

# Prime Agreement



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## Zerocap Pty Ltd

Zerocap Pty Ltd (ACN 164 874 597)

Corporate Authorised Representative  
(No 001289130) of Gannet Capital Pty. Ltd.  
ACN 139264690 AFSL 340799.

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See important document information at the end.

# Prime Agreement

## 1. CLIENT AGREEMENT

- 1.1** The Prime Agreement with you and us is on the terms in this document. A reference to “**Terms**” is a reference to the terms in this document (including the Schedules) and to any other document referred to in the Terms which are incorporated by reference into the Terms, all as amended from time to time.
- 1.2** The Prime Agreement sets out the terms of the services offered by us. Our services (covered by the Prime Agreement) include custody, account services, acting as your agent (also referred to as brokering) and issuing over the counter (OTC) financial products to you.
- 1.3** All of the transactions which we provide for you, whether as agent or acting as principal when issuing OTC products to you, are referred to as Transactions.
- 1.4** The terms of Transactions are part of and subject to the Prime Agreement. Some terms of Transactions may be set out in a Schedule, in a Term Sheet or in an Order which you give us (or any combination of that).
- 1.5** The entire relationship which you have with Zerocap is governed by these Terms and is referred to as an Account. This covers all Transactions with you, our other financial services to you in relation to Transactions, our duties to you, your obligations to us, how we may exercise our powers, limits on our liability to you and the indemnities by us in your favour and by you in favour of us.

There is no other agreement, contract or set of terms, whether express or implied for our services and Transactions.

- 1.6** The Prime Agreement operates as a master agreement by you and us. Each Transaction applies pursuant to the Prime Agreement so that all of the relevant Terms apply to all of the Transactions in aggregate. Transactions may be reported separately (but they remain as part of the Prime Agreement as a master agreement). Amounts owing as between you and us will always set off so that only a single net sum will be owing as between you and us, based on all of the Prime Agreement. Margining and margin cover obligations will be applied on a netted basis across all of the Account. Without limiting the master agreement, netting and set-off, payments required to be made by the Prime Agreement (including payments for Transactions, Margin and indemnified amounts) may be separately requested and made.
- 1.7** In order to establish your Account, you must apply for the Account and agree to be bound by this Prime Agreement, on these Terms.

You may only do this by your original Application Form or by a later Application Form (or as otherwise agreed by Zerocap).

The Application Form will be provided to you electronically, on-line, by email or in paper format. Zerocap may, in its absolute discretion, accept or decline your application.

- 1.8** These Terms apply to you from the earlier of:
- (a) any time you and Zerocap agree;
  - (b) the time Zerocap accepts your application in the Application Form for the Prime Agreement (as exclusively determined by Zerocap); and
  - (c) if you are a client of Zerocap, the beginning of the day Zerocap which Zerocap notifies to you that these Terms apply and, if this applies:
    - (i) all rights and liabilities up to time the Terms take effect as between Client and Zerocap remain and continue without variation or loss and, in particular, transactions which were

entered into before that time and which remain open as at by you as at that time continue to apply on their respective terms;

- (ii) subject to paragraph (a) above, these Terms apply as a complete and exclusive amendment of any previously existing terms of agreement between you and Zerocap, with the effect that the Prime Agreement is the only agreement between you and Zerocap.

**1.9** You acknowledge and agree that you (if a natural person) have or (if you are a corporate entity) a natural person acting on your behalf has, read and understood all documentation provided to you by us (including by the Platform or by way of being directed to a website location on which the disclosures are available) including these Terms and any document which is expressly described as a product disclosure statement (**Disclosure Statement**) in relation to any Financial Products or Financial Services which you request Zerocap to make available to you in relation to your Account.

**1.10** You acknowledge that all dealings in Financial Products, our financial services and the performance by us of our obligations under these Terms are subject to the Applicable Laws.

**1.11** You acknowledge that we will not provide legal, tax, financial or accounting advice to you as part of the services that we provide to you in accordance with these Terms. By these Terms we do not act in a fiduciary capacity and Zerocap does not owe any fiduciary obligations to you in respect of its services provided to you in connection with these Terms except as expressly stated in these Terms.

**1.12** These Terms do not constitute personal financial advice, nor a recommendation or opinion that a Financial Product or a Financial Service is appropriate for you or meets your objectives, needs or financial situation. Zerocap's assessment of whether or not to provide an Account, a Financial Product, Financial Service or any Transaction to you is solely and exclusively for its own purposes and may not be used or inferred to be a suitability assessment for you or for your benefit.

**1.13** Zerocap acts in its own capacity.

- (a) Zerocap does not act as agent, fiduciary, joint venturer or guarantor of any other person unless and to the extent expressly stated in these Terms or expressly agreed in writing in another document.
- (b) A liability of Zerocap accrues solely to Zerocap. To the extent Zerocap is acting as a corporate authorised representative of the holder of a licence (licensee) entitling it to provide financial services on behalf of the licensee, that authorisation and the conduct of Zerocap under it do not by reason of the terms of the Business Law governing the licence and authorisation make Zerocap the agent of the licensee for these Terms, the Account, or any Transaction from time to time nor is the licensee liable for the conduct of Zerocap arising in relation to these Terms, an Account or any such Transaction, in all cases unless and only to the extent imposed by Applicable Laws which may not be contracted out by these Terms and which have not been contracted out of by these Terms.

**1.14** Zerocap has discretions under these Terms which can affect your Transactions. You do not have any power to direct how we exercise our discretions. When exercising our discretions, we will comply with our legal obligations. We will have regard to our obligations, our policies and to managing all risks (including financial, credit and legal risks) for ourselves and all of our clients, our obligations to our counterparties, market conditions and our reputation. We will try to act reasonably in exercising our discretions but we are not obliged to act in your best interests or to avoid or minimise a loss in your Account.

We will not give reasons for why or how we exercise our discretions.

**1.15** Our policies are not binding on you or on us unless and to the extent expressly stated in the policy. A policy is otherwise a non-mandatory and non-exclusive guide procedures and expectations. They are not legally binding obligations nor are they binding on their own terms (unless and to the extent expressly stated in the policy). Policies by their nature are subject to consideration of particular facts and circumstances in each case and our exercise of our discretions may take into account anything relevant in the particular circumstances at the time.

## **2. ACCOUNT**

- 2.1** Zerocap will establish one or more Accounts in respect of the Financial Products or financial services it provides to you. Transactions entered into by you pursuant to these Terms will be recorded in the relevant Account established by Zerocap. Unless you have specifically requested Zerocap to open separate Accounts, you will be taken to have only one Account, with Transactions in respect of each Financial Product or financial service provided to you being recorded in that Account.
- 2.2** The calculations, reporting and administration may be performed by Zerocap separately for each Account, so that (without limitation):
- (a) calculations may be managed and enforcement action may be taken for each Account separately; and
  - (b) Zerocap may at any time aggregate one or more Accounts (for reporting or otherwise for the purposes of these Terms), even if you cannot immediately access reports for aggregated Accounts.
- 2.3** The Prime Agreement is a master agreement by which all amounts owing as between parties is irrevocably automatically set-off and netted across all amounts then owing and payable as between the parties to derive a single net amount owing by one party to the other. Without affecting the master agreement for netting and set-off, Zerocap may, without notice, from time to time and at any time (whether or not either party is in Default) demand from you or invoice you for payment for an amount owing by you which is separately identified in that demand or notice. This includes for Margin payments.
- 2.4** A Client may be comprised of two or more persons. If Client is comprised of more than one person then the Account will be deemed to be held by the persons as joint tenants despite any actual or constructive notice to Zerocap of any partnership or other agreement between the persons. The joint holding will be only be deemed not to be held as joint tenants if there is a court determination that it is not held as joint tenants or if Zerocap expressly agrees in writing.
- 2.5** An Account may include custody but need not have any custody from time to time or at any time. Custody will be on these Terms. (There is no separate "custody account".)

## **3. TRANSACTIONS**

- 3.1** A Transaction is a dealing of any kind, including purchase and sale, conversion, staking, lending, borrowing, in whole or in part.
- 3.2** An Order is an instruction and request to us to execute it to make a Transaction based on the terms of the Order (and subject to these Terms).
- 3.3** Some or all variables of a proposed or indicative Order (including Initial Margin, Fees, charges and costs) may be described on the Platform, in a Schedule, in a Term Sheet, by email or other written communication with or agreed to by Client (e.g., a social media channel message to Client) or in a combination of any of those.
- 3.4** Client must give the Order to us. Client can give the Order by any written or oral instructions or combination of them, including (without limitation) any combination of:
- (a) using a telecommunications service for spoken conversations, or using the Platform, or by email or written communication with Client (e.g., a social media channel message to Client);
  - (b) sending us an Order;
  - (c) agreeing to a proposed Order, including by Client notifying us that Client agrees to the terms of an indicative quote for the Order.
- 3.5** We will execute your Orders subject to these Terms (including if applicable acting as your agent to broker a Transaction). We may decline to execute the Order for any reason. Unless otherwise expressly agreed:
- (a) an indicative Entry Price in a proposed Order is not binding; and

(b) the Entry Price for the Transaction may be at or better than the indicative Entry Price in the proposed Order or it will be as actually applicable at execution of the Order.

**3.6** We will not be responsible for delays or errors in the transmission or execution of your Orders (except to the extent Non-excluded Liability).

**3.7** We may refuse to accept an Order and we may place a limit on any Order or place other conditions on the receipt of instructions or Orders, in our absolute discretion and for any reason. We may at any time use, add and change filters within a system which prevent delivery of Orders or execution of Orders. We will notify you of any refusal or limitation as soon as reasonably practicable, unless we are prevented by law or a direction from a regulatory authority from notifying you.

**3.8** We may cancel or amend an Order if (in our sole discretion) any one or more of the following has occurred, is reasonably likely to have occurred or will occur:

- (a) if we are required by Applicable Laws to do so;
- (b) if there is an error, whether made by us in pricing or otherwise material to the Order;
- (c) you have engaged in conduct which is a material breach of these Terms;
- (d) you are using our Financial Products in the course of criminal activities or in breach of AML/CTF Laws; and
- (e) it is appropriate, having regard to the desirability to maintain a fair and orderly system or market, or due to our obligations as a user of a Payment System or due to our other legal and regulatory obligations.

**3.9** We will make reasonable efforts to implement any instructions to cancel or to amend Orders as quickly as possible. If, however, an Order is filled prior to a cancellation or amendment instruction being implemented, you are obliged to accept the Transaction on the original terms prior to your amendment or cancellation instruction, unless the Transaction is itself cancelled or amended.

**3.10** We may execute Orders for you even in circumstances if we or our related bodies corporate and other associates:

- (a) hold a principal position or deal in Financial Products partly or wholly similar to your Transactions, whether or not at different rates or prices;
- (b) provide similar services to other persons in relation to the relevant Financial Products;
- (c) have material price sensitive information relating to the relevant Financial Products; or
- (d) have an actual or a potential conflict of interest or duties including, for example, a conflict of interest of which you are not aware and which we are unable to disclose to you.

**3.11** Notwithstanding any rule of law or equity to the contrary, Zerocap is not disqualified from contracting with any person and no contract, transaction or arrangement in which Zerocap is in any way interested is avoided or made voidable by virtue of your agreement with us. Zerocap is not obliged to notify you of any such other roles, contract, transaction or arrangement nor is it liable to account to you for any profit realised by any such contract, transaction or arrangement in connection with these Terms. Zerocap is not required to make any disclosure to you concerning any such contract, transaction or arrangement.

**3.12** We and our related bodies corporate are permitted by these Terms to enter into Transactions with you as principal and as your agent or as the agent for another person in a Transaction with you. We, an associate or other client of Zerocap may take the opposite position in a Transaction with you. Your Orders may match opposite Orders of another person who is our client, and this may entitle us to derive profits or receive fees or other benefits from both Transactions (or as agent for both). Similarly, because we deal as principal, then your Orders may wholly or partly match opposite orders entered by us as principal and you authorise us and consent to us charging you the Transaction Fees (if any) provided by these Terms.

- 3.13** You are aware of and acknowledge the right of Zerocap and its associates, related bodies corporate, directors and employees, either on their own account or on behalf of other clients or persons, to deal in any Transaction or take the opposite position to you in Transactions, if permitted (or, if not expressly permitted, then if not prohibited) to do so by the Business Law and Applicable Laws.
- 3.14** You acknowledge that we do not operate any discretionary accounts unless we expressly agree in writing to discretionary authority over your account. We will, unless otherwise expressly provided by these Terms or as otherwise expressly agreed for a discretionary account, only act on your instructions (including those given by your Authorised Person).
- 3.15** Unless otherwise specified in these Terms, all Orders will remain open until either cancelled by you or purged by the Platform. We do not accept responsibility for reinstating lapsed Orders or for contacting you to seek new instructions.
- 3.16** You must not give us an Order to enter into a Transaction which would breach or cause us or any other person to breach the Business Law, the Rules or any other Applicable Laws including, without limitation, in relation to:
- (a) creating a disorderly market or otherwise prejudicing the integrity or efficiency of the relevant market; or
  - (b) misleading or deceptive conduct.
- 3.17** Your instructions to Zerocap to enter into a Transaction, your Order to Zerocap to enter into the Transaction and the Transaction remains valid and enforceable against you, without affecting your other liability to Zerocap even if you (or your Authorised Person) are not authorised by your own rules (such as a corporate or trust constitution or an investment management agreement).
- 3.18** You agree not to make any Claim against Zerocap for any Loss incurred or suffered by you which arises in connection with the exercise of any power by Business Regulator or pursuant to Applicable Laws or any Rules which directly or indirectly affects your Transaction, including by way of Zerocap directly or indirectly, fully or partly hedging your Transaction (whether or not Zerocap has given you a Confirmation in respect of any affected Transaction) except to the extent that the Loss incurred or suffered is caused by Non-excluded Liability.
- 3.19** Zerocap will deal fairly and in due sequence with all client Orders having regard to regulatory requirements, market practices and Zerocap's compliance policies and procedures.
- 3.20** To the extent that it is reasonably practicable to do so, Zerocap will allocate all Transactions (including Transactions implemented pursuant to Orders placed on Zerocap's own account) in the sequence in which Zerocap receives those Orders, subject to filters and compliance review and to any delay or technical faults connected with or arising through the use of the Platform, a Payment System or any other delay that is outside the control of Zerocap.
- 3.21** The details of a Transaction will be provided to Client as follows:
- (a) A written record specifically of a particular Transaction is referred to in these Terms as a **Confirmation**. It might also be described in communications with Client as a contract note or trade note. A Confirmation can state just the final details of the Transaction and be based on (and incorporate by reference ) other details which are in the Order for the Transaction, unless by law the Confirmation must state all of the details of the Transaction.
  - (b) If we choose, we will give you (or as you nominate) a Confirmation.
  - (c) If required by Applicable Law (and Applicable Law does not allow any agreement otherwise), we will give you (or as you nominate) a Confirmation.
  - (d) if we are required by Applicable Law to give you a Confirmation but Applicable Law allows you to agree not to receive a Confirmation, you agree not to receive a Confirmation sent to you but instead to rely on the Platform giving you substantially continuously available access to the information that

would be in the Confirmation or, if available in the Platform, to receiving Confirmations through the Platform.

- 3.22** You can agree with us, if permitted by Applicable Laws, not to give you a Confirmation or to provide Confirmations to an address or person nominated by you.
- 3.23** Each Confirmation given by us is subject to the Applicable Laws and the correction of errors and omissions. Zerocap may, at any time, reissue a Confirmation in order to correct any errors or omissions.
- 3.24** You are responsible for promptly checking each Confirmation. You must immediately notify us if you become aware that there is an error in the Confirmation. We are entitled to assume that the Confirmation is correct unless you notify us of any error within 24 hours following us (or someone on our behalf) giving you the Confirmation or the Confirmation (or its equivalent) becoming available to you.
- 3.25** You must settle the Transaction in accordance with its terms. If Zerocap has allowed you any grace period for settlement by you, including by payment of Initial Margin, the delivery of Digital Assets to Zerocap or payment for purchased Digital Assets, the grace period is not a waiver of Zerocap's rights including to exercise its powers arising on Default by you.

#### **4. PLATFORM**

**4.1** This clause 4 contains provisions which, in addition to the other Terms, govern the use of the Platform. The Platform is any online or other electronic platform for delivery of services or any information service which we provide or make available to you (including, without limitation, all software and communication links) from time to time by which you may do any of the following:

- (a) place your Orders or transmit other instructions to Zerocap or other persons;
- (b) enquire as to the availability or pricing or value of one or more Financial Products or Financial Services;
- (c) receive market data and other information in relation to one or more Financial Products or Financial Services;
- (d) receive Confirmations, Account balances, reports, statements and other information in connection with your Account or Transactions; and
- (e) upload documents, applications or information.

In these Terms, we refer to the entire service as the Platform. It includes each separate channel of electronic delivery of services which we provide to you from time to time. For the avoidance of doubt, Platform means the facilities, or any single facility, which you access, not facilities used by Zerocap for its operations and which you do not access.

- 4.2** The Platform may be a solely or partly a proprietary service provided by Zerocap (or its nominated agent), or a service provided to you by a third party pursuant to an arrangement with Zerocap (for example, by an affiliate of Zerocap). To the extent that the Platform is provided to you by Zerocap, we grant you a non-exclusive and non-transferable licence to use the Platform subject to these Terms.
- 4.3** Zerocap may refuse to accept or to place any Order in its absolute discretion without having to provide a reason.
- 4.4** Zerocap will not be responsible for confirming the receipt of instructions or verifying the authenticity of your instructions.
- 4.5** Zerocap has no obligation to resubmit Orders purged from the Platform.
- 4.6** You agree that:
- (a) you must not use the Platform (or permit or procure any other person including any Authorised Person to use the Platform) until the Security Information has been provided by us;

- (b) the Security Information is confidential;
- (c) you are responsible for maintaining the confidentiality and use of that Security Information at all times and must procure that any Authorised Person maintains the confidentiality of the Security Information;
- (d) you will not permit, consent or allow any person (other than any Authorised Person in its capacity as your agent) to use the Security Information or to access or use the Platform using that Security Information;
- (e) you will not provide, disclose or make available the Security Information to any person (other than an Authorised Person in its capacity as your agent); and
- (f) you must notify us immediately upon becoming aware of any unauthorised use of the Security Information or the Platform.

**4.7** You acknowledge and agree that:

- (a) you are only permitted to access and to use the Platform, using the Security Information;
- (b) we are entitled to rely on all instructions given by, on behalf of, or apparently on your behalf, using the Security Information; despite any other provision of these Terms, we are not liable for any Loss caused by us acting on instructions or other communications using the Security Information;
- (c) there may be delays in the processing, execution, amendment or cancellation of an Order (whether entered through the Platform or otherwise) and:
  - (i) an Order may be filled before an instruction for its amendment or cancellation is processed;
  - (ii) you remain liable to settle the original Order, until any relevant amendment or cancellation is implemented; and
  - (iii) without limiting clause 16, Zerocap will not be liable for any Loss incurred by you arising from any delay in the dissemination of market information, the processing of any Order or instruction to amend or cancel an Order, Force Majeure or Market Risk;
- (d) the execution of an Order placed through the Platform may be delayed by filters or other features of the system;
- (e) we are not responsible for the decision to place any Orders submitted through the Platform, regardless of who enters such Orders and regardless of whether or not there is an error in the Order entry or for any delays;
- (f) the Platform is provided on an "as is" basis and, except as required by law, we make no representations or warranties express or implied with respect to the Platform;
- (g) the speed of information provided through the Platform is subject to a number of factors including, but not limited to, the speed of the user's internet connection, the user's settings, the number of concurrent users accessing the Platform and the volume of information being received and sent by the Platform;
- (h) there are significant risks in dealing through the Platform because it is serviced by means of computer and telecommunications systems, even if generally accepted industry standards and practices are followed;
- (i) the features, components or terms of use of the Platform may be changed by us or the provider of the Platform without requiring an amendment to these Terms;
- (j) you are responsible for providing and maintaining the communications equipment and services required for accessing and using the Platform and for any communication service fees and charges incurred by you in accessing and using the Platform;

- (k) you must notify us immediately if you become aware of any inaccurate information being transmitted through the Platform including, for example, inaccurate content as to Orders, Transactions or Account balances;
- (l) you must only use the Platform for your own business purposes unless you have disclosed to us in writing your other purpose of using the Platform and we have agreed to that in writing;
- (m) Client must not have applied for, or continue to use, or allow another person to use, Client's Account for a purpose which, in Zerocap's sole discretion, is or is materially for or in any degree facilitates one or more of the following:
  - (i) criminal, fraudulent or illegal purposes, including for extortion, ransoming data or systems, fraud, money laundering or for financing terrorism or other illegal activities;
  - (ii) manipulating, corrupting or otherwise harming another person's smart contract, protocol, market or Exchange;
  - (iii) data mining;
  - (i) providing to others false, misleading, deceptive information or representations;
  - (ii) using a WebCrawler or similar technique or tool to access the Platform or any part of it or to extract data;
  - (iii) reverse engineer or disassemble any part of the Platform including any source code, algorithms, underlying concepts, ideas or procedures;
  - (iv) perform any unauthorised vulnerability, penetration, design or similar testing or challenge to any part of the Platform; and
  - (v) disruption or damage to the Platform.

**4.8** You agree to be bound by any terms and conditions of access and use which we or any third-party provider of the Platform may specify and notify to you, from time to time, on reasonable prior notice to allow you to assess those terms and decide whether to continue with your Account.

**4.9** You are responsible for (yourself or, if a corporate entity, by senior staff who represent you) reading, understanding and complying with the details of the operational aspects of the Platform. It is important that you read and understand any user manuals and operational procedures or rules relating to the relevant Platform and which are made available either by Zerocap or the provider of the Platform. Further information on how to use and understand the Platform can be obtained on our website.

**4.10** Either you or your Authorised Person may place Orders with us using the Platform. You authorise each person who is an Authorised Person from time to time to enter Orders using the Platform in accordance with these Terms as your agent. You must provide us on request with a list of your Authorised Persons (containing their names and contact details) and any changes to the list.

**4.11** You and each Authorised Person must satisfy any requirements (including without limitation requirements as to knowledge, training, testing, procedures and controls) notified by us to you from time to time and you are solely responsible for ensuring that an Authorised Person satisfies these requirements.

**4.12** You are responsible for the consequences of any unauthorised disclosure or use of the Security Information, and for any actions or omissions by an Authorised Person.

**4.13** We (or any third party providing the Platform) may suspend, terminate or impose conditions on the use by you or any Authorised Person of the Platform at any time without notice to you.

**4.14** If you are uncertain as to whether your Order has been received, you must make all reasonable attempts to verify whether the Order has been received, approved and implemented prior to taking further action. You agree to issue specific cancellation or amendment instructions with respect to an existing Order and not to attempt to make changes by placing a second or duplicate Order. You will be solely responsible and liable for any duplicate instruction that you place.

- 4.15** You agree not to contest the validity or enforceability of any electronic communications or transactions between yourself (including your Authorised Person) and Zerocap on the basis of the electronic nature of that communication or transaction.
- 4.16** If a failure, interruption or malfunction of electronic communication between the parties prevents an Order from being placed, cancelled or amended then, without limiting clause 16, neither party is liable to the other party for any Loss caused then by that failure, interruption or malfunction.
- 4.17** You acknowledge that all market data and information in relation to dealing, volumes and pricing for a market or an Asset provided through the Platform may be proprietary information of another person and any display, dissemination or other use of that information may be subject to restrictions imposed by the other person. You are responsible for complying with any such restrictions.

## **5. CUSTODY**

### **5.1 Extended concept of custody**

- (a) For these Terms custody of Assets includes control of all or any part of the digital address of an Asset or pooled Assets of more than one (whether by digital keys or otherwise), even if:
- (i) the Asset is not ordinarily considered to be property by the relevant governing law of the Asset or of a service in relation to the Asset;
  - (ii) there is no change in legal or beneficial ownership of the Asset by reason of that control; or
  - (iii) the Asset is subject to restraints or limits imposed by subjecting the Asset to security interests or to controls by way of blockchain based rules, protocols, smart contracts or procedures.

### **5.2 Entitlement to Assets**

- (a) Assets allocated to your Account are held in custody for you. Your Account is exclusively conclusive as to which Assets are held in custody for you in your Account. No other Assets are held beneficially for or otherwise in custody for you.
- (b) As between you and Zerocap, you will be presumed to be absolutely and presently entitled to all rights comprised in any Asset which is subject to custody by these Terms unless the terms of any product or service expressly or by their clear context impose some limit to those rights or grant some right (such as by these Terms or by staking or lending).
- (c) Other provisions relating to custody of Assets may be set out in a Schedule from time to time, including for different Classes of Clients or for different kinds of Assets.

### **5.3 Appointment for custody**

Client appoints Zerocap to hold Assets on these Terms.

### **5.4 Duties of Zerocap**

- (a) Holding Assets
- (i) Zerocap must hold Assets which are for the account of Client either:
    - (A) segregated for Client (from other clients' Assets and from the Assets of Zerocap); or
    - (B) for custody purposes aggregated with Assets of other clients of Zerocap (but beneficially segregated from the Assets of Zerocap) if Zerocap determines that is necessary or prudent for the relevant Transaction, due to the nature of the Asset or due to market conditions (or any combination of that).

- (ii) Zerocap must segregate the Assets in its books for the account of Client (even if the Assets are aggregated with Assets of other clients).
- (iii) Assets which are capable of being held in the name of a person and which are held in custody by Zerocap must be registered in the name of Zerocap or of a sub-custodian appointed by Zerocap pursuant to clause 5.9(e).
- (iv) Assets which are incapable of being held in the name of a person but are controlled by managing a digital address of the Asset and which are held in custody by Zerocap must be solely controlled by Zerocap or by a sub-custodian appointed by Zerocap pursuant to clause 5.9(e),

except to the extent necessary for a Transaction requested by Client and otherwise subject to these Terms.

(b) Other custodial obligations

In addition to its other obligations under these Terms, Zerocap must:

- (i) open and maintain custody records concerning the Assets in custody in the name of Client;
- (ii) open and maintain custody records concerning the Assets in custody for Client whose digital address is under the direct or indirect control of Zerocap;
- (iii) provide and maintain proper and separate accounts to record all material details of Transactions in relation to the Assets;
- (iv) receive and hold Title Documents (if any) relating to the Assets on behalf of Client; and
- (v) upon request, give all information and records relating to the Assets which are reasonably requested by Client.

## 5.5 Custody services and the Corporations Act

- (a) Zerocap must use reasonable efforts to observe and to comply at all times in all material respects with the Corporations Act directly applicable to Zerocap in its role under these Terms as custodian of the Assets.

## 5.6 Custody services and Client as a responsible entity of a registered managed investment scheme

- (a) This clause 5.6 applies **only if Client is a responsible entity for the purposes of the Corporations Act in respect of a registered managed investment scheme.** (There is no implied application of any part of this clause 5.6 to custody if Client is not within this description.)
- (b) Zerocap must certify to Client in writing at least every 13 months that Zerocap believes on reasonable grounds that since the date of the previous statement in writing or the commencement of these Terms Zerocap and each sub-custodian have met, and Zerocap has no reason to believe that Zerocap and each sub-custodian will not continue to meet:
  - (i) in the case of Zerocap, these Terms; and
  - (ii) in any case, the requirements that Client must do all things necessary to ensure that paragraph 601FCAA(1)(c) and subsections 601FCAA(2) to (4), (7) and (9) of the Corporations Act are met by Zerocap or the sub-custodian (referred to in this clause 5.6 as "Custodian") in relation to Assets held by Zerocap or a sub-custodian (except to the extent that Client is not complying with a requirement to comply with the conditions of an exemption under section 601QA of the Corporations Act and Zerocap is not aware of any non-compliance);

other than:

- (iii) as disclosed in writing to Client; or

(iv) that Zerocap reasonably believes are trivial; and

Zerocap acknowledges that it or the sub-custodian must continue to meet those obligations.

- (c) Zerocap must acknowledge to Client on request that the Assets are held for Client and notify any other person if Zerocap is aware to do so would protect the beneficial interest of Client that the Assets are so held unless Client directs in writing otherwise.
- (d) Zerocap must not take or grant a security interest, mortgage, lien or other encumbrance over, or in relation to, the Assets unless it is expressly set out in these Terms, is required for a Transaction requested by Client or Client otherwise agrees (expressly or by implication) and in any case it does not cover unpaid fees of Custodian.
- (e) Zerocap must provide such periodic reports, including notifications of transfers to and from the Assets, in accordance with the terms and conditions agreed from time to time.
- (f) Zerocap must specify in its services standard, or such other document as Zerocap determines from time to time, the procedures for reconciliation each Business Day or if it is ordinary and reasonable commercial practice to reconcile certain property less frequently, in accordance with that practice, by checking information Zerocap is given as to the existence and quantity of the Assets against the records of Zerocap and for reporting by Zerocap concerning the outcomes of the reconciliation in case of any unreconciled matter.
- (g) Zerocap must provide all reasonable access and assistance to any auditor engaged to audit Client's financial statements or the Fund's financial statements.
- (h) Zerocap must provide Client with written notice of, and contact information for, any sub-custodian or other person holding Assets appointed or to be appointed by Zerocap:
  - (i) as soon as reasonably practicable; and
  - (ii) in any event before the Assets are held, except if Zerocap has reasonable grounds for believing that the delay in the appointment that would result from providing such prior notice might not be in the best interests of Client.
- (i) Client may terminate the Prime Agreement, under the relevant provisions in the main body of these Terms and (despite any other term of these Terms) without:
  - (i) payment other than in relation to fees and other amounts payable by Client in respect of services provided by or on behalf of Zerocap in accordance with these Terms, entitlements previously accrued or the reasonable expenses involved in transfer of the Assets to Client or another custodian; and
  - (ii) limiting any right to damages Client may have under these Terms, including recovering expenses if Zerocap is in breach of these Terms;if Client has reasonable grounds for believing that:
  - (iii) there is or has been an act or omission of Zerocap or a sub-custodian that results in Zerocap being in breach of the Prime Agreement; and
  - (iv) as a result of the act or omission, to a material extent Zerocap or a sub-custodian is not complying with or is unlikely to comply with the requirements that Client must do all things necessary to ensure that paragraph 601FCAA(1)(c) and subsections 601FCAA(2) to (4), (7) and (9) of the Corporations Act are met by Zerocap or the sub-custodian in relation to Assets held by Zerocap or that Zerocap arranged to be held, having regard to any remedy provided or that may be expected to be provided by Zerocap or the sub-custodian.
- (j) On or as soon as practical after termination of the Prime Agreement, Zerocap must transfer Assets (as though these Terms continued to apply even after termination of the Prime Agreement), within a

reasonable period having regard to the nature of the Assets and any outstanding fees and charges payable to Zerocap and to any costs of the transfer.

- (k) Zerocap must notify material or systemic breaches of these Terms by it or by Client in writing to the board of directors of Client or the compliance committee for the relevant Fund within a reasonable time of becoming aware of the breach.
- (l) Zerocap must have policies and procedures for business continuity and disaster recovery (“policies and procedures”), appropriate for a professional provider of such services, aiming to ensure that acceptable service levels are maintained if there is a disruption to the systems used to provide the custody services (whether disruption arises as a result of a problem arising internally within Zerocap or through an external event such as power failure), including when the custody services are outsourced to Zerocap’s agent. Zerocap must provide a summary of the contents of the policies and procedures to Client on request.
- (m) The policies and procedures must, amongst other things:
  - (i) provide for the period or periods within which normal service levels should be restored if an event occurs which causes a disruption to delivery of the custody services; and
  - (ii) address the backup of both data and software.
- (n) Zerocap must not disclose any confidential information relating to Assets or the Fund, apart from any disclosure to ASIC or as required or permitted by law, these Terms or by Client in writing.
- (o) Zerocap must establish and maintain adequate arrangements to ensure that it will report to ASIC in writing within ten (10) Business Days if it suspects that Client has breached its obligations to report Client’s breaches as required by subsection 912D(1B) or paragraph 601FC(1)(1) of the Corporations Act.

## 5.7 Reporting

- (a) Zerocap will provide Client with reports or access to the Platform that Client reasonably identify Assets held in custody for Client.
- (b) Zerocap must retain all records and books of account maintained by Zerocap with respect to Client during the continuance of its appointment as custodian under these Terms.
- (c) If Client enters into any separate services agreement with Zerocap, the reporting obligations under that agreement apply in place of clause (a).

## 5.8 Custody fees and expenses

- (a) Custodian Fee
  - (i) Zerocap is entitled to a fee (**Custodian Fee**) in such amount as specified and as varied from time to time by notice to Client.
  - (ii) The Custodian Fee is payable in the manner and at the time as may be agreed from time to time between Client and Zerocap.
- (b) Reimbursement

Client must reimburse Zerocap for any costs, charges and expenses (including registration fees, duties, taxes, imposts and other government charges) incurred by Zerocap in acting in accordance

with these Terms in relation to the Assets. Zerocap may deduct from Client's Account the amounts owing to Zerocap.

(c) Zerocap's custody expenses on termination

Upon termination of the Prime Agreement Zerocap is entitled to:

- (i) all fees as are then due to Zerocap under these Terms, calculated until the date of termination;
- (ii) all costs, charges and expenses to which it is entitled under these Terms which have not been reimbursed at the date of termination; and
- (iii) all fees, costs, charges and expenses due to or incurred by Zerocap up until the date the Assets are transferred to or at the direction of Client under these Terms. (even if incurred after the Prime Agreement is terminated)

Zerocap may deduct from Client's Account the amounts owing to Zerocap.

## 5.9 Liability of Zerocap for custodial services

(a) Extent of Liability

Except to the extent of Non-excluded Liability, and subject to paragraph (e), Zerocap is not liable for, and does not indemnify Client for, any loss resulting from, Force Majeure, Market Risk and for Zerocap's acts or omissions or the acts or omissions of its agents, sub-custodians, employees or contractors. Despite any other term of these Terms, any limitation on the liability of Zerocap set out in these Terms which would, if applicable, be contrary to law as it applies to Client and Zerocap must be severed from these Terms and these Terms must be interpreted as though that provision never applied.

(b) Limitations of Liability

- (i) Subject to clause (a), Zerocap is not responsible for the title, validity or genuineness, including good deliverable form, of any property or evidence of title of any property received by it, delivered by it or controlled by it pursuant to these Terms.
- (ii) Subject to clause (a), Zerocap is not liable for anything done or not done by it in good faith in reliance upon any notice, request, consent, certificate or instrument reasonably believed by it to be genuine and to be passed, signed, endorsed or otherwise to be given by the proper party or parties.
- (iii) Subject to clause (a), Zerocap is not liable for any loss, damage or expense resulting from or caused by:
  - (A) errors by Client in its Orders or instructions to Zerocap;
  - (B) Force Majeure;
  - (C) Market Risk; or
  - (D) failure by Client to act in accordance with Zerocap's operational policies and procedures that have been agreed to in writing by Client.

(c) Indemnity

Except to the extent of Non-excluded Liability, and without prejudice to any indemnity allowed by law, this clause indemnifies Zerocap against any costs, charges and expenses incurred in connection with Zerocap providing the custody services in accordance with these Terms including (without limitation) Zerocap's costs and other liabilities incurred in investigating, assessing and prosecuting or defending any action or suit made by a third party against Zerocap in relation to Client's Assets or Transactions.

This indemnity is a continuing obligation, separate and independent from the other obligations of Client, and survives termination of these Terms.

(d) Consequential Loss

Except to the extent of Non-excluded Liability, nothing under this clause requires Client to compensate Zerocap for any consequential loss.

(e) Sub-custodians

(i) Zerocap may appoint and remove sub-custodians to carry out such of the provisions of these Terms as Zerocap may from time to time direct.

(ii) Except to the extent of Non-excluded Liability, the liability of Zerocap under these Terms is subject to the terms of appointment of the sub-custodian reasonably accepted by Zerocap from time to time (without being obliged to Client to optimise the terms of that appointment).

(iii) To the extent the Corporations Act applies to Zerocap in relation to these Terms and the appointment by it of a sub-custodian there must be a written agreement in place with the sub-custodian that reflects the obligations imposed on Zerocap under the as if the person engaged were Zerocap and Zerocap were Client except:

(A) for the requirement that Zerocap must establish and maintain adequate arrangements to ensure that it will report to ASIC in writing within ten (10) Business Days if it suspects that Client has breached its obligations to report Client's breaches as required by subsection 912D(1B) or paragraph 601FC(1)(1) of the Corporations Act; and

(B) to the extent that, in relation to Assets which are regulated as financial products in Australia held outside Australia, Zerocap has provided to Client documents that demonstrate that it is not reasonably practicable to engage a person who is willing to include such matters in the agreement.

## 5.10 Custody and Tax Law

(a) Domestic Tax Law

Subject to clause 5.9(a), Zerocap has no responsibility or liability for any obligations now or in the future imposed on Client, or Zerocap as custodian of the Assets by the tax laws of any jurisdiction or any state or political sub-division of the jurisdiction.

(b) Payment of Tax and Other Expenses

Subject to clause 5.9(a), Zerocap is not liable to account to Client for any payments:

(i) to any fiscal authority for taxes or other charges with respect to any Assets; or

(ii) with respect to any transaction under these Terms,

notwithstanding that any such payment ought not or need not have been made.

## 5.11 Voting

(a) Client authorises Zerocap to exercise any right to vote attached to an Asset.

(b) Zerocap must inform Client of any material change regarding Zerocap's policy for exercise of voting rights.

(c) If Client enters into a separate services agreement with Zerocap or a Related Entity of Zerocap for voting then the provisions of that agreement relating to voting rights override this clause.

## 6. APPOINTMENT AND AUTHORISED PERSONS

- 6.1 Zerocap may accept your authorisation of another person (**Authorised Person**) to give instructions and to place Orders on your behalf or otherwise to do anything which you are entitled to do in connection with or under these Terms. You must notify Zerocap in your Application Form or otherwise in writing in a way permitted by Zerocap of any such authorisation, giving the details and identification of that person and any other information required by Zerocap to identify the Authorised Person.
- 6.2 Any change or revocation of such authority is only effective upon receipt by Zerocap of a signed written notice of change or revocation from you. If another person is later appointed an Authorised Person, the notice must include the full name, telephone number, email address and specimen signature of that person and be verified by an Authorised Person and any other information required by Zerocap to identify the Authorised Person and, if you are a body corporate, by a director.
- 6.3 You may appoint an attorney (under a power of attorney in the relevant jurisdiction) to give instructions and place orders on your behalf or otherwise to do anything which you are entitled to do in connection with or under these Terms. You must notify Zerocap in writing of any such appointment giving the attorney's details. You must provide Zerocap with a copy of the power of attorney; Zerocap may accept or reject this power of attorney.
- 6.4 Zerocap may allow a Client which is a corporation or other legal entity to authorise a person (who is by that authorisation an Authorised Person) or an attorney to do anything which Client is entitled to do under these Terms, including on conditions determined by Zerocap.
- 6.5 Zerocap may allow any Client of a legal type not mentioned elsewhere in these Terms to authorise its Authorised Person or attorney to do anything which Client is entitled to do under these Terms, including on conditions determined by Zerocap.
- 6.6 For the purposes of these Terms, Orders placed by, and other instructions or directions given by, an Authorised Person (or which appear to us on the face of the Orders or other instructions or directions to be placed or given by an Authorised Person) are taken to be your Orders, instructions or directions.
- 6.7 You are and remain solely liable and responsible for all acts and omissions of your Authorised Person notwithstanding the act or omission of the Authorised Person was:
- (a) outside their actual or ostensible authority; or
  - (b) in error, fraudulent, negligent, in breach of their fiduciary duties or criminal.
- 6.8 You agree not to make, and you release us from any liability to you under your right to make, any Claim against us for any Loss incurred or suffered by you which arise directly or indirectly due to us relying on instructions from or other communications from or acts or omissions by your Authorised Person (including your attorney).

## 7. CLIENT ACKNOWLEDGMENTS

- 7.1 You, Client, acknowledge and confirm to Zerocap for Zerocap's benefit in relying on the following:
- (a) you (or, if a corporate entity, your directors) have read and understood all documentation provided to you by us including these Terms and any product disclosure statement (**Disclosure Statement**) in relation to any Financial Products or Financial Services which you request Zerocap to make available to you in relation to your Account (including provision of those documents by way of being sent a link to a webpage or portal providing those disclosures);
  - (b) all dealings in Financial Products or Financial Services and the performance by us of our obligations under these Terms are subject to Market Risk and to Applicable Laws;
  - (c) Zerocap relies on your representation that at all times you will be able to make payments and fulfil all commitments on your part arising under these Terms and under the conditions applicable to dealings between you and Zerocap;

- (d) Zerocap relies on your agreement by these Terms to notify us within 24 hours of receiving a Confirmation (including by way of accessing the Platform) if you object to any part of the Confirmation;
- (e) we will not provide legal, tax, financial or accounting advice to you as part of the services that we provide to you;
- (f) by these Terms (including any Transaction made under it) we do not act in a fiduciary capacity in relation to you and Zerocap does not owe any fiduciary obligations to you in respect of its services provided to you in connection with these Terms except and only to the extent of custody of your Assets held in your Account;
- (g) the respective duties, undertakings, obligations and rights of you and of Zerocap by these Terms are not identical or mutual due to the differences in the relationship by which Zerocap provides you with an Account and Transactions on these Terms and accordingly the Defaults, rights of termination and indemnities, among other Terms, reasonably reflect the respective different roles, responsibilities and risks of you and Zerocap;
- (h) Client must provide to Zerocap on request such information regarding its financial and business affairs and identity as Zerocap reasonably requires from time to time;
- (i) that all Orders placed by Client and all dealings to be conducted under these Terms must be lawful;
- (j) in making the application for the Prime Agreement and by complying with these Terms, Client will not infringe any provisions of any other document or agreement to which Client is a party;
- (k) you, Client, will take all reasonable steps to obtain and to communicate to Zerocap all information, and will deliver or cause to be delivered to Zerocap, all documents with respect to dealings in the Financial Products or Financial Services which are requested by any person having the right to request such documents and information and Client authorises Zerocap to pass on or deliver all such information and documents to any such person;
- (l) Zerocap is not required to act in accordance with your instructions;
- (m) dealings in the Transactions may create an obligation, or a liability, to make a payment to Zerocap in accordance with these Terms;
- (n) Zerocap acts as principal in respect of the Financial Products issued by Zerocap;
- (o) Zerocap acts as your agent in respect of Transactions for Financial Products which are not issued by Zerocap and so you are solely liable on those Transactions and solely responsible for the risk of those Transactions (and so Zerocap is not acting as agent of the other party to your Transaction and is not liable as principal to that other person, even if the identity of that other person is not disclosed to you);
- (p) if you give Zerocap standing instructions to enter into a Transaction when a particular Entry Price is reached, then the Entry Price at which the Transaction is entered into might not be that exact price or level;
- (q) if you give Zerocap standing instructions to enter into a Transaction on the basis of information or other reference criteria chosen by you, then the Order might not arise or, if it does, the Transaction arising from execution of it may be modified in order to be possible within your Account, the execution of the Order may be delayed and the price for it cannot be guaranteed;
- (r) subject to applicable legal or regulatory requirements, you consent to Zerocap either knowingly or unknowingly taking the opposite side to Client in relation to any of the Financial Products, without notice to Client;
- (s) subject to applicable legal or regulatory requirements, Client agrees and acknowledges that Zerocap's directors, employees and associates (and their directors, employees) may and can deal on their own account in Transactions which may be the same as or differ from your Transactions;
- (t) Zerocap may, in its sole discretion and without explanation, refuse to deal with Client in relation to any Transaction or Zerocap may limit the kind of Transactions or both;

- (u) if (in the sole discretion of Zerocap) errors have occurred in the pricing of Transactions made by Zerocap and Client, Zerocap may choose not to be bound by such Transactions and cancel them as though they never existed (without further liability to Client);
- (v) there are risks associated with using an system for the Platform which include, but are not limited to, the failure of hardware, software, and internet connection and since Zerocap does not control data flows, internet or power connections, routing via internet, configuration of your equipment or reliability of its connection, Zerocap will not be responsible for communication failures, distortions or delays when dealing (including processing payments) via the internet or other communication methods;
- (w) Zerocap is not liable for Force Majeure or consequences of an event of Force Majeure;
- (x) Zerocap is not liable for Market Risk or consequences of Market Risk occurring;
- (y) reports to Client on the execution of Transactions by Zerocap, and the content of Confirmations being statements, unless otherwise objected to within 24 hours after communication to Client, will be deemed to be conclusive proof of the accuracy of such contents and their execution in accordance with these Terms except only in the case of manifest error; and
- (z) a notice issued by an authorised officer or agent of Zerocap stating the amount of money due and payable by Client must be taken as conclusive evidence of notice except only in the case of manifest error.

**7.2** You, Client, acknowledge and confirm to Zerocap for the benefit of Zerocap and for the benefit of any holder of a licence authorising Zerocap in relation to Zerocap's conduct under or in relation to these Terms, an Account and any Transaction (despite that licensee not being a party to the Prime Agreement that :

- (a) a liability of Zerocap arising under these Terms, an Account or any Transaction accrues solely to Zerocap;
- (b) the holder of the licence is not by reason of the terms of the Business Law governing the licence and authorisation liable for the conduct of Zerocap whether as agent or otherwise,

unless and only to the extent imposed by Applicable Laws which may not be contracted out by these Terms and which have not been contracted out of by these Terms.

**7.3** All representations, warranties and acknowledgments given by you under these Terms are taken to have been made at the time you complete the Application Form and are taken to have been repeated by you:

- (a) each time you place an Order with us;
- (b) each time you enter into a Transaction with us; and
- (c) each time we do anything or refrain from doing something under these Terms or as contemplated by these Terms in connection with your Account or any Transaction.

## **8. ZEROCAP UNDERTAKINGS**

**8.1** Zerocap will act honestly and exercise due care and diligence at all times in its performance of these Terms.

**8.2** Zerocap will use reasonable endeavours to execute your Orders, subject to these Terms.

**8.3** Apart from any duties, undertakings, warranties or representations which are imposed or implied by law and which cannot be excluded, Zerocap makes no undertaking, warranty or representation in relation to any service or information provided or made available to you in connection with these Terms.

**8.4** To the full extent permitted by law, Zerocap excludes liability for all costs, expenses, damages and Losses (including consequential loss) arising in connection with such services or information, Force Majeure, Market Risk and these Terms (including, without limitation, liability for negligence, tort or breach of fiduciary duties and breach of contract).

## 9. FEATURES AND RISKS OF TRANSACTIONS AND CUSTODY

9.1 You acknowledge and understand that there are significant features and risks involved in Transactions, including:

- (a) Market Risk;
- (b) the gearing or leverage involved in Financial Products means that a small Initial Margin payment can potentially lead to large losses for you, including more than all the Margin ever paid to Zerocap;
- (c) a relatively small market movement can lead to a proportionately much larger movement in the value of your Transaction (as measured by the cost of the Transaction you would need to close out your position, if possible, according to the type of Transaction you have), and this can work against you as well as for you;
- (d) over the counter Transactions are not made on any Exchange so might be considered to involve a greater risk than an exchange-traded Financial Product since there is no exchange - you are only able to deal with us;
- (e) the potential for loss or increases in value from Transactions relating to a non-local market, Exchange or denominated in a currency other than your local currency will be affected by fluctuations in foreign exchange rates;
- (f) it is possible to incur a notional loss if, after your Transaction, rates of conversion (foreign exchange or Digital Assets, or both) change to your detriment and that notional loss will become a real loss if the Transaction is Closed out earlier than its intended date for settlement;
- (g) you may sustain a total loss of the Margin that you to us to establish or maintain a position and, if the market moves against you, you may be required to pay substantial additional Margin at short notice but if you fail to do so within the required time, your Open Position may be liquidated at a loss to you and you will be liable for any remaining deficit in your Account;
- (h) you will be required to maintain the Margin Cover as notified to you, which might mean you must pay more Margin, even if you are not contactable;
- (i) a disruption affecting Zerocap's ability to offer Transactions can mean that you are unable to trade when desired or in the amounts and prices you desire, and you may suffer a loss as a result, including disruption due to government or regulatory decisions or announcements, the failure of a computer based dealing or pricing system, fire or exchange emergency or a regulatory body could declare an undesirable situation has developed in a particular currency, security or contract and suspend dealing or adjust terms of prices or dealing;
- (j) you may incur losses (including incurring fees and charges) that are caused by matters outside our control for example, a regulatory authority exercising its powers during a market emergency or the provider of a Payment System exercising its discretion or experiencing malfunctions in the Payment System or any event of Force Majeure; and
- (k) we have powers, and discretion to exercise those powers, without notice to you or giving you reasons, for cancelling Transactions or adjusting their prices or timing and, though we would exercise our powers in accordance with these Terms and our statutory duties, you may incur losses (including incurring fees and charges) as a result of our exercise of our powers.

9.2 You acknowledge and understand that there are significant features and risks involved in services involving Digital Assets especially custody of Digital Assets including:

- (a) coding of Digital Assets is not verified or audited by or on behalf of Zerocap;
- (b) Zerocap is not responsible for services provided by digital currency exchanges;
- (c) protocols involving Digital Assets (whether described as "DeFi" or in any other way), however they are structured or governed, may be complex, untested or vulnerable to manipulation by other persons;
- (d) Zerocap is not responsible for compiling transactions on the blockchain of Digital Assets; and

- (e) Zerocap does not assure the performance of any transaction on any blockchain of any Digital Asset.

**9.3** No advice or recommendation is provided by Zerocap in relation to your Transactions or other services unless that is expressly given in writing.

## **10. FEES, CHARGES AND COSTS**

**10.1** You owe us, and must pay to us or as we direct (in accordance with these Terms):

- (a) any Transaction charges including all Margin, commission, charges, fees, premia, settlement and clearing fees and charges, interest, default charges and Taxes (including Applicable Tax but excluding Zerocap's income tax or penalty tax and levies) and any other amounts due under these Terms on demand by Zerocap in cleared funds or otherwise as required by these Terms;
- (b) (if applicable) a Transaction Fee for each Financial Product or Transaction (as the case may be) being the fee from time to time specified by Zerocap to be the amount payable by you to Zerocap in respect of each such Transaction;
- (c) any royalty or other fee which must be paid for the use of prices or information provided to you via access through the Platform or otherwise by any Exchange;
- (d) (if applicable) a monthly access charge for the use of the Platform provided by Zerocap, as specified by Zerocap from time to time;
- (e) any fees, Taxes, stamp duty or other charges as may from time to time be levied on or in connection with any Transactions entered into with you; and
- (f) in respect of any unpaid amounts required to be paid under these Terms including, (without limitation) any amounts due as a result of your failure to pay interest on all such amounts denominated in Australian dollars at the Base Rate then generally applicable for debit amounts on Accounts plus a rate of interest per annum as reasonably determined by Zerocap, such interest to accrue daily from and including the due date to and including the date of its payment in full.

*Guidance note: this is the rate of interest you pay if you default on making any payment to Zerocap.*

You agree that any delay in, or partial exercise of any of the above rights is not a waiver or abandonment of those powers.

**10.2** Any amount or rate or formula which is to be specified by Zerocap may be specified by a Disclosure Statement, a Supplementary Disclosure Statement or in any other permitted way of notifying you, such as on Zerocap's website or the Platform. The amount of any fees and charges or other amounts payable by you to Zerocap in respect of any Transaction will be set out in the Confirmation of that Transaction or the Platform to the extent known at the time.

**10.3** Zerocap may charge you for, and you must pay promptly on request, the following (plus any Applicable Tax), which must be reasonably based on the direct and indirect costs to Zerocap for those items and relate to you:

- (a) your payments which are declined, charged back or challenged by the paying institution;
- (b) paper copies of documents which we have not otherwise confirmed that we will provide for free;
- (c) telephone transcript copies.

You agree that any delay in, or partial exercise of, any of the above rights is not a waiver or abandonment of those powers.

**10.4** Zerocap may receive commissions and other benefits from other parties in relation to Transactions which Zerocap enters with you or in connection with other services provided to you. Zerocap is entitled to retain such commissions and benefits.

- 10.5** If you have been referred to us or on behalf of a referrer or other third party, that referrer or third party may receive benefits in the form of a commission, rebate or other payment or benefit from us.
- 10.6** Unless otherwise agreed, the terms of any amounts payable by you under these Terms are stated exclusive of Applicable Tax. If Applicable Tax is payable on a taxable supply made by Zerocap under, by reference to, or in connection with these Terms, you must also pay the amount of Applicable Tax payable in respect of that taxable supply. Zerocap will when required by law and as far as practicable state in Confirmations (or Account statements, if applicable) the amounts as Applicable Tax-inclusive. Zerocap will manage any credit granted to it for any Applicable Tax refund, input credit or similar tax credit in accordance with its policy from time to time.
- 10.7** The amounts of or basis of calculating the fees, commissions, charges and credits referred to in this clause 10 will be as notified from time to time in writing by Zerocap, either by way of a Disclosure Statement, posting on the Platform (including by way of Transaction prices), notification to your contact address, posting to Zerocap's website or as otherwise agreed with you or permitted by these Terms.
- 10.8** You must reimburse Zerocap for all fees (both direct and indirect) and expenses charged in connection with any Transaction (other than Tax on the income of Zerocap) and for all costs and expenses incurred by Zerocap in implementing these Terms and in enforcing its rights under these Terms (including its legal costs of external or internal legal advisers on a full indemnity basis).
- 10.9** Zerocap will notify you of any change in its fees and charges or other amounts payable by these Terms in accordance with Applicable Laws except indicative rates may change at any time.

## **11. PAYMENTS**

- 11.1** Zerocap must deal in accordance with the Applicable Laws with any money and property which you pay or give to, or which is otherwise received by, Zerocap in connection with services provided by Zerocap. If there is ever any inconsistency between these Terms and Applicable Laws, Zerocap will always comply with Applicable Laws and not these Terms and will not be liable to Client for that.
- 11.2** Your payments to us for Margin for Transactions are payments for the product to be issued to you or; for Transactions with you; or on your behalf which requires staking (in any way) some or all of your Assets (and are not deposits with Zerocap, are not client moneys and will not be held in any trust account or otherwise retained beneficially for you).
- 11.3** If Zerocap pays your funds or other Assets to another person at your request, Zerocap is not liable to you for the performance by the other person. Without limitation, Zerocap is not obliged to enquire into, and will not enquire into:
- (a) the use of those funds or other Assets by the third party;
  - (b) any persons to whom the third party pays or delivers all or any of these funds or other Assets;
  - (c) the solvency of any of those persons;
  - (d) the compliance by any of those persons with the Business Law, Applicable Laws and Rules;
  - (e) whether any of those persons hold any part of the funds or other Assets on any nominee, segregated account, trust or any other basis for your protection or security.

The moneys or other Assets to which you are entitled under these Terms and which are under the control of Zerocap will be provided directly to you and not to any third party, unless you have otherwise instructed us to do so and we agree. You must provide relevant account details for payment or delivery instructions. Although Zerocap will take reasonable steps to comply with your instructions, Zerocap accepts no responsibility for any failure to comply with those instructions and, if such failure occurs, the relevant moneys or Assets will continue to be held by Zerocap in accordance with the Business Law and Applicable Laws.

- 11.4** If Zerocap determines that your Account has been inactive for a period determined by Zerocap, you authorise Zerocap to apply a charge to your Account (see the Platform) and ultimately close your Account.

**11.5** All currency exchange risks regarding any payment instruction or any Order or Transaction entered into by you with Zerocap is your responsibility. Any conversion from one currency or Asset to another required to be made for performing or executing any payment instruction, Order or Transaction may be made by Zerocap in the manner and at the time and at the exchange rates that Zerocap, in its absolute discretion, decides.

## **12. MARGIN REQUIREMENTS**

**12.1** You agree and acknowledge with each of the following:

- (a) Margin Cover refers to the amount which is allocated in your Account for this purpose. Margin Cover does not constitute funds to which you are entitled nor is any amount referable to Margin Cover held on deposit or trust for you, your collateral held by Zerocap for you or a debt owed by Zerocap to you.
- (b) The minimum amount of the Margin Cover required by Zerocap is determined by Zerocap in its absolute discretion from time to time.
- (c) A Margin payment is the amount you pay Zerocap for crediting your Account as Margin Cover.
- (d) A Margin payment when received by Zerocap is an irrevocable payment to Zerocap for its own account. You are not entitled to any funds paid to Zerocap for Margin. You are entitled to any net amount which is in your favour after setting off all amounts owing as between you and Zerocap in accordance with these Terms.
- (e) The time for your payment to maintain Margin Cover is of the essence, whether it is to satisfy a call for Margin or to maintain an automatically updated Margin Cover amount.
- (f) You must maintain at least the amount of Margin Cover required by Zerocap whether or not Zerocap gives any notice to you to make those payments or you have actual notice of the required amount. The Margin Cover requirements may be determined automatically by the Platform. The required amount of Margin Cover can change continuously and can change automatically, including over the week-end or other non-trading days. Your obligation to maintain at least the required amount of Margin Cover is continuous.
- (g) You must ensure that for so long that you have an Open Position, the Margin Cover must always remain positive. If not, all or some of your Open Positions may be Closed Out by Zerocap without prior notice to you and entirely at your risk and cost.
- (h) Your obligation to maintain Margin Cover arises at the time specified by Zerocap for payment of the Margin or, if not specified, the time the Transaction is executed.
- (i) You have an absolute obligation to maintain the amount of Margin Cover required by Zerocap from time to time. Your failure to maintain the required Margin Cover is automatically a Default.
- (j) It is solely your responsibility to monitor and to satisfy all Margin Cover requirements.
- (k) You have an absolute obligation to pay the amount of Margin required by Zerocap from time to time by notice to you. Your failure to pay Zerocap that the required Margin by the required time notified to you is automatically a Default.
- (l) The time for you to satisfy an obligation to pay Margin is determined as follows and in the following order of hierarchy:
  - (i) If specified in a notice sent to you, the time specified in the notice (even if immediate or not on a Business Day).
  - (ii) If specified in an Order, the time specified in the Order.
  - (iii) If specified in a Term Sheet, the time specified in the Term Sheet.
  - (iv) If specified in a Schedule, the time specified in the Schedule.
  - (v) If specified in the Platform, the time specified in the Platform.

- (vi) If not specified by any of the above means, it will be required by 4:00 p.m. (Melbourne time) on the day a notice is sent to you by 12:00 p.m. (if not sent on a Business Day, or it was sent on a Business Day but after 12:00 p.m. (Melbourne time)), by 4:00 p.m. on the following Business Day).

A notice sent to you to pay Margin is valid even if you do not receive it or do not read it (or, if Client is a corporate entity, it is not received or read by the Authorised Person to whom it was sent.)

More than one notice to pay Margin may be sent, including on the same day.

A notice to pay Margin may be sent on any day, at any times, even if not a Business Day.

- (m) A Margin payment is credited by Zerocap at the time cleared funds have been received into the payment account nominated by Zerocap from time to time and Zerocap has applied the amount to your Account or such other time as allowed by Zerocap, so a Margin Cover requirement for one or more Transactions issued by Zerocap is not satisfied unless and until your payment is received in cleared funds into the payment account nominated by Zerocap from time to time and applied to your Account by Zerocap.
- (n) Without limiting any other right of Zerocap, in respect of any Financial Product issued to you by Zerocap acting as principal to you, you authorise and direct, by these Terms, that all of the funds which you paid to Zerocap for its own account will be applied towards satisfying your obligations to pay Transaction Fees, charges, to maintain Margin Cover and to pay all other amounts owing under these Terms, even if:
  - (i) your payment is in an amount less than or more than the amount required to maintain the total amount of required Margin Cover;
  - (ii) your payment is in an amount less than or more than the Margin required by Zerocap;
  - (iii) the required amount of Margin Cover reduces after your payment;
  - (iv) there is any delay between the time you make the payment and when Zerocap revived the cleared funds; or
  - (v) you do not tell us your intended use of the Margin Cover which will be allocated to your Account after your payment or you change your mind after you tell us and you deal in Financial Products for a lesser value than you told us or you do not deal.
- (o) Your liability in respect of Margin requirements is not limited to the amount, if any, initially paid to Zerocap for your Account. You are responsible for paying Zerocap any deficit owing to Zerocap after Close Out of a Transaction and if you default in payment of such deficit, Zerocap may (in any combination) pay the deficit out of the Account (including selling Financial Products) or realise (that is, Close Out early) any Financial Products issued by Zerocap to you and apply the amounts or proceeds against that deficit and you are responsible for the full and prompt discharge of the deficit (which exceeds the value of the Account) by making payment in full to Zerocap immediately when that deficit arises.

**12.2** Zerocap may (without notice to you) Close Out, but will not be obliged to Close Out or to attempt to Close Out, some or all Open Positions, at that time or any later time as Zerocap determines (whether in its discretion or by automatic risk management systems) if any one or more of the following applies at any time, and from time to time:

- (a) your Account Value falls below the Margin Closeout Level;
- (b) you fail to maintain the required Margin Cover;
- (c) you fail to pay Margin as required by Zerocap or otherwise in accordance with these Terms; and
- (d) Zerocap determines that the value of all of your Open Positions (and taking into account any other balance in your Account) represents a substantial net unrealised loss to you such that, in Zerocap's belief, the continued trading, or failure to Close Out, one or more of your Open Positions will or is likely to materially prejudice your Account Value.

A delay by Zerocap in exercising any of its rights or powers arising under these Terms including as specified as above must not be construed as waiving the Default by you or electing to accept the continued Open Positions. You remain fully and solely responsible for your Defaults (including the costs and risks of your Open Positions and their Close Out) even if Zerocap delays or partially exercises its rights under these Terms.

### **13. PRIVACY, INFORMATION AND ADVICE**

- 13.1** Zerocap may provide (but is under no obligation to provide) you with information or data concerning interest rates, foreign currency, other Financial Products or markets generally. If such information or data is provided, it is provided on the basis that Zerocap believes the sources to be reliable but has not verified that information. You acknowledge that Zerocap is not responsible for the accuracy, completeness or currency of any information or data provided (including the sequence of trades) and that if you rely on that information or data you do so at your own risk. Unless otherwise agreed with Zerocap, you acknowledge that no information or data provided by Zerocap to you takes into account your objectives, your financial needs or situation or your special circumstances.
- 13.2** When Zerocap provides services to you (including agreeing to provide Financial Products or financial services, open an Account, issuing to you, or dealing with you, as principal) Zerocap is not by these Terms or those acts providing, required to provide, or liable for, advice or recommendations in relation to the Financial Products, financial services, Orders or Transactions, except to the extent required by Applicable Laws.
- 13.3** You represent and warrant to Zerocap on a continuing basis that under these Terms, to the extent permitted by law:
- (a) you are not relying on any communication (written or oral) from Zerocap as Financial Product, Financial Services or other investment advice or as a recommendation to enter into, or to vary or to end, any Transaction;
  - (b) you will not consider or treat the information and explanations relating to the proposed or actual terms of a Transaction to be Financial Product, Financial Services or other advice on, or a recommendation to, enter into, any Transaction or otherwise on which you may rely; and
  - (c) you will not take any communication (written or oral) received from Zerocap as an assurance or guarantee as to the expected results of any Transaction.
- 13.4** You acknowledge that you are responsible for all Orders which you place, or choose not to place, with Zerocap and it is your responsibility to obtain personal Financial Product or Financial Services advice (or any legal, tax and financial advice) before making any decision in respect of Financial Products or Financial Services.
- 13.5** To the extent that Zerocap would be obliged (but for this clause) to give you a statement recording any advice to you, then to the extent permitted by Applicable Laws:
- (a) you consent to receiving any such written statement of advice after having been given the advice; and
  - (b) you consent to receiving any such written statement of advice after making the Transaction but within the period permitted by law.
- 13.6** Client acknowledges that all materials, questions, feedback, comments, ideas, and statements provided by Client to us, whether by the Platform or otherwise, including in chatrooms, support tickets, queries or complaints, in any case regarding the Platform which is not specifically in relation to Client and which is provided by or on behalf of Client is not confidential and becomes the sole and exclusive property of Zerocap or, if not property, may be exclusively used by Zerocap, without limitation, on a non-attributable basis and without being liable in any way, whether to account for profits, rights nor give compensation or acknowledgement to Client.
- 13.7** You authorise each of us and each related body corporate of ours to collect your personal information from you when we provide services to you under these Terms. You authorise each of us and each related body

corporate to use any information collected from you or from others, or such other relevant documents:

- (a) to assess your request for us to provide our services to you;
- (b) to provide our services to you in accordance with these Terms;
- (c) for the purposes of complying with its obligations regarding your beneficial interests;
- (d) to allow Zerocap to communicate with third parties in connection with the matters contemplated by these Terms, such as in connection with the Account; and
- (e) to ensure that legal and regulatory requirements under Applicable Laws are met.

**13.8** You must notify us in writing when any of the information provided by you changes.

**13.9** You agree to the Privacy Policy applying to you and to us. Without limiting or amending the Privacy Policy, you authorise us to disclose personal information to:

- (a) our related bodies corporate, whether in Business Location or elsewhere;
- (b) any clearing or settlement participant responsible for the clearing or settlement of your Transactions (if your Transactions are ever cleared by a third party, such as the provider of a Payment System);
- (c) our service providers (including data management and protection consultants and IT contractors);
- (d) our agents, contractors, and external advisers;
- (e) government and other regulatory bodies and authorities whether in Business Location or elsewhere;
- (f) payment system operators;
- (g) other financial institutions and credit providers who provide services to you;
- (h) on a confidential basis, a prospective purchaser of, joint venture partner of, or investor in, Zerocap or a related body corporate or all or part of the business of Zerocap or a related body corporate; and
- (i) any other relevant person to the extent required by Applicable Laws.

**13.10** You authorise Zerocap to use and disclose the Tax file number (or tax file exemption number) which you provide to Zerocap for all Accounts conducted by you with Zerocap for the purposes of Transactions in accordance with any legal requirements.

**13.11** You have a right to access any personal information that we hold about you unless there is a legal reason why access will not be possible. If that is the case, and the laws permits us to tell you, you will be told why. To find out what kinds of personal information we may hold about you, or to request access to any personal information, please contact us.

**13.12** You agree that your personal information can be used or disclosed by us as contemplated in these Terms. You agree to take all reasonable steps to deliver information or documentation to Zerocap, or cause information or documentation to be delivered to Zerocap concerning Transactions which are requested by a person having a right to request such information or documentation (including, without limitation, Business Regulator). You acknowledge that if you do not provide any information requested by us or do not agree to us using your information pursuant to this clause, then we may not be able to provide our services to you.

**13.13** You agree that we may make such enquiries as we think fit of any person, including your employer, bank or a credit agency, relating to your creditworthiness and disclose the result of those enquires and as a result of your disclosures to us (including your tax file number) to any credit rating agency or to any clearing or settlement participant responsible for the clearing or settlement of your Transactions for the purposes of our or that participant's risk assessment.

- 13.14** You must, promptly following the request of Zerocap, take all reasonable steps to deliver to Zerocap all information and documentation relevant to dealing in Financial Products.
- 13.15** You authorise Zerocap to record any or all incoming and outgoing voice communications (including phone calls) with you without making a disclosure to you of this nature each and every time you speak with a representative of Zerocap. These calls may be recorded with or without an audible tone. You agree that Zerocap may use such recordings for the purposes of monitoring and training its staff, monitoring compliance with you and Zerocap's respective regulatory and contractual obligations and resolving disputes. If there is a dispute between Zerocap and you, you have the right to listen to any recording of those conversations (if still available). Nothing in these Terms obliges Zerocap to keep a recording or to notify you that we have eliminated a recording.
- 13.16** Recordings may be used to assess the performance of or to train Zerocap's representatives, monitoring compliance with Zerocap's respective regulatory and contractual obligations and resolving disputes.
- 13.17** Zerocap is not obliged unless Applicable Laws require for it to keep any transcripts or copies of any recording or conversation nor to tell you when it disposes of the record.
- 13.18** Subject to clause 13.17, Zerocap may upon request, provide copies of any recording or transcript relating to your dealings to you in if there is a dispute or anticipated dispute with respect to such dealings. You agree to pay any reasonable cost associated with providing any such transcript or copy.

## **14. YOUR CAPACITY, REPRESENTATIONS AND WARRANTIES**

- 14.1** We provide services under these Terms on the fundamental basis that you undertake as primary obligor all obligations arising on the execution of Transactions which we enter into with you regardless of your legal capacity.
- 14.2** You represent and warrant to us, and we rely on the fundamental condition, that you are only one of the following:
- (a) acting as principal;
  - (b) acting as an intermediary on another's behalf fully disclosed to us and you are specifically authorised to enter into Transactions on behalf of the other person and (if required) currently have all appropriate licensing and other kinds of registrations and authorisations to do so; or
  - (c) if you are a trustee of a trust, you are acting in accordance with the terms of a trust deed.
- 14.3** If you are constituted by more than one person (including, for example, if you are acting in a partnership or joint venture), then each person constituting you are jointly and severally liable for the obligations under these Terms, and we may act on the instructions of any one of those persons.
- 14.4** If you are a corporation, you represent and warrant that:
- (a) you have full corporate power to enter into, and perform your obligations under, these Terms; and
  - (b) you have taken all necessary corporate action to authorise the performance of your obligations under these Terms, and these Terms constitute the legal, valid and binding obligations, enforceable against you.
- 14.5** If you are acting as a trustee of a trust, a responsible manager of a managed investment scheme, a trustee of a superannuation fund or an agent under an investment management agreement, the additional representations, warranties and undertakings set out in Schedule 3 apply.
- 14.6** You represent and warrant that:
- (a) you have read and understood all documentation provided by Zerocap to you in relation to the services provided by Zerocap including, without limitation, any product disclosure statement;

- (b) you are a person with whom Zerocap is lawfully entitled to deal pursuant to any Applicable Laws and that all dealings by you with Zerocap or requested to be done by Zerocap are and will be lawful under all Applicable Laws;
- (c) all information supplied on the Application Form or otherwise provided to Zerocap is true, complete and accurate in all respects and you will notify Zerocap immediately of any change in any information supplied (including but not limited to any change in your name, address, contact number or address or email or social media account address);
- (d) you will rely upon your own knowledge and judgment and will seek such advice (financial or otherwise) as may be prudent before placing an Order with Zerocap and you assume full responsibility for any Order placed with Zerocap; and
- (e) at all times you will be able to make payments and fulfil all commitments on your part arising under these Terms and under the conditions applicable to dealings between yourself and Zerocap.

**14.7** Apart from any warranties and representations which are implied by law and cannot be excluded, Zerocap makes no warranties, representations or undertakings in relation to any service or information provided or made available to you in connection with these Terms. To the full extent permitted by law, Zerocap excludes liability for all costs, expenses, damages and Losses (including consequential loss) arising in connection with such services or information, or these Terms (including, without limitation, liability for negligence).

**14.8** All representations, warranties and acknowledgments given under this clause 14, Schedule 3 or elsewhere in these Terms are taken to have been made at the time you complete the Application Form and are taken to have been repeated by you:

- (a) each time you place an Order with us;
- (b) each time you enter into a Transaction with us; and
- (c) each time we do anything or refrain from doing something under these Terms or as contemplated by these Terms in connection with your Account or any Transaction.

## **15. ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING**

**15.1** You acknowledge that:

- (a) Zerocap is subject to various anti-money laundering and counter-terrorism financing laws (**AML/CTF Laws**) which may prohibit us from offering services or entering into or conducting Transactions; and
- (b) the AML/CTF Laws include prohibitions against any person dealing with the proceeds of or assets used in criminal activity (wherever committed) and from dealing with any funds or assets of, or the provision of finance to, any person or entity involved (or suspected of involvement) in terrorism or any terrorist act.

**15.2** You agree that:

- (a) Zerocap is not required to take any action or perform any obligation under or in connection with these Terms if we are not satisfied as to your identity or if we suspect on reasonable grounds that by doing so we may breach the AML/CTF Laws;
- (b) Zerocap may delay, block or refuse to make any payment or to provide any service if we believe on reasonable grounds that to do so may breach any law in Business Location or any other country, and we will incur no liability to you if we do so; and
- (c) Zerocap will not incur any liability to you for any loss you suffer (including consequential loss) however caused by reason of any action taken or not taken by us as contemplated in paragraph (a) or (b) above.

**15.3** You agree to provide all information and documents to Zerocap which we reasonably require to comply with any law in Business Location or any other country, including any AML/CTF Laws. You agree that Zerocap may disclose information which you provide to us, or about Transactions you have with us or which you seek to conduct with us, if we are required to do so by any law or Rule in Business Location or in any other country.

**15.4** You represent and warrant to Zerocap that the payment of moneys by us in accordance with these Terms, or any instructions given by you, will not breach any law in Business Location or any other country.

## **16. LIMITATIONS OF LIABILITY, INDEMNITIES AND PAYMENTS**

**16.1** Subject to any legislation and any other rights, duties or other obligations imposed or implied by law which cannot be excluded by agreement between the parties, to the extent each of the following is not prohibited by those laws:

- (a) we make no warranties either expressly or impliedly as to merchantability, fitness for a particular purpose, or otherwise (including as to accuracy, currency, availability, completeness or quality), with respect to any services we provide under these Terms including, without limitation, the Platform;
- (b) Zerocap excludes all liability in contract, tort, fiduciary duties or otherwise relating to or resulting from any Financial product and any Financial Service which we provide under these Terms and for any Loss incurred by you directly or indirectly, including without limitation as a result of or arising out of:
  - (i) any inaccuracy, error or delay in or omission from any information provided to you under these Terms including the Platform;
  - (ii) any delays or failures or inaccuracies, or loss of access to, the provision of a service to you including, without limitation, any delay, failure or inaccuracy in, or the loss of access to, the Platform or in respect of the transmission of Orders or any other information;
  - (iii) any misinterpretation of your Orders or instructions which are unclear, ambiguous, or not specific;
  - (iv) any government restriction, Exchange or market rulings, suspension of dealing, computer or telephone failure, unlawful access to our Platform;
  - (v) any event of Force Majeure; and
  - (vi) Market Risk.
- (c) Zerocap is not liable in contract, tort (including negligence), breach of fiduciary duty or otherwise for any loss of prospective profits or expenses or special, indirect or consequential damages resulting from the supply of a service including, without limitation the Platform;
- (d) Zerocap makes no representations or warranties either express or implied that:
  - (i) any Payment System (or any part of it) or any service or any services performed in respect of it will meet your requirements or the requirements of any user; or
  - (ii) the operation of, or services performed in respect of, any Payment System will be uninterrupted or error-free;
- (e) Zerocap is not liable for any breach of a provision of any relevant legislation, negligence, injury, death, lost profits, loss of files data or use, economic loss, loss or reputation or losses or damages incidental or consequential to the operation of any Payment System, except to the extent that it is caused by the negligence or dishonesty of Zerocap or their employees, agents or representatives; and
- (f) Zerocap's liability to you is (unless the limitation in this paragraph (f) is prohibited or void due to Applicable Law) in any event limited to:

- (i) in the case of goods, the replacement or repair of the goods; or
- (ii) in the case of services, the re-supply of the services.

**16.2** To the fullest extent permitted by law, you release, discharge and indemnify and agree to keep Zerocap and its respective officers, employees, agents and representatives indemnified from and against all Claims arising out of:

- (a) any default by you, whether by your act or omission under these Terms or any Order or Transaction;
- (b) any breach by you of any Applicable Laws;
- (c) any representation or warranty made or given by you under these Terms proving to be untrue or incorrect;
- (d) any error, omission, fraud, malfeasance, negligence, misappropriation or criminal act or omission by you or by any of your clients, employees, agents or Authorised Persons, consultants or servants;
- (e) any failure of any of your computer or electronic systems or networks to perform, be available or successfully transmit data to Zerocap, or any error or inadequacy in the data or information input into such systems or networks by you;
- (f) any delays in processing any Order including, for example (but not limited to), as a result of systems or market delays, or due to verification or filtering procedures or unauthorised processes, email delays or due to telephone call waiting time or adherence to internal policies and procedures;
- (g) anything lawfully done by Zerocap in accordance with, pursuant or incidental to these Terms;
- (h) acting on any instruction, request or direction given by you, including a standing instruction or any Order;
- (i) by reason of Zerocap complying with any direction, request or requirement of Applicable Laws, any provider of market information or Payment System, any government body or any regulatory body having jurisdiction over;
- (j) arising from and in connection with or in any way related to Zerocap in good faith accepting and acting on instructions received by any electronic transmission (including email) or by other means of any kind which are signed by or purported to be signed or otherwise made by you or any Authorised Person,

except only to the extent attributable to Non-excluded Liability or which would be liability which by law may not be imposed on you.

### **16.3 Limited recourse for OTC Financial Products**

- (a) To the maximum extent permitted by law in respect of your Financial Products, Financial Services, Orders or Transactions and all related obligations and liabilities of Zerocap to you in respect of Financial Products issued by Zerocap as principal to you (**Zerocap OTC Liability**):
  - (i) the Zerocap OTC Liability – however that liability arises – is limited to paying to you an amount equal to the Recovery Amount (if any); and
  - (ii) your recourse against Zerocap is limited to seeking payment of the Recovery Amount, in accordance with this clause 16.3.
- (b) This limitation of Zerocap's liability and your recourse against Zerocap apply despite any other provision of these Terms or any other agreement, arrangement or understanding (written or not) and extends to all liabilities and obligations of Zerocap in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to the Terms and anything done or omitted to be done under it, subject only to any Non-excluded Liability. In particular:

- (i) this clause 16.3 applies before determining the respective amounts to be netted and set off under these Terms; and
  - (ii) the Recovery Amount is nil unless and until the Recovery Amount is actually determined (with the effect that the amounts to be netted and set-off by these Terms must deem the Recovery Amount to be nil unless and until the Recovery Amount is actually determined).
- (c) For clause 16.3, the Recovery Amount is:
- (i) the amount that Zerocap actually receives from, on behalf of or in respect of the counterparty to Zerocap (**OTC Counterparty**) under the terms of or in respect of:
    - (A) a transaction or dealing facility which Zerocap makes to hedge (partly or fully) the Transaction made by you; or
    - (B) any transaction made by Zerocap with that OTC Counterparty which, in Zerocap's opinion, fully or substantially corresponds with your Transaction with Zerocap,

and if Zerocap receives only a proportion of the amount due to Zerocap (whether for itself, as agent or in any other capacity) from, on behalf of or otherwise in respect of the OTC Counterparty in respect of several clients or several Transactions, then the Recovery Amount is limited to your *pro rata* portion (as determined by Zerocap) of the amount actually received by Zerocap);
  - (ii) less any amount actually paid to you in respect of termination of your Transaction with Zerocap.
- (d) If:
- (i) you make a claim in any way, whether directly or in any court or dispute resolution forum (**your claim**) against Zerocap to recover Loss or for any other compensation in relation to a Transaction, which Loss has arisen because or substantially due to an OTC Counterparty failing to pay in full an amount to Zerocap (**payment failure**) and Zerocap relies on this clause 16.3 in respect of that payment failure); and
  - (ii) Zerocap receives from the OTC Counterparty an amount, or makes, or has made, a demand or claim against the OTC Counterparty in respect of that payment failure (**Zerocap claim**),

Then, subject to this clause 16.3, Zerocap holds the Zerocap claim against the OTC Counterparty for your benefit.

- (e) Nothing in these Terms obliges Zerocap to make a demand or other claim of any kind against the OTC Counterparty or any other person.
- (f) Zerocap has no liability for taking or failing to take any action in relation to any actual or prospective Zerocap claim. Zerocap is not obliged to accept any direction from you or any other person with regard to how Zerocap must conduct the Zerocap claim or negotiate any settlement. Zerocap may require a binding agreement to be fully indemnified, in a form satisfactory to it (including with or without security) in respect of accepting any such direction.
- (g) Zerocap may conduct or participate in one or more claims (for example, in connection with these Terms and the terms of agreements which it has with other clients) or under one or several proceedings, as determined by Zerocap.
- (h) Zerocap may incur costs of preparing for and conducting any Zerocap claim and defending cross-claims, including costs of legal services, experts and other agents and advisers and recover as expenses to it those costs, which recovery may be apportioned by Zerocap across several claims (and across more than one client).
- (i) Zerocap may make or accept any offer for settlement of a Zerocap claim which it considers reasonable, including for any amount less than the amount claimed by Zerocap.

- (j) Zerocap may withhold from settlement of any Zerocap claim proceeds such it amounts it determines to pay for, or to provide for payment for, costs incurred by Zerocap in connection with the Zerocap claim, including its estimate of costs of enforcing the judgments for the claim.
- (k) Zerocap may apply the net proceeds of settlement of any Zerocap claim proportionally to the balance of the unsatisfied amounts of all claims.
- (l) Zerocap may make a determination not to prosecute any Zerocap claim if it determines there are insufficient prospects of success and having regard to the estimate costs of prosecuting the claim.
- (m) Nothing in in these Terms:
  - (i) limits your right to make a claim against Zerocap for the full amount of liability which would have arisen but for these Terms; however, the liability of Zerocap to you and your recourse to Zerocap or any assets or other property held on your behalf is limited by these Terms;
  - (ii) limits any party in obtaining an injunction or other order to restrain any breach of these Terms by any party or obtaining declaratory relief.
- (n) The meaning and effect of this clause 16.3 are to be construed for the purposes of limiting the liability of Zerocap to you and limiting your recourse against Zerocap or any assets or other property held on your behalf, to the maximum extent permitted by law, so that Zerocap is only liable to you to the extent provided by this clause and Zerocap is not otherwise liable to you.
- (o) You agree that this limitation of liability under this clause 16.3 is a reasonable term having regard to the nature of the Financial Services and Financial Products offered and provided by Zerocap to you, the benefits to you and the risks and benefits from Transactions using Zerocap in the context of these Terms and the protections given to you by Zerocap from time to time for your moneys or for giving you other benefits in relation to the Zerocap OTC Liability (whether or not given by these Terms).

**16.4** If Applicable Tax is payable on a taxable supply made by Zerocap under, by reference to, or in connection with these Terms, you must also pay the amount of Applicable Tax payable in respect of that taxable supply. This clause does not apply to the extent that consideration for a supply is expressly stated to you to be Applicable Tax inclusive.

**16.5** You acknowledge that you are responsible for your own legal costs associated with entering into these Terms and for all Taxes and expenses incurred by you in connection with these Terms, including any Transaction made under it.

**16.6** All payments by you under these Terms are:

- (a) to be made without any counter claim or condition made by you and without you making any deduction or withholding for any Tax or any other reason unless the deduction or withholding is required by applicable law or the set-off arises by express application of the Terms; and
- (b) payable in the currency agreed with you.

**16.7** If:

- (a) you are required to make a deduction or withholding in respect of Tax from any payment to be made; or
- (b) Zerocap is required to pay any Tax (other than income tax) in respect of any payment made in relation to these Terms at your request,

then you:

- (c) indemnify Zerocap against the Tax; and
- (d) agree to pay to Zerocap, promptly after demand by Zerocap, an additional amount to ensure Zerocap receives a net amount (after payment of any Tax in respect of each additional amount) that

is equal to the full amount Zerocap would have received had a deduction or withholding or payment of Tax not been made.

## 17. DISPUTES

- 17.1 You must notify us within 24 hours of any disputed Transaction. If you do not dispute a Transaction on reusable grounds by that time, then (regardless of when you are notified or whether or not you access your Account information), the Account will be conclusive evidence of the executed Transaction except for any manifest error or for any Non-excluded Liability.
- 17.2 Complaints (other than disputed Transactions) must initially be made to us in accordance with our policies and procedures from time to time for dispute resolution.

## 18. DEFAULT

18.1 Each of the following constitutes a **Default**:

- (a) you breach these Terms, whether by act or omission (including, without limitation, giving us an Order in breach of clause 3.16);
- (b) a Transaction is entered into by you in any circumstances in which Zerocap reasonably believes that conduct is, or could be considered to be, in breach of the Business Law, the Rules or any other Applicable Laws (not restricted to those circumstances described in clause 3.16 in respect of Orders), whether or not you are aware that the Transaction could breach those laws or rules;
- (c) you fail to pay, or to provide security for, amounts payable by you to Zerocap;
- (d) you fail to pay the amounts due in respect of any Transaction entered into pursuant to these Terms including but not limited to Margin required by Zerocap;
- (e) you fail to maintain Margin Cover required by Zerocap;
- (f) you fail to perform any obligation arising pursuant to the settlement of a contract which arises pursuant to a Transaction;
- (g) you fail to fulfil any settlement obligations in respect of a Transaction entered into pursuant to these Terms;
- (h) you fail to fulfil any grace period for settlement obligations in respect of a Transaction entered into pursuant to these Terms which Zerocap has allowed;
- (i) you fail to comply with any limit or restriction imposed on you by Zerocap in connection with your Account (for example, a restriction on the kind, volume or value of Transactions or outstanding liabilities);
- (j) a guarantee lodged by you, or lodged by a third party at your request (such as by a director of a Client) is withdrawn without the consent of Zerocap or becomes ineffective and other replacement security acceptable to the beneficiary of the guarantee is not provided;
- (k) any security provided by you (to anyone) which is binding on your assets becomes enforceable and the holder of that security takes any step to enforce the security;
- (l) any representation or warranty which you give under or pursuant to these Terms is or becomes incorrect or misleading in any material way;
- (m) Zerocap determines that you are unable, or you might not be able to meet your obligations to Zerocap in respect of one or more Transactions, including, without limitation, strict compliance with any time limits for performance by you;
- (n) you become insolvent or bankrupt;
- (o) you enter into a composition or scheme of arrangement for the benefit of creditors;

- (p) if you are a body corporate:
  - (i) you go into liquidation, voluntarily or otherwise (except for the purpose of reconstruction), or you or another person appoint a liquidator, receiver, administrator or official manager in respect of your assets;
  - (ii) a director has not given (a reasonable time after requested by Zerocap) a valid deed of guarantee and indemnity in respect of your obligations under these Terms in favour of Zerocap and in a form acceptable to Zerocap; or
  - (iii) you have not notified Zerocap of a change of any director within seven (7) days of the change taking effect;
- (q) if you are acting on behalf of another person pursuant to authority provided by another person, the authority is varied in a way which (in Zerocap's opinion) negatively impacts on your authority or legal or financial capacity to perform your obligations under these Terms;
- (r) if you are a trustee, the relevant trust of which you are trustee is terminated, vests or a distribution of capital of the trust or fund is made, or your rights of indemnification from trust assets or reimbursement is terminated, restricted or challenged, which would result in there being, in Zerocap's opinion, insufficient assets of the trust or fund to meet your liabilities under these Terms or any Transaction;
- (s) if you are a natural person, you die or become of unsound mind or if you or your estate is liable to be dealt with in any way under any law relating to mental health;
- (t) you challenge or deny the applicability of the express governing law of these Terms, the non-exclusive jurisdiction of courts as provided in these Terms;
- (u) you impose a moratorium on payments to creditors or cease, or threaten to cease, carrying on business;
- (v) in the absence of making alternative arrangements, you are not immediately contactable by Zerocap in order for Zerocap to obtain instructions in relation to any of your Transactions; and
- (w) the occurrence of any other event referred to in a Schedule applicable to your Account as constituting a Default or which Zerocap and you have agreed constitutes a Default.

**18.2** If a Default occurs, Zerocap may, in addition to any other rights which Zerocap has or may have against you (including rights arising in other parts of the Terms), without giving prior notice to you, act, or refrain from acting, which it considers reasonable in the circumstances in connection with Transactions entered into pursuant to these Terms and, without limitation, Zerocap may do any one or more of the following:

- (a) cancel any outstanding Orders;
- (b) settle any Transaction which has not at the time of Default settled;
- (c) cancel a Transaction (whether or not it has settled) and make consequential adjustments to your Account;
- (d) immediately, or later, terminate these Terms, one or more Schedules, one or more Accounts, one or more Transactions or any combination of these;
- (e) realise or enforce any security or guarantee provided in respect of your obligations to Zerocap;
- (f) convert any or all amounts owing by you to Zerocap or by Zerocap to you in a foreign currency into Australian currency;
- (g) calculate any or all amounts owing by you to Zerocap and declare such amount immediately due and payable; or

- (h) exercise any other rights conferred by Applicable Laws or these Terms or perform any other obligations arising under Applicable Laws or these Terms in respect of your Transactions.

In respect of any action which Zerocap takes, or refrains from taking under this clause 18.2, you must account to Zerocap as if Zerocap took, or refrained from taking, the action on your instructions and, without limitation, you are liable for any deficiency and are entitled to any surplus which may result.

**18.3** Nothing in these Terms limits your rights to claim a default by Zerocap or for you to take any proper action which you determine is appropriate to claim or to recover for any Loss arising from your claim. For example, we acknowledge that you may terminate these Terms if Zerocap materially breaches these Terms. You agree that it is reasonable for you not to have specific rights following default and specific events of default by Zerocap in order to avoid all Transactions of all of Zerocap's clients prematurely terminating, which could cause irrevocable loss to some or all clients and those losses could be irrevocably increased by such an automatic termination.

## **19. TERMINATION**

**19.1** Without limiting clause 18.2, you and Zerocap may each terminate the Prime Agreement at any time by giving the other notice of that.

**19.2** The notice of termination and the termination of the Prime Agreement does not affect outstanding obligations which arose under these Terms and which remain undischarged at the time of termination, limitations of liability or recourse, indemnities provided for in these Terms or any other clause of these Terms which states or implies that they survive termination.

**19.3** Each indemnity provided within these Terms survives the termination of these Terms.

**19.4** Upon termination of the Prime Agreement, and without limiting clause 18.2, this clause survives and Zerocap may do one or more of the following:

- (a) cancel any outstanding Orders;
- (b) terminate and settle at one or more times any of the Transactions which has not at the time of notice of termination or at termination of the Prime Agreement been settled (and must adjust the settlement amount to reflect the early settlement as Zerocap determines in its absolute discretion is reasonable, having regard to market conditions at the time but without needing to substantiate or evidence its determination);
- (c) terminate at one or more times any of the Transactions which has not at the time of notice of termination or at termination been exercised despite the Expiry Date but for this clause (and must determine the termination value to reflect the early termination as Zerocap determines in its absolute discretion is reasonable, having regard to market conditions at the time but without needing to substantiate or evidence its determination);
- (d) exercise any other rights Zerocap has under the Prime Agreement;
- (e) do, or refrain from doing, anything else which Zerocap considers reasonable in the context of these Terms (or any part of them) having been terminated; and
- (f) calculate the net amount owing as between Client and Zerocap as a result of termination of the Transactions and other accrued amounts owing by a party under these Terms (such net amount may later be adjusted according to anything relevant to the net amounts owing as between the parties including but not limited to Transactions were later terminated, interest accrued and capitalised for this purpose, indemnified amounts and fees, charges and costs incurred after the previous calculation of the net amount owing as between the parties).

## **20. NOTICES**

**20.1** Notices given by us may be sent to any address (including email address) specified in your application for an Account or later notified by you, or by posting the notice on our website or through the Platform. Unless

otherwise specified in these Terms any notice given by us is taken to have been received or becomes effective on the Business Day following the transmission or posting of the notice, demand or Confirmation.

- 20.2** Notices given by you must be in writing and sent by post, or email to our postal address or email address specified by us in the Disclosure Statement or on our website or as otherwise notified by us from time to time (including, if available, accepting your notice by the Platform). A notice given by you is taken to have been given at the time it is actually received by us during business hours or, if after business hours, on the next Business Day during business hours.
- 20.3** If an Account is opened in the joint names of more than one person, each person agrees that we may discharge any obligation we have to give a notice or a document to those persons under these Terms or Applicable Laws by giving notice to any one of those persons.
- 20.4** Zerocap may give notice to you of any change in its Transaction Fees or any rates, fees charges or other amounts payable by these Terms (for any new Transaction) in any manner permitted by these Terms, including by posting to Zerocap's website or to the Platform. Zerocap must give at least the minimum period of notice required by the Business Law. If no minimum period is required or is not stated elsewhere in these Terms, notice of a change in Transaction Fees or any rates, fees charges or other amounts payable by these Terms (for any new Transaction) may be effective immediately Zerocap first generally publishes the information of any variation on its website or through the Platform.

## **21. GENERAL**

- 21.1** In consideration of Zerocap entering into the agreement on these Terms, you irrevocably appoint Zerocap and each director, secretary and principal executive officer and each employee (which employee's title of office includes the word "Manager" or "Head") of Zerocap and any other authorised representative of Zerocap (including an authorised representative of a related body corporate of Zerocap) severally as your attorney at any time and from time to time following a Default, to execute and deliver all documents and to do all things which your attorney may consider necessary or desirable to give effect to the provisions of these Terms, and in particular, without limitation, in connection with, or incidental to, the exercise of any of the rights and powers of Zerocap under these Terms. Those powers may be exercised in the interests of Zerocap notwithstanding any conflict with the interests of Zerocap. This appointment survives termination of these Terms.
- 21.2** Zerocap may from time to time delegate any or all of its obligations, powers and discretions to anyone or more or all of its employees or any other authorised representative of Zerocap (or a related body corporate of Zerocap). Zerocap remains responsible for the acts or omissions of its employees and any authorised representative of Zerocap (including an authorised representative of a related body corporate of Zerocap). A delegation by Zerocap under this clause need not be in writing.
- 21.3** These Terms and any relevant Application Form completed by you contain the entire understanding between you and Zerocap concerning the provision of the Financial Products or financial services and any other services referred to in or provided under the Prime Agreement, as later amended only in accordance with the Prime Agreement.
- 21.4** The location of services provided by Zerocap is only the Business Location. Zerocap does not provide its services or conduct business in any other location (even if Client is outside of the Business Location).
- 21.5** These Terms are governed by and construed in accordance with the laws in force in the Governing Jurisdiction. The parties submit to the exclusive jurisdiction of the courts of the Governing Jurisdiction.
- 21.6** We may vary these Terms by giving you notice of any variation by any combination of: document in writing, by updating our website to show the revised version of these Terms, by posting a message in the Platform, by email or by other social media channel that you have expressly or by custom of usage agreed to use to receive communications from Zerocap. The notice of variation is effective even if you are unaware of the notice or, having received it, do not read all or any it. The minimum period of notice will be the lesser of:
- (a) any minimum period of notice required by Applicable Laws;
  - (b) if no such minimum period is required by the Applicable Laws, then not less than two (2) Business Days' notice (unless paragraph (c) applies); and

- (c) subject to paragraph (a), if we believe a variation is necessary to maintain or restore the security of any Accounts or of our systems or to comply with any legal or regulatory requirement, we may make the variation without prior notice and will notify you of the change as soon as practicable after the change.

- 21.7** Each part of these Terms is severable from the balance of these Terms and if any part of these Terms is illegal, void, invalid or unenforceable, then that will not affect the legality, effectiveness, validity or enforceability of the balance of these Terms.
- 21.8** No failure by us to exercise, and no delay by us in exercising, any right, power or remedy in connection with these Terms will operate as a waiver of that right, power or remedy. No single or partial exercise of any right, power or remedy will preclude any other or further exercise of such right, power or remedy or the exercise of any other right, power or remedy.
- 21.9** These Terms are not to be interpreted against our interests merely because we proposed these Terms or some provision in it or because we rely on a provision of these Terms to protect our interests.
- 21.10** You may not assign or otherwise transfer any of your rights under these Terms to another person without our prior written consent. Zerocap may assign, novate or otherwise transfer any of its rights under these Terms to another person without your prior written consent including, without limitation, in connection with a sale or transfer of all or part of our business to another person.

## **22. INTERPRETATION**

- 22.1** Unless the context otherwise requires, any expressions or phrases not otherwise defined within these Terms have the meaning given to them in the Applicable Laws relevant to the Financial Product or Financial Service.
- 22.2** In these Terms, unless otherwise indicated, the words and expressions defined in a Schedule have the meanings given to them in the relevant Schedule.
- 22.3** The following rules also apply in interpreting these Terms, except if the context makes it clear that a rule is not intended to apply.
  - (a) Headings used in these Terms are used for convenience only, and do not affect interpretation.
  - (b) A reference to legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it.
  - (c) A singular word includes the plural and *vice versa*.
  - (d) A word which suggests one gender includes the other gender.
  - (e) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
  - (f) A reference to time is to local time in Melbourne, Victoria, unless otherwise specified.
  - (g) Anything permitted to be done by Zerocap in accordance with these Terms may be done in its absolute discretion, and any opinion or view required to be formed by Zerocap may be formed in its absolute discretion.
  - (h) For the avoidance of doubt, time will continue to run on days which are not Business Days.
  - (i) The English version of these Terms prevails over any other translated version of these Terms.
- 22.4** If a specific provision in a Schedule is inconsistent with another provision in these Terms, the specific provision prevails over the other provision to the extent of the inconsistency.

# Schedule 1

## GLOSSARY - TERMS

For convenience, the Glossary in this Schedule has defined expressions which are mainly in **general use** in these Terms.

(See Schedule 2 for defined expressions generally used in Transactions. Other defined expressions for specific kinds of Transactions may be in a Term Sheet for those specific transactions. Please note that all defined expressions in all Schedules apply to all of the Terms. This separation across Schedules is only for convenience.)

Unless otherwise indicated, the following words and expressions have the meaning set out below:

**Account** means an account held in your name or for your benefit with Zerocap including all Transactions recorded in them, for the purposes of these Terms.

**Account Value** means the current value of your Account which is calculated by Zerocap by combining:

- (a) the Realised Losses, the Unrealised Losses, the Realised Profits and the Unrealised Profits;
- (b) if applicable at the time, indicative costs to Close Out a Transaction early (e.g., Transaction Fees); and
- (c) if Zerocap chooses, provision (by a debit entry) for the amounts of any fees, charges or costs which Zerocap determines is reasonably likely to be incurred by you and which ought to be taken into account for fairly and reasonably calculating Account Value.

**Applicable Laws** means, in relation to a matter, all laws, legislation, regulation and subsidiary regulation, instruments and directions of a regulatory authority or a court, rules and procedures of a Payment System which apply to the relevant matter including for example, and without limitation, the Business Law and regulations made pursuant to the Business Law, Business Regulator Legislative Instruments and other instruments. Applicable Law is a reference to any of them.

**Applicable Tax** means tax that is imposed as a goods and services tax, value added tax, sales tax or analogous tax under any Applicable Law.

**Application Form** means the application form by which a person applies to become a Client of Zerocap and to open an Account. It can be in electronic form.

**Asset** means property (including Digital Assets even if not ordinarily considered by law to be transferrable property), rights or choses in action of Client deposited with, vested in or controlled by Zerocap from time to time in accordance with these Terms and any rights and income arising from that.

**Authorised Person** means the person (if any) described as your authorised person in the Application Form or another person notified by you to us from time to time.

**Business Day** means a weekday which is not a gazetted public holiday in Melbourne, Victoria.

**Business Law** means the statutory laws and regulations made under them, all as amended from time to time applicable to us under the Governing Jurisdiction.

**Business Regulator Legislative Instrument** means an instrument issued by Business Regulator from time to time which is designated a "Legislative Instrument".

**Business Location** means the State of Victoria, Australia.

**Business Regulator** means Australian Securities and Investments Commission.

**Calculation Time** means the time that Zerocap performs the calculation, generally being 4:00 p.m. Melbourne.

**Claim** means any or all, actual or potential claim, action, complaint, suit, cause of action, arbitration, debt due, costs, claim, entitlement, allegation, demand in respect of damages and any other benefit verdict and judgment whether both at law or in equity or arising under the provisions of any statute, award or determination whether known at the date of these Terms or not.

**Client** means the person who is (or persons who are) recorded as having an Account.

**Close Out, Closed Out and Closing Out** in relation to a Transaction means discharging or satisfying the obligations of Client and Zerocap under the transaction and this includes matching up the Transaction with a Transaction of the same kind under which Client has assumed an offsetting opposite position.

**Confirmation** means any confirmation of a Transaction issued by us to you and includes an electronically transmitted confirmation or a substantially continuously available account which contains or allows access to the information which would be in a confirmation.

**deal** has the meaning given in the Business Law.

**Default** has the meaning in clause 18.1 and, if applicable, as supplemented by a term in a Schedule.

**Digital Asset** means an asset, software code or software-based instruction that is issued and transferred using distributed ledger or blockchain technology and any other thing notified by Zerocap from time to time is a Digital Asset.

**Disclosure Statement** is defined in clause 1.9.

**Exchange** means an exchange or market in any financial products (whether or not they include the same as or similar to Financial Products). It includes decentralised exchanges and market facilities.

**Financial Product** means a financial product made available by us (whether an individual Transaction or a series of more than one Transaction which is netted under the Terms). It includes a Non-cash Payment Financial Product. This includes Transactions which are not regulated as financial products under Applicable Laws or which involve Digital Assets which are not regulated as financial products under Applicable Laws.

**Financial Service** means a financial service (which is not a Financial Product) which is made available by us (whether an individual Transaction or a series of more than one Transaction which is netted under the Terms). This includes a service which is not regulated as a financial service under Applicable Laws or a service which involves Digital Assets which are not regulated as financial products under Applicable Laws.

**Force Majeure** means an event that is beyond the reasonable control of a party (other than Market Risk) including but not limited to (without any implied limitation) change of Applicable Law (including taxation), change of interpretation of Applicable Law by a government agency nationalisation, expropriation, currency restrictions, national law restrictions on using or transacting with Digital Assets, disruption of normal procedures and practices of any markets or Exchanges, acts of war or terrorism, riots, disruption, revolution, occupation, theft, sabotage, strikes, cyberattacks, hacks and other similar events or acts (whether or not directly or indirectly impacting on Client, Zerocap).

**Fund** means a fund or other type of managed investment scheme which is registered in Australia as a scheme. A reference in these Terms to a Fund means a Fund for which Client is the responsible entity and has notified Zerocap in writing of that.

**Governing Jurisdiction** means the State of Victoria, Australia.

**Initial Margin** means the amount which you are required to pay to Zerocap (depending on your Financial Product or financial service), as the initial Margin Cover for any Transaction which you propose to enter into.

**Loss** means a damage, loss, cost, expense or liability incurred by the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

**Margin** means the amount of cash or other assets paid to Zerocap and credited to your Account as Margin.

**Margin Closeout Level** means the minimum Margin Cover required by Zerocap which, if not maintained by you, may result in all or some of your Open Positions being Closed Out at any time and from time to time, at your cost and risk.

**Margin Cover** means the amount of Margin available for margin trading on your Account. It is calculated by Zerocap by subtracting from the Account Value: (i) the required Margin; and (ii) a percentage of the value of Open Positions determined by Zerocap from time to time.

**Market Risk** means risks inherent in Transactions or any part of any asset or procedures relevant to the Transaction which risks are outside of the reasonable control of Zerocap and which relate to the nature of the Digital Asset, or a Reference for the Transaction (including Digital Assets) or a protocol, market, Exchange or other trading context relevant to their Transaction including (but not limited to):

- (a) risks inherently associated with:
  - (i) Digital Assets (including no verification or auditing of them by Zerocap);
  - (ii) coding of Digital Assets and protocols that use them;
  - (iii) collateralising for Digital Assets;
  - (iv) collateralising for Transactions including for protocols that use Digital Assets;
  - (v) Transactions with Digital Assets;
  - (vi) staking Digital Assets;
  - (vii) lending and borrowing Digital Assets;
  - (viii) custody of Digital Assets;
  - (ix) using digital currency exchanges;
  - (x) counterparty risks (including credit and solvency);
  - (xi) third party data flows, internet or power connections, routing via internet;
  - (xii) configuration of Client's equipment or reliability of its connection;
  - (xiii) using blockchain-based transaction or platform for delivery of services systems, which include, but are not limited to:
    - (xiv) Digital Assets may not be recognised by some Applicable Laws;
    - (xv) the governing law for all or any part of a transactions or Digital Assets might be unknown, uncertain or contested;
    - (xvi) the person or address nominated by Client for settlement of a Transaction brokered by Zerocap is not under the control of Zerocap so Client takes all risk of custody or control by Client's nominated settlement address;
    - (xvii) the solvency of counterparties to Client's Transactions brokered by Zerocap or the solvency of OTC Counterparties;
    - (xviii) the governing law of the Prime Agreement might not be recognised by, or relevant to, counterparties to brokered Transactions for Client;
    - (xix) minting and issuance policies for Digital Assets;
    - (xx) taxation relating to Transactions in some Digital Assets may be unknown, emerging or subject to change of law or of interpretation;
    - (xxi) blockchain transaction costs (including mining costs, however described), including those blockchain transaction costs which can vary (rapidly and in significant amounts);
    - (xxii) unknown errors, limits or features of blockchains and distributed ledger technology that use blockchains;
    - (xxiii) flaws in the integrity of Digital Assets;

- (xxiv) flaws in protocols that use Digital Assets;
  - (xxv) flaws in protocols or in Digital Assets that claim stability or pegging in performance features;
  - (xxvi) communication failures, disruptions, distortions or delays when dealing (including processing payments) with any Digital Asset (including custody of them) or via any blockchain;
  - (xxvii) coding of Digital Assets and protocols that use them;
  - (xxviii) unintended flaws or features or being exploited by anyone or being hacked by unauthorised persons;
  - (xxix) unknown or undisclosed collateralisation for Digital Assets failing, being depleted or being hacked or exploited;
  - (xxx) changes, failures and disruptions to blockchain platforms;
  - (xxxi) delays in blockchain transactions;
  - (xxxii) base layer transactions on a blockchain based distributed ledger or other distributed ledger are irreversible and the history of transactions on them is impractical to modify so it will be impossible to identify the recipient and reverse the defective or unintended transaction if Client initiates or requests a transfer of Digital Assets using an incorrect distributed ledger address;
  - (xxxiii) any transaction in Digital Assets may be stored in a public distributed ledger and may be visible to the public (which is neither the property of Zerocap nor under its control) and so information which is available on a public ledger may be exploited or misused in unforeseen ways;
  - (xxxiv) delays or disruptions by taking control of Digital Assets technology including but not limited to managing or manipulating processing power for the Digital Assets network or making the network unavailable or dysfunctional;
  - (xxxv) fraud, theft and attack on wallets, Exchanges or service providers with impact on Digital Assets or protocols in relation to them;
  - (xxxvi) non-compliance or change of legal frameworks affecting other persons in relation to Digital Assets or services relevant to them;
  - (xxxvii) failure of hardware to access the blockchain, software, and internet connection to the systems for managing Digital Assets, protocols for them, blockchain based platforms;
  - (xxxviii) the lack of central or obvious central governing bodies or government agencies can lead to unclear, uncertain or critical changes and decisions regarding Digital Assets and their networks, including delays, suspensions and forking;
  - (xxxix) forking can lead to several versions of the Digital Assets and that can lead to flaws in integrity, unavailability or impaired acceptance by network users;
- (b) market slippage, so the Entry Price for the Transaction differs from the indicative Entry Price given to Client or Orders to Close Out positions might not be able to be executed at or around the levels given at the time of the Order;
  - (c) the transactions of other persons in Digital Assets or protocols, including by other clients of Zerocap, may impact pricing or performance of Digital Assets or protocols involving them in relation to Transactions for Client; and
  - (d) foreign exchange rates and exchange rates as between Digital Assets;
  - (e) unknown liquidity in markets, Exchanges or protocol participants; and
  - (f) banking processes, payment services processes and performance.

*(The above list is not exhaustive. These Terms do not attempt to list all specific Market Risks including all risks and features of Digital Assets and blockchain based risks.)*

**Non-cash Payment Financial Product** means a Financial Product which provides for arranging payment other than by dealing in cash.

**Non-excluded Liability** means:

- (a) material breach by Zerocap of an express provision of the Prime Agreement;
- (b) fraud, dishonesty, negligence by or on behalf of Zerocap; and
- (c) any other liability imposed by Applicable Law on Zerocap which by that law may not be excluded by these Terms and is not excluded by these Terms.

**Order** means any instruction placed by you with us to purchase or to sell or otherwise deal in Financial Products.

**OTC Counterparty** is defined in clause 16.3(c).

**Platform** is defined in clause 4.1.

**Payment System** means a payment clearing and settlement system.

**Prime Agreement** means the agreement of that name made by you and us on which is pursuant to these Terms.

**Privacy Policy** means the policy of that name from time to time which we publish as our privacy policy.

**Realised Loss** means the amount by which the value of an Open Position on Close Out is less than the value of the Open Position when the Open Position was last valued or if the Open Position has never been valued previously, it is the value when the position was opened.

**Realised Profit** means the amount by which the value of an Open Position on Close Out is more than the value of the Open Position when the Open Position was last valued or if the Open Position has never been valued previously, the value when the position was opened.

**Rules**, in relation to a Payment System, means the operating rules, procedures, customs and usages of the of the Payment System.

**Security Information** means any of your email address, logon code, password or access password.

**Tax** means any present or future tax, levy, impost, deduction, charge, duty, compulsory loan or withholding (together with any related interest, penalty, fine or expense in connection with any of them) levied or imposed by any Government agency, other than any imposed on overall net income.

**Term Sheet** means a document (whether or not with that express name) which sets out contract specifications for a proposed specific Transaction or a class of proposed Transactions. A Term Sheet may be updated, varied, superseded or ended at any time (but that does not affect any previously executed Transaction). A Transaction may be on terms which partly include a Term Sheet and partly on terms in these Terms (including a Schedule) and partly in an Order.

**Terms** is defined in clause 1.1.

**Transaction Fee** means the fee or commission from time to time specified by Zerocap to be the amount payable by you to Zerocap in respect of each Transaction.

**Unrealised Loss means** the amount by which the value of an Open Position (not on Close Out) is less than the value of the Open Position when it was last re-valued or if the Open Position has never been valued previously, it is the value when the position was opened.

**Unrealised Profit** means the amount by which the value of an Open Position (not on Close Out) is more than the value of the Open Position when it was last re-valued or if the Open Position has never been valued previously, the value when the position was opened.

**we, us or our** means Zerocap Pty Ltd (ACN 164 874 597) and its successors and assignees.

**you** means Client, being the person or persons in whose name we open an Account, following our acceptance of an application by that person or those persons.

**Zerocap** means Zerocap Pty Ltd (ACN 164 874 597), Corporate Authorised Representative (No 001289130) of Gannet Capital Pty. Ltd. ACN 139264690 AFSL 340799.

**Zerocap claim** is defined in clause 16.3(d).

**Zerocap OTC Liability** is defined in clause 16.3(a).

## Schedule 2

### GLOSSARY – TRANSACTIONS

For convenience, the Glossary in this Schedule has defined expressions which are **mainly used in Transactions**.

(See Schedule 1 for defined expressions which are mainly generally used in the Terms. Other defined expressions for specific kinds of Transactions may be in other Schedule for those specific transactions. Please note that all defined expressions in all Schedules apply to all of the Terms. This separation across Schedules is only for convenience.)

Unless otherwise indicated, the following words and expressions have the meaning set out below:

**AUD, Australian Dollars** and **\$A** means the lawful currency of the Commonwealth of Australia.

**Base Rate** means the amount nominated by Zerocap for this term from time to time, as notified to you (including through the Platform) or posted on its website.

**Bought Currency** is the first currency quoted in a currency pair, for example in the quote AUD/USD, the AUD is the Bought Currency. This may have another name on the Platform, Zerocap's website or in a Disclosure Statement which is similar or which is conventionally used in the global markets. It is the currency sold by Zerocap to you for you paying to Zerocap the Sold Currency.

**Closing Date** means the date on which the Transaction is agreed to be Closed Out, or earlier, if deemed to be Closed Out in accordance with these Terms.

**Contract Date** means the date that the Transaction was agreed to by Zerocap.

**Digital Asset Contract** means a contract between Client and Zerocap to purchase and deliver payment for a Digital Asset (including but not limited to cryptocurrency) on the Value Date. It includes (but is not limited to) a contract for immediate delivery, for forward delivery and for delivery to custody provided by Zerocap or to a settlement address provided by or on behalf of Client or by a person nominated by Client (but does not include a Digital Asset Option).

**Digital Asset Loan** means a Transaction of with the specific terms set out in or incorporated by reference in Schedule 7.

**Digital Asset Option** means a contract between Client and Zerocap whereby one of them has the right, but not the obligation, to exercise the option to acquire a Digital Asset Contract.

**Foreign Exchange** means currency including Australian Dollars and foreign currency.

**FX Contract** means a foreign exchange contract between Client and Zerocap to purchase and deliver payment for currency on the Value Date. It includes (but is not limited to) a Spot FX Contract and a Forward FX Contract.

**FX Option** means a contract between Client and Zerocap whereby one of them has the right, but not the obligation, to exercise the option to acquire an FX Contract.

**Forward FX Contract** means an FX Contract whose Value Date is later than two (2) Business Days after the FX Contract is entered into (that is, the Contract Date).

**Open Position** means, at any time, a Transaction which has not been Closed Out, or settled prior to the time agreed for settlement.

**Price** means, in relation to a Transaction, the price or rate quoted by Zerocap as finally determined when an Order is implemented.

**Settlement Time** means the time by which a Transaction must be settled, as set out in the Confirmation for the Transaction or through the Platform.

**Sold Currency** is the second currency quoted in a currency pair, for example in the quote AUD/USD, the USD is the Sold Currency. This may have another similar name on the Platform, Zerocap's website or in a Disclosure Statement. It is the currency sold by you to Zerocap for Zerocap to pay you the Bought Currency.

**Spot FX Contract** is an FX Contract whose Value Date is on or before two (2) Business Days after the Contract Date.

**Structured Product** is a Transaction on the terms in Schedule 4 and the commercial variables agreed for the Transaction.

**Transaction** means any:

- (a) FX Contract;
- (b) FX Option;
- (c) Digital Asset Contract;
- (d) Digital Asset Loan;
- (e) Digital Asset Option;
- (f) Structured Product;
- (g) purchase or sale of an Asset; and
- (h) any other Financial Product or Financial Service specifically agreed by us from time to time.

**USD** means United States dollar or the lawful currency of the United States of America.

**Value Date** means the date agreed at the time the relevant deal is entered in to, to be the date of settlement of that deal (specified in the Confirmation).

## Schedule 3

### ADDITIONAL REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

*(Guidance note: These apply to the extent Client falls into the relevant category below.)*

#### 1. Trustee of a trust

If you are the trustee of a trust (**Trust**), you represent and warrant to Zerocap that:

- (i) the Trust has been duly constituted and is validly existing in compliance with all applicable laws and the trust deed constituting the trust (**Trust Deed**) has been duly executed and duly stamped;
- (j) the Trust Deed and its constituent documents enable you to enter into the Prime Agreement on these Terms with Zerocap despite any conflict of interest and duty which may arise on your part;

and, if you are a company, any of your directors, when entering into the Transactions contemplated with Zerocap;

- (k) all necessary resolutions have been duly passed and all consents have been obtained and all other procedural matters have been attended to as required by the Trust Deed, any other document or any law for the entry into, observance and performance by it of its obligations under these Terms;
- (l) each of your obligations under, and the Transactions contemplated by, these Terms constitute binding obligations and are completely and lawfully enforceable against you and the Trust's property in accordance with their terms;
- (m) Zerocap's rights under these Terms and any other of your agreements with Zerocap have priority over the interests of the beneficiaries of the Trust;
- (n) you are the only trustee of the Trust or have disclosed to us all of the trustees;
- (o) no property of the Trust has been re-settled, set aside or transferred to any other trust or settlement;
- (p) the Trust has not been terminated, nor has the date or any event for the vesting of the Trust's property occurred;
- (q) no determination has been made to distribute the Trust's property on a date which is earlier than the latest date under the Trust Deed by which the Trust's property must be distributed;
- (r) no action has been taken, or has been proposed, to remove you as trustee of the Trust, or to appoint additional or alternate trustees;
- (s) there is no conflict of interest on your part in entering into these Terms and performing your obligations under them or the Transactions contemplated by them;
- (t) (as appropriate) each of the manager and the investment manager of the Trust is authorised to act on your behalf and to instruct Zerocap in relation to any dealing and in relation to all other matters arising under these Terms;
- (u) you will be bound by any instructions given to Zerocap by or any actions of the manager or the investment manager (as the case may be) as if the actions of the investment manager were your actions for the purpose of these Terms;
- (v) you authorise each of the manager and the investment manager to accept any notices or documents on its behalf and if Zerocap has an obligation to serve any document or notice on you pursuant to these Terms, or any law, service upon either the manager or the investment manager (as the case may be) will be effective service on you;
- (w) you have an unrestricted right to be fully indemnified or exonerated out of the Trust's property in respect of any losses or liabilities incurred by you (except only in respect fraud or breach of the Trust Deed of or your trustee duties) and the Trust documents do not restrict the right of Zerocap to have recourse to the assets of the Trust to satisfy and liability to Zerocap properly incurred by you arising out of the Transactions contemplated with Zerocap and the Trust's property is sufficient to satisfy that right of indemnity or exoneration;
- (x) you have complied with your obligations relating to the Trust;
- (y) you are authorised to open bank accounts; and
- (z) you are authorised to enter into contracts in relation to trust property, in your personal capacity.

## 2. Responsible entity of a fund

If you are the responsible entity of a fund or other managed investment scheme (**Fund**):

- (a) You undertake that you must not retire as responsible entity of the Fund unless you give notice to Zerocap of your intention to retire and upon satisfaction of the following conditions:
  - (i) the successor responsible entity must be acceptable to Zerocap; and
  - (ii) the successor responsible entity must execute whatever documents Zerocap reasonably requires to ensure that these Terms are binding on it.

- (b) You will (or will procure that the following will be done) in relation to the Fund, ensure that other than with Zerocap's prior consent:
- (i) the constitution of the fund (**Fund Constitution**) is not amended in any way which could have a material adverse effect on your ability to comply with your obligations under these Terms or could otherwise be prejudicial to Zerocap;
  - (ii) the Fund Constitution is not revoked;
  - (iii) if you determine that the Fund Constitution, the compliance plan for the Fund, or any custodian or other agency agreement entered into by you in connection with the Fund is required by law to be changed or replaced, you promptly give to Zerocap full details of the requirement and copies of the documentation you propose to enter into to comply with that requirement;
  - (iv) there is no re-settlement, setting aside or transfer of any asset of the Fund other than a transfer which complies with the Fund Constitution and these Terms;
  - (v) your obligations under the Fund Constitution and at law are fully complied with;
  - (vi) except in accordance with this clause 2 no other person is appointed responsible entity of the Fund;
  - (vii) subject to section 601FM of the Business Law and except if and to the extent that you have retired as responsible entity of the Fund in accordance with this clause 2 nothing is done which would cause or enable your removal as responsible entity of the Fund, nor retire as responsible entity;
  - (viii) appoint a custodian or other agent to carry out any of your functions as responsible entity of the Fund;
  - (ix) terminate the appointment of any custodian or other agent appointed in accordance with paragraph 2(b)(viii) of this clause 2;
  - (x) the vesting date under the Fund Constitution is not changed or fixed;
  - (xi) subject to the Business Law nothing occurs which could limit, exclude or otherwise derogate from in any material way your right under the Fund Constitution and the general law to be indemnified out of the assets of the Fund; and
  - (xii) subject to the terms of the Fund Constitution and the general law, your lien over the property of the Fund will have priority over the rights of the members of the Fund.
- (c) You represent and warrant in relation to the Fund as follows:
- (i) the Fund has been duly constituted and is validly existing in compliance with all applicable laws and the Fund Constitution has been duly executed and duly stamped;
  - (ii) the Fund Constitution and its constituent documents give you power:
    - (A) to carry on all of the business activities now conducted by you in any capacity;
    - (B) to enter into and comply with your obligations under, and to carry on the Transactions contemplated by, these Terms;
  - (iii) all necessary resolutions have been duly passed and all consents have been obtained and all other procedural matters have been attended to as required by the Fund Constitution, any other document or any law for the entry into, observance and performance by you of your obligations under these Terms;
  - (iv) each of your obligations under, and the Transactions contemplated by, these Terms constitute binding obligations and are completely and lawfully enforceable against you and the Fund's property in accordance with their terms;
  - (v) you are the only responsible entity of the Fund;
  - (vi) no property of the Fund has been re-settled, set aside or transferred to any other trust or settlement;

- (vii) the Fund has not been terminated, nor has the date or any event for the vesting of the Fund's property occurred;
- (viii) no determination has been made to distribute the Fund's property on a date which is earlier than the latest date under the Fund Constitution by which the Fund's property must be distributed;
- (ix) there is no conflict of interest on your part in entering into these Terms and performing your obligations under them or the Transactions contemplated by them;
- (x) except as required by the Business Law and except to the extent expressly stated in the Fund Constitution, your rights under the Fund Constitution and the general law to be indemnified out of, and have a lien over, the assets of the Fund have not been limited in any way; and without limitation you have no liability which may be set-off against that right of indemnity; and
- (xi) you have complied with your obligations in connection with the Fund.

### 3. Trustee of a Superannuation Fund in Australia

If you are a trustee of the superannuation fund constituted under law in Australia (**Fund**), you represent and warrant to Zerocap that:

- (a) the Transactions contemplated by these Terms insofar as they concern the Fund:
  - (i) comply with all requirements of the Superannuation Industry (Supervision) Act 1993 (**SIS Act**);
  - (ii) have been or are to be implemented in accordance with an investment strategy undertaken in accordance with the SIS Act;
  - (iii) comply with all the requirements of the constitution of the Fund (**Fund Constitution**) and rules applicable to the Fund, in force at the date of these Terms; and
  - (iv) have been or are undertaken on an arm's length basis, for value and on commercial terms.
- (b) the Fund has been duly constituted and is validly existing and the Fund Constitution has been duly executed and duly stamped;
- (c) the Fund Constitution and its constituent documents give you power:
  - (i) to carry on all of the business activities now conducted by you in any capacity;
  - (ii) to enter into and comply with your obligations under, and to carry on the Transactions contemplated by, these Terms;
- (d) all necessary resolutions have been duly passed and all consents have been obtained and all other procedural matters have been attended to as required by the Fund Constitution, any other document or any law for the entry into, observance and performance by you of your obligations under these Terms;
- (e) each of your obligations under, and the Transactions contemplated by, these Terms constitute the Fund's binding obligations and are completely and lawfully enforceable against you and the property in accordance with their terms;
- (f) you are the only trustee of the Fund or have disclosed to us all of the trustees;
- (g) no property of the Fund has been re-settled, set aside or transferred to any other trust or settlement;
- (h) the Fund has not been terminated, nor has the date or any event for the vesting of the property occurred;
- (i) no determination has been made to distribute the Fund's property on a date which is earlier than the latest date under the Fund Constitution by which the Fund's property must be distributed;
- (j) there is no conflict of interest on your part in entering into these Terms and performing your obligations under it or the Transactions contemplated by it;

- (k) you have an unrestricted right to be fully indemnified or exonerated out of the Fund's property in respect of any losses or liabilities incurred by you and the Fund's property is sufficient to satisfy that right of indemnity or exoneration; and
- (l) you have complied with your obligations in connection with the Fund.

#### 4. Agent under Investment Management Agreement

If you are an agent of a client (**Investor**) who has entered into an agreement relating to the holding and investment of assets (**Investment Management Agreement**):

- (m) you will ensure that, without Zerocap's prior consent:
  - (i) the Investment Management Agreement is not determined or amended in any way which could have a material adverse effect on your ability to comply with your obligations under these Terms or could otherwise be prejudicial to Zerocap; and
  - (ii) your obligations under the Investment Management Agreement and at law are fully complied with;
- (n) you represent and warrant to Zerocap that:
  - (i) the Investment Management Agreement is valid and binding on you and the Investor, respectively;
  - (ii) you have the power, as agent for the Investor under the Investment Management Agreement, to enter into and observe all the provisions and to carry on the Transactions contemplated by, these Terms as agent for the Investor;
  - (iii) the Investor will be bound by instructions provided by you to Zerocap as if the Investor were named in these Terms as you and will be bound by any Transaction entered into by Zerocap on your instructions;
- (o) if an Investor is a trustee, the Investor has warranted to you and you reasonably believe that the Investor is empowered by the relevant trust deed and law:
  - (i) to enter into and comply with its obligations under, and to carry on the Transactions contemplated by, the Investment Management Agreement and each Transaction entered into by you on its behalf in connection with these Terms; and each of its obligations under, and the Transactions contemplated by, the Investment Management Agreement constitute binding obligations and are completely and lawfully enforceable against it and the relevant trust's property in accordance with their terms;
  - (ii) to enter into and perform the Investment Management Agreement and each Transaction entered into by you on its behalf in connection with these Terms and to carry on the Transactions contemplated by these Terms;
  - (iii) to carry on the trust's business as now conducted or contemplated and to own the trust's assets, in its capacity as trustee of the relevant trust; and there are no restrictions or conditions on this; and
  - (iv) all other procedures have been completed as required by the relevant trust deed for it to enter into and perform the Investment Management Agreement and Transactions entered by you on its behalf in connection with these Terms (this includes all necessary resolutions and all consents and approvals); and
- (p) you enter into these Terms as agent of each of the Investors and in your personal capacity.

## Schedule 4

### FX CONTRACTS

*(Guidance note: This Schedule applies **only** to Transactions which are **solely** FX Contracts. Other Transactions, which are based on Digital Assets, might have a foreign exchange aspect to them but those Transactions are not covered by this Schedule.)*

#### 1. Introduction

- (a) The following terms will apply to you, and you agree to be bound by them, each time you place an Order with Zerocap to deal in an FX Contract.
- (b) Any term not defined in this Schedule has the same meaning given to it elsewhere in the Terms.

#### 2. Entering into FX Contracts

- (a) On any Business Day you may request Zerocap quote the rate at which you may enter into an FX Contract and the Initial Margin.
- (b) Immediately upon receiving the quote, you may by the Platform or otherwise if agreed by Zerocap instruct Zerocap to arrange the entry into by you of an FX Contract equivalent to that for which the quote was sought. Receipt by Zerocap of your instruction will constitute an offer by you to Zerocap to enter into such an FX Contract.
- (c) Zerocap is under no obligation to accept your offer to enter into an FX Contract.
- (d) The payment required in respect of an FX Contract becomes payable upon Zerocap accepting your offer to enter an FX Contract. The timing of the payable amount is as expressly agreed with you.
- (e) If Zerocap accepts your offer to enter into an FX Contract, Zerocap may issue to you a written confirmation (or it may publish a written Confirmation available to you in the Platform) of that FX Contract promptly after it has been entered into, in the form of a contract note, trade advice or deal confirmation, but failure by Zerocap to issue or to publish a confirmation will not prejudice or affect that FX Contract. Zerocap will not have any liability as a result of a failure to issue or to provide such information. If Zerocap decides not to accept your offer to enter into an FX Contract, Zerocap will advise you of that decision as soon as is practicable. You may not take any delay, regardless of how that delay arose, as an indication that Zerocap has accepted your Order.

#### 3. Settlement of FX Contracts

- (a) On the Contract Date, Zerocap will send you a Confirmation as which will advise you of the amount(s) and the date(s) upon which you will need to send money to Zerocap.
- (b) Once your FX Contract reaches the Value Date, and Zerocap has received all or the balance of your Sold Currency in cleared funds and the details of a permitted payee's name and physical address, Zerocap will arrange to send the Bought Currency via a Payment System to the permitted nominated account.
- (c) If you have requested payment of any money owed to you under these Terms, Zerocap will) pay it to you electronically or in such other manner as agreed by Zerocap and you.

## Schedule 5

### STRUCTURED PRODUCTS

*(Guidance note: This Schedule applies to the range of Transactions called Structured Products, issued by Zerocap as principal to Client.)*

#### 1. Introduction

- (a) The following terms will apply to you, and you agree to be bound by them, each time you place an Order with Zerocap to deal in a Structured Product.
- (b) This Schedule applies to any Transaction which is identified as a "Structured Product". This can be identified in the Order or instruction for it, including by email, spoken confirmation of the Order or in any other way that reasonably identifies it as a Structured Product. Confirmation of the Transaction which identifies it as a Structured Product must be deemed to apply this Schedule to the Transaction unless it is expressly disputed in writing to Zerocap within 24 hours of receipt of confirmation.
- (c) Any term defined in this Schedule prevails over any other definition of the term elsewhere in the Terms.
- (d) Any term not defined in this Schedule has the same meaning given to it elsewhere in the Terms.

#### 2. Structured Products – defined expressions

Structured Products use the following defined terms:

**Current Yield** means the indicative Yield which would be payable if the Transaction is entered into with at the indicative Entry Price and the indicative Expiry Price applies as quoted in the proposed Order. (The Current Yield is non-binding. The Yield is the actual amount applying based on the Entry Price for the executed Order and the Expiry Price as applicable for the Transaction.

**Currency** – currency denomination of the Initial Margin and the Payout. If not specified for the Transaction, USD is the Currency.

**Entry Date** – the day (in the Business Location) on which the Transaction is made.

**Entry Price** – the price (in the Currency) or the index level (as the case may be) of the Reference at the actual time the Transaction is made (not any prior indicative quote), as determined by Zerocap.

**Expiry Date** – the day (in the Business Location) on which the Transaction expires.

**Expiry Price** – the price (in the Currency) or the index level (as the case may be) of the Reference at expiry of the Transaction (not any prior indicative example price), as determined by Zerocap. If not specified for the Transaction, the default is:

- (a) for a Transaction directly or indirectly involving a Digital Asset, the "Market Price" published by Deribit; and
- (b) for a Transaction directly or indirectly involving an index, the Deribit Index,

at the Expiry Time. If Zerocap determines that Deribit (or other source, if applicable for the Transaction) has not published the data for determining the Expiry Price, Zerocap must make a good faith determination of the Expiry Price which is fair and reasonable in the circumstances.

**Expiry Time** – the time on the Expiry Date at which the Transaction expires. If not specified for the Transaction, it is 08:00 UTC.

**Fee** – the (non-refundable) amount (in the Currency) payable for the Transaction.

**Initial Margin** – the net amount (in the Currency) payable by Client for the Transaction, **before** deduction for payment of the Fee.

**Margin** – the net amount (in the Currency) payable by Client for the Transaction, **after** deduction for payment of the Fee.

**Payout** – the amount payable or deliverable (as the case may be) as at Expiry.

**Reference** – the item which is the subject of the Transaction. If not specified for the Transaction, the default Digital Asset is Bitcoin (BTC) and the default index is the Deribit Index.

**Strike Price** – the price of the Reference (in the Currency) or the index level (as the case may be) for the Transaction. (These are set for the agreed Transaction.)

**Term** – the number of calendar days from and including the Entry date to and including the Expiry Date.

**Yield** – the fixed amount or percentage agreed for the Transaction.

**Yield Annualised** means the indicative Yield *per* 365-day year which would be derived at the Current Yield (so is indicative only) based on the following formula:

$$= (1 + Yield)^{(365/Term)} - 1$$

### 3. Structured Products – standard terms

A Structured Product is a Transaction by which the following apply **in addition to the other terms** (set out below or otherwise agreed):

- (a) Client must pay the Fee on or before the Transaction;
- (b) Client owes the Initial Margin as at commencement of the Transactions, which may be separately paid to Zerocap or maybe allocated from existing Margin posted in Client's Account; and
- (c) the Fee is deducted from the Initial Margin or existing Margin (as the case may be), to give the net Margin for the Transaction.

### 4. Yield Entry Structured Products

A Structured Product referred to as a **Yield Entry Structured Product** is a Transaction by which the following apply **in addition to the other terms** (set out in these Terms or otherwise agreed).

At Expiry:

- (a) If the Expiry Price is equal to or above the Strike Price, then the Payout to the Client is the amount which is the sum of the Margin plus the Yield amount of the Margin.
- (b) If the Expiry Price is below the Strike Price, then the Payout deliverable to the Client is the amount of Reference equal to the sum of:
  - (i) the number of Reference given by dividing the Margin by the Strike Price; plus
  - (ii) the number of Reference given by multiplying the Margin by the Yield then dividing by the Entry Price.

### 5. Yield Exit Structured Products

A Structured Product referred to as a **Yield Exit Structured Product** is a Transaction by which the following apply **in addition to the other terms** (set out in these Terms or otherwise agreed).

At Expiry:

- (a) If the Expiry Price is equal to or below the Strike Price, then the Payout to the Client is the amount which is the sum of the Margin plus the Yield.
- (b) If the Expiry Price is above the Strike Price, then the Payout deliverable to the Client by Zerocap is the amount of Reference equal to the sum of:
  - (i) the number of Reference given by multiplying the Margin by the Strike Price; plus
  - (ii) the number of Reference given by multiplying the Margin by the Yield then multiplying by the Strike Price.

## 6. Principal Protected Structured Products

A Structured Product referred to as a Principal Protected Structured Product is a Transaction by which the following apply **in addition to the other terms** (set out in these Terms or otherwise agreed).

At Expiry:

- (a) If the Expiry Price is above the Strike Price, then the Payout to the Client is the lesser of:
  - (i) the product of (1) the Margin, (2) the Upside Price Exposure % and (3) the difference between the Expiry Price and the Entry Price; and
  - (ii) the product of (1) the Margin, (2) the Upside Price Exposure % and (3) the difference between the Strike Price and the Entry Price.
- (b) If the Expiry Price is equal to or below the Entry Price, then the Payout to the Client is the amount of the Margin.

## 7. Entering into Structured Products

- (a) On any Business Day (or at any other time agreed by Zerocap) you may request Zerocap to quote the variables at which you may enter into a Structured Product with Zerocap. The Entry Price in a quote is indicative only, not fixed. A quote will automatically lapse at the earlier of any time stated in the quote and the end of the Business Day on which the quote is given, unless withdrawn earlier by notice to you.
- (b) The Entry Price for the Transaction will be the actual Entry Price as and when executed, so may and probably will differ from the indicative Entry Price quoted to Client.
- (c) Client may place an Order for the Structured Product for the variables which are provided in the quote. The Entry Price for the Transaction will be the actual Entry Price as and when executed, so may and probably will differ from the indicative Entry Price quoted to Client.
- (d) Zerocap is under no obligation to accept your Order for a Structured Product. Zerocap may choose to do this if Zerocap cannot execute the Order at the indicative offer or better, or for any other reason.
- (e) If Zerocap accepts your Order for a Structured Product:
  - (i) The Entry Price for the Transaction will be as and when actually made by Zerocap (not bound by any indicative quote). The Entry Price for the Transaction will depend upon prevailing prices or levels and the market conditions at the time.
  - (ii) The payment required in respect of a Structured Product becomes immediately payable upon Zerocap accepting your Order for the Structured Product.
  - (iii) Zerocap may issue to you a written confirmation (or it may publish a written Confirmation available to you in the Platform) of that Structured Product promptly after it has been entered into, in the form of a contract note, trade advice or deal confirmation, but failure by Zerocap to issue or to give a confirmation will not prejudice or affect that Structured Product. Zerocap will not have any liability as a result of a failure to issue or to provide such information.

- (f) If Zerocap decides not to accept your offer to enter into a Structured Product, Zerocap will advise you of that decision as soon as is practicable. You may not take any delay, regardless of how that delay arose, as an indication that Zerocap has accepted your Order.

## Schedule 6

### PURCHASE AND EXTERNAL SETTLEMENT

*(Guidance note: This Schedule applies if Zerocap acts as your broker to acquire a Digital Asset and settle that purchase to your nominated person other than Zerocap.)*

#### 1. Introduction

- (a) The following terms will apply to you, and you agree to be bound by them, each time you place an Order with Zerocap to acquire a Digital Asset and nominate settlement to a person other than Zerocap.
- (b) Any term defined in this Schedule prevails over any other definition of the term elsewhere in the Terms.
- (c) Any term not defined in this Schedule has the same meaning given to it elsewhere in the Terms.

#### 2. Settlement

- (a) The purchase of the Digital Asset may be by Zerocap as agent for you or as principal.
- (b) Zerocap will promptly arrange settlement of your purchase Transaction by delivery of your purchased Digital Asset to the settlement address which is provided by you or on your behalf or which is provided to Zerocap at your direction. Zerocap will use the settlement address without verifying it. Zerocap is not responsible for any delays in settlement to the address arising in the ordinary course of transactions in the kind of assets which includes the Digital Asset.
- (c) Zerocap may charge you a fee to cover the transaction costs.

#### 3. Client's acknowledgments

You acknowledge that:

- (a) You are solely responsible for ensuring that the correct settlement address is provided to Zerocap. Zerocap will not make any enquiries as to the accuracy of the settlement details provided to Zerocap.
- (b) Zerocap may at any time refuse to accept instructions for, or settlement of, a Transaction to be made pursuant to this Schedule. Zerocap may at any time and from time to time conduct checks on the settlement address or any person who is reasonable considered by Zerocap to be associated with the nominated settlement address. Whether or not Zerocap conducts any such enquiries, Zerocap is not responsible to Client, or have any liability to Client or to any other person, for checking the settlement address, the identity of such persons, to disclose Zerocap's enquiries or to advise Client of the risks of the settlement requested by or on behalf of Client.
- (c) Zerocap is not liable for the conduct of the person who controls the settlement address in relation to the delivered Digital Asset. Zerocap is not acting as their agent. Zerocap has no contractual or fiduciary responsibility to you for the control of custody of the Digital Asset on and from delivery to the settlement address.

## Schedule 7

### DIGITAL ASSETS LOANS

#### 1. Introduction

- (a) The following terms will apply to you, and you agree to be bound by them, each time you place an Order with Zerocap for lending a Digital Asset.
- (b) Any term defined in this Schedule prevails over any other definition of the term elsewhere in the Terms.
- (c) Any term not defined in this Schedule has the same meaning given to it elsewhere in the Terms.
- (d) Any other provision in this Schedule prevails over any other provision elsewhere in the Terms which is inconsistent with this Schedule.

#### 2. Lending Digital Assets

- (a) A loan of Digital Assets which is made pursuant to the Prime Agreement is a Transaction on the terms of the Prime Agreement, the specific terms in this Schedule and the variables agreed by the parties for the loan.
- (b) A Digital Assets loan Transaction between client and Zerocap, however it is labelled or referred to by the parties, is automatically pursuant to the Prime Agreement including this Schedule, even if the Order or Confirmation for it does not expressly refer to the Prime Agreement or to it as a Digital Asset Loan.
- (c) A loan may be the entire Transaction and it may also be part of one or more related Transactions. Each is a separate Transaction unless expressly agreed otherwise.

*Guidance note: For example, there could be a Transaction for purchase of Digital Assets and a related Transaction for the loan of the Digital Assets.*

- (d) Despite the use of the words "loan", "lending", "borrow", "return" and their related expressions, the lending of Digital Assets and the delivery of Equivalent Digital Assets always only involves the absolute transfers to the other party all rights and title to and interest in the Digital Assets, free and clear of any liens, claims, charges or encumbrances or any other interest of the party or of any other person.

A loan of Digital Assets does not involve any deposit of the Digital Asset nor any encumbrance, claim or clawback on any other Digital Asset of any party.

- (e) A loan Transaction:
  - (i) obliges the party who is identified for the transaction as Lender to lend the specified Digital Assets to the other party (identified as Borrower); and
  - (ii) obliges Borrower to deliver Equivalent Digital Assets to Lender,

on the terms of this Schedule and the variables agreed for the Transaction.

This is referred to as Lender *lending* the Digital Assets and Borrower *borrowing* the Digital Assets. Borrower *delivers* Equivalent Digital Assets by transferring to Lender all title to Equivalent Digital Assets in accordance with the Transaction.

- (f) The variables for a Transaction to be agreed include:
  - (i) the specific type of Digital Assets to be lent;
  - (ii) the number of Digital Assets;
  - (iii) the currency denomination of the loan;
  - (iv) the date the loan commences;

- (v) the term of the loan (or expressed by way of the specific date the loan ends) or whether it is a continuing loan;
- (vi) any Margin or Margin Cover; and
- (vii) any Fee (including specified by a rate).

The terms of the agreed Transaction may specify other variables or conditions.

- (g) Zerocap may require Margin or Margin Cover for the Transaction (regardless of whether Zerocap is Borrower or Lender).

### 3. Delivery of Digital Assets and Equivalent Digital Assets

- (a) The obligation of Lender to deliver the Digital Assets for the Digital Assets Loan requires full transfer of Lender's right and title to and interests in the number and type of Digital Assets agreed for the Transaction, free from all liens, charges, equities and encumbrances (of Lender and of all other persons).
- (b) The obligation of Borrower to deliver Equivalent Digital Assets for the Digital Assets Loan requires full transfer of all rights and title to and interests in Equivalent Digital Assets, free from all liens, charges, equities and encumbrances (of Borrower and of all other persons).
- (c) If Client is Lender, then Zerocap will arrange the transfer of the number and type of Digital Assets from Client's Account with Zerocap to Zerocap, unless Client has made other arrangements with Zerocap to deliver to Zerocap the number and type of Digital Assets agreed for the Digital Asset Loan.
- (d) An obligation on Zerocap to deliver to Client Digital Assets lent to Client or to deliver Equivalent Digital Assets will be satisfied by Zerocap delivering to Client's Account the required number and type of Digital Assets or Equivalent Digital Assets, as the case may be.
- (e) Equivalent Digital Assets are the same number and identical type of Digital Assets lent to the Borrower adjusted only for changes to the Digital Assets actually made and effective to the type of Digital Assets which are the subject of the Transaction between the time of commencement of the loan and the time for delivery of Equivalent Digital Assets.
  - (i) If a choice may be made, or is required to be made, to Digital Assets for any adjustment in that period by reason of the features of that Digital Asset, then Borrower may in its discretion choose the adjustment.
  - (ii) If at the time required for discharging obligations at the end of the loan it is not possible to return Digital Assets adjusted in accordance with the above, Zerocap must terminate the Transaction without delivery of any Digital Assets but instead Zerocap must adjust the net value of the terminated Transaction having regard to the intrinsic worth of the terminated Transaction.

*Guidance note: Lender takes the risk on the value of the Digital Assets lent to Borrower. If it is not possible or its not reasonably practicable to deliver Equivalent Digital Assets as at termination of the loan, then Zerocap will calculate a net value on terminating the Transaction, which could be little or nothing.*

- (f) If the Digital Asset Loan is a continuing loan, then either party may terminate the loan:
  - (i) if by Zerocap, by giving effect to that terminating at any time; and
  - (ii) if by Client, by giving Zerocap not less than one (1) Business Day's prior notice. Despite the minimum required notice, Zerocap may (without notice to client) act on Client's request at any time earlier than the expiry of the prior notice (including immediately).

**Important document information:**

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