

Zagga investor agreement

Zagga Investor Agreement

Date prepared: 29 November 2014

Updated: 6 June 2017

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1. Definitions

“Act”	means the Financial Markets Conduct Act 2013 and the Financial Markets Conduct Regulations 2014.
“Associated Person”	has the meaning given to that expression in section 12 of the Financial Markets Conduct Act 2013.
“Borrower”	means an approved person, persons, New Zealand company or other legal entity with the capacity to borrow monies which has entered into a Borrower Agreement.
“Borrower Agreement”	means the agreement entered into by a Borrower with Zagga.
“CAS”	means Zagga’s proprietary credit assessment score calculated by Zagga in relation to each Loan Application prior to it being published on the Website for subscription to by Investors. It is based on Zagga’s subjective assessment of the information provided to Zagga by the Borrower and third party credit and identity report providers and takes into account factors such as (but not limited to), type of Loan sought, purpose of the Loan, the Borrower’s credit history, quality and type of security, value of the security and servicing ability of the Borrower.
“Declaration of Trust”	means the terms and conditions of appointment of the Trustee to act as trustee for the Investor (including the fees and charges payable by Investors to the Trustee), attached as Appendix 1.
“Disclosure Statement”	means the disclosure statement which we shall provide to you pursuant to section 423 of the Act.
“Investor”	means an approved person or entity that has entered into an Investor Agreement.
“Investor Agreement”	means the agreement entered into by an Investor with Zagga.
“Zagga”	means Zagga Limited.
“Listing Period”	means the period of time that the Loan Application is available for subscription to by Investors on the Website.
“Loan”	means the monies lent by the Investor/s to the Borrower/s.
“Loan Application”	means the Borrowers application for a Loan.
“Trustee”	means Magna Trust Company Limited.
“RWT”	means resident withholding tax and refers to an amount payable as income tax under the RWT rules pursuant to the Income Tax Act 2007.
“We” or “Us”	means Zagga.
“Website”	means the Zagga website being www.zagga.co.nz .

2. Background

- 2.1** Zagga provides services (pursuant to its peer-to-peer lending licence under the Act) to Borrowers, whereby Zagga publishes offers of debt securities (loans) for subscription and provides a web-based platform that enables those loans to be subscribed to. Specifically:
- (a) Borrowers provide information to Zagga;
 - (b) Zagga undertakes various checks on the Borrowers and their Loan Applications including identity, fraud and credit checks and categorises the Loan Applications including setting a CAS in order that such applications have the best chance of attracting Investors;
 - (c) Zagga publishes the Loan Applications and provides tools on its Website so that Loan Applications are easily understood by and are attractive to Investors and enables the loans to be subscribed to.
- 2.2** Zagga is not an investor and does not handle Loan monies.
- 2.3** Zagga does not operate a secondary market at the date of this agreement.
- 2.4** In order to enable subscriptions through Zagga's Website it is necessary for subscribers (Investors) to register. The registration process enables an Investor to agree to the basis on which the Investor is using Zagga's Website, to the process used for subscriptions to Loans published on Zagga's Website, and to make all necessary disclosures.
- 2.5** The Trustee is an authorised body under Zagga's peer-to-peer lending licence but is otherwise independent of Zagga.
- 2.6** The Trustee is appointed by the Investor/s to hold the Loan and securities on trust for them and to manage the Loan in accordance with the Declaration of Trust.
- 2.7** The Investors may by unanimous written direction, require the Trustee to transfer the Loan and securities to another party (refer paragraph 1.5 Declaration of Trust).

3. Investor Registration

- 3.1** To register as an Investor and subscribe for a Loan you must:
- (a) complete the Investor registration process on the Website including the provision of information required to verify your identity being any of the following:
 - (i) New Zealand driver's licence details;
 - (ii) New Zealand or non-New Zealand passport details;
 - (iii) Birth certificate details; or
 - (iv) Certificate of citizenship details;
 - (b) acknowledge that you have read and agree to the Disclosure Statement by clicking the "Agree" button on the Investor registration page;

- (c) read and enter into this Investor Agreement by clicking the "Agree" button;
- (d) read and make the non-disclosure declaration by reading the declaration and clicking the 'I Declare' button. The Investor is now legally bound to keep all Borrower and Loan Application information strictly confidential and not to disclose it to third parties pursuant to the terms of the Investor Agreement;
- (e) pass the following checking by us:
 - (i) identity checks;
 - (ii) company office checks; and
 - (iii) any other checks Zagga deems appropriate in its sole discretion.
- (f) satisfy Zagga's minimum standards in accordance with its Fraud & Anti Money Laundering Policy and Fair Dealing Policy (published on the Website).
- (g) receive from us acceptance as an Investor (at our sole discretion), notification of which shall be sent to you and shall include any terms and conditions on the use of our Website. Acceptance is subject to ongoing checks of your identity which may take place at any time.

4. Investor Eligibility Criteria

4.1 To qualify as an Investor you, your directors and senior managers must:

- (a) if natural persons be over the age of 18 years;
- (b) not be bankrupt or insolvent, in receivership or liquidation;
- (c) have no previous convictions for fraud or dishonesty; and
- (d) otherwise comply with the laws of New Zealand.

4.2 You must satisfy our identity checks, which may take place at any time, and you will be required to provide your and your director's and senior manager's:

- (a) full legal name;
- (b) residential address or registered address (whichever is applicable) and address for service;
- (c) date of birth (if applicable);
- (d) occupation (if applicable);
- (e) a copy of passports or driver's licences (if applicable);
- (f) proof of address if not ordinarily resident in New Zealand or not a New Zealand company;
- (g) IRD number, RWT exemption certificate (if applicable), RWT rate applicable to you;
- (h) the country in which you are a resident for income tax purposes (If you are a non New Zealand tax resident);
- (i) New Zealand Bank account number;
- (j) certificate of incorporation if a company or other corporate entity.

5. Agreement

- 5.1** By you registering and Zagga accepting your registration, an agreement is formed between you and Zagga on the terms and conditions set out herein.

6. Further Conditions and Availability of Website

- 6.1** We may by written notice to you, in our absolute discretion, impose conditions at any time that must be fulfilled by you to subscribe to Loan Applications published on the Website.
- 6.2** We do not guarantee that provision of the Website will be continuous or fault free. You acknowledge that access to the Website may not be available from time to time and that Zagga will not be liable to you for any loss whatsoever arising from any inability to access the Website.

7. Contact Details of Zagga

- 7.1** Zagga may send you communications, including notices and disclosures, by mail or in an electronic form, including by email or SMS messaging.
- 7.2** You must provide notices to Zagga by mail (posted to its postal address) or by email to the email address below.

Name:	Zagga Limited
Phone:	0800 286286
Physical address:	Level 13, 175 Queen Street, Auckland
Postal address:	P.O. Box 1290, Auckland 1140
Email contact:	info@zagga.co.nz

8. How Loans Are Made

- 8.1** Loan Applications are made by Borrowers and published on the Website (subject to Zagga's sole discretion) and may include the following information:
- (a) Loan amount;
 - (b) Type of Loan;
 - (c) Term of Loan;
 - (d) Details of security offered;
 - (e) Registered valuation of the security (not more than six months old) if a property;
 - (f) Valuation of security if a business, plant and equipment or other assets (including where provided by the Borrower reasonable grounds for any assumptions made);

- (g) Details of the Borrowers ability to service the Loan (including where provided by the Borrower reasonable grounds for any assumptions made);
- (h) Purpose of the Loan;
- (i) CAS and associated interest rates;
- (j) Listing Period;
- (k) Monthly repayment amounts.

8.2 When the Borrower has submitted the Loan Application, Zagga will review it and decide in its sole discretion whether to approve the Loan Application for publication on the Website. If the Loan Application is approved for publication Zagga will assign it a CAS together with the interest rates payable on the Loan.

8.3 The CAS:

- (a) does not guarantee that the Borrower can or will repay all or any part of the Loan or any interest charged;
- (b) reflects the information available to Zagga at the relevant time and will not be updated during the term of the Loan;
- (c) is provided to the Borrower solely in order to:
 - (i) categorise Loan Applications and set interest rates for the purpose of publishing the Loan Applications for subscription; and
 - (ii) determine the platform fee payable by the Borrower to Zagga pursuant to the Borrowers Agreement;
- (d) is not provided to you or any other Investor for your use or reliance and you acknowledge that you have paid no consideration for it and that you shall under no circumstances hold Zagga liable in respect of it.

8.4 Investors can agree to lend money to any Borrower that has a Loan Application published on our Website provided the Investor complies with any special conditions relating to the Loan Application, the Investor Agreement and the laws of New Zealand, up until the expiry of the Listing Period. The Borrower may withdraw the Loan Application from the Website at any time before an agreement to invest has been completed.

8.5 To invest money you:

- (a) search and select the Loan Application/s you wish to consider;
- (b) choose the Loan Application/s you want to invest money into;
- (c) enter RWT information, IRD number and bank account information;
- (d) confirm that you have sufficient funds available to meet the investing commitment being made;
- (e) enter the amount you want to invest which may or may not be the whole amount sought by the Borrower (any conditions will be clearly published);
- (f) agree to invest into the borrower's loan by clicking the "Agree to Invest" button;

(g) agree to appoint the Trustee as your trustee in accordance with the Declaration of Trust (Appendix 1) by clicking the “Agree to Appoint Trustee” button;

8.6 Once you have agreed to lend and appoint the Trustee you cannot withdraw your agreement until the Listing period has expired and the Loan Application has not been fully funded.

8.7 When the amount sought in the Loan Application has been fully funded (by one or many Investors) and any special conditions have been fulfilled then:

(a) the Investor/s and the Borrower will be notified that an agreement to invest has been completed. At this point a legally binding contract exists between you and the Borrower;

(b) you will pay the relevant portion of the Loan monies in cleared funds from a New Zealand bank account to the Trustee by completing an electronic bank deposit within 3 working days (the Trustee’s bank account details will be supplied by the Trustee).

8.8 If any Investor or Borrower fails the identity check, we will advise and seek further information from them.

9. Disclosure Arrangements and Assessments

9.1 Zagga will publish on the public pages of the Website only generic information about Borrowers and Loan Applications.

9.2 Detailed information regarding the Borrower and Loan Application will only be disclosed to Investors who have completed the non disclosure declaration.

9.3 Information accessible to Investors who complete the non disclosure declaration may include:

(a) Borrower identity information, including full legal name;

(b) Loan Application;

(c) The CAS together with the interest rates payable on the Loan;

(d) Identity and credit checks on the Borrower and if a company, its directors and senior managers;

(e) Any loan history the Borrower has with Zagga; and

(f) Any limits and conditions affecting the Borrower.

9.4 Zagga will review the disclosure information prior to publication to ensure that it is timely and understandable.

10. Fees and Charges Payable

- 10.1** No fees or charges are payable by you to Zagga.
- 10.2** By appointing the Trustee you will be agreeing to pay the fees and charges to the Trustee which are set out in the Declaration of Trust.

11. Disclosure of Fees Earned by Zagga in relation to Loan Subscriptions

- 11.1** Zagga hereby discloses, and you hereby acknowledge:
- (a) that in the event a Loan is fully subscribed for by an Investor or Investors, Zagga will earn a platform fee, in the nature of a commission, payable by the Borrower to Zagga (which is calculated using the CAS);
 - (b) The basis for calculating all fees and charges payable by Borrowers to Zagga will be published on Zagga's website from time to time and is set out in the Disclosure Statement.

12. Warranties

- 12.1** You warrant to Zagga that:
- (a) all information you provide to Zagga is true, accurate, and complete, and there is no information which has not been provided which would impact on Zagga's:
 - (i) decision to approve you as an Investor; and/or
 - (ii) provision of information to the Trustee in the preparation and completion of the Loan and security documentation.
 - (b) you will provide Zagga with updated information in respect of yourself if any of your or your Association Person's circumstances have materially changed.
- 12.2** After having made the non-disclosure declaration in relation to viewing Borrower and Loan Application information (Information) by reading the declaration and clicking the 'I Declare' button, you will not under any circumstances:
- (a) disclose it to any third parties whatsoever;
 - (b) use the Information for any purpose other than for selecting and investing in Loans in accordance with the terms of this Agreement;
 - (c) use the Information for unlawful or illegitimate purposes.
- 12.3** You will comply with all New Zealand laws in connection with the use of our Website.
- 12.4** You will comply with, agree to and be bound by:
- (a) this Agreement;
 - (b) the fair dealing obligations in Part 2 of the Act;

- (c) Zagga's minimum standards in accordance with its Fraud & Anti Money Laundering Policy and Fair Dealing Policy (published on the Website);
- (d) The decision of the chief executive officer of Zagga in relation to whether any of your conduct has breached Zagga policies, the Act or any other applicable New Zealand laws, including your fair dealing obligations.

12.5 Zagga, the Borrower and Investor/s who participate or propose to participate in Loans may have initial or ongoing customer due diligence and other obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (or equivalent legislation in other countries) and related regulatory directives or guidelines. You agree promptly on request by Zagga to provide it with any information and documents that are reasonably required to enable Zagga and the Borrower/s to comply with those obligations. You authorise Zagga to disclose any information or documents it holds about you or your Associated Persons (including any information or documents you provide to Zagga under this clause) to any Borrower for this purpose.

12.6 You acknowledge that you do not rely on Zagga's skill or judgment as to the suitability or otherwise of Loan Applications and the Website for your specific needs.

12.7 You agree that Zagga may communicate with you by electronic means, including SMS messaging and email, including for the purposes of marketing to you.

13. Suspension or Cancellation of Website Access

13.1 We may at any time, and in our absolute discretion, do any one or more of the following, without giving you any reasons or prior notice:

- (a) immediately terminate this Agreement;
- (b) suspend your access to the Website;
- (c) remove you as an Investor;
- (d) remove content from the Website;
- (e) refuse to publish content on the Website;
- (f) disclose any information on the Website or otherwise necessary to comply with the Disclosure Statement, the Investor Agreement, the Borrower Agreement and New Zealand law; and
- (g) publish a censure of, or statement relating to your conduct, or the conduct of any of your Associated Persons if we consider such conduct warrants such a censure. Except where we have acted in bad faith, you waive all claims you or they may have in respect of such censure or statement and indemnify us against any such claims.

14. Inspection and Privacy Act

- 14.1** In order to assist us to determine whether you are complying or have complied with this Agreement and New Zealand law, we may from time to time require you or any of your directors, senior managers, officers, employees, contractors or any Associated Person of you or any of the before mentioned entities to produce any documents (including electronic documents) for inspection or provide any information held by the person concerned.
- 14.2** You consent to us providing to the Financial Markets Authority any and all documents or records we have in respect of you that the Financial Markets Authority may from time to time request.
- 14.3** In order for us to comply with the Act, regulations and our licence we may from time to time need to carry out Ministry of Justice checks on you or any of your directors, senior managers, officers, employees, contractors or any Associated Person of you or any of the before mentioned entities and you hereby irrevocably consent to us carrying out these checks when required. You also agree to provide us when requested further information regarding your identity and the identity of any of your Associated Persons.

15. Complaints and Dispute Resolution

- 15.1** If a dispute arises between us which we are unable to resolve by negotiation the dispute shall be referred to Financial Services Complaints Limited (FSCL) and its determination shall be final and binding.
- 15.2** Zagga is registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 and is a member of the FSCL dispute resolution scheme.
- 15.3** FSCL provides an independent and impartial dispute resolution service. Zagga is a participant of the scheme. You can contact FSCL by using an online form available at www.fscl.org.nz, emailing at complaints@fscl.org.nz, telephoning on 0800 347 257 or writing to FSCL, PO Box 5967, Wellington 6145. More information about FSCL's dispute resolution process is at www.fscl.org.nz.

16. Intellectual Property

- 16.1** You acknowledge and agree that we own all of the intellectual property rights in respect of Zagga and the Website.

17. Liability and Indemnity

- 17.1** Zagga and its directors, shareholders, employees, agents, contractors and Associated Persons are not liable in any way for:

- (a) the failure of any Borrower payments;
- (b) any failure to provide the Website or otherwise to comply with this Agreement, if the failure or non-compliance is caused by events beyond our reasonable control; or
- (c) to achieve any funding in respect of any Loan Application.

17.2 All liability we may have to you and your Associated Persons, except liability arising under the Consumer Guarantees Act 1993 that cannot be contracted out of, is excluded. We are not liable to you and do not have to pay you for anything else caused by or resulting from any action or inaction by us. This exclusion applies whatsoever you are claiming (including loss of profits, savings, revenue or business) and however liability might arise but for this clause (including for breach of contract or in tort, including negligence).

17.3 If we are ever liable to you and, for any reason whatsoever, the maximum combined amount we will have to pay you, your Associated Persons and anyone else who uses our Website (together) is a total of \$10,000.

17.4 You hereby indemnify us against all liabilities, losses and costs, including legal costs, incurred by us arising out of or in connection with any action or inaction we take in relation to you, your Associated Persons and your Loan/s and which is in accordance with this Agreement.

17.5 You hereby indemnify us against any liability we incur to any Borrower, co-Borrower, co-Investor or third party arising out of or in connection with the Loan, your performance or breach of this Agreement and your use of the Website including in relation to information posted on the Website or to any Borrower, co-Borrower or co-Investor or former Borrower, co-Borrower or co-Investor where such liability arises out of or in connection with the Loan.

17.6 In this clause "we" and "us" includes our subsidiaries, Associated Persons, and our directors, officers, employees and contractors.

17.7 In this clause "you" includes your subsidiaries, Associated Persons, and your directors, officers, employees and contractors.

17.8 If you are in trade, and you use the Website in trade, all parties agree that:

- (a) the provisions of the Consumer Guarantees Act 1993; and
- (b) sections 9, 12A, and 13 of the Fair Trading Act 1986, will not apply to this Agreement.

18. Miscellaneous

18.1 Assignment

The Investor shall not assign this Agreement or a right under this Agreement.

18.2 Survival

Any indemnity or obligation of confidentiality under this Agreement is independent from the other obligations of the parties and survives termination of this Agreement. Any other term which by its nature is intended to survive termination of this Agreement survives termination of this Agreement.

18.3 No merger

The rights and obligations of the parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

18.4 Entire agreement

This Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter. The terms of this Agreement prevail over any other terms that may appear on the Website or in other documents.

18.5 Amendment

Zagga may modify this Agreement, and the way in which it provides the Website, at any time by notice on the Website. You should check the notices section of the Website regularly. Any such modifications will apply from the date stated on the Website.

18.6 Severability

A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the term of this Agreement continue in force.

18.7 Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise by a party of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

18.8 Governing law and jurisdiction

This Agreement is governed by the law of New Zealand and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New Zealand.

Appendix 1

Declaration of Trust

Between: **Magna Trust Company Limited** (company number 5481381) whose registered office is at Level 9, West Plaza, Albert Street, Auckland 1010, **as trustee** (the **Trustee**)

and: The Investor ("**the Investor**")

1. Trusts

1.1 Appointment of Trustee

The Investor appoints the Trustee as the trustee of the trusts arising pursuant to this Declaration of Trust.

1.2 Declaration

The Trustee acknowledges and declares that it holds the Trust Assets on trust for the Investor upon the terms and conditions of this Declaration of Trust

1.3 Termination of Trustee

An Investor is not entitled to terminate the trust, discharge or replace the Trustee or appoint additional trustees.

1.4 Establishment of Trusts

All Trust Assets received by the Trustee from time to time shall be held for and on behalf of the relevant Investor on trust for such Investor, to be paid and/or utilised in accordance with this Declaration of Trust. For the purposes of this clause, the Trustee is deemed to have received Trust Assets if the Trustee takes control of any Trust Assets or if the Trust Assets (being monies) are received by the Trustee into the Trustee's bank account.

1.5 Assignment of Trust Assets

The Trustee shall, if required by all of the Investors who have invested in a Loan, transfer the interest in that Loan together with all Trust Assets in relation to that Loan to a party as directed by the Investors in writing.

1.6 More than one Investor

Each Investor who has invested in a Loan will have a beneficial interest in that Loan and the Trust Assets in proportion to the amount that Investor has invested in that Loan. That beneficial interest entitles the Investor to a proportionate share of:

- (a) the principal amount lent to and repaid by the Borrower; and
- (b) any returns including any interest paid on the Loan by the Borrower.

1.7 No merging or pooling of Trust Assets

Notwithstanding that the Trustee shall receive and hold the Trust Assets of more than one Loan from time to time, the Trust Assets held by the Trustee in respect of one Loan shall not merge or be pooled with and shall not be deemed to have merged or pooled with the Trust Assets held by the Trustee in respect of any other Loan.

2. Loan Documentation and Advances

2.1 When a Loan Application is fully subscribed to by Investors and Zagga advises the Trustee of the successful subscription together with each Investors details, the Trustee shall promptly:

- (a) prepare and deliver to the Borrower the unexecuted Contract documents; and
- (b) subject to execution of all Contract documents by the Borrower and other parties thereto and fulfilment of any Loan conditions and subject to receipt of the full loan principal to the Trustee's satisfaction:
 - (i) execute the Contract documents (as appropriate) as Trustee; and
 - (ii) advance the loan principal of the Loan to the Borrower, less any legal fees payable to the Trustee.

3. Loan Management

3.1 Management

The Trustee shall manage the Loans, collect payments (all payments received will be banked into the bank account of the Trustee to be held at a New Zealand registered trading bank) and provide collection and recovery services in respect of the Loans.

3.2 Third Party as Manager

The Trustee may from time to time appoint a third party to manage the Loans. At the date of this Disclosure Statement the Trustee has contracted Zagga Limited and Debtworks (NZ) Limited to carry out various Loan management functions on its behalf.

3.3 Management Services to Investor

The Trustee will:

- (a) require all Borrowers to sign a direct debit authority;
- (b) systematically monitor all loan payments;
- (c) produce daily arrears reports and methodically contact Borrowers in arrears;
- (d) use systems that automatically generate communications to Borrowers if Loan payments are late;
- (e) methodically manage Loans that are in arrears up until they are 30 days in arrears and then refer the defaulting Loan to a loan recovery officer (appointed by or approved by the Trustee) and advise the Investor of the default by email or sms message.

3.4 Management duties

The Trustee shall manage and administer the Trust Assets held by the Trustee. Without limiting the generality of the foregoing the Trustee shall:

- (a) manage and make all decisions relating to Loans including as set out in the applicable Contracts;
- (b) determine the terms of all Contracts, rights and other matters relating to the Loans;
- (c) appoint and engage solicitors and other consultants and advisers on such terms as the Trustee determines;
- (d) use its best endeavours and skill to ensure that the affairs of the Loans are conducted in a proper and efficient manner; and
- (e) use due diligence and vigilance in the exercise and performance of its functions, powers, and duties as manager.

3.5 Recovery Officer

When Loans are referred to the loan recovery officer (to be appointed by or approved by the Trustee) he or she may take any of the following steps:

- (a) continue to manage the defaulting Loan;
- (b) report the default to any credit reporting agency;
- (c) instruct the Trustee's solicitors to recover the Loan;
- (d) appoint a receiver or liquidator to recover the Loan.

If the Loan remains in default for more than 90 days the loans recovery officer must report the default to the Investor and the board of the Trustee together with details of the steps being undertaken to recover the Loan.

3.6 Establishment of Trusts

Should a Borrower suffer unforeseen hardship and apply to the Trustee to vary the terms of the Loan contract pursuant to part 2 subpart 8 of the CCCFA, the Trustee may vary the said terms, in accordance with the provisions of the CCCFA, provided such variation would be agreed by an investor acting reasonably and responsibly.

3.7 Appointment of substitute trustee

If the Trustee goes into liquidation, or ceases to be an authorised body under Zagga's peer-to-peer lending licence, then subject to the powers reserved to the Trustee and the provisions of this Declaration of Trust, the Trustee irrevocably appoints K3 Legal (company number 4426940) (K3 Legal) as agent or replacement trustee (if required) in the Trustee's place to fulfil the obligation of the Trustee under this Declaration of Trust. All or any of the powers, authorities, functions and discretions exercisable by K3 Legal in this respect may be delegated by K3 Legal to its officers and employees or to any other Person nominated by K3 Legal (by way of sub-contract or otherwise) provided that:

- (a) K3 Legal takes all reasonable steps to ensure that the delegated functions are performed in the same manner and are subject to the same duties and restrictions as if K3 Legal were performing them directly; and

- (b) K3 Legal takes all reasonable steps to monitor the performance of the delegated functions.

4. Investor Register

4.1 Establishment of Investor Register

The Trustee shall establish and maintain a register of all Investor Interests in respect of each Loan. Such register may take the form of a computer printout or any other computer based information storage and retrieval system compiled in a manner satisfactory to the Trustee and such printout or system is deemed to be the Investor Register.

4.2 Details to be entered

There must be entered in the Investor Register, in respect of each Loan:

- (a) The name and address of all of the relevant Investors;
- (b) The proportion of the Trust Assets held by each Investor;
- (c) Such other matters as the Trustee may determine from time to time.

4.3 Investor absolute owner

For the purposes of establishing and maintaining the Investor Register, except as otherwise provided in this Declaration of Trust, the Trustee is entitled to treat an Investor as the absolute owner of the applicable Investor Interest and accordingly, except as ordered by a court of competent jurisdiction or as required by statute, are not bound to recognise (even upon notice) any equitable or other claim to or interest in the Investor Interest on the part of any other Person.

4.4 No recognition of trusts

Except as required by law, the Trustee shall not recognise (or be bound to see to the performance of) any trust (express, implied or constructive) or any charge, pledge, or equity to which any Trust or any part thereof or any interest therein is or may be subject, or to recognise any Person as having any interest in any Trust except for the relevant Investor. No notice of any trust (whether express, implied or constructive), charge, pledge or equity shall be entered upon the Investor Register.

5. Duties

5.1 Duties to account to Investors

The Trustee shall:

- (a) hold all monies constituting Trust Assets in a bank account with a registered trading bank in New Zealand in accordance with the obligations of a broker under the Financial Advisers Act 2008;
- (b) promptly refund to the Investor all principal monies paid by that Investor to the Trustee if the applicable Loan Application does not proceed as a Loan within a reasonable period;
- (c) account to each Investor for the monies the Trustee receives in respect of a Loan, less any fees charged and less any deduction required by law; and

- (d) not pay out, invest, or apply any money of a Trust for any purpose that is not directed by, or authorised in, the Contracts or this Declaration of Trust.

6. Trustee's Powers and Covenants

6.1 Trustee's powers

The Trustee shall have the power to settle and complete all transactions in respect of each Trust. Subject to the provisions in this Declaration of Trust the Trustee shall have all powers, authorities, and discretions which it could exercise if it were the absolute and beneficial owner of the Trust Assets held by the Trustee from time to time and all the powers, authorities and discretions necessary to enable it to carry out the purposes of the Trust or otherwise to perform and comply with the obligations and duties under this Declaration of Trust.

6.2 Trustee's covenants

The Trustee covenants with the Investor that:

- (a) the Trustee has the power to act continuously as trustee under the trusts herein set forth and will not do or cause to be done or omit to do any act, matter or thing which would or might cause it to be disqualified from acting as trustee under this Declaration of Trust or which might prevent it from so acting and will act continuously as trustee under the Trusts until the Trusts are determined as herein provided or until it has retired or been removed from office;
- (b) the Trustee will exercise due diligence in carrying out its functions and duties hereunder;
- (c) the Trustee will ensure that any documents of title relating to the Loans (including the Contracts) are held in safe custody;
- (d) the Trustee will keep all Trust Assets held by the Trustee separate from all other assets, investments and other property vested in or held by the Trustee;
- (e) except as herein provided or as authorised by law the Trustee will not sell, mortgage, charge or otherwise part with the possession or ownership of any Trust Assets held by the Trustee.

Records

6.3 Trustee to keep records

The Trustee must keep complete, accurate and separate records of all its activities concerning the Loans.

7. Distributions

7.1 Time for Distribution

Distributions shall be distributed by the Trustee to Investors as soon as practicable.

7.2 Disclosure of information to tax authorities

The Trustee may make such disclosure as may be required by the Inland Revenue Department of the details of Investors, any Distributions to Investors or any other details or information arising out of any Trust.

8. Fees and Charges

8.1 Fees Schedule

The Trustee may charge Investors such fees and charges as set out in the Investor Fees Schedule, attached hereto (and updated by the Trustee from time to time) together with all applicable GST.

8.2 Fees and charges payable by the Investor to the Trustee may only be altered:

- (a) by agreement between the parties; or
- (b) If it is considered necessary, by the Trustee, as a result of a legal or regulatory development or change and by the Trustee giving the Investor 20 working days notice in writing.

9. Complaints and Dispute Resolution

9.1 Registration and membership

The Trustee shall register and maintain registration under the Financial Service Providers (Registration and Dispute Resolution) Act 2008. The Trustee shall be a member of the dispute resolution scheme operated by Financial Services Complaints Limited.

10. Responsibilities and Indemnities

10.1 No personal liability

The Trustee and their directors and officers and agents, in incurring any liabilities or obligations or in taking or omitting any other action for or in connection with the affairs of this trust are, and are deemed to be, acting for and on behalf of this trust and not in their own personal capacities. Except as otherwise expressly provided in this Declaration of Trust, the Trustee and their directors and officers and agents shall be entitled to limit their liability accordingly.

10.2 No Guarantee

Loans are not guaranteed by the Trustee.

10.3 No Relationship with other Investors

Investors do not have any contractual relationship with other Investors whatsoever, including in the nature of partnership, joint venture, trust, by virtue that an Investor is an investor with them in a particular Loan or Loans

10.4 No Direct Rights Against Borrower

Investors do not have any rights to pursue Borrowers directly for the recovery of Loans.

10.5 Indemnity

If the Trustee or any of their directors or officers or agents are held personally liable to any other person in respect of any debt, liability or obligation incurred by or on behalf of a Trust or any action taken or omitted in connection with the Trust (other than in respect of the Trustee's negligence) then they are entitled to indemnity and reimbursement out of the Trust Assets held by the Trustee from time to time to the full extent of such liability and the costs of any litigation or other proceedings in which such liability has been determined including without limitation legal fees and disbursements.

10.6 Reliance upon advice

The Trustee may accept and act upon the opinion or advice of or information obtained from barristers or solicitors or other consultants in the employ of the Trustee or instructed by the Trustee and upon any statement of, or information obtained from, any bankers, stockbrokers, accountants, valuers or other persons appointed or approved by the Trustee and believed by the Trustee in good faith to be expert or suitably qualified in relation to the matters upon which they are consulted.

10.7 Trustee's discretion and authority

Except insofar as is otherwise expressly provided in this Declaration of Trust the Trustee as regards all the trusts, powers, authorities and discretions vested in it by this Declaration of Trust has absolute and uncontrolled discretion as to their exercise whether in relation to the manner or as to the mode of and time for their exercise.

11. Accounts and Information

11.1 Accounting records

The Trustee must:

- (a) keep or cause to be kept proper records of or relating to the Loans including records of all transactions relating to the Loans;
- (b) keep or cause to be kept true accounts of all sums of money received and expended by or on behalf of any Loan; and
- (c) make available for the Investors in electronic format financial statements for each Loan.

12. Notices

All notices required to be given or served shall be in writing, signed by or on behalf of the party giving the notice and given to or served upon the other party in the manner set out in section 353(1) of the Property Law Act 2007 and the sections referred to in it provided that the parties to this Declaration of Trust from time to time may agree that certain notices or communications may be given by Electronic Communication.

13. Period of Trusts

Each Trust will commence on the date on which the Trustee receives the relevant Trust Assets and will continue until the earlier of the:

- (a) date falling eighty years less two days thereafter (the period so specified being the perpetuity period for the purposes of section 6 of the Perpetuities Act 1964) (the Date of Termination); or
- (b) the full repayment of the Loan.

14. Winding Up

From and after the Date of Termination in relation to a Trust:

- 14.1** The Trustee must demand all amounts outstanding under the relevant Loan as soon as practicable, provided however that the Trustee may postpone doing so in respect of such Loan if the Trustee reasonably considers it is in the interest of the relevant Investor to do so. In this circumstance, the terms of this Declaration of Trust will continue to apply with such changes as the context may require.
- 14.2** The Trustee is entitled to retain out of the Trust Assets held by the Trustee such amount that the Trustee considers necessary or appropriate to meet all claims and liabilities (including for this purpose contingent liabilities) in connection with the relevant Trust or arising out of any liquidation of the Trust Assets, including the Trustee's fees pursuant to this Declaration of Trust and the fees of any agents, solicitors, bankers, accountants, auditors or other Persons (including the Manager) whom the Trustee may employ in connection with the winding up of the Trust. The Trustee is entitled to be indemnified in respect of the foregoing from the Trust Assets retained by the Trustee.

15. Deductions and Adjustments for Taxes

- 15.1** If the Trustee is obliged or permitted by law to make any deduction or withholding on account of taxes from any payment to be made to an Investor, the Trustee may (and where required by law, shall) make such deduction or withholding and shall pay the relevant amount of tax to the Commissioner of Inland Revenue or other taxing authority when due. On payment of the net amount to the Investor and the amount deducted or withheld to the tax authorities, the full amount payable to the relevant Investor shall be deemed to have been duly paid and satisfied.
- 15.2** If the Investor is a New Zealand tax resident and has not provided the Trustee with a copy of its RWT exemption certificate then the Trustee will deduct and pay RWT tax from the gross interest payable to the Investor:
 - (a) at the RWT rate notified or at a higher rate as required by New Zealand law; or
 - (b) at the maximum RWT rate if the Investor has not provided its IRD number or RWT rate.

- 15.3** If the Investor is not a New Zealand tax resident then the Trustee will deduct and pay non-RWT tax from the gross interest payable to it provided that the Investor is not subject to the Approved Issuer Levy rules (AIL) regime in which case non-RWT will not be deducted and instead the Trustee will deduct and pay the AIL levy in relation to the gross interest payable to the Investor.
- 15.4** The Investor indemnifies the Trustee or the Borrower for any liability or payment made by them in respect of any interest earned on a Loan by it.

16. Applicable Law

This Declaration of Trust is governed by the law of New Zealand.

17. Interpretation

17.1 Definitions

In this Declaration of Trust, unless the context otherwise requires:

- "Act"** means the Financial Market Conduct Act 2013 and the Financial Market Conduct (Phase 1) Regulations 2014.
- "Borrower"** means a person, persons, New Zealand company or other legal entity with the capacity to borrow monies which has entered into a Borrower Agreement and is approved by Zagga.
- "Borrower Agreement"** means the agreement entered into by a Borrower with Zagga.
- "Business Day"** means any day (other than a Saturday or Sunday) on which banks in Auckland are open for business.
- "Contracts"** means all loan agreements, guarantees, securities and (as appropriate) certification documents that are associated with a relevant Loan including without limitation those agreements or securities entered into by or granted in favour of the Trustee in relation to that Loan.
- "Distribution"** means, in relation to a Loan, monies to be distributed or repaid to an Investor in respect of a Loan.
- "Electronic Communication"** means a transmission of an instruction, request, notice or information by telephone, facsimile, computer or other electronic medium approved by the Trustee subject to such conditions as the Trustee considers appropriate as to identification of the person making the communication or verification of the content of the communication.
- "FMA"** means the Financial Markets Authority (including any successive regulatory authority that regulates the Services).
- "GST"** means Goods and Services Tax or duty or similar tax or duty payable.

"Investor"	means a person or entity that has entered into an Investor Agreement and is approved by Zagga.
"Investor Agreement"	means the agreement entered into by an Investor with Zagga.
"Investor Interest"	means the beneficial interest of an Investor in the Trust Assets held pursuant to a Loan.
"Zagga"	means Zagga Limited.
"Loan"	means the monies lent by the Investor/s to the Borrower/s.
"Loan Application"	means the Borrower's application for a Loan prepared by the Borrower and Zagga and published on Zagga's website, www.zagga.co.nz , for subscription to by Investors.
"Person"	includes a natural person, a company, a corporation, a corporation sole, a firm, a unit trust, a government or a body of persons (whether incorporate or unincorporated).
"Trust Assets"	means the Loan and all other monies, property, assets, Contracts and rights from time to time in respect of the Loan including: <ul style="list-style-type: none"> (a) all monies received by the Trustee from one or more Investors on account of the Loan; (b) the Loan itself (including the right and interest of the Trustee in the Contracts and the transactions evidenced thereby); and (c) all income received by the Trustee in respect of the Loan pending distribution.
"Trustee"	means Magna Trust Company Limited.

17.2 Interpretation

In this Declaration of Trust, unless the context otherwise requires, references to:

- (a) Clauses, sub-clauses, paragraphs and schedules are to clauses, sub-clauses, paragraphs and schedules to this Declaration of Trust.
- (b) Any legislation includes a modification and re-enactment of, legislation enacted in substitution for and a regulation, order-in-council and other instrument from time to time issued or made under, that legislation.
- (c) The singular includes the plural and vice versa.
- (d) Parties to this Declaration of Trust includes their successors and permitted assigns.
- (e) The Index to and headings in this Declaration of Trust are used for convenience only and do not affect its interpretation in any way.

Investor Fees Schedule

Investors shall pay the following fees and charges to the Trustee:

1. Loan management fee which is payable monthly from the date of drawdown of the Loan and the percentage rate applicable shall be that rate disclosed in the Loan Application. The loan management fee will be deducted automatically from interest received by the Trustee.
2. Interest on late payments more than 7 days overdue at an interest rate of 18% p.a. compounded monthly.
3. Full costs incurred by the Trustee and/or its agents and contractors involved in any recovery, collection or enforcement process needed to recover the Loan monies owed as a result of any default by the Borrower (including solicitor/client costs and disbursements). Any amount recovered from the Borrower in relation to these costs shall be credited to the Investor.

Loan management fees (Effective 1 September 2016)

Rates are calculated on a per annum basis and deducted monthly from repayments.

Grade	A	B	C	D	E	F
1	0.90%	1.10%	1.20%	1.25%	1.45%	1.55%
2	0.90%	1.10%	1.20%	1.25%	1.45%	1.55%
3	0.90%	1.10%	1.20%	1.25%	1.45%	1.55%
4	1.10%	1.30%	1.35%	1.45%	1.65%	1.75%
5	1.35%	1.50%	1.55%	1.65%	1.90%	1.95%

Loan management fees are expressed as a nominal annual percentage (%) rate.

Indicative borrower interest rates (Effective 1 September 2016)

The following interest rates for borrowers are indicative only and may change at any time.

Grade	A	B	C	D	E	F
1	6.34%	6.84%	7.54%	8.44%	9.94%	11.74%
2	6.59%	7.19%	7.99%	8.94%	10.54%	12.49%
3	6.84%	7.54%	8.44%	9.44%	11.14%	13.24%
4	7.09%	7.89%	8.89%	9.94%	11.74%	13.99%
5	7.34%	8.24%	9.34%	10.44%	12.34%	14.74%

All rates are expressed as nominal annual percentage (%) rates. Rates can be impacted by actual loan terms and conditions on a case by case basis.