



# Master Services Agreement

Zerocap Pty Ltd

ABN: 99 164 874 597

AUSTRAC Registration: 100635539

Digital Currency Exchange Registration: DCE100635539-001

8/287 Collins St  
Melbourne  
VIC 3000  
Australia

# Master Services Agreement

This Agreement (“**This Agreement**”), dated \_\_\_\_\_ (the “**Effective Date**”) is made and entered into between:

- A. **Name:** \_\_\_\_\_  
**ABN/business number (if applicable):** \_\_\_\_\_ of  
**Address:** \_\_\_\_\_  
\_\_\_\_\_  
 (“**The Customer**”); and
- B. Zerocap Pty Ltd (ABN 99 164 874 597)  
Level 8, 287 Collins Street, Melbourne VIC 3000, Australia  
 (“**Zerocap**”).

Each may be referred to as a “**Party**”, and together “**the Parties**”.

## Recitals

- A. Zerocap operates a proprietary web platform that facilitates the purchase and sale of digital assets and provides custody, yield and technical support services in relation to digital assets.
- B. The Parties desire to purchase and sell digital assets between them from time to time, and the Customer wishes to engage Zerocap to provide custody, storage and technical support services in relation to its digital assets on the terms and conditions set out in this Agreement.

## Operative Provisions

Pursuant to the terms and conditions set forth in this Agreement the parties agree as follows:

### 1 Definitions and Interpretation

#### 1.1 Definitions

In this Agreement, unless the context otherwise requires:

“**Activate**” means a Customer choosing to activate the provision of a Service from Zerocap by selecting to toggle ‘on’ the Service in Zerocap’s Customer facing API interface. “**Activation**” and “**Activated**” each have corresponding meanings.

“**Additional Services**” means other services which may be offered by Zerocap not currently offered as at the Execution Date.

“**Associates**” has the meaning given in the Corporations Act.

“**Assets**” means any Supported Digital Assets that have been Delivered to Zerocap.

“**Authorised Person**”, of a party, means the person nominated by that party in clause 13.11 to receive notices pursuant to this Agreement, and any other person nominated by that party to the other in writing from time to time.

“**Business Day**” means each day that is not a Saturday, Sunday or public holiday in the state of Victoria, Australia.

“**Corporations Act**” means the *Corporation Act 2001* (Cth).

“**Custody Account**” means a separate custody account for the Customer to store Supported Digital Assets hosted on the Zerocap platform.

“**Custody Fees**” means the Custody Service Fees and LPP Fees (as applicable).

“**Custody Service Fees**” has the meaning given to that term in clause 4.3.

“**Custody Services**” means:

- A. establishing and allocating a Custody Account;
- B. providing a secure Digital Asset Wallet associated with the Customer’s Custody Account; and
- C. related ancillary services.

“**Deactivate**” means a Customer choosing to deactivate the provision of a Service from Zerocap by selecting to toggle ‘off’ the Service in Zerocap’s Customer facing API interface. “**Deactivation**” and “**Deactivated**” shall each have corresponding meanings.

“**Delivery**” means the transfer of fiat currency or Supported Digital Assets to the Digital Asset Wallet associated with the Customer’s Custody Account. Supported Digital Assets will only be considered Delivered after the transfer is confirmed by at least three (3) network confirmations have occurred on the blockchain. “**Delivered**” has the corresponding meaning.

“**Digital Asset Wallet**” means a digital asset wallet connected to the Customer’s Custody Account.

“**Fee**” means, in respect of a service, the fee and expenses to be paid by the Customer as disclosed in the Fee Schedule.

“**Fee Schedule**” means the fee schedule currently disclosed on the Zerocap website at <https://zerocap.io/legal/fee-schedule>.

“**GST Law**” means the same as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

“**Invitation**” has the meaning given in clause 3.2.

“**LPP Fee**” has the meaning given in clause 4.3.

“**Order Confirmation**” has the meaning given in clause 3.1.

“**OTC Services**” means the purchase, sale and exchange of Supported Digital Assets for fiat or cash.

“**Person**” means any individual, corporation, partnership, association, limited liability company, private company (limited by shares or guarantee), public company, trust, body corporate or other entity, either individually or collectively.

“**Privacy Policy**” means the privacy policy of Zerocap as disclosed on its website at <https://zerocap.io/legal/privacy>.

“**Publication Date**” means the date on which this agreement is published on the Zerocap website.

“**Purchase Order**” has the meaning given in clause 3.1.

“**Purchase Price**” means the agreed purchase price for an agreed amount of Assets set out in an Order Confirmation.

“**Purchaser**” has the meaning given in clause 3.1.

“**Registration Data**” means information and documents as is required by Zerocap to verify the Customer’s identity, in accordance with the requirements of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) and Zerocap’s AML CTF Program.

“**Review Period**” has the meaning given in clause 3.1.

“**Seller**” has the meaning given in clause 3.1.

“**Services**” means services which may be provided by Zerocap to the Customer from time to time, as disclosed in the Services Schedule including the OTC Services, Custody Services, Yield Services and the Additional Services.

“**Services Schedule**” means the services schedule currently disclosed on the Zerocap website at <https://zerocap.io/legal/service-schedule>.

“**Settlement Date**” means a date on which an Order Confirmation is validly communicated in accordance with this Agreement.

“**Supported Digital Assets**” means Bitcoin, Ethereum (including associated ERC tokens) and any other digital assets notified from time to time by Zerocap.

“**Term**” means the term commencing on the Effective Date until the date this Agreement is terminated in accordance with clause 7.2.

“**Yield Account**” means a separate wallet or account maintained by Zerocap where Yield Assets are deposited by a Customer by electing to Activate the Yield Product.

“**Yield Assets**” means the Assets nominated by the Customer to be subject to the Yield Services.

“**Yield Product**” means a yield-bearing digital asset account hosted on the Zerocap platform.

“**Yield Product Fees**” means fees charged by Zerocap to the Customer for the provision of the Yield Product and the Yield Services as provided in clause 5.5.

“**Yield Services**” means:

- A. transferring the Yield Assets for and on behalf of the Customer;
- B. agreeing to pay the Customer the Yield; and
- C. responding to requests and queries from the Customer regarding the Yield Services and use of the Yield Assets,

by way of Zerocap’s subsidiary entity, Zerocap UK.

“**Yield Term**” means the period commencing on the date the Customer Activates the Yield Product until the date the Customer Deactivates the Yield Product

“**Zerocap UK**” means Zerocap Limited (registered no. 12796242).

## 1.2 Interpretation

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In this Agreement, unless the context otherwise requires:

- (A). references to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under the legislation;
- (B). words denoting the singular include the plural and vice versa, words denoting individuals or persons include bodies corporate and vice versa, references to documents or agreements also mean those documents or agreements as changed, novated or replaced, and words denoting one gender include all genders;
- (C). the word “including” and like words are not to be treated as words of limitation;
- (D). grammatical forms of defined words or phrases have corresponding meanings;
- (E). parties must perform their obligations on the dates and times fixed by reference to Melbourne, Australia;
- (F). a reference to an amount of money, ‘\$’ or ‘dollars’ is a reference to the amount in US dollars, unless specified otherwise and confirmed by both Parties;
- (G). if the day on or by which anything is to be done is a Saturday, a Sunday or a public holiday in the place in which it is to be done, then it must be done on the next Business Day;
- (H). references to a party are intended to bind their executors, administrators and permitted transferees; and
- (I). obligations affecting more than one party bind them jointly and each of them severally.

## 2 Provision of Services

### 2.1 Services

- (A). Zerocap must provide the Services in accordance with this Agreement and the Customer agrees to use the Service on the terms and conditions of this Agreement as amended or varied from time to time including any terms that are incorporated by reference in this Agreement.

- (B). The Customer agrees to pay the Fees for the Services as set out in the Fee Schedule.

## 2.2 Additional Services

- (A). Zerocap may offer and provide Additional Services from time to time on the Zerocap Platform. The Additional Services will be provided in accordance with the terms of this agreement.
- (B). Zerocap shall notify Customers of Additional Services being offered by Zerocap which are not currently being provided as at the Execution Date by amending the Services Schedule available on the Zerocap website and sending Customers an email notification stating what Additional Service it now offers, the nature of the Additional Service, and the date from which the Additional Service will be offered.
- (C). Zerocap will only provide Customers with the Additional Services on Activation by the Customer.

## 2.3 Service Terms

- (A). Terms applicable to the provision of the OTC Services, Custody Services and Yield Services are set out below at clauses 3, 4 and 5 respectively.
- (B). Zerocap shall advise Customers of the terms of Additional Services as and when the Additional Service becomes available.
- (C). Customers may obtain a copy of the terms for the Services, including the Additional Services, from the Zerocap website at <https://zerocap.io/legal/service-terms>.

all terms applicable to Services provided will be available on the Zerocap website and are subject to change without notice.

## 2.4 Activation and Deactivation

- (A). Customers will Activate or Deactivate the provision of any Service or Additional Service at their own volition from within the Zerocap Platform.
- (B). The Customer agrees that on the Activation of any Service:
  - a. Zerocap will commence providing the relevant Service within 24 hours of the Activation;

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- b. the relevant Service terms will apply to the provision and receipt of the Service;
  - c. Zerocap will deduct any applicable Fee amount associated with the provision of the relevant Service from the Customers Custody Account;
- (C). Zerocap will continue providing the Service and deducting any Fee associated with the provision of the relevant Service from the Custody Account until the Customer Deactivates the Service.
- (D). On the Deactivation of any Service:
- a. Zerocap will immediately cease providing the relevant Service;
  - b. Zerocap will immediately cease accruing to the Customer any Fee amount (if applicable) for the Service from the Customers Custody Account;
  - c. Zerocap will use its best endeavours to effect any withdrawal requests made by a Customer from the applicable Yield Account to the Customers Custody Account within 72 hours of Deactivation;
  - d. the Customer irrevocably agrees not to hold Zerocap liable for any delays in effecting any withdrawal from the Yield Account to the Custody Account.

## 2.5 Changes to Services and Fees

- (A). Zerocap reserves the right to:
- a. cancel the provision of any Services at any time; and
  - b. amend the scope, nature or features of the Services, Fees or the Platform at any time.
- (B). Zerocap shall notify Customers of changes made pursuant to clause 2.5(A) by:
- a. in the case of Services, amending the Services Schedule available on the Zerocap website and sending Customers an email notification stating which Service has been amended and the date from which the amendment will take or has taken effect;
  - b. in the case of Fees, amending the Fees Schedule available on the Zerocap website, and sending Customers an email notification stating what Fees have been amended and the date from which the amendment will take or has taken effect;



- c. in the case of the Platform, sending Customers an email notification stating the proposed changes to the Platform at least 48 hours prior to the changes on the Platform taking effect.

## 3 OTC Services

### 3.1 Purchase Orders

(A). During the Term of this Agreement, the Customer or Zerocap (as applicable), as purchaser of Assets from time to time (the “**Purchaser**”), may submit a purchase order to the other Party (the “**Seller**”) via email, by other agreed electronic instant messaging communication means, or by phone (“**Purchase Order**”).

(B). A Purchase Order will contain:

- a. the number and types of Supported Digital Assets the subject of the Purchase Order;
- b. the manner of payment to be used by the Purchaser (including the denominations of all purchasing currencies);
- c. a desired date or timeframe for completion of the Purchase Order;
- d. details of the source of funds to be used by the Purchaser for the Purchase Order, including beneficial owners of the funds; and
- e. all other details that the Seller reasonably requires to fulfill the Purchase Order.

(C). On receiving a Purchase Order, the Seller will decide whether to enter into the transaction in accordance with the details specified in such Purchase Order with the Purchaser via email or other agreed electronic instant messaging communication means, or by phone (the “**Order Confirmation**”) within 24 hours of receiving the Purchase Order (the “**Review Period**”). Otherwise, such Purchase Order shall be deemed to have been rejected and expired.

(D). An Order Confirmation will contain:

- a. the number and types of Supported Digital Assets the subject of the Purchase Order;
- b. the Purchase Price for the Supported Digital Assets;
- c. the agreed date and time for completion of the Purchase Order; and

- d. any other information that the Purchaser reasonably requests to fulfill the Purchase Order.
- (E). A Purchase Order or Order Confirmation will not be deemed void or invalid merely because it does not meet the requirements of form set out in this clause 3.1.

### 3.2 Seller Purchase Order

- (A). A Seller may initiate a Purchase Order by notifying the Purchaser of its desire to sell Assets and invite the Purchaser to submit a Purchase Order to the Seller (“**Invitation**”).
- (B). Upon the receipt of such Invitation, the Purchaser in its absolute discretion shall decide whether to submit a Purchase Order to the Seller and, if so, shall do so in the manner set out in clause 3.1.
- (C). The Seller shall decide whether to enter into the transaction in accordance with the details specified in such Purchase Order with the Purchaser via email or other agreed electronic instant messaging communication means within the Review Period after the receipt of the Purchase Order. Otherwise, such Purchase Order shall be deemed to have been rejected and expired.

### 3.3 Purchase Order Authorisation

Purchase Orders, Order Confirmations and Invitations may only be given by an Authorised Person of one party to an Authorised Person of the other.

### 3.4 Settlement and Payment

- (A). Once an Order Confirmation is communicated to the Purchaser:
- a. the Seller shall sell and transfer the number of units of Assets specified in the relevant Purchase Order to the Purchaser, or if the Purchaser holds a Custody Account with the Seller, then the Seller shall credit the Assets to that Custody Account and confirm this with the Purchaser; and
  - b. the Purchaser shall buy and pay the Purchase Price for the Assets to the Seller by wire transfer of immediately available funds to the bank account specified by the Seller in writing.

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- (B). The actions specified in '3.4(A)' must be undertaken as soon as reasonably practicable after the Order Confirmation and in any case no later than 3 Business Days after that date.
- (C). Settlement and payment under this clause 3 is subject always to Zerocap determining if a deposit is required in order for Zerocap to fulfill any Purchase Order in its absolute discretion.

### 3.5 Title and Risk of Loss

All of the rights, title, interests in and attached to Assets sold pursuant via a Purchase Order will pass to the Purchaser upon completion of each of the following:

- (A). the Purchaser's payment of the Purchase Price to the Seller;
- and either:
- (B). the Seller's transfer and delivery of the Assets to the Purchaser; or
- (C). Zerocap crediting or debiting the purchased Assets to the Customer's Custody Account (as relevant).

The risk of loss for the Assets will pass to the Purchaser along with title.

## 4 Custody Services

### 4.1 Appointment

The Customer appoints Zerocap to provide the Custody Services, and Zerocap agrees to provide the Custody Services, for the duration of the Term on the terms and conditions set out in this Agreement.

### 4.2 Custody Account

**(A). Account Registration**

To access the Custody Services, the Customer must:

- a. execute this Agreement and request a Custody Account from Zerocap;
- b. nominate the Customer's Authorised Signatories for the Custody Account; and

- c. provide the Registration Data for verification by Zerocap.

**(B). Digital Asset Wallet**

- a. The Custody Account will have an associated unique Digital Asset Wallet where Supported Digital Assets may be: (i) stored separated from other assets held by Zerocap; and (ii) directly verifiable via the applicable blockchain.
- b. Deposits of Supported Digital Assets to a Digital Asset Wallet associated with the Custody Account will be credited to the Customer's Custody Account once they are Delivered.
- c. The Customer may withdraw or transfer the Assets from its Digital Asset Wallet by submitting a written request to Zerocap in accordance with any withdrawal process procedures published by Zerocap from time to time.

### 4.3 Fees and payment

- (A). Subject to Zerocap altering any Fee at its discretion, Zerocap will charge the Customer the following fee for the Custody Services ("**Custody Service Fee**"):

**Service Fee (year) = Fee Rate x total value (in USD) of Customer Assets in Custody for that year**

Unless waived or altered by Zerocap, the Fee Rate for each year of the Term is: **0.4% per annum**

- (B). If the Customer elects to participate in the Loss Protection Program referred to in clause 5, then Zerocap will also charge the Customer the following fee ("**LPP Fee**"), subject always to the ability of Zerocap to waive or alter this fee at its discretion:

**LPP Fee (year) = LPP Rate x total value (in USD) of Customer Assets in Custody for that year**

Unless waived or altered, the LPP Rate for each year of the Term is: **0.5% per annum**

- (C). At the end of each financial quarter during the Term, Zerocap will invoice the Customer for the Custody Service Fees and LPP Fees accrued during the preceding financial quarter ("**Custody Fees**").

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- (D). Unless otherwise indicated, all amounts provided under this Agreement are expressed exclusive of any GST payable. If, and to the extent, any supply of goods or services contemplated under this Agreement is a taxable supply within the meaning of the GST Law, the price for the goods or services will be increased to include GST payable by the supplier in respect of the supply.

## 5 Yield Services

### 5.1 Application

This clause 5 only applies to the Parties where the Customer has Activated the Yield Product on the Zerocap website.

### 5.2 Authorisation

The Customer authorises Zerocap to provide the Yield Services, and Zerocap agrees to provide the Yield Services, for the Yield Term on the terms and conditions set out in this Agreement.

### 5.3 Operation

#### **(A). Yield Account Registration**

To access the Yield Product and Yield Services, the Customer must:

- a. Activate the Yield Product in the Custody Account on the Zerocap website;
- b. accept that the Yield Product terms of service apply; and
- c. nominate the Asset amount to be subject to the Yield Services.

#### **(B). Yield Returns**

- a. Zerocap will credit Yield Returns to the Customer's Custody Account from the applicable Yield Account in accordance with its then current policy on Yield Returns, to the Customer's preferred Supported Digital Asset denomination.
- b. Title and risk to the Yield Returns will be attributed to the Customer on Delivery to the Customer's Custody Account.

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**(C). Activation of different Yield Products**

- a. Zerocap may from time to time offer Customers different features attaching to Yield Products which a Customer will be able to Activate from within their Custody Account including but not limited to savings, term deposits and basis accounts. The Customer agrees that when it Activates such a Yield Product and its features the Customer may be subject to specific terms and conditions applicable to that Yield Product which are at the discretion of Zerocap.
- b. Zerocap and the Customer agree that by Activating or using any Yield Product the following terms apply:
  - (i) the Customer may be charged entry and exit fees in accordance with the terms and conditions of that Yield Product;
  - (ii) the use of that Yield Product is subject to Zerocap accepting the offer of the Customer to participate in that Yield Product at its sole discretion;
  - (iii) the Customer agrees to pay an early withdrawal fee in the event the Yield Product has a set term and the Customer seeks to Deactivate that Yield Product prior to the end of the applicable term;
  - (iv) Zerocap will use its best endeavours to process any withdrawal request from a Yield Product but is under no obligation to return any Assets the subject of a Yield Product until the expiry of any applicable term;
  - (v) the ability of a Customer to withdraw from, Deactivate, Activate or move between any Yield Products is at the sole discretion of Zerocap.

## 5.4 Acknowledgement

By Activating the Yield Product, the Customer agrees and acknowledges that:

- (A). title to the Yield Assets will during the Yield Term remain at all times with the Customer;
- (B). the Customer authorises Zerocap to transfer the nominated Yield Asset amount from its Digital Asset Wallet to Zerocap UK;

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- (C). the Customer grants Zerocap the right without further notice to the Customer, to hold the Yield Assets in Zerocap’s own virtual wallet or elsewhere and to pledge, re-pledge, hypothecate, rehypothecate, sell, lend, or otherwise transfer or use any amount of such Digital Assets, separately or together with other property, with all attendant rights of ownership, and for any period of time;
  - (D). neither Zerocap nor Zerocap UK will at any time have any legal or equitable interest to the Yield Assets; and
  - (E). Zerocap is not liable to the Customer for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with the Activation of the Yield Product, except to the extent that such liability may not lawfully be limited or excluded. For the avoidance of doubt, this extends to any employees, contractors, agents, representatives, licensees or permitted assigns of Zerocap.

## 6 Loss Protection Program

As a licensee of Fireblocks Inc.’s (“**Fireblocks**”) MPC Wallet Infrastructure, Zerocap has elected to participate in Fireblock’s optional insurance coverage, which Zerocap refers to as the “Loss Protection Program”. As such, Zerocap receives a portion of the proceeds that Fireblocks receives from one or more liability insurance policies that indemnify Fireblocks for its liability in case Digital Assets are stolen as a result of either an external cyber breach of Fireblocks’s systems or any malicious or intentional misbehavior or fraud committed by a Fireblocks employee (a “**Covered Incident**”). Fireblocks licensees that elect to participate in the insurance coverage are referred to in the Fireblocks Terms as “Fireblocks Customers”.

In the event of a Covered Incident, the affected Fireblocks Customers will receive an equitable allocation of insurance proceeds received by Fireblocks, if any and subject to the additional conditions and limitations set forth in Zerocap’s Subscription License Agreement with Fireblocks, in connection with the Covered Incident not to exceed the value of any lost digital assets. Additional conditions and limitations on a Fireblocks Customer’s right to receive a portion of these proceeds are set forth in Zerocap’s Subscription License Agreement with Fireblocks, as provided to the Customer.

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Zerocap makes no representations or warranties to the Customer as to the sufficiency of coverage of any insurance policies associated with the Loss Protection Program or the Customer's eligibility to receive any.

## 7 Term and Termination

### 7.1 Term

This Agreement shall commence on the Effective Date and continue in force for until the date this Agreement is terminated in accordance with its terms (“**Term**”).

### 7.2 Termination

- (A). Either party may elect to terminate this Agreement at its convenience, by giving at least two (2) months' prior written notice to the other party.
- (B). Either party may terminate this agreement immediately by notice in writing to the other if the notified party:
  - a. fails to observe a material term of this agreement and fails to rectify this breach to the reasonable satisfaction of the notifying party, following the expiration of 5 Business Days' notice of the breach being given in writing by the notifying Party to the other Party;
  - b. enters into a deed of arrangement, an order is made for it to be wound up, an administrator, receiver or liquidator is appointed to the Company pursuant to the *Corporations Act 2001* (Cth), or if notified party would be presumed to be insolvent by a court in any of the circumstances referred to in the *Corporations Act 2001* (Cth); or
  - c. is no longer permitted to perform its obligations under this Agreement under Australian law; or
  - d. is no longer able to provide the Services for any reason whatsoever.

## 8 Zerocap's Obligations

### 8.1 General



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Zerocap's obligations under this agreement are to:

- (A). provide the Services to the Customer, as may be applicable;
- (B). act honestly and in good faith in providing the Services to the Customer;
- (C). follow any instructions regarding the Customer's Digital Asset Wallets held on the Zerocap Platform provided that Zerocap reasonably believes that such instructions are authorised by the Customer or an authorised person of the Customer;
- (D). exercise all due diligence and care in carrying out its functions, powers and duties under this agreement;
- (E). if required by law to provide the Services, hold an Australian financial services licence or be an authorised representative such that it is authorised to provide the Services;
- (F). exercise due care in selecting, appointing and reviewing the performance of any third party service provider engaged by Zerocap or any of Zerocap's associated entities;
- (G). as soon as reasonably practicable notify the Customer of any breaches or likely breaches of this agreement or any failure to observe or perform any representation, warranty or undertaking given by it under this agreement.

## 8.2 Limitations

- (A). The Customer acknowledges and agrees that Zerocap's obligations under this agreement do not extend to losses, problems, issues or damage:
  - a. caused by software product conflicts on any device or website that was not sourced or installed by Zerocap;
  - b. caused by errors or conflicting instructions from the Customer;
  - c. caused by Hard Forks;
  - d. caused by any violation of law or illegal activity of the Customer.

## 8.3 Indemnity

- (A). Zerocap indemnifies the Customer from and against all claims, demands, actions, liabilities, Costs and expenses of any kind (including without limitation reasonable legal costs) that the Customer suffers as a result of Zerocap's fraud, negligent act or omission or breach of this agreement.

- (B). Customer indemnifies Zerocap from and against all claims, demands, actions, liabilities, Costs and expenses of any kind (including without limitation reasonable legal costs) that Zerocap suffers as a result of the Customer's fraud, negligent act or omission or breach of this agreement.
- (C). The indemnities given in this clause 8.3 shall be reduced proportionately to the extent that any act or omission of the indemnified party or its employees or agents contributed to the loss or liability.

## 9 Disclosure of Digital Asset Wallet Information

We may disclose information to third parties about you, your Digital Asset Wallet, or the transfers you make:

- (A). where it is necessary for the provision of our Services under this Agreement;
- (B). in order to verify the existence and condition of your Digital Asset Wallet for a third party, such as a referral partner;
- (C). for the purpose of conducting our AML and KYC checks;
- (D). if you give us written authorization;
- (E). in order to comply with any request or order by any government agency or court of competent jurisdiction; and
- (F). as described in our Privacy Policy.

## 10 Representations, Warranties and Liability

### 10.1 Zerocap's Representation and Warranties

Zerocap represents and warrants to the Customer, as at the Effective Date:

- (A). Zerocap is a company limited by shares and is duly organised, validly existing and in good standing under the laws of Australia. Zerocap has all necessary power and authority to enter into this Agreement, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery by Zerocap of this Agreement, the performance by Zerocap of its obligations hereunder and the consummation by Zerocap of the transactions contemplated hereby have been duly authorised by all requisite company action on the part of Zerocap.

- (B). This Agreement has been duly executed and delivered by Zerocap and (assuming due authorisation, execution and delivery by the Customer), this Agreement constitutes a valid and legally binding obligation of Zerocap, enforceable against Zerocap in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganisation, moratorium, fraud, and any other laws of general application affecting enforcement of creditors' rights generally.

## 10.2 Customer's Representations and Warranties

The Customer hereby represents and warrants to Zerocap, as at the Effective Date and for the Term that:

- (A). ***[For individuals]***  
The individual has all necessary power and authority to enter into this Agreement, to carry out its obligations hereunder and to consummate the transactions contemplated hereby.
- [For companies]***  
The Customer is a company limited by shares, and is duly registered, validly existing and in good standing under the laws of its incorporation. The Customer has all necessary power and authority to enter into this Agreement, to carry out its obligations hereunder and to consummate the transactions contemplated hereby.
- (B). The execution and delivery by the Customer of this Agreement, the performance by the Customer of its obligations hereunder and the consummation by the Customer of the transactions contemplated hereby have been duly authorised by all requisite action on the part of the Customer.
- (C). This Agreement has been duly executed and delivered by the Customer and this Agreement constitutes a valid and legally binding obligation of the Customer, enforceable against the Customer in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganisation, moratorium, fraudulent conveyance, and any other laws of general application affecting enforcement of creditors' rights generally.
- (D). Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, does or will violate any statute, regulation, rule, judgment, order, decree, ruling, charge or other restriction of any government, governmental agency, or court to which the Customer is subject or conflict with, violate or constitute a default under any agreement, debt or other instrument to which the Customer is a party.

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- (E). The Customer is solely responsible for any decision to enter into a transaction subject to this Agreement, including the evaluation of any and all risks related to any such transaction.
  - (F). In entering into any such transaction, the Customer has not relied on any statement or other representation of Zerocap other than as expressly set forth herein.
  - (G). Any Assets used by the Customer in connection with the Customer's Digital Asset Wallet are owned by the Customer or that the Customer is validly authorised to carry out transactions using such Assets, and that all transactions initiated with the Customer's Digital Asset Wallet is for their own Digital Asset Wallet and not on behalf of any other person or entity.
  - (H). All Assets held in a Digital Asset Wallet are free from any claims, indebtedness, liens or third-party interests.

### 10.3 Customer's acknowledgments

By electing to activate the Yield Product, the Customer specifically and irrevocably agrees and acknowledges that:

- (A). Zerocap may lend, sell, pledge, hypothecate, assign, invest, use, commingle or otherwise dispose of assets and Supported Digital Assets at its discretion and hold the Supported Digital Assets at its discretion;
- (B). the value of Assets that may be held in a Digital Asset Wallet is derived from the continued willingness of market participants to exchange digital assets for fiat currencies or other digital assets. If such willingness is abolished for any reason, this may result in the potential for a permanent and total loss of value of a particular digital assets including those that may be held in a Customers Digital Asset Wallet;
- (C). the volatility and unpredictability of the price of digital assets may result in significant loss over a short period of time. The nature of digital assets may lead to an increased risk of fraud or cyber-attack, including rollback attacks or blockchain reorganizations. The nature of digital assets means that any technological difficulties experienced by Zerocap may prevent the access or use of your digital assets and/or cause losses of digital assets including those held in any Digital Asset Wallet;
- (D). in providing you with the Yield Product, Zerocap will hold all right and title to such digital assets, including ownership rights, and the right, without further notice to you, to hold such digital assets in Zerocap's own virtual wallet or elsewhere, and to pledge, re-pledge, hypothecate, rehypothecate, sell, lend, or

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otherwise transfer or use any amount of such digital assets, separately or together with other property, with all attendant rights of ownership, and for any period of time, and without retaining in Zerocap's possession and/or control a like amount of digital assets or any other monies or assets, and to use or invest such digital assets.

## 10.4 Limitation of Liability

- (A). Subject to clause (D) below, Zerocap is not liable to the Customer for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with this Agreement, except to the extent that such liability may not lawfully be limited or excluded. For the avoidance of doubt, this extends to any employees, contractors, agents, representatives, licensees or permitted assigns of Zerocap.
- (B). Notwithstanding the generality of clause (A), Zerocap expressly excludes liability for consequential loss or damage which may arise in respect of any Services or for loss of loss of data, loss of, or claim for, revenue, profits, actual or potential business opportunities or anticipated savings or profit, whether direct, indirect, economic, consequential howsoever arising by way of act or omission in contract or in tort. The Customer expressly agrees to release and indemnify Zerocap to that extent.
- (C). Where Zerocap cannot by law exclude such liability, its liability to the Customer will be limited to, if the breach relates to goods, the replacement or repair of the goods or, if the breach relates to services, the supply of those services or the payment of the cost of those services supplied again. This clause applies despite anything else contained in or incidental to the agreement and to the fullest extent permitted by law.
- (D). Notwithstanding clause (A), the limitation of liability set out in this clause 10.4 will not apply to any liability arising as a result of, or in connection with the fraud or wilful misconduct by Zerocap, its officers, employees, sub-contractors, suppliers or agents.
- (E). To the fullest extent permitted by law, Zerocap excludes all warranties implied by law except as expressly set out in the Agreement.

## 10.5 Force Majeure

- (A). Neither party has any liability under, or may be deemed to be in breach of, this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that party.

- (B). The party affected by these circumstances must promptly notify the other party in writing when such circumstances cause a delay or failure in performance and when they cease to do so.
- (C). If such circumstances continue for a continuous period of more than 30 days, either party may terminate this agreement by written notice to the other party.

## 11 Security Interest Rights

- (A). The Customer grants Zerocap a security in any and all of its Assets in Digital Asset Wallet for debts, amounts owed, or liabilities incurred (“**Obligations**”) to Zerocap or any of its Associates by any owner of any of your Digital Asset Wallet. Obligations may include both secured and unsecured debts, and Obligations you owe individually or together with someone else, including Obligations under other transactions or agreements between you and us or any of our Associates.
- (B). We may take or set off assets in any or all of your Digital Asset Wallets, or transfer assets between any or all of your Digital Asset Wallets with us or any of our Associates for direct, indirect, and acquired Obligations that you owe us or our Associates, including any balances as a result of not having sufficient assets available, regardless of the source of assets in a Digital Asset Wallet. These rights are in addition to other rights we have to take, transfer, or charge assets in your Digital Asset Wallet for Obligations you owe us or our Associates.
- (C). Your acceptance of these Terms serves as your consent to Zerocap asserting its security interest or exercising its right of setoff should any laws governing your Digital Asset Wallet require your consent. If the law restricts our ability to take, transfer, or setoff assets in your Digital Asset Wallet, or if some Assets are protected from attachment, levy, or legal process, you waive those conditions and limits to the full extent that you may do so by contract, and you authorize us to apply assets in any or all of your Digital Asset Wallets to your Obligations.

## 12 Risk Disclosure

- (A). Legislative and regulatory changes or actions at the state, federal, or international level may adversely affect the use, transfer, exchange, and value of Digital Assets. Transactions in Digital Assets may be irreversible, and, accordingly, losses due to fraudulent or accidental transactions may not be recoverable. Any secured wallet maintained by Zerocap for the benefit of its customers may not be sufficient to cover all losses incurred by customers.

- (B). The value of Digital Assets may be derived from the continued willingness of market participants to exchange Digital Assets for fiat currencies or other Digital Assets. If such willingness is abolished for any reason, this may result in the potential for a permanent and total loss of value of a particular Digital Asset.
- (C). The volatility and unpredictability of the price of Digital Assets may result in significant loss over a short period of time. The nature of Digital Assets may lead to an increased risk of fraud or cyber-attack, including rollback attacks or Blockchain reorganizations. The nature of Digital Assets means that any technological difficulties experienced by Zerocap may prevent the access or use of your Digital Assets and/or cause losses of Digital Assets.

## 13 Miscellaneous

### 13.1 Amendments

The provisions of this Agreement may be amended only in writing signed by all parties.

### 13.2 Waiver

Consent with respect to any action or omission shall not constitute a waiver of, or estoppel with respect to, any other or subsequent action or omission. No failure to exercise and no delay in exercising any right, remedy or power hereunder shall constitute as a waiver thereof, nor shall any single or partial exercise of any right, remedy or power hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy or power provided herein or by law or at equity.

### 13.3 Assignment; Successors and Assigns

- (A). This Agreement shall be binding on and inure to the benefit of the Parties and their respective successors, heirs, personal representatives, and permitted assigns.
- (B). The Customer may not assign or delegate its rights or obligations hereunder without the prior written consent of the other Party, which shall not be unreasonably withheld.
- (C). Notwithstanding clause 13.3(B), the Customer may assign this Agreement in whole or in part, without the consent of Zerocap to:

1. a successor corporation in connection with the transfer or sale of all or substantially all of the Customer's business or assets or in the event of the merger or consolidation with another corporation; or
2. an Associate.

### 13.4 Severability

So far as is possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.

### 13.5 Descriptive Headings and Construction

The descriptive headings of this Agreement are inserted for convenience only and do not constitute a part of this Agreement. Unless otherwise indicated, references to Articles and Sections herein are references to Articles and Sections of this Agreement.

### 13.6 Governing Law and Jurisdiction

This Agreement is governed by the laws of Victoria, Australia and the Parties irrevocably and unconditionally submit to the exclusive jurisdiction of the courts exercising jurisdiction there.

### 13.7 Dispute Resolution

- (A). In the event of a dispute in relation to this Agreement, a party ("**Provider**") may give to another party ("**Recipient**") a written notice ("**Dispute Notice**") adequately identifying the matters in dispute.
- (B). Within 10 days of the Provider giving a Dispute Notice, nominated representatives of the parties must meet informally and attempt to resolve the dispute.
- (C). At the expiration of 10 days from when the informal meeting took place, the Provider may give the Recipient written notice ("**Mediation Notice**") requiring the dispute to be referred to mediation.



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- (D). If a Mediation Notice is given:
1. in an attempt to resolve the dispute, either party may refer the dispute to a mediator:
  2. as jointly agreed to by the parties;
  3. if the parties cannot agree on the mediator within 7 days of the Mediation Notice being served, as appointed by an appropriate representative of the Resolution Institute;
  4. the disputing parties or their nominated representatives must attend any arranged mediation to attempt to resolve the dispute;
  5. unless otherwise agreed by the parties, the Resolution Institute Mediation Rules will apply to the mediation; and
  6. it is a condition precedent to the right of either party to commence arbitration or litigation other than for interlocutory relief that it has first offered to submit the dispute to mediation.
- (E). In the absence of any agreement to the contrary between the disputing parties, the costs of mediation will be shared equally by the disputing parties.
- (F). If the dispute identified in the Mediation Notice is not resolved within 14 days of the appointment of the mediator, either party may seek mediation again, with the Parties agreeing that the mediator will make a binding resolution.

## 13.8 Confidentiality

- (A). The Customer hereby agrees to not disclose, and to otherwise keep confidential, the transactions contemplated hereby, the existence or nature of any relationship between the Parties, the name of the other Party or the fact that the Parties engaged in any transaction, provided, however, that each Party may disclose information regarding this Agreement to its accountants and attorneys.
- (B). If either Party is compelled by law, rule or regulation, to disclose such information (the “**Compelled Party**”), the Compelled Party will, to the extent legally permissible, provide the other Party (the “**Innocent Party**”) with prompt written notice of such requirement so that such Innocent Party may seek an appropriate protective order or waive compliance with this Section. The Innocent Party shall promptly respond to such request in writing by either authorising the disclosure or advising of its election to

seek such a protective order, or, if such Innocent Party fails to respond promptly, such disclosure shall be deemed approved. The confidentiality obligations set forth in this Section shall survive the termination or expiration of this Agreement.

### 13.9 Entire Agreement

- (A). This Agreement and applicable terms, and each Purchase Order and Order Confirmation issued under it, contain the entire agreement among the Parties with respect to their subject matter and supersede all prior agreements and understandings, written or oral, among the Parties.
- (B). Each party acknowledges, to the fullest extent allowable by law, that in entering into this Agreement it has not relied on any statement, representation, assurance or warranty other than as expressly set out in this Agreement.
- (C). The Customer additionally agrees that if it has sought advice in relation to this Agreement from a third party, it shall hold Zerocap harmless for that advice or its consequences.
- (D). No amendment or modification of this Agreement or any provision or attachment of this Agreement shall be effective unless in writing and signed by both Parties.

### 13.10 Counterparts

This Agreement may be executed in one or more counterparts, each of which when so executed and delivered shall be an original, but all such counterparts taken together shall constitute one and the same instrument. Transmission by email or other form of electronic transmission of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

### 13.11 Notices, Consents, etc.

Notices, consents or other communications required or permitted to be sent or given under this Agreement will be deemed to have been received:

- (A). if hand-delivered, on delivery;
- (B). if by phone, once confirmed in writing by either party;

- (C). if sent by registered post or courier, three days after being posted (if sent within Australia) or seven days (if sent from overseas); or
- (D). if sent via email or by other agreed electronic instant messaging communication means, when receipt is recorded in the recipient's electronic logs.

**ZeroCap - Notice details:**

Attention: OTC

Authorised Person: Ryan McCall

Address: 8/287 Collins St, Melbourne VIC 3000, Australia

Email: [otc@zerocap.io](mailto:otc@zerocap.io)

**Customer - Notice details:**

**Attention (name):** \_\_\_\_\_

**Authorised Person:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Email:** \_\_\_\_\_

### **13.12 No Third-Party Beneficiary**

The terms and provisions of this Agreement are intended solely for the benefit of each Party and their respective Associates, subsidiaries, successors or permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other party except as provided for in this Agreement.

### **13.13 GST**

Unless otherwise indicated, all amounts provided under this Agreement are expressed exclusive of any GST payable. If, and to the extent, any supply of goods or services contemplated under this Agreement is a taxable supply within the meaning of the GST Law, the price for the goods or services will be increased to include GST payable by the supplier in respect of the supply.

## 14 Execution page

### EXECUTED as an agreement

**EXECUTED** by **Zerocap Pty Ltd** ABN 99 164 874 597  
in accordance with section 127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of director / secretary

\_\_\_\_\_  
Name of director / secretary (print)

\_\_\_\_\_  
Date

### EXECUTED by

*[If an individual]*

**Full name:** \_\_\_\_\_

*[If a company]*

an authorised representative of **[company name:]** \_\_\_\_\_

**ABN/business number:** \_\_\_\_\_

\_\_\_\_\_  
**Signature of authorised person**

\_\_\_\_\_  
**Name of authorised person (print)**

\_\_\_\_\_  
**Date**