
Harmoney Limited
Investor Agreement

Version: 16 March 2018

This document sets out the terms on which a person (whether an individual or a corporate entity) (**you** or **your**) agrees to use the service provided by Harmoney Limited (**Harmoney**) to lend money (through the Trustee as bare trustee) on a peer-to-peer basis to other persons.

By accepting these terms in any manner as may be required by Harmoney (including, without limitation through Harmoney's website), an agreement is formed between you, Harmoney, and the Trustee.

Introduction

1. This agreement sets out the terms on which you are able to access and use the Service. If there is any inconsistency between these terms and any other terms set out on the Website, these terms will prevail (except as expressly contemplated by these terms).
2. You acknowledge that Harmoney provides the Service under a licence which Harmoney holds pursuant to the FMCA.
3. In providing the Service, Harmoney will (and will procure that its Related Companies who provide any aspects of the Service will):
 - (a) exercise the care, diligence, and skill that a prudent licensee for the Service would exercise in the same circumstances; and
 - (b) if any aspect of the Service is contracted out, take all reasonable steps to:
 - (i) ensure that those functions are performed in the same manner, and are subject to the same duties and restrictions, as if Harmoney were performing them directly; and
 - (ii) monitor the performance of those functions.

Registration as an Investor

4. In order to access and use the Service, you must register as an Investor by completing the Investor Application. Harmoney reserves the right not to register any person as an Investor if that person has not completed the registration process to Harmoney's satisfaction or does not meet Harmoney's eligibility criteria.
5. Harmoney's eligibility criteria for registering as an Investor are:
 - (a) you must satisfy Harmoney's "know your customer" requirements under any applicable law or regulation (including the Anti-Money Laundering and Countering Financing of Terrorism Act 2009);
 - (b) tax information as required under clause 29;
 - (c) such other documentation and other conditions precedent as may be determined by Harmoney in its discretion; and
 - (d) in addition, if you are an individual you must:
 - (i) be a New Zealand resident, which Harmoney will verify through you having a New Zealand residential address and a bank account with a registered New Zealand bank; and
 - (ii) be 18 years of age or older when you register.

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6. Harmony may terminate your registration as an Investor at any time at its absolute discretion by notice to you.
 7. Harmony may suspend your registration as an Investor at any time by notice to you if Harmony reasonably believes that you are not complying with the terms of this agreement or are otherwise not using the Service for its intended purpose.
 8. You may terminate your registration as an Investor at any time by notifying Harmony through the Website or via 0800 HARMONEY or customer.services@harmony.co.nz.
 9. If your registration is terminated or suspended, this agreement will continue to apply in respect of any Loan Contracts and Loans and Optional Service Contracts to which you are a party when the termination or suspension takes effect.
 10. Subject to clause 9, this agreement will apply to you for so long as you are registered as an Investor.

Trustee's Role

11. Every Loan you fund through the Service will be made by the Trustee (acting through Harmony as its agent). The Trustee will then hold that Loan on a bare trust for the benefit of yourself and every other Participating Investor in accordance with clause 15.
12. The process through which Loans will be made is as follows:
 - (a) All amounts you want to invest through the Service will be credited to the Investor Account (which is a trust account operated by Harmony, as set out in clause 38).
 - (b) When you place an Order to invest in a particular Loan Listing, and that Order is filled, the amount you invest will be transferred from the Investor Account to the Advance Account. All other amounts invested by other Investors who Participate in funding that Loan will similarly be transferred from the Investor Account to the Advance Account. In this way, all funding provided by the Participating Investors for that particular Loan will be aggregated in the Advance Account.
 - (c) The Loan will be made to the relevant Borrower via the Trustee. This will occur by Harmony (at the Trustee's direction) deducting the Establishment Fee and (if and to the extent applicable under clause 64(b)) Optional Service Charges from the Loan Amount deposited in the Advance Account, and transferring the balance of the Loan Amount to the Borrower's nominated account.
13. You appoint the Trustee as trustee in respect of your interests in the Advance Account, every Loan Contract relating to a Loan in which you Participate, every such Loan, every Optional Service Contract and the Collections Account, all on and subject to the terms of this agreement. The Trustee accepts this appointment.
14. You direct and authorise the Trustee:
 - (a) if any Loan Listing in respect of which you have placed an Order is Fully Funded, to:
 - (i) enter into the relevant Loan Contract (and, as applicable, any related Optional Service Contract); and

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- (ii) apply funds held for you in the Advance Account equivalent to the Order Amount towards Settling that Loan, by way of investing those funds in the Loan for your benefit; and
- (b) to appoint Harmoney as its agent as provided in clauses 23 and 24.
15. The Trustee confirms, and the parties agree, that the Trustee holds:
- (a) the Advance Account on trust for the benefit of all Investors whose funds have been transferred from the Investor Account to the Advance Account in respect of Loans that have not yet been Settled, in accordance with those Investors' respective interests;
- (b) every Loan Contract relating to a Loan, and every such Loan, and every Optional Service Contract on a separate trust for the benefit of the Investors who will or do Participate in that Loan, in accordance with their respective Participations; and
- (c) the Collections Account on trust for the benefit of all Investors who are beneficially entitled to any Receipts that have been paid into the Collections Account and that have not yet transferred to the Investor Account (net of deductions allowed by this agreement), in accordance with those Investors' respective interests,
- in each case on and subject to the terms of this agreement.
16. The Trustee further confirms, and the parties agree, that the Trustee has no power to invest, pay, or otherwise apply, any funds or property the Trustee holds for your benefit under clause 15 without your express direction or as provided in this agreement.
17. The Trustee will account to you for your share (in accordance with your Participation) of all Receipts, subject to deductions permitted under this agreement.
18. You acknowledge that the Trustee acts as trustee in respect of the Service and any Optional Service provided by it. You agree that you are not entitled (whether alone or together with any other Participating Investors) to:
- (a) give the Trustee a direction that is inconsistent with this agreement;
- (b) call for the transfer of all or any share of any Loan in which you Participate or the relevant Loan Contract or any related Optional Service Contract to (or as directed by) you;
- (c) terminate the trust of any such Loan, Loan Contract, or Optional Service Contract; or
- (d) discharge or replace the Trustee, or appoint any person as trustee of such trust in addition to the Trustee.
19. Harmoney will pay the Trustee such remuneration and fees as Harmoney and the Trustee may from time to time agree for the Trustee's trustee services under this agreement. You are not liable to pay the Trustee any remuneration or fees.
20. Harmoney can in its discretion replace the Trustee. Any such change will not affect your rights and obligations under this agreement or in respect of any funds or property held on trust for you. The replacement Trustee will have the same rights and obligations as the Trustee it replaces, without further action being necessary.

Harmoney's Role

21. Harmoney will provide the Service as set out in this agreement.
22. Harmoney will provide the Service as principal for its own benefit, subject to clauses 11, 23, 24, and 38.
23. Harmoney will act as the Trustee's agent in:
- (a) opening and transacting the Advance Account;
 - (b) concluding all Customer Services Agreements with Borrowers on the Trustee's behalf (in addition to entering into the Customer Services Agreements as principal);
 - (c) concluding all Loan Contracts;
 - (d) agreeing to all additional terms to Loan Contracts relating to Optional Services and concluding all Optional Service Contracts;
 - (e) advancing all Loans, including by Settling them;
 - (f) administering all Loans (including without limitation by providing all disclosure statements required to be given under the CCCFA by effecting any applicable rebates if Loans are repaid early, by providing the Collection Services, and by amending any Loan Contracts (including any additional terms relating to Optional Services) under clause 76);
 - (g) administering all Optional Services Contracts (including without limitation by managing the relevant Optional Services, effecting any applicable rebates if Loans are repaid early, amending any Optional Service Contracts under clause 76, and settling any disputes relating to Optional Service Contracts as Harmoney may consider appropriate);
 - (h) opening and transacting the Collections Account;
 - (i) performing the Trustee's duties and exercising the Trustee's powers under clauses 29 to 31; and
 - (j) transferring funds held for you in the Collections Account (after deductions permitted by this agreement) to the Investor Account for your benefit,
- as provided in, and subject to the terms of, this agreement.
24. The Trustee (which each Investor confirms) appoints Harmoney as the Trustee's agent to do all things referred to in clause 23, and all other things which are (or which Harmoney considers) reasonably incidental to them. Harmoney accepts this appointment.
25. The fees to which Harmoney is entitled for acting as the Trustee's agent are set out in clauses 59, 60, and 63.
26. Harmoney and its Related Companies may be paid a commission or other financial benefit by any person in connection with any Loan or the Service or an Optional Service (which may include Participating in any Loan).
27. Harmoney may subcontract or delegate any of its duties or authorities under this agreement, to the extent permitted by law. Harmoney will be liable for any default by the subcontractor or delegate (subject to the limitations on Harmoney's liability provided in this agreement).
28. If a Harmoney Servicer Default occurs, a back-up servicer will be appointed to carry out the role of Harmoney under this agreement (on terms that the back-up servicer will be paid reasonable fees for doing so). Any such appointment will not affect your rights and obligations under this agreement or in respect of any Loan or Loan Contract or Optional Service Contract. The

appointed back-up servicer from time to time will have the same rights as Harmony did, without further action being necessary.

Taxation and Returns

29. When you register as an Investor:
- (a) you must notify Harmony (acting on behalf of the Trustee) whether you are an NZ Tax Resident or a Non-NZ Tax Resident;
 - (b) if you are an NZ Tax Resident, you must provide to Harmony:
 - (i) your IRD number;
 - (ii) a copy of your RWT Exemption Certificate (if applicable);
 - (iii) the rate at which RWT should be withheld from interest payments accruing for your benefit under a Loan; and
 - (iv) such other tax-related information as Harmony requests; and
 - (c) if you are a Non-NZ Tax Resident, you must provide to Harmony:
 - (i) the country in which you are resident for income tax purposes; and
 - (ii) such other tax-related information as Harmony requests.
30. If you are a Non-NZ Tax Resident, the Trustee (acting on behalf of the relevant Borrower, and through Harmony) will deduct NRWT from interest paid for your benefit under the Loan. However, if the AIL regime is utilised in respect of your Participation in the Loan:
- (a) NRWT will not be deducted from the interest paid for your benefit under the Loan; and
 - (b) instead:
 - (i) the Trustee (acting on behalf of the Borrower, and through Harmony) will pay the AIL levied in relation to that interest; and
 - (ii) the share of the interest the Trustee holds for your benefit will be reduced by an amount equal to that AIL.
31. If you are an NZ Tax Resident and you do not provide Harmony with a copy of your RWT Exemption Certificate (if appropriate), the Trustee (acting on behalf of the Borrower, and through Harmony) will deduct RWT from interest paid for your benefit under the Loan, at the rate you notified to Harmony under clause 29(b) (or at such higher rate as the law may require). If you do not provide Harmony with your IRD number (as required under clause 29(b)(i)) or your RWT rate (as required under clause 29(b)(iii)), you will automatically have RWT deducted at the maximum rate then applicable.
32. You acknowledge and agree as follows:
- (a) Harmony, the Trustee, and the Borrower do not have to reimburse you for any amount that is deducted or withheld, whether under clause 30 or 31 or any legal requirement, from any interest paid for your benefit. References in this agreement to amounts being paid to you are to be read accordingly.
 - (b) If Harmony, the Trustee, or the Borrower becomes liable to make any payment of, or on account of, tax in respect of any Loan (including any AIL payment), you will indemnify them in respect of that liability.

(c) References on the Website to interest rates and rates of return are expressed as gross returns, before deduction of any fees or without any withholding or deductions, unless otherwise specified.

33. You acknowledge and agree that a Borrower is entitled to prepay all or any portion of its Loan early, without penalty, provided that all interest, fees, and charges payable under the Loan Contract accrued to the date of prepayment are also paid. You accept that such early prepayment will affect your returns under the Loan. You further accept and agree that your returns may be affected if the Loan Contract is varied under clause 76 or if liability for a payment is waived in accordance with any applicable Payment Protect Plan (see clause 41).

34. You acknowledge and agree that you are responsible to obtain your own tax advice in connection with your investment in and returns on any Loans (including in connection with any Optional Service, such as Payment Protect).

Retail Investors and Wholesale Investors

35. This agreement applies to both Retail Investors and Wholesale Investors, where:

(a) a **Wholesale Investor** is an Investor whom Harmony has agreed to treat as a Wholesale Investor for the purposes of the Service (and includes an Investor who is an "eligible investor" within the meaning of the Financial Advisers Act 2008); and

(b) a **Retail Investor** is an Investor who is not a Wholesale Investor.

References in this agreement to an "Investor" are references to both a Wholesale Investor and a Retail Investor, except as set out in clauses 36 and 37.

36. Harmony reserves the right to designate a Wholesale Investor as a Retail Investor at any time. This designation will not affect any Loan or Loan Contract in which that Investor has Participated before the designation took effect.

37. A Wholesale Investor:

(a) will be entitled to fund (through the Trustee) entire Loans (in addition to Participating with other Investors in Loans);

(b) will be allocated Loans to fund by Harmony from the pool of Loans available to be funded, and will not be entitled to select any specific Loans (but can select investment criteria within which Loans are able to be allocated by Harmony to that Wholesale Investor); and

(c) charged Service Fees under clause 60 (instead of Lender Fees under clause 59),

and will otherwise have the same rights and obligations of an Investor under this agreement.

Investor Account

38. Harmony will maintain an Investor Account, which it will hold on trust for the benefit of Investors whose funds have been deposited into that account (to the extent that their funds have not yet been transferred out of that account). Harmony will not make any payments from funds that are held for you in the Investor Account without your express direction or as otherwise expressly set out in this agreement.

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39. You acknowledge and agree as follows:
- (a) When you place an Order, the amount of that Order will be "locked" in the Investor Account until the earlier of:
 - (i) that Order being accepted (through the relevant Loan being Fully Funded, and a Loan Contract being concluded as set out in clause 52); and
 - (ii) the expiry of the Listing Period.During this period, you will not be able to use the amount of your Order for any other Order or to withdraw that amount from the Investor Account.
 - (b) If your Order is accepted, and the relevant Loan is funded:
 - (i) Harmoney is authorised to deduct your Order Amount from the Investor Account, and to transfer it to the Advance Account for your benefit;
 - (ii) the Trustee (through Harmoney) will enter into the Loan Contract and apply your Order Amount to fund Settlement.
 - (c) If the Trustee or Harmoney (as its agent) receives any Loan Repayments and other Receipts, those payments will be deposited in the Collections Account, where they will be held on trust for you and each other Participating Investor in proportion to your and their respective Participations. The relevant Investor Fees and any Enforcement Costs owed to Harmoney, any Optional Service Charges, any Optional Service Expenses and any withholdings or deductions on account of RWT, NRWT or AIL will then be deducted from those deposits. Following this, your share of the balance will be paid to the Investor Account for your benefit.
 - (d) Harmoney may of its own accord transfer any unallocated cleared funds that are held in the Investor Account for your benefit, from the Investor Account to your Nominated Account. You may also at any time request Harmoney to make such a transfer, in which case Harmoney will action the transfer within 1 Business Day. You may change your Nominated Account by notice to Harmoney.
 - (e) You can opt for your funds to be transferred into your Investor Account by direct debit. If you opt to do this, you must provide Harmoney with details of your bank account with a registered bank in New Zealand from which transfer of funds are to be made by you. You must choose the amount you wish to be direct debited from your bank account and the frequency for Harmoney to direct debit your account. By providing those details, you agree to Harmoney establishing a direct debit authority against that bank account on the Direct Debit Terms attached to this agreement in relation to the amount you have selected to be direct debited.

Optional Services

40. Optional Services may from time to time be offered to Borrowers.
41. The Optional Services may include Payment Protect. Payment Protect operates as follows:
- (a) Payment Protect is a service under which (if the Borrower opts into it):
 - (i) the Trustee will waive certain payments by the Borrower falling due after the Borrower has given the Trustee (through Harmoney as its agent) written notice that certain events have happened (for example, that the Borrower has died or become disabled – Payment Protect is offered at different levels, each covering different events); and
 - (ii) in exchange, the Borrower must pay the Trustee a fee (being the Payment Protect Fee) on Settlement.

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- (b) Harmoney will arrange and manage Payment Protect Plans on the Trustee's behalf. The Trustee will pay Harmoney a sales commission and a management fee in respect of each Payment Protect Plan (at the rates set out on the Website under the "Interest Rates & Fees" section).
- (c) The process through which a Loan that is covered by Payment Protect will be made is as follows:
- (i) The total Loan Amount for which the Borrower applies will be increased by the Payment Protect Fee. This is because the Payment Protect Fee will be capitalised as being a debt due and owing to the Trustee by the Borrower), with the Borrower required to pay the capitalised fee as part of his or her monthly repayments.
- (ii) Pending Settlement, two amounts will be transferred from the funds held for the Participating Investors in the Investor Account (each Participating Investor's share of each such amount being in proportion to that Participating Investor's Participation) and aggregated in the Advance Account:
- first, an amount equal to the Establishment Fee plus the net amount to be paid to the Borrower's nominated account (in this clause 41, **First Investors' Amount**); and
 - secondly, an amount equal to the sum of the sales commission and the management fee payable to Harmoney in respect of the Payment Protect Plan (in this clause 41, **Second Investors' Amount**).
- (iii) At Settlement, the First Investors' Amount will be applied to make the Loan as set out in clause 12(c).
- (iv) Concurrently with Settlement, Harmoney (acting as agent of the Trustee, and at the Trustee's direction) will transfer the Second Investors' Amount from the Advance Account to Harmoney's own account, in discharge of the Trustee's obligation to pay the sales commission and management fee to Harmoney.
- (d) If Payment Protect applies in respect of a Loan, the Participating Investors will have certain benefits, but they will also face certain risks.
- (i) The benefits are that the Participating Investors will be beneficially entitled (through the Trustee) to the increased monthly principal and interest payments by the Borrower (due to the Borrower having increased the Loan Amount to cover the Payment Protect Fee), in accordance with their respective Participations in the Loan and subject to the terms of this agreement.
- (ii) The key risks are as follows:
- An event that is covered by the Borrower's Payment Protect Plan may occur. As a result, the Participating Investors (through the Trustee) will not receive the Loan repayments and interest payments that are waived (including any sums on account of the Payment Protect Fee that has been capitalised into the Loan). The Borrower may fully prepay the Loan and therefore be entitled to a proportionate rebate of the capitalised Payment Protect Fee. As a result, the Participating Investors (through the Trustee) will not receive the increased monthly interest payments for the remaining of the term of the Loan. Further, they may not receive a portion of the principal they would have otherwise have

expected in relation to the Payment Protect Fee where Harmony does not rebate the Optional Service Fee.

- If a Borrower notifies Harmony (as agent for the Trustee) that an event that is covered by the Borrower's Payment Protect Plan has occurred, Harmony will suspend direct debiting the payments in respect of which the Borrower has applied for a waiver. This suspension will apply until Harmony has completed its assessment of the waiver application. If Harmony declines the waiver application, it will reactivate the direct debit at that point. Consequently, there may be some delay before Investors receive payments in respect of which a Borrower unsuccessfully applies for a waiver.

You need to assess for yourself whether the risk/reward balance makes a Loan covered by Payment Protect a suitable investment for you.

- (e) If Payment Protect applies in respect of a Loan, the terms on which Payment Protect is provided will be part of the terms to the Loan Contract. The terms on which Payment Protect is currently offered to Borrowers, and the rates at which Payment Protect Fees are currently charged, are available on the Website under the "Legal Agreements" and "Interest Rates & Fees" sections respectively.

42. Harmony may arrange further Optional Services in respect of Loans, whether as the Trustee's agent or as principal.
43. If a Borrower is applying for an Optional Service (such as Payment Protect), the Loan Listing will specify this.

Order Process

General

44. An Order is a legally binding offer by you to lend (through the Trustee) to the relevant Borrower the Order Amount, on the terms set out in the relevant Loan Listing and otherwise as set out in this agreement.
45. The Website will contain details of the available Loan Listings. Each Loan Listing will specify the Loan Amount sought, the applicable Credit Grade, the purpose of the proposed Loan, and the proposed Optional Services (if any) that the Borrower has selected.
46. You may place an Order on a Loan Listing at any time, provided that you have sufficient unallocated cleared funds held for you in the Investor Account at that time. Each of your Orders must be expressed in multiples of \$25, and you must state the aggregate amount you want to invest in that Loan Listing.
47. You will be able to select the Loans on which you wish to bid, and the amount you wish to invest in that Loan, on the Website. You will be required to confirm your Order before it is placed in the marketplace on the Website.
48. Once you have placed an Order, you cannot withdraw it. Your Order will remain open for acceptance for the Listing Period. You will be notified by Harmony if your Order is accepted.

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49. You may not be successful with your Order, or may be only partially successful with your Order, regardless of what the unfunded balance of the relevant Loan is shown to be on the Website when you submit your Order.

Auto-lend

50. If you select the "Auto-lend" option on the Website, Harmoney will automatically place Orders to invest in Loans which meet the investment criteria you have selected (subject to the maximum notes per loan, minimum available funds, and daily auto-lend limit, if any, you specified for amounts to be invested through Auto-lend when you selected that option). When you have set an "Auto-lend" instruction:
- (a) you are authorising Harmoney to make deductions from the funds held for you in the Investor Account, up to the available funds, in accordance with that instruction;
 - (b) you may turn off that instruction at any time, but any Orders which have already been placed by Harmoney for your benefit pursuant to that instruction cannot be cancelled or reversed;
 - (c) Harmoney will place Orders up to either the then current balance of available funds held for you in the Investor Account or the minimum available cash balance set by you, and therefore either the entire balance of those funds or the amount exceeding the specified minimum balance (as the case may be) may be "locked" pending acceptance or otherwise of those Orders, subject to the daily auto-lend limit; and
 - (d) any money which is paid into the Investor Account for your benefit, including the proceeds of Loan Repayments, may be immediately reinvested, and may not be available to you to withdraw from the Investor Account;
 - (e) Harmoney's ability to place Orders which comply with your investment instructions will depend on the availability of Loans on the Website at the relevant time, and therefore not all of the available funds held for you in the Investment Account may actually be invested at any time; and
 - (f) if there are insufficient funds held for you in the Investor Account, your instruction will not be carried out by Harmoney.

Loan Contract

51. If sufficient Orders are placed during the Listing Period to Fully Fund a proposed Loan, Harmoney will notify the Borrower of that fact and (acting as the Trustee's agent) provide the relevant Loan Disclosure to the Borrower. For the purposes of this agreement, the Loan Disclosure will be treated as provided to the Borrower on the day on which it is emailed to the Borrower, or otherwise sent to the Borrower by electronic communication (within the meaning of section 35 of the CCCFA).
52. Immediately after Harmoney has provided the Loan Disclosure to the Borrower, a Loan Contract will come into existence under which the Trustee (who will be the lender of the Loan) will agree to advance the Loan Amount to the Borrower. The Loan Contract will be on the form set out on the Website when the Borrower lodged the Loan Listing on the Website.

Optional Services Terms or Contracts

53. If an Optional Service will apply in relation to a Loan, the relevant Loan Disclosure will confirm the Optional Service that applies.

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54. An Optional Service may be provided either pursuant to additional Loan Contract terms or pursuant to a separate contract, as follows:
- (a) If an Optional Service applies in relation to a Loan, and the terms governing that Optional Service provide that they apply as additional terms of the Loan Contract, those terms will be additional terms of the Loan Contract from its inception. Those additional terms will be on the terms set out on the Website under the "Legal Agreements" section when the Borrower lodged the Loan listing on the Website.
 - (b) If an Optional Service applies in relation to a Loan, and the terms governing that Optional Service provide that the Optional Service will be provided under a separate contract from the Loan Contract, then a separate contract relating to that Optional Service will come into existence immediately after Harmony has provided the Loan Disclosure to the Borrower. That contract will be on the terms set out on the Website under the "Legal Agreements" section when the Borrower lodged the Loan listing on the Website. The contract will be an **Optional Service Contract** for the purposes of this agreement if the party providing the Optional Service is the Trustee (acting through Harmony as its agent) rather than Harmony (acting as principal).

Your Rights

55. In respect of any Loan in which you Participate, you acknowledge and agree as follows:
- (a) Your interests in that Loan and the related Loan Contract and any Optional Service Contract are legally held on trust for your benefit by the Trustee, on the terms set out in this agreement.
 - (b) You will be entitled to receive your share (in accordance with your Participation) of any Receipts, after deduction and payment to Harmony of the relevant Investor Fees, any Enforcement Costs, any Optional Service Charges, and any Optional Service Expenses, and after deduction and payment over of any withholdings or deductions on account of RWT, NRWT, or AIL.
 - (c) You cannot personally pursue the Borrower or carry out any of the Collection Services if the Borrower defaults on any of its obligations under the Loan Contract or any Optional Service Contract.
 - (d) If a Loan Listing specified that the Borrower is applying for an Optional Service and the Loan is Fully Funded, you accept that the Loan will be made subject to that Optional Service. Without limiting the generality of the foregoing, you accept that if Payment Protect applies to a Loan in which you Participate the Borrower's obligation to make certain payments under the Loan will be waived if events covered by the Borrower's Payment Protect Plan occur (as provided in the Payment Protect terms, which are available on the Website under the "Legal Agreements" section) and that, in that event, you may not receive any or all of the unpaid Payment Protect Fee given that it is capitalised into the Loan; and you accept that risk.
 - (e) You will not be provided with any information which would enable you to identify the Borrower (unless required by law or to enable you to comply with your obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (or equivalent legislation in other countries).
 - (f) You do not have any contractual relationship with other Participating Investors (whether in the nature of partnership, joint venture, or otherwise) by virtue of Participating in the same Loan.

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- (g) You and the other Participating Investors beneficially co-own the Loan as owners in common (in accordance with your respective Participations), and not as joint owners. Accordingly, if you die, your interest in the Loan will be an asset in your estate; it will not devolve on the surviving Participating Investors.

Collection Services

56. A Borrower will be required to provide a direct debit authorisation for all Loan Repayments and other amounts payable by the Borrower in respect of a Loan, including any fees payable by the Borrower to Harmony. Harmony will be entitled to process additional direct debit payments to cover any fees payable by the Borrower to Harmony.

57. Harmony will (itself or through a third party) provide collection and enforcement services (collectively, **Collection Services**) in respect of all Loans, as the Trustee's agent. The Collection Services will include:
- (a) the administration of all Loan accounts following the advance of the Loan;
 - (b) monitoring all amounts payable under each Loan Contract;
 - (c) taking such steps as Harmony considers appropriate to contact the Borrower for payment arrears; and
 - (d) taking such recovery action as Harmony considers appropriate where there is a payment default, including by:
 - (i) appointing a collection or other agency to recover payment arrears;
 - (ii) instituting legal proceedings, and recovering the legal and associated third party costs from the Borrower;
 - (iii) entering into settlements with Borrowers on such terms as Harmony considers appropriate; and
 - (iv) selling any Loans that have been charged off if and on such terms (including as to price) as Harmony considers appropriate.

58. Harmony will be:
- (a) paid the fees described in clauses 59 and 60 (collectively, **Investor Fees**) for providing such Collection Services to the Trustee for the benefit of the Investors; and
 - (b) reimbursed for all Enforcement Costs it pays or incurs as specified in clause 61.

59. **Fees for providing Collection Services to Trustee for benefit of Retail Investors:** Harmony will receive the following fees in respect of each Retail Investor who Participates in the Loan, for providing the Collection Services for the benefit of that Retail Investor:

- (a) The Trustee will pay Harmony (beneficially, as a cost to the Retail Investor) a fee (**Lender Fee**) that is calculated:
 - (i) on the Retail Investor's share (in accordance with its Participation) of the interest amounts actually recovered; and
 - (ii) at the rate set out on the Website from time to time.The Lender Fee will be payable only as a deduction from those interest amounts. Harmony will not be entitled to be paid the Lender Fee except out of the Retail Investor's share of the interest amounts actually recovered.
- (b) In addition to the Lender Fee, the Trustee will pay Harmony an amount (**Loan Administration Fee**) equal to that Retail Investor's share

(in accordance with its Participation) of all fees and charges (not being Optional Service Fees) payable by the Borrower under the Loan that Harmony actually recovers (including without limitation all account maintenance fees, overdue fees, and dishonour fees payable under the Loan that Harmony actually recovers). Neither the Trustee nor the Retail Investor will be obliged to pay the Loan Administration Fee to Harmony, except out of the Retail Investor's share of the fees and charges actually recovered.

60. **Fees for providing Collection Services to Trustee for benefit of Wholesale Investors:** Harmony will receive the following fees in respect of each Wholesale Investor who Participates in the Loan:
- (a) The Trustee will pay Harmony (beneficially, as a cost to the Wholesale Investor) a fee (**Service Fee**) that is calculated:
 - (i) on the Wholesale Investor's share (in accordance with its Participation) of the principal and interest amounts actually recovered; and
 - (ii) at the rate agreed from time to time between Harmony and the Wholesale Investor.The Service Fee will be payable only as a deduction from those principal and interest amounts. Harmony will not be entitled to be paid the Service Fee except out of the Wholesale Investor's share of the principal and interest amounts actually recovered (and neither the Trustee nor the Wholesale Investor will be obliged to pay the Service Fee to Harmony except out of) the Receipts net of any enforcement costs or the Wholesale Investor's proportionate share thereof, as the case may be.
 - (b) In addition to the Service Fee, the Trustee will pay Harmony a Loan Administration Fee calculated as, and payable only as set out in, clause 59(b) (read as if all references there to a "Retail Investor" were references to the Wholesale Investor).

61. **Enforcement Costs:** The Enforcement Costs are payable only as a deduction from the enforcement costs due under the Loan Contract that are actually recovered. Neither the Trustee nor you will be obliged to pay Harmony any Enforcement Costs, except out of the enforcement costs actually recovered.

62. All deductions of the Investor Fees and Enforcement Costs will be made from the Collections Account.

Payments to Harmony for Optional Services

63. Harmony will in respect of each Optional Service that is provided under:
- (a) additional terms to the Loan Contract; or
 - (b) an Optional Service Contract,
- be paid such commissions, fees, and charges (collectively, **Optional Service Charges**) as are set out on the Website under the "Interest Rates & Fees" section, all at the rates specified in that section.
64. The Optional Service Charges are payable by the Trustee in full when Settlement occurs. The following provisions will apply:
- (a) Subject to the terms of the Optional Service, the Trustee will pay the Optional Service Charges either out of:
 - (i) funds contributed by the Participating Investors for that purpose (in this clause 64, "First Method"); or
 - (ii) the Optional Service Fee paid by the Borrower (in this clause 64, "Second Method").

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- (b) If the First Method applies (as in the case of Payment Protect), the Trustee will pay the Optional Service Charges to Harmony only out of funds that are:
- (i) pending Settlement, contributed by the Participating Investors (by transfer from funds held for them in the Investor Account, rateably in proportion to their Participations) and aggregated in the Advance Account for that purpose; and
 - (ii) at the time of Settlement, transferred from the Advance Account to Harmony's own account for Harmony's use.
- (c) If the Second Method applies, the Optional Service Charges will be paid:
- (i) only as a deduction from the Optional Service Fee actually received by the Trustee from the Borrower at Settlement;
 - (ii) by transfer of the Optional Service Charges from the Collections Account to Harmony's own account for Harmony's use.
- (d) Harmony is authorised to, and will, effect the transfer contemplated by clause 64(b) or clause 64(c) (as applicable) when Settlement occurs, in discharge of the Trustee's obligation to pay Harmony the Optional Service Charges.

65. If a Loan in relation to which an Optional Service is provided is prepaid, the following provisions will apply:

- (a) Harmony will (on the Trustee's behalf) rebate to the Borrower such proportion of the Optional Service Fee as may be required under the CCCFA. Harmony is authorised to make all such adjustments to the Loan account and all such transfers from the Collections Account as may be necessary for this purpose.
- (b) If a Borrower is entitled to have a proportion of its Optional Service Fee rebated to it, Harmony will refund to the Participating Investors (by payment into the Collections Account for their benefit):
 - (i) a proportion of the management fee described in clause 41(b); and
 - (ii) if the Borrower used another Loan to prepay the relevant Loan, a proportion of the sales commission described in clause 41(b),in each case calculated using the formula set out on the Website when the Borrower lodged the Loan Listing on the Website.

66. If Harmony (acting as agent for the Trustee) suffers or incurs any costs, expenses, losses, or liabilities in administering an Optional Service (**Optional Service Expenses**), those Optional Service Expenses will (depending on the terms of the Optional Service) be borne either by Harmony itself or by the Borrower. If the Optional Service Expenses are to be borne by the Borrower:

- (a) the Borrower's Loan account will be debited with an amount equal to the Optional Service Expenses; and
- (b) once the Borrower has paid that amount on the Loan account (or it is recovered from the Borrower), it will be transferred to Harmony in refund of Harmony's Optional Service Expenses.

Neither you nor the Trustee will be obliged to pay the Optional Service Expenses to Harmony, except out of the amount so debited to the Borrower and actually recovered. Harmony is authorised to (and will) transfer the Optional Service Expenses from the Collections Account to Harmony's own account for Harmony's use, if and to the extent that sufficient amounts owed to the Trustee under the Loan have been credited to the Collections Account

Order of Appropriation of Receipts

67. All Receipts will be appropriated as Harmony determines, and otherwise in the following order:
- (a) first, to any enforcement costs, overdue fees, and dishonour fees then owing (and pro rata as between these amounts); and
 - (b) secondly, to interest then due and owing; and
 - (c) lastly, as to any balance then remaining, to the principal outstanding and to any other amounts owed to the Trustee under the Loan.

Warranties

68. You warrant to Harmony that:
- (a) all information you provide to Harmony is true, accurate, and complete, and there is no information which has not been provided which would affect Harmony's decision to register you as an Investor; and
 - (b) you will provide Harmony with updated information in respect of your Investor Application if any of your circumstances change in a material respect.

Liability of Harmony and the Trustee

69. Neither Harmony nor the Trustee will have any liability for any failure to provide the Service, or any Optional Service or otherwise to comply with this agreement, if the failure or non-compliance is caused by events beyond its reasonable control.
70. The parties acknowledge and agree, in respect of Harmony, each Related Company of Harmony, and the Trustee, and their respective employees, directors, officers, agents and contractors (together, **relevant persons**) and to the fullest extent permitted by law, that:
- (a)
 - (i) none of the relevant persons will have any liability in respect of:
 - any failure to provide the Service, or any Optional Service or otherwise to comply with this agreement, if the failure or non-compliance is caused by events beyond its reasonable control; or
 - any failure by a Borrower to repay all or any amounts which are owing by that Borrower under a Loan Contract; and
 - (ii) any liability of any relevant person will be limited to the amounts actually received by Harmony which are payable to you, less all deductions from such amounts which are authorised by this agreement (and in aggregate no more than that amount can be recovered from all relevant persons),
 - (b) provided that nothing in this clause 70 or this agreement (except for clause 71) limits any rights you may have under the Consumer Guarantees Act 1993.

This clause 70 is for the benefit of, and is enforceable by, each relevant person, in terms Part 2, subpart 1 of the Contract and Commercial Law Act 2017.

71. If you are in trade, and you acquire the Service 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.

72. You acknowledge that you do not rely on Harmoney's skill or judgment as to the suitability or otherwise of the Service for your specific needs, in terms of providing a service through which you can seek to fund loans.

73. You acknowledge that the Website may not be available at all times and that neither Harmoney nor the Trustee will have any liability for any loss of profit or opportunity (however described) arising from any inability to access the Website at any time.

Modification

74. Subject to clause 75(b), Harmoney may modify this agreement, and the way in which it provides the Service, and the way in which it or the Trustee provides any Optional Service 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 as the effective date on the Website.

75. Harmoney may:

- (a) modify any of the fees charged in connection with the Service (including the Establishment Fee, Lender Fee, Loan Administration Fee, and Service Fee) or in connection with any Optional Service (including the Optional Service Fees and Optional Service Charges) at any time; and
- (b) introduce any new types of Investor Fees in connection with the Service, and any new types of Optional Service Charges in connection with an Optional Service, with effect from the time specified on the Website; provided that a new type of Investor Fee will apply in respect of a Loan or a new type of Optional Service Charge will apply in respect of an Optional Service only if:
 - (i) the Borrower lodges the Loan Listing for the Loan on the Website after that new type of Investor Fee or Optional Service Charge came into effect; or
 - (ii) introducing the new type of Investor Fee or Optional Service Charge is considered necessary as a result of a legal or regulatory development (including as a result of any legislative change or in the interpretation or application of any legislation).

Any new type of Investor Fees will be charged at Harmoney's prevailing rate (as specified on the Website), and payable as a deduction from amounts due under the relevant Loan that are actually recovered. Neither you nor the Trustee will be obliged to pay any such Investor Fee except out of the amounts actually recovered. Any new type of Optional Service Charge will be charged at Harmoney's prevailing rate (as specified on the Website), and payable as provided for in clause 64. Neither you nor the Trustee will be obliged to pay any such Optional Service Charge except in accordance with clause 64.

76. You acknowledge and agree that the Loan Contract (including any terms for Optional Services) or an Optional Services Contract may be varied as the Trustee (acting through Harmoney) in its discretion considers fit, including without limitation if the Trustee or Harmoney considers that:

- (a) the Borrower is suffering or will suffer unforeseen hardship (including as contemplated by subpart 2.8 of the CCCFA); or
- (b) a responsible lender would otherwise agree to such variation.

Such variation may be in respect of the term of the Loan, the calculation, amount, or time for payment of any amount, or any other matter.

Communications

77. Harmoney may provide you with communications in relation to the provision of the Service, including notices and disclosures, by mail or in an electronic form, including by email.
78. The Trustee (acting through Harmoney) will provide you with information about money or property received, held, or paid for your benefit or to your account (including about transactions effected for you) in accordance with the Financial Advisers (Custodians of FMCA Financial Products) Regulations 2014. You agree that all such information may be provided to you on an ongoing basis through your investor dashboard on the Website.
79. You must provide notices to Harmoney by mail (posted to its registered address) or by email to the email address below.
80. If you have any questions about the Service or the terms of this agreement, please contact Harmoney as follows:

Phone: 0800 HARMONEY
Email: customer.services@harmoney.co.nz
81. Each of Harmoney and the Trustee is a member of the Financial Services Complaints Limited dispute resolution scheme. You may refer any dispute as to the provision of the Service to that dispute resolution service, details of which are available at <http://www.fscl.org.nz/>.

Accounts

82. The entries made in the accounts maintained by Harmoney (as principal or as the Trustee's agent, as the case may be) are, in the absence of manifest error, conclusive evidence of the matters to which they relate.

General

83. You may not transfer or assign any of your rights or obligations under this agreement or in relation to any Participation, Loan, or any Loan Contract or Optional Services Contract without Harmoney's prior written consent (which consent may be withheld at Harmoney's absolute discretion).
84. This agreement and every trust arising under it are governed by New Zealand law. The parties submit to the non-exclusive jurisdiction of the New Zealand courts in respect of all matters arising under or in connection with this agreement (including in connection with any Loan Contract or Loan made under it or Optional Service Contract made under or in connection with it) and every such trust.

Defined Terms

85. In this agreement:

Advance Account means the bank account operated by Harmoney on behalf of the Trustee into which funds are transferred by Harmoney from the Investor Account when an Order is accepted, and from which Harmoney (as agent for the Trustee) at Settlement transfers funds to the relevant Borrower's nominated

account (and transfers the Establishment Fee and any Optional Service Charges payable under clause 64(b) to Harmony's own account);

AIL means the approved issuer levy payable under part 6B of the Stamp and Cheque Duties Act 1971;

Borrower means a person who has registered as a Borrower with Harmony;

Business Day means a day other than a Saturday, Sunday or statutory public holiday in New Zealand;

CCCFA means the Credit Contracts and Consumer Finance Act 2003;

Collections Account means the bank account operated by Harmony on behalf of the Trustee:

- (a) into which all Receipts are paid; and
- (b) from which any tax deductions or withholdings on interest comprised in Loan Repayments (including any NRWT and AIL) are deducted and paid over to Inland Revenue, the Investor Fees, the Loan Administration Fee, any Enforcement Costs, certain Optional Service Charges, and any Optional Service Expenses are paid to Harmony, and the balance is repaid to the Investor Account for the benefit of the relevant Investors;

Collection Services means the services described in clause 57;

Credit Checks means the credit checks carried out by Harmony on a Borrower, either itself or through a Related Company or a third party credit reporting agency;

Credit Grade means Harmony's proprietary credit grade attributed to a Borrower, which Harmony generates based on information provided by a Borrower and otherwise obtains in respect of that Borrower (including through Credit Checks), details of which are set out on the Website;

Customer Services Agreement means the agreement entered into by a Borrower with Harmony and the Trustee in relation to the provision of the Service by Harmony to that Borrower;

Enforcement Costs in respect of a Loan means all costs, expenses, and liabilities actually incurred by Harmony in enforcing or attempting to enforce the Loan or recovering or attempting to recover any amounts owing under it (including, for the avoidance of doubt, in selling a Loan that has been charged off), including without limitation all legal costs;

Establishment Fee means the fee owed by the Borrower to Harmony in respect of a Loan which Settles;

FMCA means the Financial Markets Conduct Act 2013;

Fully Funded in relation to a Loan Listing or a Loan means that Harmony has received sufficient Orders from Investors to fund the full amount of:

- (a) the proposed Loan Amount; or
- (b) any lesser amount the Borrower agreed to accept, as specified in the relevant Loan Listing;

provided that if an Optional Service is proposed to apply to the Loan, **Fully Funded** means that Harmony has received sufficient Orders from Investors to fund:

- (i) the full amount of the proposed Loan Amount (or any lesser amount the Borrower agreed to accept) net of any Optional Service Fee that is proposed to be capitalised; and
- (ii) the full amount of any Optional Service Charges payable by the Trustee to Harmony in relation to the Optional Service in accordance with clause 64(b) (if and to the extent applicable);

Harmony Servicer Default means:

- (a) the appointment of a liquidator to Harmony; or
- (b) Harmony ceasing to hold a licence for the Service under the FMCA for a period of 5 Business Days;

Interest Rate means the annual interest rate (expressed as a percentage rate per annum) for the Loan specified in the Loan Listing, which will be calculated daily on the outstanding amount of the Loan on the basis of a 365-day year and will be payable monthly in arrears by the Borrower (or compounded if not paid);

Investor means, as the context requires:

- (a) a person who has registered as an Investor with Harmony; or
- (b) in relation to a Loan, a Participating Investor;

Investor Account means a trust account held by Harmony for the benefit of all Investors whose funds have been deposited into that account for the purpose of investment or reinvestment in Participations or pending repayment to their Nominated Accounts, in accordance with their respective interests;

Investor Agreement means the agreement entered into by an Investor with Harmony and the Trustee in relation to the provision of the Services by Harmony to that Investor;

Investor Application means the application to become an Investor, set out on the Website or provided by Harmony for you to complete and return to Harmony;

Investor Fees has the meaning given to that term in clause 58(a), and includes any new types of Investor Fees introduced under clause 75(b);

Lender Fee has the meaning given to that term in clause 59(a);

Listing Period means the period from the date on which the Loan Listing appears on the Website for consideration by Investors (or is first allocated to the marketplace for Wholesale Investors under clause 37, where applicable) to the earlier of 14 days from that date and the date on which the Loan which is the subject of that Loan Listing is Fully Funded;

Loan means the Loan Amount lent by one or more Investors (through the Trustee as trustee) to a Borrower, using the Service, and where applicable, includes the amount of all compounded or capitalised interest;

Loan Administration Fee has the meaning given to that term in clause 59(b) (subject to clause 60(b));

Loan Amount means, as the context requires:

- (a) the amount that a Borrower wishes to borrow (inclusive of the amount of the Establishment Fee and any applicable Optional Service Fee that is to be capitalised) in the relevant Loan Listing; or
- (b) the total amount of the Loan at Settlement (inclusive of the amount of the Establishment Fee and, if applicable, the capitalised Optional Service Fee.), as set out in the Loan Disclosure;

Loan Contract in relation to a Loan means the contract under which that Loan is made, as described in clause 52;

Loan Disclosure means, in respect of a Loan, the initial disclosure required under the CCCFA for that Loan;

Loan Listing means a listing which is lodged by the Borrower on the Website, and which sets out the details of a Loan which the Borrower wishes to be funded;

Loan Repayments means, as the context requires:

- (a) the monthly payments of principal and interest which will be payable by the Borrower in respect of the Loan Amount in a Loan Listing; or
- (b) the monthly payments of principal and interest which are payable by the Borrower on a Loan which has Settled;

Nominated Account means the New Zealand bank account which is nominated by an Investor from time to time as the account into which funds held for the benefit of that Investor may be transferred from the Investor Account by Harmony;

Non-NZ Tax Resident means an Investor who is not an NZ Tax Resident;

NRWT means non-resident withholding tax imposed under the NRWT rules in the Income Tax Act 2007;

NZ Tax Resident means an Investor who is: (i) resident in New Zealand under the Income Tax Act 2007; (ii) is engaged in business in New Zealand through a fixed establishment in New Zealand and either invests in Loans through that fixed establishment or is a registered bank in New Zealand; or (iii) both;

Optional Service means a service that a Borrower may opt in to when taking out a Loan;

Optional Service Charges has the meaning given to that term in clause 63;

Optional Service Contract in relation to a Loan means a contract under which an Optional Service is to be provided to the Borrower by the Trustee (acting through Harmony as its agent);

Optional Service Expenses has the meaning given to that term in clause 66;

Optional Service Fee means the fee the Borrower must pay to have the benefit of an Optional Service, as set out on the Website under the "Interest Rates & Fees" section, and includes a Payment Protect Fee;

Order means an offer by an Investor to participate in

- (a) funding a Loan (or an offer by a Wholesale Investor to fund an entire Loan, where applicable); and

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- (b) if an Optional Service is proposed to apply to the Loan, funding any Optional Service Charges payable to Harmony in relation to the Optional Service in accordance with clause 64(b) (if and to the extent applicable), based on that Borrower's Loan Listing;

Order Amount means the amount of an Order;

Participating Investor in relation to a Loan means an Investor who participated in providing funds to the Trustee to make that Loan; and in relation to an entire Loan funded by a Wholesale Investor includes that Wholesale Investor and each transferee of any share in that Wholesale Investor's beneficial interest in that Loan; and "**Participate**" has a corresponding meaning;

Participation means in relation to a Loan, a beneficial interest in that Loan comprising a principal amount of \$25 together with the right to repayment from that Loan of that amount and all unpaid interest on that amount calculated at the relevant Interest Rate applicable to that Loan, together with all other rights and obligations of the Investor in respect of that Loan as set out in the relevant Investor Agreement and the beneficial rights of the Investor in the relevant Loan Contract for that beneficial interest (provided that a Wholesale Investor who funds an entire Loan shall be deemed to have invested in a series of beneficial interests in the Loan, each comprising a principal amount of \$25, and each of which constitutes a "Participation");

Payment Protect means the Optional Service provided by the Trustee (acting through Harmony as its agent) under which the Trustee agrees with a Borrower (in consideration of the Borrower paying the Trustee a Payment Protect Fee) that the Borrower will not be liable to make certain payments under the Loan if specified events occur, subject to applicable cover limits;

Payment Protect Fee means the fee that a Borrower must pay the Trustee to have the benefit of Payment Protect;

Payment Protect Plan means an arrangement between the Trustee and a particular Borrower (pursuant to additional terms to the relevant Loan Contract) that Payment Protect will apply to a particular Loan to that Borrower;

Receipts in relation to a Loan Contract, Loan, or Optional Service Contract means all payments that are derived under or from it that are actually received or recovered by or on behalf of the Trustee; and (to avoid doubt) in the case of a Loan Contract and a Loan includes:

- (a) all Loan Repayments and other payments due under the Loan that are actually received or recovered by or on behalf of the Trustee from the Borrower; and
- (b) the sale proceeds actually received or recovered by or on behalf of the Trustee, if the Loan is sold under clause 57(d);

Related Company has the meaning given to that term in section 2(3) of the Companies Act 1993;

Retail Investor has the meaning given to that term in clause 35(b);

RWT means resident withholding tax imposed under the RWT rules in the Income Tax Act 2007;

RWT Exemption Certificate has the meaning in section YA 1 of the Income Tax Act 2007;

Service means the peer-to-peer lending service which Harmony provides through the Website;

Service Fee has the meaning given to that term in clause 60(a);

Settlement in relation to a Loan means:

- (a) Harmony arranging for the collection of funds from all Investors who have had their Orders on the relevant Loan Listing accepted, and (as directed by the Trustee) deducting the applicable Establishment Fee for Harmony's own account, deducting any Optional Service Charge (if and to the extent applicable under clause 64(b)) and transferring the balance of the Loan Amount to the Borrower's nominated account (all via the Advance Account); and
 - (b) the time at which the above transfer occurs;
- and **Settle** and **Settled** have corresponding meanings;

Trustee means the entity which is appointed by Harmony from time to time to hold Loans on trust for the benefit of Investors;

Website means the website at www.harmony.co.nz, or such other website as Harmony may from time to time operate to provide the Service; and

Wholesale Investor has the meaning given to that term in clause 35(a).

Interpretation

2. In this agreement:
- (a) headings are inserted for ease of reference only, and do not affect the interpretation of this agreement;
 - (b) references to the singular include the plural and vice versa;
 - (c) references to a **person** include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity;
 - (d) where the Investor consists of more than one person, the terms of this agreement bind each of them jointly and severally;
 - (e) reference to a party includes its permitted assignee or transferee; and any reference to the Trustee or to Harmony includes any entity appointed to replace it under clause 20 or clause 28 (as applicable) and any duly appointed subcontractor or delegate in relation to the Service;
 - (f) reference to the "liability" of a person include references to its liability under any cause of action, whether in contract, tort, or equity or under any enactment;
 - (g) references to any document (however described) are references to that document as modified, novated, supplemented, varied or replaced from time to time and in any form, whether on paper or in an electronic form; and
 - (h) a reference to any legislation is a reference to that legislation as amended or replaced from time to time, and includes any regulations or legislative instrument made under it.

Attachment – Direct Debit Terms

CONDITIONS OF INSTRUCTION TO ACCEPT DIRECT DEBITS

1. Harmony:
 - 1.1. Will provide notice either:
 - 1.1.1. in writing; or
 - 1.1.2. by electronic mail where the Investor has provided prior written consent to Harmony.
 - 1.2. Has agreed to give advance Notice of the net amount of each Direct Debit and the due date of the debiting at least 10 calendar days (but not more than 2 calendar months) before the date when the Direct Debit will be initiated.
 - 1.2.1. The advance notice will include the following message:

“Unless advice to the contrary is received from you by (date*), the amount of \$..... will be directly debited to your Bank account on (initiating date*).”

*This date will be at least two (2) days prior to the initiating date to allow for amendment of Direct Debits.
 - 1.3. Alternatively, Harmony undertakes to give notice to the Investor of the commencement date, frequency and amount at least 10 calendar days before the first Direct Debit is drawn (but no more than 2 calendar months).
 - 1.3.1. Where the Direct Debit System is used for the collection of payments which are regular as to frequency, but variable as to amounts, Harmony undertakes to provide the Investor with a schedule detailing each payment amount and each payment date.
 - 1.3.2. In the event of any subsequent change to the frequency or amount of the Direct Debits, Harmony has agreed to give advance notice of at least 30 days before the change comes into effect. This notice must be provided either:
 - (a) in writing; or
 - (b) by electronic mail where the Investor has provided prior written consent to Harmony.
 - 1.4. May initiate a Direct Debit on the Investor’s account when authorisation is received from the Investor in accordance with the terms and conditions agreed between the Investor and Harmony of each amount to be debited from the Investor’s account.
 - 1.4.1. Notice will be sent of the net amount of each Direct Debit and the due date of debiting after receiving authorisation from the Investor under clause 1.4 but no later than the date the Direct Debit will be initiated. This notice must be provided either:
 - (a) in writing; or
 - (b) by any other means which provides a verifiable record of the initiated transaction and where the Investor has provided prior written consent to Harmony.
 - 1.4.2. Where the notice is in writing it must include the following message:

“The amount \$..... was directly debited to your Bank account on (initiating date).”

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- 1.4.3. Where the notice is provided by other means:
 - (a) Harmony should hold prior written consent of those means of providing notice; and
 - (b) the notice should provide a verifiable record of the initiated transaction and include the amount and initiating date of that transaction.
 - 1.5. May, upon the relationship which gave rise to this Instruction being terminated, give notice to the Bank that no further Direct Debits are to be initiated under the Instruction. Upon receipt of such notice the Bank may terminate this Instruction as to future payments by notice in writing to me/us.
 2. The Investor may:
 - 2.1. At any time, terminate this Instruction as to future payments by giving written (or by the means previously agreed in writing) notice of termination to the Bank and to Harmony.
 - 2.2. Stop payment of any Direct Debit to be initiated under this Instruction by Harmony by giving written notice to the Bank prior to the Direct Debit being paid by the Bank.
 - 2.3. Where no advance notice is provided under clause 1.4 a variation to the amount agreed between Harmony and the Investor from time to time to be Direct Debited had been made without notice being given in terms of clause 1.4 above, request the Bank to reverse or alter any such Direct Debit initiated by Harmony by debiting the amount of the reversal or alteration of Direct Debit back to Harmony through Harmony's Bank PROVIDED such request is made not more than 120 days from the date when the Direct Debit was debited to the Investor's account.
 - 2.4. Request the Bank to reverse any Direct Debits initiated by Harmony under the Instructions by debiting the amount of the Direct Debits back to Harmony through Harmony's Bank where Harmony cannot produce a copy of the Instructions and/or Confirmation to the Investor that the Investor is reasonably satisfied demonstrate that the Investor has authorised the Investor's bank to accept Direct Debits from Harmony against the Investor's account PROVIDED the request is made not more than 9 months from the date when the first Direct Debit was debited to the Investor's account by Harmony under the Instructions.
 3. The Investor acknowledges that:
 - 3.1. This Instruction will remain in full force and effect in respect of all Direct Debits passed to the Investor's account in good faith notwithstanding the Investor's death, bankruptcy or other revocation of this Instruction until actual notice of such event is received by the Bank.
 - 3.2. In any event this Instruction is subject to any arrangement now or hereafter existing between the Investor and the Bank in relation to the Investor's account.
 - 3.3. Any dispute as to the correctness or validity of an amount debited to the Investor's r account shall not be the concern of the Bank except in so far as the Direct Debit has not been paid in accordance with this Instruction. Any other disputes lie between the Investors and Harmony.
 - 3.4. Where the Bank has used reasonable care and skill in acting in accordance with this Instruction, the Bank accepts no responsibility or liability in respect of:
 - 3.4.1. the accuracy of information about Direct Debits on Bank statements; and

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- 3.4.2. any variations between notices given by Harmony and the amounts of Direct Debits.
- 3.5. The Bank is not responsible for, or under any liability in respect of Harmony's failure to give notice in accordance with clauses 1.1 to 1.4, nor for the non-receipt or late receipt of notice by the Investors for any reason whatsoever. In any such situation the dispute lies between the Investors and Harmony.
4. The Bank may:
- 4.1. In its absolute discretion conclusively determine the order of priority of payment by it of any monies pursuant to this or any other Instruction, cheque or draft properly signed by the Investor and given to or drawn on the Bank.
- 4.2. At any time terminate this Instruction as to future payments by notice in writing to the Investor.
- 4.3. Charge its current fees for this service in force from time to time.