

# Declaration of Trust

## Part A - Terms and Conditions

Issued by **ZAGGA LIMITED** (NZBN: 9429041137635 Market Service Licence number FSP393946) as servicer for **MAGNA TRUST COMPANY LIMITED** (NZBN: 9429041446140, Market Service Licence number FSP407186).

### 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 that 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.

**“Loan”** means the monies lent by the Investors/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](http://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).

**“Secondary Market”** means the secondary market which Zagga operates on its platform where Investors may (with the consent of Zagga) sell their interest

in a loan, subject to Zagga’s secondary market rules which are published on the website (Secondary Market Rules)

**“Trustee”** means Magna Trust Company Limited

**“Trustee”** means the Loan and all other monies, property, assets, Contracts and rights from time to time in respect of the Loan including:

- (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.

**“Zagga”** means Zagga Limited.

## **2. Trusts**

### **2.1. Appointment of Trustee**

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

### **2.2. 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.

### **2.3. Termination of Trustee**

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

### **2.4. 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.

### **2.5. 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.

### **2.6. 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.

### **2.7. 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

### **3. Loan documentation and advances**

- 3.1.** 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.

### **4. Loan Management**

#### **4.1. 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.

#### **4.2. 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.

#### **4.3. 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.
- (f)** As part of the operation of the Secondary Market, the Investor Register will change when a new investor has purchased some of the available interest in a Zagga loan. In line with the Secondary Market Rules, the register for a loan will change at the point the investment by the purchasing investor has been received and cleared and therefore the selling investor has had their break

amount returned (less the break fees applicable).

#### **4.4. 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 endeavors 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.

#### **4.5. 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.

#### **4.6. 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.

#### **4.7. 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.

## **5. Investor Register**

### **5.1. 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.

### **5.2. 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.

### **5.3. 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.

### **5.4. 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.

## 6. Duties

### 6.1. 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

## 7. Trustee's powers and covenants

### 7.1. 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.

### 7.2. 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.

## **8. Records**

### **8.1. Trustee to keep records**

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

## **9. Distributions**

### **9.1. Time for Distribution**

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

### **9.2. 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.

## **10. Fees and charges**

### **10.1. 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.

### **10.2. Fees and charges payable by the Investor to the Trustee may only be altered:**

- (a) by agreement between the parties; or
- (b) the sale of an interest in a loan on our Secondary Market in which case you will pay to Zagga a Break Administration Fee in the nature of an administration fee as set out in our Secondary Market Rules; or
- (c) 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.

## **11. Complaints and dispute resolution**

### **11.1. 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.

## **12. Responsibilities and indemnities**

### **12.1. 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.

### **12.2. No Guarantee**

Loans are not guaranteed by the Trustee.

### **12.3. 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

### **12.4. No Direct Rights Against Borrower**

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

### **12.5. 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.

## **12.6. 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.

## **12.7. 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.

## **13. Accounts and Information**

### **13.1. 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.

## **14. 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.

## **15. 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.

## **16. Winding up**

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

- 16.1.** 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.
- 16.2.** 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.

## **17. Deductions and adjustments for taxes**

- 17.1.** 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.
- 17.2.** 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.
- 17.3.** 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.
- 17.4.** 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.

## **18. Applicable law**

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

## **19. Interpretation**

### **19.1. 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.

## **20. Secondary Market**

Zagga now offers Investors the opportunity to sell all or part of their investment in a loan on its Secondary Market. The sale of a loan (in whole or in part) will not affect the existing terms and conditions of the loan. Investor sellers will on the sale of a loan pay the administrative fees as set out in the Secondary Market Rules. All loan sales on the Secondary Market will be subject to the terms contained in this Agreement and in Zagga's Secondary Market Rules which are published on the Website.

For the avoidance of doubt, the successful sale of an interest in a loan (all or part) will result in the reduction of the beneficial interest in a loan proportionate to the amount sold through the Secondary Market. If all of a current interest in a loan is sold, then at the point of sale the current beneficial holder of the interest in that loan will have that beneficial interest transferred to the new beneficial owner. This change will occur simultaneously and will be time-stamped in the Loan Management System.

Once the Acquiring Investor has deposited their funds, and these funds have cleared, then the Selling Investor will have these funds transferred to their nominated bank account less fees (as outlined in the Secondary Market Rules). They will cease to have any beneficial interest in a loan if they sell all of their investment in a loan, or a reduced beneficial interest (proportionate to their remaining investment) if they sell a portion of their current investment. The Loan Management System will hold the ledger of ownership of the beneficial interest in each loan the form of the underlying investor pool at all times.

## Part B – 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.
4. No fees or charges are payable by you to Zagga unless you sell an interest in a loan on our Secondary Market, in which case you will pay to Zagga a Break Administration Fee, in the nature of an administration fee, as set out in our Secondary Market Rules.

### Loan Management Fees

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%	1.20%	1.20%	1.45%	1.65%	1.75%
5	1.20%	1.20%	1.20%	1.65%	1.90%	1.95%

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

### Indicative Investor Returns – net of loan management fees

Grade	A	B	C	D	E	F
1	7.10%	7.40%	8.00%	8.85%	10.15%	11.85%
2	7.35%	7.75%	8.45%	9.35%	10.75%	12.60%
3	7.60%	8.10%	8.90%	9.85%	11.35%	13.35%
4	7.65%	8.35%	9.35%	10.15%	11.75%	13.90%
5	7.80%	8.70%	9.80%	10.45%	12.10%	14.45%

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.

### Indicative Borrower Interest Rates

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

Grade	A	B	C	D	E	F
1	8.00%	8.50%	9.20%	10.10%	11.60%	13.40%
2	8.25%	8.85%	9.65%	10.60%	12.20%	14.15%
3	8.50%	9.20%	10.10%	11.10%	12.80%	14.90%
4	8.75%	9.55%	10.55%	11.60%	13.40%	15.65%
5	9.00%	9.90%	11.00%	12.10%	14.00%	16.40%

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.

### Indicative Platform Fees

Grade	A	B	C	D	E	F
1	1.00%	2.00%	3.00%	4.00%	11.60%	13.40%
2	1.00%	2.00%	3.00%	4.00%	12.20%	14.15%
3	1.00%	2.00%	3.00%	4.00%	12.80%	14.90%
4	2.00%	3.00%	4.00%	5.00%	13.40%	15.65%
5	2.00%	3.00%	4.00%	5.00%	14.00%	16.40%

A platform fee is charged to the borrower once the loan has been fully funded. It is calculated as a percentage of the principle loan amount at the commencement date of the loan.