credit Union's internal management purposes, and also such other information as agreed with the Supervisor;
- (i) **(furnish notice of reduction or withdrawal of Committed Undrawn Borrowing Facilities and overdrafts)** provide to the Supervisor notice and full explanatory details immediately after they become known to the Credit Union of any reduction, withdrawal or cancellation of any amount of Committed Undrawn Borrowing Facilities or overdraft facilities or the possibility of any such event occurring or of any demand for repayment of any moneys outstanding under any such facility or the possibility of any such demand being given (written notice of which has not already been given to the Supervisor);

- (j) **(provide accounts of Subsidiaries, Associates or Securitisation Programme)** at the request of the Supervisor, provide or cause to be provided to the Supervisor the latest accounts (including consolidated accounts) of any of its Subsidiaries, Associates or any Securitisation Programme; and
- (k) **(Securitisation Programme)** where any duly authorised Securitisation Programme is in place, provide or cause to be provided to the Supervisor such reports or information in relation to the Securitisation Programme as the Supervisor requires from time to time, including pursuant to any consent given by the Supervisor.

8.2 Information for Supervisor

The Credit Union covenants with the Supervisor that it will:

- (a) **(requested information and reports)** if requested by the Supervisor (or a person authorised by the Supervisor), make available to the Supervisor (or other authorised person):
 - (i) all documents and records relating to the Credit Union; and
 - (ii) any other reports or information required by the Supervisor (or other authorised person),within the time and in the manner (which must be reasonable in the circumstances) specified by the Supervisor;
- (b) **(contravention or possible contravention)** if the Credit Union has reasonable grounds to believe that the Credit Union has contravened, may have contravened, or is likely to contravene any obligation applying to it as issuer of the Securities, as soon as practicable:
 - (i) report the contravention or possible contravention to the Supervisor; and
 - (ii) advise the Supervisor of the steps (if any) that the Credit Union has taken or intends to take in light of the contravention or possible contravention and the date by which the steps were taken or are to be taken;
- (c) **(serious financial problems)** if the Credit Union becomes aware of information on the basis of which it could reasonably form the opinion that the Credit Union is, or is likely to be become, insolvent, as soon as practicable:
 - (i) disclose to the Supervisor all information relevant to that matter that is in the possession or under the control of the Credit Union and that was obtained in the course of, or in connection with, the performance of the Credit Union's functions as issuer of the Securities; and
 - (ii) advise the Supervisor of the steps (if any) that the Credit Union intends to take in respect of that matter and the date by which the steps are to be taken;
- (d) **(balance date and financial year of Credit Union and Subsidiaries)** ensure that the Credit Union and each of its Subsidiaries will, unless the Supervisor otherwise approves in any particular case, have and continue to have the same balance date and financial year for the purposes of their respective audited annual financial accounts;
- (e) **(change in Subsidiaries or Associates)** immediately notify the Supervisor of:
 - (i) the acquisition or formation of any Subsidiary or Associate including its name and provide to the Supervisor a copy of the most recent statement of financial position and statement of financial performance of any Subsidiary or Associate acquired in this way; and/or

- (ii) any change in the shareholding of a Subsidiary or Associate;
- (f) **(notice if financial limits exceeded)** immediately notify the Supervisor if any of the limits imposed by clause 7.1 to 7.4 have been or are about to be exceeded;
- (g) **(notice of proceedings)** immediately notify the Supervisor of:
 - (i) the service of any material notice affecting the Secured Property or any part of them (and not being in connection with the normal conduct of the Credit Union's business) or of the commencement of any proceedings which may materially and adversely affect the same, which may otherwise materially affect the Credit Union or which is for an amount in excess of 3% of the Total Equity; or
 - (ii) the service of any material notice by the Credit Union pursuant to which the Credit Union intends to bring any proceedings against any person which may affect the Secured Property or any part of it or which may materially and adversely affect the same, which may otherwise materially affect the Credit Union or which is for an amount in excess of 3% of the Total Equity;
- (h) **(notice of dispute)** immediately notify the Supervisor of any dispute which the Credit Union may have with any Member or any other person which will or may have a material adverse effect on the Secured Property or which may otherwise materially affect the Credit Union;
- (i) **(provide notices)** immediately forward to the Supervisor copies of all notices or other communications:
 - (i) it receives from or is required to provide to any regulatory body in respect of its roles and responsibilities as a credit union and as a non-bank deposit taker, including any notices or other communications received or required under the FSCU Act, the FMC Act, the NBDT Act or any other legislation; or
 - (ii) that are relevant to the Supervisor's ability to consult fully with any regulatory body or otherwise carry out its functions and duties under this Deed;
- (j) **(provide Offer Documents)** provide to the Supervisor copies of all Offer Documents required to be filed by the Credit Union with any regulatory body, at the same time as they are required to be provided to the Regulatory Agency;
- (k) **(Member communications)** except as otherwise agreed with the Supervisor in respect of various categories of communications (such as flyers and newsletters), provide to the Supervisor copies of all communications generally sent to Members, including financial reports and notices of meetings, at the same time as those communications are distributed to Members;
- (l) **(non-payment of claims)** immediately notify the Supervisor of any non-payment of any insurance claim money owing by the Credit Union; and
- (m) **(event in relation to Securitisation Programme)** immediately notify the Supervisor of any event or circumstance of the kind (or of a kind materially equivalent to any such event or circumstance) set out in this clause 8.2 occurring or arising in relation to any Securitisation Programme.

9. Guaranteeing Subsidiaries

9.1 New Subsidiaries

As a condition of the Supervisor providing the written consent required by the Credit Union in accordance with clause 7.2(d) in order for the Credit Union to establish or acquire a Subsidiary,

the Supervisor may require that Subsidiary to become a Guaranteeing Subsidiary. In that case, the Subsidiary will execute, register and deliver to the Supervisor a deed in a form determined by the Supervisor guaranteeing and securing the Secured Indebtedness and agreeing to become bound by this Deed as a Guaranteeing Subsidiary.

9.2 Compliance by Guaranteeing Subsidiaries

The Credit Union covenants with the Supervisor that it will use its voting powers in and representation on the board of directors of any Guaranteeing Subsidiary in such manner as to ensure full compliance and observance by each Guaranteeing Subsidiary at all times with the provisions of this Deed.

10. Events of Review

10.1 Declaring an Event of Review

If any of the following events has occurred, or if the Supervisor in its reasonable opinion believes or suspects that any of the following events may or is likely to have occurred:

- (a) an Event of Default;
- (b) an event which has or could have a material adverse effect on the Credit Union's ability to perform its functions and duties under this Deed as they fall due (including its ability to maintain its financial soundness or its administration capabilities); or
- (c) it appears to the Supervisor on reasonable grounds that it is necessary for the financial structure of the business or activities of the Credit Union to be reviewed, amended or improved,

the Supervisor may by notice in writing to the Credit Union declare an **Event of Review**.

10.2 Supervisor may call for proposals

Without limiting any other rights the Supervisor may have under this Deed:

- (a) at any time after an Event of Review has been declared by the Supervisor, the Supervisor may require the Credit Union to submit to the Supervisor a proposal to restore the Credit Union to a sound financial position or otherwise improve the financial structure of the business or activities of the Credit Union or to remedy any breach of this Deed. The Credit Union will have such reasonable time as may be stipulated by the Supervisor not being greater than 30 days to develop, negotiate, finalise and submit the plan to the Supervisor;
- (b) if the plan is approved by the Supervisor the Credit Union must proceed to implement the plan;
- (c) the Supervisor and the Credit Union will monitor implementation of the plan and will advise each other in writing of any modifications to the plan or its implementation that either the Supervisor or the Credit Union considers to be necessary. If any modifications to the approved plan are reasonably considered to be necessary each party must in good faith cooperate with the other to put such modifications in to effect.

10.3 Supervisor may give directions

- (a) Without limiting any other rights the Supervisor may have under this Deed, where:
 - (i) it is clear that the plan proposed by the Credit Union to meet the concerns raised by the Supervisor under clause 10.2(a) does not adequately address those concerns; or

- (ii) the Credit Union fails to implement the plan approved by the Supervisor under clause 10.2(b) to the reasonable satisfaction of the Supervisor,

the Supervisor may, having regard to the interests of the Members, give a direction (**Direction**) to the Credit Union either relating to the management and administration of the Credit Union or requiring or prohibiting the Credit Union from carrying the activities then carried on by the Credit Union (to the extent and subject to such conditions as are specified in the Direction), including but not limited to:

- (iii) requiring the Credit Union to write down its Securities proportionally according to Members' contributions;
 - (iv) requiring the Credit Union to enter into negotiations to effect a transfer of engagements on terms and conditions to be settled by the Credit Union after consultation with the Supervisor;
 - (v) prohibiting the Credit Union from:
 - (A) borrowing moneys;
 - (B) accepting a payment representing an amount due by way of subscription for a Security other than a payment which has fallen due before the Direction is given;
 - (C) lending money;
 - (D) repaying Securities for a period of up to 90 days; or
 - (E) accepting new Members; or
 - (vi) if the Rules of the Credit Union permit, requiring any Director of the Credit Union to resign by serving a disqualification notice on the Director and the Credit Union, and directing that the Credit Union convene a meeting of its Members to appoint new Directors.
- (b) The Supervisor must give the Credit Union not less than 30 days' notice in writing that the Supervisor proposes to give a Direction to the Credit Union. The notice must set out the Supervisor's reasons for proposing the Direction and the date on which the Direction is to become effective (**Direction Date**).
- (c) At any time prior to the Direction Date, the Credit Union may make representations to the Supervisor in respect of the proposed Direction, setting out alternative ways or proposals to satisfy the concerns of the Supervisor regarding the interests of Members.
- (d) Where the Credit Union has made representations to the Supervisor in relation to the proposed Direction, the Supervisor may:
- (i) if the Supervisor is in its sole discretion satisfied that the alternative ways or proposals put forward by the Credit Union fully satisfies its concerns regarding the interest of Members, withdraw the Direction;
 - (ii) amend the proposed Direction to such extent as the Supervisor in its sole opinion considers appropriate and the Credit Union shall comply with the amended Direction. The Supervisor has all necessary powers to ensure that the amended Direction is given effect to; or
 - (iii) reject the representations made by the Credit Union and the Supervisor will then have all necessary powers to ensure that the Direction is given effect to.

- (e) The Supervisor may, in its sole discretion and at any time, withdraw or amend any Direction which has been given to the Credit Union.
- (f) Nothing in this clause will be construed as requiring the Supervisor to give any Direction under this clause.

11. Enforcement of security on default

11.1 When security enforceable

The security constituted by this Deed will become enforceable on the happening of any one or more of the following events (each an **Event of Default**):

- (a) (**non-payment**) the Credit Union fails to pay any amount of the Secured Indebtedness on its due date for payment;
- (b) (**breach of undertaking**) the Credit Union does not perform or comply with any of its obligations under clause 7.1 to 7.4;
- (c) (**breach of other obligations**) the Credit Union fails to perform or comply with any of its other obligations under this Deed and, in the case of a failure that is capable of remedy, that failure is not remedied within 14 days of the date that the Credit Union first became aware of it;
- (d) (**avoidance or repudiation**)
 - (i) this Deed ceases to have effect (in whole or in any material part) or is or becomes void, voidable, illegal, invalid or unenforceable in any material respect (other than by reason of any waiver); or
 - (ii) the Credit Union repudiates or does or causes to be done an act, omission, matter or thing evidencing an intention to repudiate this Deed;
- (e) (**insolvency**) the Credit Union:
 - (i) is unable to pay its indebtedness as it falls due or is presumed to be so under any law;
 - (ii) stops or suspends payment of any of its indebtedness generally or begins negotiations or takes any proceedings to reschedule any of its indebtedness; or
 - (iii) makes, or proposes to make, a general assignment, arrangement, compromise or composition with, or for the benefit of, its creditors in respect of its indebtedness generally;
- (f) (**enforcement**) either:
 - (i) a distress, attachment, execution or other legal process for an amount of or in excess of NZ\$10,000 in aggregate (or its equivalent in other currencies) is levied or enforced on or against assets of the Credit Union and is not discharged or stayed within 14 days; or
 - (ii) a receiver, trustee, manager, administrator or similar officer is appointed in respect of the Credit Union or the whole or any material part of its assets;
- (g) (**liquidation**) an order is made or a resolution is passed for the liquidation of the Credit Union in accordance with the FSCU Act, except for the purpose of and followed by a reconstruction or reorganisation (not involving or arising out of insolvency) on terms approved by the Supervisor before that step is taken;

- (h) (**amalgamation**) the board of a Guaranteeing Subsidiary passes any resolution not previously approved by the Supervisor for or in contemplation of any amalgamation with or involving another company then existing or yet to be formed (unless such amalgamation is of a Guaranteeing Subsidiary with another Guaranteeing Subsidiary);
- (i) (**statutory management**) the Credit Union is declared at risk pursuant to the *Corporations (Investigation and Management) Act 1989*, a statutory manager is appointed to it or any step is taken with a view to any such appointment in respect of it under that Act (including a recommendation by the FMA supporting such an appointment);
- (j) (**cessation of business**) the Credit Union ceases or threatens to cease to conduct all or a substantial part of its business (except where the business of the relevant person is transferred to another Guaranteeing Subsidiary or for the purposes of and followed by an amalgamation or solvent reconstruction on terms approved by the Supervisor);
- (k) (**enforcement of Prior Security Interest**) a Prior Security Interest is enforced; and
- (l) (**cross default**) any indebtedness for borrowed money of the Credit Union of or in excess of NZ\$10,000 in aggregate (or its equivalent in other currencies):
 - (i) is not paid within any applicable grace period or (if no grace period applies) when due; or
 - (ii) becomes due before it would otherwise have been due by reason of any default or event of default (howsoever described) or any facility for financial accommodation or any underwriting facility available to the Credit Union is cancelled or suspended by any person providing it by reason of any default or event of default (howsoever described).

11.2 Consequences of Event of Default

At any time whilst an Event of Default is continuing:

- (a) (**security enforceable**) the Security Interest created under this Deed will become immediately enforceable;
- (b) (**floating charge**) the floating charge created under this Deed will become a fixed charge in accordance with clause 4.2, to the extent that it is not already fixed; and
- (c) (**Supervisor's rights**) the Supervisor may (upon being directed to do so by a Special Resolution) by notice to the Credit Union do any or all of the following:
 - (i) declare all or any part of the Secured Indebtedness to be:
 - (A) due and payable on demand, in which event that Secured Indebtedness will become due and payable on demand; or
 - (B) due and payable, in which event that Secured Indebtedness will become immediately due and payable;
 - (ii) appoint a Receiver pursuant to clause 12; and
 - (iii) (whether or not a Receiver has been appointed) exercise all or any rights which a person would have if appointed as a Receiver under this Deed.

11.3 Co-operation in exercise of power of sale

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

12. Receiver

12.1 Appointment of Receiver

- (a) At any time whilst an Event of Default subsists; or
- (b) if the Credit Union so requests,

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

12.2 Additional rights

At any time on or following the appointment of a Receiver, the Supervisor may:

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

12.3 Remuneration

The Supervisor may, subject to the *Receiverships Act 1993*, determine or vary the remuneration of any Receiver. Such remuneration:

- (a) may be (or may include) a commission;
- (b) is payable by the Credit Union;
- (c) will form part of the Secured Indebtedness; and
- (d) will be secured by the Security Interest created under this Deed.

12.4 Receiver agent of the Credit Union

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

12.5 Receiver's rights

In addition to, and without limiting or affecting, any other rights granted to or conferred on a Receiver (whether under the *Receiverships Act 1993*, at law or otherwise), and subject to the specific terms of appointment of each Receiver, each Receiver has the right in respect of the Secured Property and the Credit Union's business to do anything (whether alone or with any other person) the Credit Union could do as if the Receiver had full legal and beneficial ownership of the Secured Property and carried on the Credit Union's business for the Receiver's own benefit.

12.6 Exercise of Receiver's rights

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

12.7 Event of Default taken to subsist

Each party agrees that if a Receiver is appointed under this Deed on the basis of an Event of Default which subsequently ceases to subsist, the Event of Default is taken to continue to subsist for the purposes of the Receiver's appointment under this document.

12.8 Withdrawal

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

13. Application of amounts

13.1 Proceeds of sale of released assets prior to enforcement

The proceeds of sale of any part of the Secured Property may until the Date of Enforcement, but subject to any terms and conditions imposed by the Supervisor, be applied by the Credit Union for the purpose of carrying on its business.

13.2 Application of proceeds of enforcement

All moneys received by the Supervisor and any Receiver after the Date of Enforcement must (subject to payment of or provision for any debts or liabilities having priority to the Securities) be held and applied:

- (a) **(first)** (subject to any order made by any court) in payment or retention of all costs charges expenses and liabilities incurred and payments made by or on behalf of the Supervisor or any Receiver under this Deed or any collateral security and of all remuneration payable to the Supervisor or any Receiver under this Deed with interest as provided in this Deed;
- (b) **(secondly)** in or towards payment to the Members equally in proportion to the amounts owing whether actually or contingently to them of the Principal and Interest in respect of their Shares;
- (c) **(thirdly)** in or towards payment of the holders of any subsequent encumbrances;
- (d) **(fourthly)** in or towards payment to the Members equally in proportion to the amounts owing actually or contingently to them of the Principal and Interest in respect of their Credit Union Securities; and
- (e) **(fifthly)** in payment of the surplus (if any) of such moneys to the Credit Union or such other person or persons as the High Court of New Zealand on the application of the Supervisor may direct.

13.3 Order of payment of Principal and Interest

All moneys available for payment to Members under clause 13.2 will be applied first on account of Interest and secondly on account of Principal. However if the Supervisor considers it expedient and in the interests of Members generally or the Members by Special Resolution so direct, the whole or any part of the Principal may be paid before any payment is made on account of Interest.

13.4 Supervisor's powers to postpone distribution

If the amount of the money at any time available under clause 13.2 for payment of Principal of the Securities is less than 10% of the amount of the Securities, the Supervisor may invest those moneys in any investments authorised under this Deed until such investments and income from them together with any other funds for the time being under the control of the Supervisor and applicable for the purpose amount to a sum sufficient to pay 10% of the amount of such Securities.

13.5 Notice of distribution

The Supervisor must give not less than 14 days' notice to Members of the day, place and time fixed for any payment to them under clause 13.2. After the day so fixed (unless the Supervisor fails to make payment in which case interest will run until payment is actually made or effected) Members are entitled to Interest on the balance only (if any) of the Principal owing on the Securities held by them after deducting the amount (if any) payable on the day so fixed.

14. Supervisor's fees, expenses and indemnities

14.1 Fees

The Credit Union must pay to the Supervisor the fees from time to time agreed by them in writing, plus goods and services tax (if any).

14.2 Expenses

The Credit Union must pay or cause to be paid all expenses (including legal fees on a full indemnity basis and travelling expenses) reasonably incurred by or on behalf of the Supervisor in connection with:

- (a) the preparation, execution and (if applicable) registration of this Deed, and any deed which supplements this Deed and each Offer Document relating to the Securities;
- (b) the exercise of any power by the Supervisor, including the taking of any expert advice deemed reasonably necessary or expedient by the Supervisor in connection with the exercise of the powers conferred on the Supervisor by this Deed;
- (c) the convening and holding, and carrying out of any directions or resolutions, of any meeting of Members in accordance with the terms and conditions of this Deed in respect of the Securities; and
- (d) any waiver, consent or other action requested by the Credit Union.

14.3 Enforcement

The Credit Union must pay all expenses (including legal fees on a full indemnity basis and travelling expenses) properly incurred by the Supervisor in connection with the enforcement or preservation of, or attempted enforcement or preservation of, any right under this Deed or otherwise in the exercise of any power in relation to the Securities. This includes taking any expert advice deemed reasonably necessary or expedient by the Supervisor.

14.4 Indemnity by Credit Union

Subject to clause 18.1 and any limitations placed on rights of indemnity by the FMC Act, without prejudice to the right of indemnity by law given to supervisors or trustees, the Credit Union must indemnify the Supervisor (and each of its officers, directors, employees and agents) for all expenses, losses and liabilities (and for the avoidance of doubt excluding income tax on the Supervisor's remuneration) reasonably sustained or incurred in relation to the proper performance of its duties under this Deed or at law or otherwise for any action taken, or omitted to be taken, in accordance with the provisions of this Deed in relation to the Securities, other than a claim arising out of a wilful default, gross negligence or wilful breach of trust by the Supervisor.

14.5 Indemnity for Supervisor

The Supervisor is not required to take any action or exercise any power or comply with any request or direction pursuant to this Deed (whether or not it is expressed to be bound to do so) unless it has first been indemnified to its satisfaction against all reasonable expenses and liabilities it may reasonably sustain or incur by so doing.

14.6 Payments

The fees, expenses, indemnities and other amounts payable under this Deed to the Supervisor (excluding for the avoidance of doubt amounts payable in respect of the Securities) form part of the Secured Indebtedness and are payable by the Credit Union:

- (a) at the times agreed, or
- (b) in the absence of agreement, on demand.

14.7 Indemnities generally

Each indemnity in this Deed is:

- (a) a continuing obligation, separate and independent from other obligations under this Deed; and
- (b) subject to the limitations placed on an indemnity for the Supervisor by the FMC Act.

14.8 Other securities

This Deed is in addition to, and will not prejudicially affect or be prejudicially affected by, any guarantee or security, or any other right, which the Supervisor may have in respect of any Secured Indebtedness.

14.9 Other recoveries

The Supervisor, in its absolute discretion, may appropriate any amount received or recovered by it from the Credit Union or any other person in or towards payment of other indebtedness of the payer to the Supervisor, in preference to applying that amount in reduction of the Secured Indebtedness.

15. Supervisor's functions, powers and duties

15.1 Supervisor's functions

The Supervisor is responsible for the following functions:

- (a) acting on behalf of Members in relation to:
 - (i) the Credit Union;
 - (ii) any matter connected with this Deed or the terms of the Securities; and
 - (iii) any contravention or possible contravention of the Credit Union's 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 amounts of the Securities as they become due;
- (c) reporting contraventions or possible contraventions of the Credit Union's issuer obligations to the FMA and advising the FMA of the steps (if any) that the Supervisor intends to take in respect of the contravention or possible contravention, including in relation to the date by such steps are to be taken;
- (d) reporting serious financial problems of the Credit Union to the FMA where required by the FMC Act; and

- (e) performing or exercising any other functions, duties, and powers conferred or imposed on the Supervisor by applicable law or this Deed.

15.2 Supervisor's powers

- (a) The powers, authorities and discretions conferred on the Supervisor by this Deed are in addition to any powers, authorities and discretions which may from time to time be vested in supervisors or trustees by law in relation to the Securities and to any powers, authorities and discretions which may from time to time be vested in the Supervisor as the holder of any Security.

- (b) The Supervisor has the following powers and duties:

- (i) **(Applications to court)** If, after due inquiry:

- (A) the Supervisor is of the opinion that the Credit Union is unlikely to be able to pay any amounts payable in relation to a Security as and when due;
- (B) the Supervisor is of the opinion the Credit Union is insolvent;
- (C) the Supervisor is of the opinion that the financial position, the security of benefits, or management of the Credit Union is inadequate;
- (D) the Supervisor is of the opinion that the provisions of this Deed are no longer adequate to give protection to the interests of any of the relevant Members;
- (E) the Supervisor is of the opinion that there is a significant risk that the interests of Members will be materially prejudiced for any reason; or
- (F) whenever the Supervisor, acting reasonably, considers it in the best interests of Members having regard to any other powers or remedies available to it under this Deed or at law for the protection of the interests of that Members and to all other circumstances relevant to the general interests of that Members,

then:

- (G) the Supervisor may apply to the court pursuant to section 207 of the FMC Act for an order that its powers be exercised under the direction of the court or for directions or any other order in relation to the extent of, or the carrying out of, its powers or for any other order under section 208 of the FMC Act; and
- (H) it may support or oppose any application to the court made by or on behalf of any Member.

The Supervisor is indemnified by the Credit Union against all expenses incurred in relation to any such application or proceedings, provided that the Supervisor must consult with the Credit Union prior to making any such application before the Date of Enforcement.

- (ii) **(Material breach)** If any breach of this Deed occurs which the Supervisor reasonably considers is likely to be materially prejudicial to the interests of any Member, the Supervisor may in its absolute discretion:

- (A) require the Credit Union to promptly report to the affected Members the circumstances and the nature of such breach and any other relevant information concerning the Credit Union which the Supervisor has received

in relation to this Deed and which it reasonably considers to be material to those Members; and

- (B) invite those Members to indicate to the Supervisor their preferences as to any exercise or non exercise of any Supervisor Power. If the Credit Union fails to give that report the Supervisor may do so itself.
- (iii) **(Investment)** Any money held by the Supervisor which is subject to the trusts created by this Deed may, at the Supervisor's discretion, be invested in the name of the Supervisor or its nominee in any investment whatsoever, with power to vary those investments and from time to time to deal with or dispose of them. The income arising from all such investments made by the Supervisor will belong to the person in respect of whom such money is held by the Supervisor.
- (iv) **(Guaranteeing Subsidiaries)** The Supervisor may at its discretion require that any Subsidiary must be a Guaranteeing Subsidiary.
- (v) **(Power to remedy breach)** The Supervisor's powers to remedy any breach of this Deed are subject to any other provision of this Deed which is inconsistent with the exercise of such powers.
- (vi) **(Power to require withdrawal of Offer Document)** The Supervisor may, if it forms the view that any Offer Document has become misleading or deceptive, require the Credit Union to withdraw that Offer Document until such time as the Offer Document is no longer misleading or deceptive.
- (vii) **(Supervisor attendance)** A representative of the Supervisor may:
 - (A) attend any meeting of the Members; and
 - (B) be heard at any meeting of the Members that he or she attends on any part of the business of the meeting that concerns the Supervisor as a supervisor or trustee or the Members for whom it is Supervisor.
- (viii) **(Appointment of experts)** The Supervisor may, in the performance of its functions, engage an expert (for example, an auditor, investigating accountant, valuer, actuary or legal adviser) if the Supervisor considers, on reasonable grounds, that it requires the assistance of the expert to:
 - (A) determine the financial position of the Credit Union, or
 - (B) review the business, operation, or management systems, or the governance, of the Credit Union,and if the Supervisor engages an expert under this clause, the Credit Union must:
 - (C) provide all reasonable assistance to allow the expert to provide the assistance to the Supervisor under this clause; and
 - (D) pay the fees and expenses of the expert, which must be reasonable in the circumstances.

15.3 Supervisor's duties

- (a) The Supervisor must:
 - (i) act honestly in acting as a supervisor;
 - (ii) in exercising its powers and performing its duties as a supervisor, act in the best interests of Members;

- (iii) exercise reasonable diligence in carrying out its functions as a supervisor;
- (iv) do all the things it has the power to do to cause any contravention referred to in clause 15.1(a)(iii) to be remedied (unless it is satisfied that the contravention will not have a material adverse effect on Members); and
- (v) subject to any order of the court made under section 210 of the FMC Act, act in accordance with any direction given by a Special Resolution that is not inconsistent with any enactment, rule of law or this Deed in relation to:
 - (A) seeking a remedy to a contravention referred to in clause 15.1(a)(iii); or
 - (B) any other matter connected with the Supervisor's functions.
- (b) The Supervisor is not liable for anything done, or omitted to be done, in good faith in giving effect to a direction to it by the Members.

16. Exercise of Supervisor's powers

16.1 Standard of care

The Supervisor must, 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 supervisor licensed under the FM Supervisors Act would exercise in the same circumstances.

16.2 Discretion

Except as otherwise expressly provided in this Deed, the Supervisor:

- (a) has absolute and uncontrolled discretion as to the exercise or non-exercise of its powers and as to the conduct of any action, proceeding or claim (provided it has acted with reasonable care and diligence); and
- (b) may refrain from exercising any Supervisor Power until directed by Special Resolution of Members to do so.

16.3 Reliance

The Supervisor may, without liability for loss, obtain, accept and act on, or decline and elect not to act on:

- (a) any communication or document (including any fax or email) reasonably believed by it to be genuine and correct;
- (b) any resolution which the Supervisor reasonably believes to have been properly passed at any meeting of Members;
- (c) advice and statements of lawyers, accountants and other experts reasonably selected by it or by the Credit Union;
- (d) a certificate signed by or on behalf of the Credit Union as to any matters of fact which might reasonably be expected to be within the knowledge of the Credit Union or that any particular transaction, step or thing is expedient or commercially desirable and not detrimental to the interests of Members generally, as sufficient evidence of such fact or the expediency or desirability of such transaction, step or thing; and
- (e) the statements contained in any certificate or certificates or in any report or reports given pursuant to the provisions of this Deed, as conclusive evidence of the facts stated.

16.4 Delegation

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

- (a) delegate at any time to any person any of its powers under this Deed (including the giving of power to sub-delegate) which cannot conveniently be exercised by it or through its employees, upon any terms and conditions it thinks fit, provided any such delegation will not relieve the Supervisor of its responsibilities under this Deed; and
- (b) authorise any person as it thinks fit to act as its representative at any meeting.

The Supervisor must not delegate any of its functions under clause 15.1 (except as expressly permitted by the FMC Act or as permitted by, and then subject to, conditions imposed under the FM Supervisors Act).

16.5 Supervisor's consent

The Supervisor may give any consent for the purposes of this Deed on such terms and conditions (if any) as the Supervisor reasonably thinks fit.

16.6 Members' money

The Supervisor is not responsible for monitoring the application by the Credit Union of the money paid by Members as subscription moneys for Securities.

16.7 Fiduciary relationship

The Supervisor and any of its related companies and officers may (without having to account to the Credit Union or any Member) engage in any kind of business with the Credit Union and its Related Persons and may accept fees or other consideration for services without having to account to the Members.

16.8 Binding on all Members

Any action taken by the Supervisor in accordance with this Deed is binding on all of the Members or all of the relevant Members (as the case may be).

16.9 No obligation to consult

Except where expressly required otherwise in this Deed, the Supervisor is not obliged to consult with Members before giving any consent, approval or agreement or making any determination under this Deed.

16.10 Knowledge of default

Without limiting its obligations under the FMC Act or the FM Supervisors Act, the Supervisor:

- (a) may assume that the Credit Union is complying with this Deed; and
- (b) is not taken to have knowledge of the occurrence of an Event of Default,

unless any of its officers having responsibility for the transaction actually become aware of the relevant non-compliance or Event of Default or the Supervisor has received written notice from a Member or the Credit Union stating that the non-compliance or Event of Default has occurred and describing it.

17. Replacement of Supervisor

17.1 Removal or resignation of Supervisor

Subject to the appointment and acceptance of a new Supervisor as provided in this clause 17 and any requirements under law, the Supervisor will cease to hold office as Supervisor if:

- (a) it is removed by the FMA or the Credit Union under Part 2 of the FM Supervisors Act;

- (b) the Members remove the Supervisor from office by giving not less than 20 days' written notice to the Credit Union and Supervisor following the passing of a Special Resolution to that effect;
- (c) the Supervisor resigns by giving not less than 90 days' written notice to the Credit Union;
or
- (d) the Credit Union removes the Supervisor from office by giving not less than 90 days' written notice to the Supervisor.

17.2 Limitations on removal or resignation

The Supervisor:

- (a) may not be removed or resign unless:
 - (i) all functions and duties of the position have been performed;
 - (ii) another supervisor licensed under the FM Supervisors Act has been appointed, and accepted in the appointment, in its place; or
 - (iii) the court consents; or
- (b) may be removed by the Credit Union with the consent of the FMA where permitted under the FMC Act.

17.3 Special appointment of a new Supervisor

Upon such a notice of resignation or removal being given, the Credit Union may appoint a new Supervisor, which must be a person who is authorised to act as a supervisor under section 103 of the FMC Act and the FM Supervisors Act.

17.4 Failure to appoint Supervisor

- (a) If a new Supervisor has not been appointed by the Credit Union or has not accepted an appointment within 60 days after any such notice, then the retiring Supervisor may, on behalf of the Credit Union, appoint a new Supervisor.
- (b) In circumstances where the new Supervisor requires approval by a Special Resolution, any failure of the Credit Union to appoint or have approved a new Supervisor will entitle the Members, by a Special Resolution, to appoint a new Supervisor.

17.5 Successor Supervisor

Where an appointment under this clause 17 is accepted by a new Supervisor:

- (a) the new Supervisor will succeed to, and become vested with, all the rights, powers and obligations of the retiring Supervisor and, as from that time, the retiring Supervisor will be discharged from its rights, powers and obligations;
- (b) the retiring Supervisor must transfer to the new Supervisor all moneys, investments, property and books held by the Supervisor under this Deed;
- (c) the new Supervisor must execute all such documents which are necessary or appropriate and in such form as may be reasonably required by any relevant party such that the new Supervisor is bound by all the covenants on the part of the Supervisor from the date of such appointment. Any appointment of a new Supervisor has no effect until such documents are executed by the new Supervisor; and
- (d) the Credit Union must execute all such documents which are necessary or appropriate and in such form as may be reasonably required by the retiring Supervisor, so that the retiring Supervisor is indemnified to its satisfaction in respect of the effectiveness of its retirement and any actions of the new Supervisor.

17.6 Notice

The Credit Union agrees to:

- (a) notify all Members of the appointment of any new Supervisor as soon as reasonably practicable following the appointment; and
- (b) make such notifications of the appointment of the new Supervisor as are required under the FMC Act and any other legislation.

18. Liability of Supervisor

18.1 Supervisor not indemnified

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

- (a) act honestly in acting as a supervisor;
- (b) in exercising its powers and performing its duties as a supervisor, act in the best interests of Members;
- (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 supervisor licensed under the FM Supervisors Act would exercise in the same circumstances.

18.2 Duty of care

Notwithstanding any other provision of this Deed, the Supervisor does not assume any duty of care to the Credit Union, any creditors of the Credit Union or any person other than the Members (subject to and in accordance with this Deed) in exercising the Supervisor Powers. The Supervisor is not liable to any person (including the Credit Union and any Member or Enterprise) in any way except for wilful default, gross negligence or wilful breach of trust where the Supervisor has failed to show the degree of care and diligence required of it having regard to the provisions of this Deed.

19. Appointment of Auditor

19.1 Consultation with Supervisor

The Credit Union must:

- (a) before recommending the appointment or reappointment of a person as an Auditor:
 - (i) consult with the Supervisor on the appointment or reappointment; and
 - (ii) 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;
- (b) 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
- (c) 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.

19.2 Specified engagement

The Credit Union must, before recommending the appointment or reappointment of a person as the Auditor:

- (a) 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
- (b) consult with the Supervisor on the nature and scope of any such engagement.

19.3 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:

- (a) 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;
- (b) 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;
- (c) that the Auditor will, at the request of the Supervisor, provide the Supervisor with any information relating to the Credit Union that the Supervisor requests, that is within the Auditor's knowledge, and that is, in the Auditor's opinion, relevant to the exercise or performance of the Supervisor Powers or other duties of the Supervisor; and
- (d) that the Auditor will report serious problems in relation to the Credit Union as required by section 199 of the FMC Act.

20. Meetings of Members

20.1 Credit Union may convene meeting

Without affecting the rights or obligations of the Credit Union to convene a meeting of all Members or any class of Members under the FSCU Act or the Rules, the Credit Union may convene a meeting of all Members or any class of Members under this Deed at any time and must do so whenever required by law.

20.2 Request of the Supervisor or Members

The Credit Union must summon a meeting of the Members or any class of Members upon the request in writing of the Supervisor, or of not less than 5% of the number of Members who hold Securities on issue (or such other percentage as required by law), at the date of the request, in accordance with section 120 of the FMC Act.

20.3 Proceedings of meetings held under the FMC Act

Meetings of Members convened in accordance with the FMC Act must be convened and held in accordance with the procedure set out in Schedule 1. Where a meeting of Members is to be held at the same time as a meeting under the Rules, if the procedure set out in Schedule 1 conflicts with the provisions as to meetings set out in the Rules, the Rules will prevail (unless the Credit Union and the Supervisor agree otherwise).

20.4 Resolution in lieu of meeting

A written resolution is as valid as if it had been passed at a meeting of Members, in accordance with regulation 78 of the FMC Regulations.

21. Protections

21.1 Notice, demand or lapse of time required by law

If a notice, demand or lapse of time is required by law before the Supervisor can exercise any right, power, authority, discretion, remedy or privilege conferred on the Supervisor, a Receiver or an Attorney under this Deed, or by law or equity (in these clauses 21 and 22, a **Power**), then for the purposes of the charge created under this Deed:

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

21.2 Supervisor, Receiver not restricted

The Supervisor or a Receiver need not:

- (a) exercise a Power, give a consent or make a decision under this Deed; or
- (b) resort to a collateral security or Power before resorting to any other of them.

21.3 Supervisor, Receiver not mortgagee in possession or liable

To the extent permitted by law, none of the Supervisor, a Receiver nor any Attorney will:

- (a) be, nor account or be liable as, mortgagee in possession due to exercise of a Power; or
- (b) be liable to anyone for any loss in relation to an exercise or attempted exercise of a Power, or a failure or delay in exercising a Power.

21.4 Protection of Supervisor, Receiver and Attorney

Neither the Supervisor, nor any Receiver or Attorney is:

- (a) accountable for any proceeds of enforcement other than those proceeds actually received by it;
- (b) obliged to enforce payment of the Secured Indebtedness or compliance with the Secured Obligations;
- (c) liable in respect of any conduct or delay in the exercise, manner of exercise, attempted exercise, or non-exercise of any right by the Supervisor or a Receiver;
- (d) liable to account as mortgagee in possession in respect of the Secured Property; or
- (e) liable for any loss resulting from, or consequential on, any of the matters set out in clauses 21.4(a) to (d).

21.5 No marshalling or merger

The Supervisor is not required to marshal, enforce, apply, appropriate, recover or exercise any security, guarantee or other entitlement held by it or any assets which it holds or is entitled to receive.

21.6 Protection of third parties

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

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

22. General security provisions

22.1 Security continuing and independent

- (a) Each of this Deed and the Security Interest created under it:
 - (i) is in addition to and enforceable independently of any other Security Interest or guarantee; and
 - (ii) shall remain in full force and effect until the execution by the Supervisor and delivery to the Credit Union of an unconditional release of this Deed, despite any intermediate payment, discharge, settlement, release or other matter.
- (b) The Credit Union's obligations under this Deed continue despite any partial release of Secured Property.

22.2 Release

The Credit Union shall not be entitled to be released from its obligations and liabilities under this Deed nor to have any Secured Property released from this Deed, unless the Supervisor is satisfied that the Secured Indebtedness has been irrevocably paid.

22.3 Reinstatement

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

- (a) each Power and the Credit Union's liability will be what it would have been, and will continue, as if the payment or transaction the subject of the Avoidance had not occurred; and
- (b) the Credit Union will immediately execute and do anything required by the Supervisor to restore the Supervisor to its position immediately before the Avoidance.

This clause 22.3 survives any termination or full or partial discharge or release of this Deed.

23. Power of attorney

23.1 Appointment

For the purpose of enabling the Supervisor to obtain the full benefit of this Deed, to the extent permitted by law, the Credit Union irrevocably appoints the Supervisor, every officer of the Supervisor and every Receiver, separately, for valuable consideration, to be the attorney of the Credit Union with power to:

- (a) at any time while an Event of Default is subsisting, do anything which the Credit Union agrees to do under the provisions of this Deed or which, in the Attorney's opinion, is necessary to give effect to any right, power or remedy conferred on the Supervisor by this Deed, by law or otherwise;
- (b) at any time while an Event of Default is subsisting:
 - (i) sign any transfer of, and transfer, the Secured Property to any person on a sale;
 - (ii) commence, prosecute, settle and compromise actions or proceedings relating to the Secured Property; and
 - (iii) exercise any other rights, powers or remedies which the Credit Union may have as the holder or owner of the Secured Property;
- (c) delegate its rights (including this right of delegation) to any person for any period (and to revoke any such delegation); and
- (d) appoint any person its agent for any period (and to revoke any such appointment).

23.2 Ratification

The Credit Union agrees to ratify everything done by an Attorney, or by any delegate or agent of any Attorney, in accordance with this clause 23.

24. PPSA

24.1 Waiver and section 109 of the PPSA

Without limiting any other provision of this Deed, the Credit Union:

- (a) (**waiver**) waives its right to receive any verification statement in respect of any financing statement or financing change statement relating to any Security Interest created under this Deed; and
- (b) (**section 109**) agrees that, at any time whilst an Event of Default subsists, the Supervisor may:
 - (i) take possession of any Personal Property; and/or
 - (ii) dispose of any Personal Property in such manner and generally on such terms and conditions as the Supervisor thinks desirable,
 and otherwise do anything that the Credit Union could do in relation to the Personal Property.

24.2 Part 9 of the PPSA and additional rights

The Credit Union and the Supervisor agree that, to the extent permitted by law and in respect of this Deed and each Security Interest created under this Deed:

- (a) the Credit Union and the Supervisor contract out of sections 114(1)(a), 133 and 134 of the PPSA; and
- (b) the Credit Union and the Supervisor contract out of the Credit Union rights to (and the Credit Union waives its rights 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 Personal 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) be reimbursed for damage caused when the Supervisor (or any person on its behalf) removes an accession under section 126 of the PPSA;
- (vi) refuse permission to remove an accession under section 127 of the PPSA;
- (vii) receive notice of the removal of an accession under section 129 of the PPSA; and
- (viii) apply to the court for an order concerning the removal of an accession under section 131 of the PPSA.

24.3 Other rights

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

24.4 Repossession of consumer goods

Where any Secured Property constitutes "consumer goods" under the *Credit Contracts and Consumer Finance Act 2003*, nothing in this Deed shall have the effect of contracting out of Part 3A of the *Credit Contracts and Consumer Finance Act 2003* to the extent that this is prohibited by law.

25. Notices

25.1 Notice to Member

Any notice to be given to any 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 Security by giving the notice to any of them. Where a notice is sent by post, service of the notice will be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice. If the notice is posted to an address in New Zealand it will be deemed to be served on the third day following the day of posting. If posted to an address outside New Zealand, the notice will be deemed to be served on the tenth day following the date of posting.

25.2 Notice to manager, legal representative etc

A notice may be given to the manager of a mentally disordered person, or the persons entitled to a Security in consequence of the death or bankruptcy of a Member, by sending it by post in a prepaid letter addressed to them by name, or to the title of the manager of the mentally disordered person, or the legal representatives of the deceased, or the assignee of the bankrupt, at the address, if any, supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been supplied) by giving the notice in any manner in which it might have been given if the mental disorder, death or bankruptcy had not occurred.

25.3 Notice where no address

If any Member has no registered address and has not supplied to the Credit Union an address for the giving of notices, or if any two notices sent to a Member are returned to the Credit Union on consecutive occasions, then, despite anything contained elsewhere in this Deed, until the Member gives notice in writing to the Credit Union of some other address, the address of the Member for all purposes of this Deed will be deemed to be the registered office of the Credit Union.

25.4 Calculation of notice period

Where a specified number of days' notice is required to be given, the day on which it is served or deemed to be served and, in the case of a notice of meeting, the day for which it is given, will be excluded in calculating such number of days.

25.5 Notice to the Credit Union or the Supervisor

Any notice, communication or information required by this Deed to be given to the Credit Union by the Supervisor, or to the Supervisor by the Credit Union, must be in writing and be signed by a duly authorised officer of the party giving the notice provided that the Credit Union and the Supervisor may agree in writing that certain notices or communications may be given by Electronic Communication.

25.6 Copy of notice to Members

The Credit Union must give a copy of every notice given to Members under this Deed to the Supervisor at the same time it is given to the Members.

26. Changes to Deed

26.1 Changes by written instrument

Subject to this clause 26, the Credit Union and the Supervisor may amend or replace this Deed by signing a written instrument.

26.2 Limitations on changes

An amendment or replacement of this Deed has no effect unless made:

- (a) with the consent of the Supervisor (subject to clause 26.3);
- (b) by the Credit Union with the consent of the FMA if the FMA is satisfied that it is necessary to enable this Deed to comply with subpart 1 of part 4 of the FMC Act or any other enactment or rule of law; or
- (c) under an express power in the FMC Supervisors Act or any other power to amend or replace this Deed under an enactment.

26.3 Restrictions on Supervisor's consent

The Supervisor must not consent to an amendment to, or a replacement of, the Deed unless:

- (a) either:
 - (i) the amendment or replacement is approved by, or is contingent on approval by, a Special Resolution of Members or each class of Members that is or may be adversely affected by the amendment or replacement; or
 - (ii) the Supervisor is satisfied that the amendment or replacement does not have a material adverse effect on Members; and
- (b) the Supervisor certifies to that effect and certifies, or obtains a certificate from a lawyer, that the Deed, as amended or replaced, will comply with the requirements of the FMC Act on the basis set out in the certificate.

27. Other matters

27.1 Registration of Deed

The Credit Union must promptly at its own cost register, as and when necessary, and must pay costs and expenses incidental to this Deed including the cost of its preparation.

27.2 Invalidity

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

27.3 Counterparts

This Deed may be executed in any number of counterparts (including facsimile or email copies) which, when taken together, will constitute one and the same instrument.

27.4 PLA exclusions

The Credit Union agrees that:

- (a) the covenants set out in clauses 1(3), 2, 3, 4, 5, 6, 7, 8(2), 10, 11, 12, 13, 15, 16, 17, 18, 19 and 20 of Part 1 of schedule 2 to the *Property Law Act 2007* are excluded from this Deed and, to the extent that a mortgage of Real Property (**Mortgage**) secures any Secured Indebtedness, from that Mortgage;
- (b) the covenants set out in clauses 1(3), 2, 3, 4, 5, 6(2), 7, 8, 9, 10, 11, 12 and 13 of Part 2 of schedule 2 to the *Property Law Act 2007* are excluded from this Deed; and
- (c) if there is any conflict between any provision of this Deed and schedule 2 to the *Property Law Act 2007*, the provision of this Deed will apply.

27.5 Privity of contract

For the purposes of the *Contract and Commercial Law Act 2017*, each Receiver and each Attorney may enforce against the Credit Union any provision of this Deed which confers a benefit on a Receiver or Attorney (as the case may be). However, none of them needs to consent to any amendment made to this Deed.

27.6 Delivery

For the purposes of section 9 of the *Property Law Act 2007*, and without limiting any other mode of delivery, this Deed will be delivered by a party (**Delivering Party**), immediately on the earlier of:

- (a) physical delivery of an original of this Deed (or a counterpart of it), executed by that Delivering Party, into the custody of the other parties or the other parties' solicitors; and
- (b) transmission by that Delivering Party or its solicitors (or any other person authorised in writing by the Credit Union) of a facsimile or scanned copy of an original of this Deed (or a counterpart of it), executed by that Delivering Party, to the other parties or the other parties' solicitors.

27.7 Governing law

This Deed is governed by and must be interpreted in accordance with New Zealand law.

Signing page

EXECUTED as a Deed

SIGNED by xxx in the presence of:

Signature of witness

Name of witness

Occupation of witness

City/town of residence

Signature of

SIGNED by xxx in the presence of:

Signature of witness

Name of witness

Occupation of witness

City/town of residence

Signature of

SIGNED by xxx in the presence of:

Signature of witness

Name of witness

Occupation of witness

City/town of residence

Signature of

Signed for and on behalf of **TRUSTEES
EXECUTORS LIMITED** by:

Authorised signatory

Authorised signatory

Name of authorised signatory

Name of authorised signatory

Witness to both signatures

Name of witness

Occupation

City/town of residence

Draft

Schedule 1– Proceedings

1. Chairperson

- (a) The Supervisor may appoint the chairperson of any meeting called in accordance with clause 20.2 of this Deed.
- (b) Subject to clause 1(a) of this schedule, the Credit Union may appoint the chairperson of the meeting if:
 - (i) no chairperson has been appointed by the Supervisor;
 - (ii) at the meeting, the chairperson appointed by the Supervisor is not present within 15 minutes of the time appointed for the start of the meeting; or
 - (iii) there is no Supervisor.

2. Notice of meetings

- (a) The Credit Union must ensure that written notice of the time and place of a meeting of Members is sent to the following at least 14 days before the meeting:
 - (i) every Member entitled to receive notice of the meeting;
 - (ii) the Supervisor; and
 - (iii) every Director and the Auditor.
- (b) The notice 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.
- (c) If a Special Resolution is to be submitted to the meeting:
 - (i) a draft of the proposed notice of the meeting (including any explanatory memorandum under clause 2 of this schedule) must be given to the Supervisor at least 10 Business Days before the notice is given under subclause (a) (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 subclause (a), or any lesser period approved by the Credit Union).
- (d) An irregularity in a notice of a meeting is waived if:
 - (i) all the 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.

- (e) 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.
- (f) If a meeting of Members 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.

3. Methods of holding meetings

A meeting of Members may be held by a quorum of the Members:

- (a) being assembled together at the time and place appointed for the meeting; or
- (b) participating in the meeting by means of audio, audio and visual, or Electronic Communication; or
- (c) by a combination of both of the methods described in subclauses (a) and (b).

4. Quorum

- (a) No business may be transacted at a meeting of Members if a quorum is not present.
- (b) A quorum for a meeting of Members at which a Special Resolution is to be submitted is present if, in relation to holders of Securities, Members or their proxies are present or have cast votes under clause 10 of this Schedule who represent no less than 15 Members who are entitled to vote, or such other quorum as may be prescribed by applicable law.
- (c) In subclause (b), entitled to vote means entitled to vote on the business to be transacted by the meeting.
- (d) A quorum for any other business at a meeting of Members is present if at least 2 Members or their proxies (or any higher quorum set by this Deed) are present.
- (e) Despite subclause (a), if a quorum is not present within 30 minutes after the time appointed for the meeting:
 - (i) in the case of a meeting called under section 120(1)(c) of the FMC Act, the meeting is dissolved; and
 - (ii) in the case of any other meeting, the meeting is adjourned to the day that is 10 Business Days after the date appointed for the meeting at the same time and place, or to such other date, time, and place as the Supervisor the Credit Union may appoint, and, subject to this Deed, if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the Members or their proxies present are a quorum.
- (f) To avoid doubt, a Member participating in a meeting by means of audio, audio and visual, or Electronic Communication is present at the meeting and part of the quorum.

5. Member participation by electronic means

- (a) For the purposes of this schedule, a Member, or the Member's proxy or representative, may participate in a meeting by means of audio, audio and visual, or Electronic Communication if:
 - (i) the Supervisor approves those means; and
 - (ii) the Member, proxy, or representative complies with any conditions imposed by the Supervisor in relation to the use of those means (including, for example,

conditions relating to the identity of the Member, proxy, or representative and that person's approval or authentication (including electronic authentication) of the information communicated by electronic means).

- (b) To avoid doubt, participation in a meeting includes participation in any manner specified in this schedule or permitted by this Deed.

6. Voting

- (a) In the case of a meeting of Members held under clause 3(a) of this schedule unless a poll is demanded, voting at the meeting must be by whichever of the following methods is determined by the chairperson of the meeting:
 - (i) voting by voice; or
 - (ii) voting by show of hands;
 - (iii) electronic voting, if approved by the Supervisor.
- (b) In the case of a meeting of Members held under clause 3(b) or 3(c) of this schedule, unless a poll is demanded, voting at the meeting must be by any method permitted by the chairperson of the meeting.
- (c) However, in the case of a vote on a Special Resolution, a poll must be taken.
- (d) A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 7 of this schedule.
- (e) The chairperson of a Members' meeting is not entitled to a casting vote.

7. Who may demand poll and how poll is taken

- (a) At a meeting of Members, a poll may be demanded by:
 - (i) the Supervisor; or
 - (ii) Members who are entitled to request a meeting to be called under section 120 of the FMC Act; or
 - (iii) the chairperson of the meeting.
- (b) A poll may be demanded either before or after the vote is taken on a resolution.
- (c) For the purposes of this clause, the instrument appointing a proxy to vote at a meeting confers authority to demand or join in demanding a poll and a demand by a person as proxy for a Member has the same effect as a demand by the Member.
- (d) If a poll is taken, each member has 1 vote.

8. When entitlement to receive notice of meeting and to vote is determined

- (a) A Member's entitlement to receive a notice of meeting and to vote under this schedule must be determined by reference to the Member's eligibility to vote under the Rules and to the Member's holdings as recorded in the Register as at the close of the record date for the purposes of the meeting.
- (b) The record date for the purposes of a meeting is:

- (i) a date determined in accordance with the governing document; or
- (ii) if no date is determined under subparagraph (i), the day immediately preceding the day on which the notice of meeting is sent under clause 2(a) of this schedule.

9. Proxies

- (a) A Member may exercise the right to vote either by being present in person or by proxy.
- (b) A proxy for a Member is entitled to attend and be heard at a meeting of Members as if the proxy were the Member.
- (c) A proxy must be appointed by notice in writing signed by or, in the case of an electronic notice, sent by the Member and the notice must state whether the appointment is for a particular meeting or a specified term.
- (d) No proxy is effective in relation to a meeting unless a copy of the notice of appointment is received by the Credit Union at an address specified in the Credit Union's proxy appointment form (or otherwise as permitted by that form) by the time specified in that form before the start of the meeting (which must be less than 48 hours before the start of the meeting).
- (e) However, a proxy is effective despite a failure to comply with a requirement in subclause (d) if the person who is authorised to receive and count the votes at the meeting waives the requirement.

10. Votes sent by post, email, or other electronic means

- (a) A Member may, in accordance with this clause, exercise the right to vote at a meeting by casting a postal vote, a vote by email, or a vote using any other electronic means permitted by the Supervisor.
- (b) The notice of a meeting at which Members are entitled to cast a vote under this clause must state the name of the person authorised by the Supervisor to receive and count those votes at that meeting.
- (c) If no person has been authorised to receive and count those votes at a meeting, or if no person is named as being so authorised in the notice of the meeting, the Supervisor is deemed to be so authorised.
- (d) A Member may cast a vote under this clause on all or any of the matters to be voted on at the meeting by sending a notice of the manner in which the Member's Securities are to be voted to a person authorised to receive and count those votes at that meeting. The notice must reach that person not less than 48 hours before the start of the meeting.
- (e) It is the duty of a person authorised to receive and count votes under this clause at a meeting:
 - (i) to collect together all of those votes received by him or her or by the Credit Union; and
 - (ii) in relation to each resolution to be voted on at the meeting, to count:
 - (A) the number of Members voting in favour of the resolution and the number of votes cast by each Member in favour of the resolution; and
 - (B) the number of Members voting against the resolution and the number of votes cast by each Member against the resolution;

- (iii) to sign a certificate that he or she has carried out the duties set out in subparagraphs (i) and (ii) and that sets out the results of the counts required by subparagraph (ii); and
 - (iv) to ensure that the certificate required by subparagraph (iii) is presented to the chairperson of the meeting.
- (f) If a vote is taken at a meeting on a resolution on which votes under this clause have been cast, the chairperson of the meeting must:
 - (i) on a vote by show of hands, count each Member who has submitted a vote under this clause for or against the resolution; or
 - (ii) on a poll, count the votes cast by each Member who has submitted a vote under this clause for or against the resolution.
- (g) The chairperson of a meeting must call for a poll on a resolution on which he or she holds sufficient votes under this clause that he or she believes that if a poll is taken the result may differ from that obtained on a show of hands.
- (h) The chairperson of a meeting must ensure that a certificate of votes under this clause held by him or her is attached to the minutes of the meeting.

11. Minutes

- (a) The Credit Union must ensure that minutes are kept of all proceedings at meetings of Members.
- (b) Minutes that have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

12. Charitable entities and registered incorporated societies may act by representatives

A charitable entity or registered incorporated society that is a Member may appoint a representative to attend a meeting of Members on its behalf in the same manner as that in which it could appoint a proxy.

13. Loss of voting right if calls unpaid

If a sum due to the Credit Union in respect of a Security has not been paid, the holder of that Security may not exercise any vote at a meeting of Members.

14. Other proceedings

Except as provided in this schedule, a meeting of Members may regulate its own procedure.