

# TERMS FOR TRUST, FIDUCIARY, FOUNDATION, FUND ADMINISTRATION AND CORPORATE SERVICES

These are the Terms for Services provided by the ZEDRA Group in Hong Kong. These Terms are effective from 25 May 2018 and replace any and all previous terms which applied to the Services.

## 1. Definitions

1.1 The following definitions will apply:

“**Additional Terms**” means any additional terms agreed in writing amending, varying or agreeing additions to these Terms;

“**Advice**” means independent legal, tax or investment advice and/or opinions;

“**Agreement**” means any agreement entered into between you and us for the provision of the Services including any Application Form, the Engagement Letter, Governing Instrument, any Services Agreement, any Additional Terms, and any Fee Schedule;

“**Appointee**” means all or any persons provided by us to act in respect of any Arrangement;

“**Arrangement**” means any structure, matter or circumstance where a ZEDRA Entity provides a Service;

“**Assets**” means the assets of an Arrangement at any given time;

“**Application Form**” means any application form relating to a Service;

“**Authorised Person**” means any person entitled or empowered or authorised in a form acceptable to us, to give Directions or make Requests in respect of any Arrangement;

“**CDD**” means information and documentation required to:

- a) identify and verify the identity of you and any other person connected to the Arrangement including the beneficial owner of any Assets contributed to an Arrangement;
- b) identify the source of Assets contributed to an Arrangement and the source of wealth from which such Assets derive; and
- c) enable us to assess the extent to which we may be exposed to risk;

“**Conflict of Interest**” means any conflict of interest including but not limited to a conflict between (a) our interests; or (b) your interests; or (c) the interests of an Arrangement; or (d) the interests of other Arrangements;

“**Directions**” means directions, consents or instructions, that you or an Authorised Person is appointed, entitled, empowered or authorised to give to a ZEDRA Entity in respect of any Arrangement or Service;

“**Electronic**” and “**Electronically**” means any form of message made by any type of telecommunication, digital or electronic or technological device;

“**Employee**” means any director, officer, consultant, agent, contractor or employee of any member of the ZEDRA Group;

“**Engagement Letter**” means the engagement letter entered into between you and us agreeing the Services and the terms on which the Services will be provided incorporating these Terms;

“**Fee Schedule**” means the schedule of fees charged for a particular Service and related expenses as amended from time to time;

“**Governing Instrument**” means the document, instrument or deed creating or establishing or amending the Arrangement;

“**Information**” means all present and future information, including personal data and documents concerning an Arrangement, you, any Interested Person or an Authorised Person;

“**Interested Person**” means any person who is connected to, or who has any role in, or who has benefited from an Arrangement;

“**Liabilities**” means any liabilities of any kind including taxes, fees, expenses, disbursements or otherwise;

“**Losses**” means all losses, costs, expenses, damages, actions, suits, proceedings, claims, demands and Liabilities suffered by any person;

“**Privacy Notice**” means the ZEDRA Privacy Notice in respect of the provision of trust, fiduciary, foundation, fund administration, fiduciary investment and corporate services;

“**Regulatory Requirement**” means:

- a) any obligation that we have, or any other person has, to comply with under any law, order, statute or regulation (including any tax legislation or rules made by an applicable regulatory body or agreements made with tax authorities), or as the result of a decision by a court, regulatory authority, tax authority, ombudsman or similar body;
- b) any obligation or standard under any industry guidance or code of practice which we are or, where relevant, another person is obliged to follow;
- c) any other legal or regulatory requirement governing the provision of relevant Services in the jurisdiction in which we provide a Service; or
- d) any circumstance where it is unclear whether an obligation or requirement applies and we have determined that it does.

“**Requests**” means advice, requests, approvals, consents or recommendations that you or an Authorised Person is appointed, entitled, empowered or authorised to give to a ZEDRA Entity;

“**Service**” means a service provided by a ZEDRA Entity pursuant to an Agreement;

“**Services Agreement**” means any agreement in writing entered into between: (a) us and (b) you and/or (c) an Arrangement, relating to a Service;

“**Terms**” means these terms;

“**Working Day**” means any day on which the relevant ZEDRA Entity providing the Service is open for business in compliance with applicable laws;

“**ZEDRA Entity**” means the ZEDRA company which provides the Service;

“**ZEDRA Group**” means the ZEDRA Entity, its direct and indirect parent companies and any companies that it or its direct or indirect parent companies totally or partly own at any time.

1.2 Unless the context otherwise requires:

- a) “**you**” and “**your**” refers to any person entering into this Agreement and any person to whom Services are provided, and, where applicable, that person’s heirs, duly authorised representatives, legal personal representatives, successors and assigns, and, in the case of a corporate body, its successors and assigns, and any beneficial owner or controlling person;
- b) “**we**”, “**us**” and “**our**” refers to the ZEDRA Entity providing the Services;
- c) “**person**” means any natural or legal person;
- d) references to a section, a clause or to a schedule are to a section, clause or schedule of these Terms;
- e) words denoting the singular will include the plural where the context admits;
- f) a reference to another agreement or document is to that agreement or document as amended, varied or replaced from time to time; and
- g) a reference to a statute is to a statute as it may have been amended, modified, re-enacted or replaced from time to time.

## 2. Electronic communications

2.1 We may contact you or an Authorised Person by post, or Electronically, where we have agreed to do so, using the details you have given us. We may also provide information on our website where we consider it appropriate to do so.

2.2 We may record or monitor Electronic communications between:

- a) us; and
- b) you or any other person connected with an Arrangement;

which may be used as evidence in any court proceedings subject to local law.

2.3 To the extent permitted by law, we are not liable if, due to circumstances beyond our control, Electronic messages are not secure, infected with a virus, intercepted, delayed, corrupted, not received or received by persons other than the intended recipient and are not liable for, and you accept responsibility for, any Liabilities incurred and/or Losses suffered by any person arising from the use of, or our agreeing to accept, Electronic communications.

## 3. Authorised persons

3.1 You may authorise an Authorised Person to act for you and give Requests or Directions to us but you are wholly responsible for their authorisation and for any such Requests or Directions.

3.2 To the extent permitted by law, we have no obligation to consider whether any Authorised Person is suitable or has sufficient capacity, experience or understanding of the Arrangement to act as an Authorised Person or to monitor or question any Request or Direction received from an Authorised Person.

3.3 We will continue to consider Requests or act on Directions from an Authorised Person until you give us written notice that he or she is no longer so authorised to make Requests or give Directions.

## 4. Directions

4.1 We may, but are under no duty to, require you or an Authorised Person to set up certain security procedures or take other steps before we will accept Directions.

4.2 We may seek further information or take such additional security measures as we think appropriate before acting on a Direction but are under no duty to do so.

4.3 We may assume that a Direction is genuine and correct if we reasonably believe that the Direction is given by an Authorised Person.

4.4 We will act on a Direction as soon as possible. We will not generally acknowledge receipt of Directions other than by acting on the Direction.

4.5 To the extent permitted by law, any liability on our part for any Losses which arise from any failure to give an acceptable Direction timeously or that arise from our acting on a Direction is excluded.

## 5. Refusing to accept directions

5.1 We may refuse to accept any Direction if we believe that:

- a) it was not given by an Authorised Person or does not comply with any applicable limitations or requirements or the person does not have the power to give us the Direction;
- b) it is not clear or contains incorrect information or we consider that we want or need to check the Direction;
- c) it is inconsistent with another Direction received from an Authorised Person (where this is the case, we may ask for a consistent Direction from all relevant persons);
- d) by carrying out the Direction we, or another member of the ZEDRA Group, might:
  - i) breach a Regulatory Requirement;
  - ii) become exposed to action or censure from any government, regulator or law enforcement agency; or
  - iii) damage our reputation, or contravene our internal policies;
- e) it would be impracticable or impossible to carry out the Direction.

5.2 Unless Regulatory Requirements prevent us from doing so, we will make reasonable efforts to confirm:

- a) if we refuse to accept a Direction; and
- b) what can be done to enable us to accept the Direction.

- 5.3 We may take no or such action as we consider necessary or appropriate where:
- a) we need a Direction but it is impractical or impossible to obtain such Direction timeously;
  - b) we consider that the Direction creates a Conflict of Interest or may lead to us or any Employee incurring a liability;
  - c) we have not been able to obtain an acceptable Direction, or you or any Authorised Person have failed to provide a Direction, in circumstances where we know or believe that action is required.
- 5.4 To the extent permitted by law, any liability for any Losses which arise from our accepting or acting on, or refusing or querying a Direction is excluded.

## 6. Administration

- 6.1 We may carry out the administration of an Arrangement in Hong Kong but may change that jurisdiction of administration to any jurisdiction we consider appropriate.
- 6.2 We may act through any Employee or any member of the ZEDRA Group.
- 6.3 We may employ members of the ZEDRA Group and other persons to provide services, including investment monitoring, reporting and advice and may delegate (with or without a power to sub-delegate further) any or all of our obligations, functions or responsibilities to another member of the ZEDRA Group or another person, in any jurisdiction without further notice or consent and we will not be liable for any Losses caused by such employee, delegate or sub delegate unless such liability cannot be excluded by local law.
- 6.4 Except where the provisions in the Governing Instrument or the applicable law provide otherwise, none of the powers given to us, any member of the ZEDRA Group or any Appointee or Employee under these Terms is a fiduciary power. All such powers may be exercised having regard solely to our own interests.
- 6.5 We may at our absolute discretion decline to accept or retain any Asset and, if the Arrangement owns or acquires an Asset we do not wish to retain, such Asset may be sold or transferred or otherwise disposed of.
- 6.6 We will not do anything or be required to do anything that may put us or any of our Employees at personal risk of injury or risk of any criminal or civil liability, penalty or prosecution anywhere in the world or which may, in our opinion, conflict with any Regulatory Requirement.

## 7. Data protection and confidentiality

- 7.1 You consent to our collecting, processing and disclosing any Information in accordance with this clause 7.1 as amended from time to time, in any of the following circumstances set out in sub-clauses (a) to (i), each of which shall be construed independently of the others and without prejudice to the generality of each:
- a) if in our opinion, (which shall be conclusive and binding), the collection, processing and disclosure is necessary or desirable to provide the Services;
  - b) if disclosure is to any person who requires the Information in order to provide a service to, in connection with us or the Arrangement, including any Employee, delegate or sub delegate;
  - c) if disclosure is to other members of the ZEDRA Group in connection with the Services or the management of the ZEDRA Group;
  - d) if in our opinion, collection, processing and disclosure is required to be made in connection with a Regulatory Requirement in any jurisdiction whether or not such requirements shall have the force of law in the jurisdiction of the proper law of the Arrangement or whether or not such disclosure may be enforced on the ZEDRA Group;
  - e) if collection, processing and disclosure is required by or in connection with or to assist with any Arrangement, your or any other person's tax filing or reporting requirements in any jurisdiction;
  - f) where disclosure is to the operator of any internet service provided in connection with the Arrangement;
  - g) if disclosure is to any third party as a result of any assignment, transfer or novation of our rights and obligations, or any merger, restructure, sale or acquisition of the ZEDRA Group or any part thereof or to anyone to whom we may transfer our rights and/or obligations under the Arrangement;
  - h) disclosure is to a new service provider to which the Arrangement is going to be transferred;
  - i) for any purpose permitted in accordance with this clause 7.
- 7.2 Where we transfer or disclose Information to any person in accordance with sub clause 7.1, unless such Information is either transferred or disclosed pursuant to a legal duty of disclosure, we will use reasonable endeavours to procure that any person uses such Information for the same purposes as it was originally supplied to us and/or as used by us and, where necessary or appropriate, is placed under an obligation of non-disclosure equivalent to that imposed on us and will ensure that any such person in another country agrees to apply the same or similar level of protection to the Information as we are required to provide.

- 7.3 Where you provide us with personal and financial information relating to others you hereby undertake that you will have their consent, or are authorised to consent on their behalf or are otherwise entitled to disclose such Information to us and to consent to the processing of that information including sensitive personal data by us. Such parties may receive data protection notices from us from time to time.
- 7.4 You authorise, and give consent to, us to collect, use, process and disclose Information relating to medical, health, lifestyle, ethnic background and criminal offences alleged or otherwise that is provided by you or that we obtain from third parties for the purposes of:
- a) assessing, identifying and providing you with products and services relating to the Arrangement;
  - b) applying for a product of an insurance company/organisation in connection with an Arrangement;
  - c) detecting and preventing crime (including, without limitation, fraud and money laundering and terrorist financing);
  - d) transferring your information in accordance with sub-clause 7.1; and
  - e) otherwise meeting our obligations under the Agreement, including but not limited to this clause 7.
- This Information may be obtained at any time directly from you or from third parties, such as your employers, your bankers, credit reference agencies, fraud prevention agencies or other organisations, or from our administration or management of the Arrangement.
- 7.5 Subject to applicable law, we and other companies in the ZEDRA Group will collect, use, process and disclose your Information in accordance with clause 7.1 in order to:
- a) provide the Services;
  - b) carry out regulatory checks and meet our obligations to any regulatory authority;
  - c) protect ourselves against harm to our rights and interests;
  - d) develop and improve our services through assessment and analysis of the Information;
  - e) prepare high-level anonymised statistical reports from Information about you and other parties which may be shared with any persons;
  - f) prevent and detect fraud, money laundering, terrorist financing and other crimes;
  - g) improve the relevance of marketing messages we may send you which you have consented to receive and which you can opt out of as stated below;
  - h) provide you with statements and provide services and products, for assessment and analysis (including credit and/or behaviour scoring, market and product analysis).
- 7.6 You acknowledge and agree that, in order to make or receive payments, the details of the payment (including information relating to those involved in the payment) may be received from or sent to another jurisdiction, where it could be accessible by regulators and authorities in connection with their legitimate duties (for example, the prevention of crime).
- 7.7 It is mandatory for you to provide the Information to us. In the event that you do not provide such Information, we may not be able to provide you with our Services.
- 7.8 Subject to your consent, we and other companies in the ZEDRA Group may use Information to inform you by post, Electronically and by any new methods of communication about products and services (including those of others) which may be of interest to you. You may tell us at any time if you do not wish to receive marketing communications from us.
- 7.9 Under the Personal Data (Privacy) Ordinance, you have a right to request access to, and to request correction of, your personal data retained by the ZEDRA Group. Such requests should be addressed to the Data Protection Officer directly at [hk@zedra.com](mailto:hk@zedra.com).
- 7.10 We will keep your affairs confidential and will take such steps as we in good faith think fit to preserve confidential information from unauthorised disclosure both during and after termination of the Agreement; provided that we may disclose such information to: (i) anyone to the extent authorised or instructed by you; (ii) insurers, or prospective insurers, provided (a) the information is reasonably required by insurers and (b) insurers are subject to confidentiality obligations; or (iii) anyone as may be required by law or a regulatory body, a government agency or court of competent jurisdiction.
- 7.11 You also accept that insofar as other clients give us information that is confidential we will respect that confidentiality and will not disclose the information to you, even if it might be useful to you in an action in which we represent you.
- 7.12 Any processing of personal data, as defined in the Data Protection Regulation of the European Union (Regulation (EU) 2016/679), which applies to the processing of personal data of data subjects within the European Union, will be processed in accordance with our Privacy Notice which may be found at [www.zedra.com](http://www.zedra.com).

## 8. Fees and expenses

- 8.1 We will charge fees for our Services and will be reimbursed for our expenses in accordance with our current published Fee Schedule in place from time to time unless otherwise agreed in writing.
- 8.2 We may decide how to allocate our fees and expenses within an Arrangement as we think fit.
- 8.3 We may deduct all fees and expenses from Assets or retain Assets until our fees and expenses have been paid at our discretion.
- 8.4 We may require you to provide funds to meet future fees and expenses.
- 8.5 Subject to Regulatory Requirements and where permitted by law, our fees and expenses will constitute a lien on all the Assets.

## 9. Our liability

- 9.1 Subject to any provisions in the Governing Instrument to the contrary, we are not liable to you, an Interested Person, an Arrangement or any other person for any Losses except Losses which we are unable to exclude by law.
- 9.2 Without prejudice to clause 9.1, to the extent permitted by law, we are never liable to you, an Interested Person, any Arrangement, or other person for:
  - a) any Losses arising from any cause beyond our reasonable control, or where the effect of which is beyond our reasonable control to avoid; or
  - b) any Losses that we did not anticipate when we exercised any of our powers when providing Services or when we received or acted upon a Direction; or
  - c) any loss of business, loss of goodwill, loss of opportunity or loss of profit suffered by any person; or
  - d) the actions of any Authorised Person over which we have no control.
- 9.3 We are not liable to you, an Interested Person, any Arrangement, or any other person if we do not take any action which in our opinion would breach any Regulatory Requirement or market practice or our fiduciary duties. To the extent that there is any conflict between these Terms and our duties under any law or Regulatory Requirement or market practice or our fiduciary duties, we will act in a way we reasonably consider necessary to comply with such law or Regulatory Requirement or market practice or our fiduciary duties. We will not be responsible for Liabilities and/or Losses which arise from our so acting or not acting.

## 10. Advice and information

- 10.1 We do not provide Advice and nothing in any discussions between you and us or information provided by us may be taken to be, or taken as, Advice or a substitute for independent Advice or depended upon as a substitute for taking independent Advice. We do not warrant or assume any duty of care to ensure that any information provided by us is accurate, up to date, complete or appropriate to you or the relevant Arrangement or to take into account your circumstances or the circumstances of any other person.
- 10.2 You must seek Advice to satisfy yourself of any tax or legal or other consequences for you, the Arrangement, of establishing an Arrangement or of our administration of the Arrangement or of accepting a benefit from an Arrangement or from the continuation or termination of the Agreement.
- 10.3 We have no duty or obligation to ensure that the establishment of the Arrangement, our administration of any Arrangement or the exercise of any of our powers will not create any adverse financial consequences for the Arrangement or cause you or any person to suffer any Liabilities or Losses except duties and obligations that we cannot exclude by law.
- 10.4 You undertake to seek Advice on a regular basis, especially if your circumstances change or you become aware of any tax or other changes which may affect you or the Arrangement, tailored to your particular circumstances and, if you fail to, or choose not, to do so, we have no obligation to advise you further to do so.
- 10.5 We have no fiduciary or other obligations to you or any other person to ensure that any Arrangement is, or remains, suitable for your purposes or the purposes of any person for legal or tax purposes, even if we are aware of any change in the law or in the circumstances of any person, or to consider or to advise you of changes in any law or tax regime, or to consider or advise you whether any changes to any law or tax regime will affect you, the Arrangement or any person.
- 10.6 Any Advice obtained by the ZEDRA Entity in respect of an Arrangement at the expense of a ZEDRA Entity shall belong to that ZEDRA Entity and cannot be relied upon by you or any other person connected with, or advising in respect of, the Arrangement without consent.
- 10.7 We may require you to provide us with copies of any Advice that you have obtained with respect to the Arrangement or the Services and to have such Advice refreshed on a regular basis but we will have no duty to comply with such Advice or any liability for Losses caused by any failure to comply with such Advice unless we have agreed to do so in writing.



## 11. Changes

We may change any provision of the Agreement at our discretion by giving you thirty Working Days notice of any change made under this clause where Regulatory Requirements or local laws require us to do so. Where we do so:

- a) we will tell you the date the change comes into effect;
- b) you will be treated as agreeing to be bound by that change on the date of service of notice.

## 12. No waiver

Any failure by any party to insist on the other party strictly complying with these Terms or any act or omission on any party's part will not amount to a waiver of that party's rights under these Terms.

## 13. Assignment

- 13.1 We may assign any or all of our rights and powers or transfer or novate all or any of our obligations and liabilities under an Agreement to any person in any jurisdiction on giving you thirty Working Days notice.
- 13.2 Subject to the entering into of any assignment or novation agreement, on the date specified in the notice:
  - a) the relevant person will acquire all the rights, powers and, in the case of a transfer, the obligations and liabilities, that it would have had if it had been an original party to these Terms in substitution for us;
  - b) we will be released from any further obligation to you, provided that in relation to any trust of which we are trustee, a new trustee is in place following the transfer. Where we have the power, we will ensure that a new trustee is appointed.
- 13.3 Neither we nor any other member of the ZEDRA Group will have any duty to account to you or any Arrangement for any sum of money or other consideration received in respect of a transfer or assignment under sub clause 13.1.
- 13.4 You may not transfer or assign any of your rights or obligations under an Agreement without our prior written consent which will not be unreasonably withheld.

## 14. Complaints

- 14.1 We have procedures for handling your complaints fairly and promptly.
- 14.2 If you have a complaint, you may inform your usual contact in person or in writing.

## 15. Conflicts of interest

- 15.1 We or any other member of the ZEDRA Group may act in any circumstance where there may be a Conflict of Interest and you hereby consent to us acting where there is a Conflict of Interest.
- 15.2 Where any member of the ZEDRA Group acts in circumstances where there is a Conflict of Interest, it will not be liable to account for any profit made.
- 15.3 If we consider that we may have a Conflict of Interest, we may terminate the Agreement under clause 22 and will not be liable for the costs or expenses arising from such termination.
- 15.4 The Services we provide are not exclusive and we may provide or procure services for other persons. Nothing in any Agreement will limit our ability or right to provide services to other persons.

## 16. Client identity

- 16.1 We are required by Regulatory Requirements to obtain CDD and you undertake to provide CDD in the form that we require and to update it on demand. Subject to Regulatory Requirements, we may determine at our discretion the time at which CDD is required and the form in which it should be delivered and will retain such CDD in accordance with Regulatory Requirements even after the Agreement has been terminated under clause 22 or clause 23.
- 16.2 If CDD is not made available when required or is not in a form acceptable to us, we may refuse to accept funds, which may be returned, Directions or Requests, take actions, exercise any powers or provide other benefit to you or any other party and may terminate the Agreement under sub clause 22.2.

## 17. International taxation arrangements

- 17.1 We and other companies in the ZEDRA Group may be required by Regulatory Requirements to provide information and/or documentation relating to you or an Arrangement or report on an ongoing basis certain information about you, any Interested Person or Assets on an individual or aggregated basis to a relevant tax authority which may then pass that information to other tax authorities. We will comply with these obligations without query and you consent to the disclosure of documentation and/or information under this clause 17. You also accept that we may be legally prevented from advising you of any disclosure.
- 17.2 If a withholding tax applies pursuant to a Regulatory Requirement, we will withhold tax at the required rate. You agree that we may report to the relevant authority all payments made by us to any party, unless you provide us with a certificate (or other appropriate documentation) confirming that you and/or we are exempt from the withholding tax.

- 17.3 To the greatest extent permitted by applicable law, we will not be liable to you for any Losses that you may suffer as a result of our complying with legislation, regulations, orders or any agreements made by any person with a tax authority in accordance with this clause 17, or if we, or any tax authority, make an incorrect determination as to whether or not you or any other person or an Arrangement should be treated as being subject to tax or tax reporting obligations or disclosure or subject to withholding tax and/or where the incorrect determination by us results from our reliance on incorrect information provided to us by you or any third party or otherwise.
- 17.4 If we are asked to make a payment to an account held at a financial institution which has no obligation to comply with Regulatory Requirements or agreements with tax authorities, we may be required, and we are authorised, to withhold funds from the payments.
- 17.5 This clause 17 will override any inconsistent term or consent provided by any person under any agreement with us to the extent that such agreement provides fewer or lesser rights for us.

## 18. Conflicts in documentation

Subject to sub clause 17.5, in the event of any conflict between these Terms and either:

- a) the Governing Instrument;
- b) any Additional Terms;
- c) the Engagement Letter;
- d) any relevant Services Agreement;
- e) the Application Form;

the documents shall prevail in the order of (a), (b), (c), (d) and (e).

In the event of conflict between the Governing Instrument and the Agreement, the Governing Instrument will prevail.

## 19. Your undertakings

19.1 You undertake and warrant as follows (as applicable):

- a) that prior to the creation of an Arrangement, you have complied with all laws in any jurisdiction that apply to you, the relevant Services or the Assets and you will continue to comply with all such laws;
- b) that neither you nor any Interested Person will use the Arrangement to handle, conceal or in any way utilise funds or Assets related to the proceeds of any criminal conduct including but not limited to fraud, tax fraud or evasion, money laundering, drug trafficking, terrorism or false accounting;
- c) that all Assets introduced to an Arrangement (except Assets introduced by us) are, or will be, the lawful property, or under the lawful control, of the person introducing such Assets prior to such introduction and will not be connected in any way with illegal activity or be the proceeds of crime or connected with terrorist financing or similar and you will provide full details of the provenance and source of all the Assets introduced to an Arrangement by you or any other party;

- d) that you have been, are, and at all times will be, compliant with, and fulfil all of your tax and reporting obligations, and have made and will make all tax declarations including those relating to the Arrangement and the Assets and any benefits received and income or gains that they produce in all relevant jurisdictions (the “**Tax Obligations**”, and all payments of tax in any and all relevant jurisdictions in respect of the Arrangement and all benefits received from the Arrangement;
- e) that you will inform us within ninety Working Days of the occurrence of any change in your personal circumstances that are relevant to the Tax Obligations including, but not limited to, address, nationality, residence or domicile, and will be responsible for reviewing your own tax advice or have it reviewed should there be any changes in your personal circumstances.
- f) that you will not in any way use the name of any member of the ZEDRA Group without our prior written consent;
- g) that you will give us notice immediately if you become aware of:
  - i) the occurrence of any event which may have a material effect on an Arrangement, its Assets or activities or on our willingness or ability to continue to provide the Services (for example, a change of address or a divorce or death in the family or a material family dispute, any event evidencing your insolvency or the commencement of your bankruptcy, liquidation, winding up or dissolution or any event affecting the probability of our not being paid for providing the Services or our not having sufficient liquid funds to administer an Arrangement);
  - ii) any actual or threatened litigation or investigation by any judicial, regulatory or tax authority in any jurisdiction in relation to you or an Arrangement which may affect us in any way and of any progress in these matters, and will promptly provide such information as we may, in our absolute discretion, require in this respect (for example, information as to the status of relevant litigation); and
  - iii) any breach of sub clause 19.1 (d);
- h) that where you have any powers or rights with respect to an Arrangement or where the Services include the provision of an Appointee:
  - i) you will not take any action, enter into any agreement, give any undertaking, make any representation or otherwise incur any liability on behalf of the Arrangement without our prior written consent;
  - ii) you will not hold yourself out as our agent or representative or as agent or representative of the Arrangement or use the name of the Arrangement in any business activities without our prior written consent;

- iii) you will ensure that the Arrangement will not be involved in any activities: without first obtaining any licence, consent or approval required in any relevant jurisdiction and will ensure that the Arrangement will not be involved in any activities which would:
    - i) breach any conditions contained in any such licence, consent or approval; or
    - ii) that are unlawful or which may reasonably be expected to cause material harm to us, including but not limited to reputational damage in any jurisdiction;
  - iv) you will ensure that the Arrangement will not:
    - i) be involved, directly or indirectly, in any unlawful activity;
    - ii) be used for any unlawful purpose; or
    - iii) receive the proceeds of unlawful activity in any jurisdiction;
  - i) that you will obtain our prior written consent before alienating, assigning, selling, pledging or otherwise disposing of or encumbering any part of your interest in an Arrangement;
  - j) that you will not take any action, and will procure that no other person takes, any action which could reasonably be expected to cause any member of the ZEDRA Group to suffer material reputational damage; and
  - k) that any Interested Person (within reason) is made aware of these Terms.
- 19.2 To the extent that you have, or have reserved to yourself or another person, or been granted, any powers in respect of an Arrangement or a Service, you will exercise such powers or will ensure that such powers are exercised in such a way that ensures that:
- a) all Tax Obligations are met;
  - b) all tax liabilities payable by any Arrangement in any applicable jurisdiction are discharged from the Assets of the Arrangement when applicable;
  - c) we are provided with all information and documentation that we may require on demand; and
  - d) you and any person with powers in respect of an Arrangement or Service will take legal advice on the exercise of those powers.
- 19.3 Where our Services are provided jointly to you and other persons:
- a) each person will be deemed to have appointed the other persons to act as his agent to exercise full power and authority in connection with the Services on his behalf; and
  - b) all the obligations of you and the other persons engaging our Services (under these Terms and otherwise) will be joint and several.

19.4 You will not, without our written consent, join us in to any proceedings in connection with an Arrangement to which we are not a party. In the event we become parties to any such proceedings, you agree to our having independent professional representation and to indemnify us against all Liabilities and Losses that we may suffer or incur as a result.

## 20. Discharging liabilities arising under an arrangement

20.1 Where any Liabilities arise in respect of an Arrangement or an Asset, we may, subject to the terms of the Governing Instrument:

- a) discharge such Liabilities using the Assets of the Arrangement;
- b) if there are insufficient liquid assets in the Arrangement or an Interested Person able to discharge such Liabilities, require you to provide funds on demand to enable the Arrangement to discharge such Liabilities and, if you fail or refuse to do so, sell, liquidate or realise Assets in order to pay any Liabilities;

regardless of whether the relevant Liabilities could be enforced against us.

20.2 Where we exercise our rights under this clause 20:

- a) to the extent permitted by law, our liability for any Losses that you or the Arrangement or an Interested Person suffer or incur shall be excluded; and
- b) we will be indemnified by you and the Assets of the Arrangement for any Liabilities and Losses that we suffer or incur.

20.3 To the extent permitted by law, our liability for any Losses suffered by any party, including an Asset, an Interested Person or the Arrangement, arising directly or indirectly from your failure or refusal to provide us with sufficient funds to pay any or all Liabilities payable or which may become payable in respect of an Arrangement or any Asset where you are obliged to do so under sub clause 20.1 (b) shall be excluded.



## 21. Indemnities

- 21.1 Other than in respect of Losses for which we are not entitled to indemnification under applicable law or the terms of the Governing Instrument, we will be indemnified out of the Assets of an Arrangement for:
- any Losses that any member of the ZEDRA Group and/or its Employees incur directly or indirectly as a result of false, incomplete or inaccurate information provided by you or any other person including an Authorised Person;
  - any fees and expenses payable for our Services;
  - any Liabilities or Losses arising in relation to or incurred by any Arrangement or any Asset;
  - any Liabilities and Losses that any member of the ZEDRA Group and/or its Employees suffer in providing the Services arising from any breach by you or any other person, including an Authorised Person, of this Agreement; and
  - any judgement recovered against and paid by us in respect of an Arrangement.
- 21.2 In relation to any indemnity claim that we may have, the relevant ZEDRA Entity will make the claim for itself and its Appointees as trustee and owner of the relevant claim.
- 21.3 We are entitled to the benefit of all of the indemnities set out in the documentation relating to an Arrangement and the indemnities herein will be independent from, and in addition to, and without prejudice to, any other indemnities set out in any other agreement or document.
- 21.4 The ZEDRA Group, its Employees and Appointees will be indemnified by you to the greatest extent permitted under law against all Losses, actions, suits, proceedings, claims or demands which may arise from the provision of the Services.

## 22. Ending the relationship

- 22.1 An Agreement may be terminated by either party by giving the other party thirty Working Days written notice and, subject to sub clause 22.3, the Agreement will be automatically terminated when the Arrangement has been wound up, distributed in full or transferred to another service provider (whichever is later).
- 22.2 The Agreement may be terminated subject to sub clause 22.3, if one party commits a material breach of this Agreement which breach is capable of remedy, and is not remedied within thirty Working Days of the other party giving notice requiring remedy of the breach. The Agreement will terminate on expiry of the notice.
- 22.3 Notwithstanding the foregoing, if either party serves notice to terminate the Agreement and you want us to transfer the Arrangement to another service provider, you will provide the name of any new service provider and details of the person that we should contact to transfer the Arrangement immediately following service of the notice and the Agreement will remain in full force and effect, subject to Regulatory Requirements, until the Arrangement is transferred.

## 23. Our termination rights

- 23.1 We may also terminate the Agreement and end our relationship or terminate the provision of any Service by giving you notice if:
- there has been a change of beneficial ownership of any Arrangement and we do not wish to provide the Services to the new owner for whatever reason, as to which we will have sole discretion;
  - an additional trustee has been appointed with whom we do not wish to act as co trustee;
  - an Arrangement has become insolvent or is going into liquidation (other than a voluntary liquidation for the purpose of reconstruction or merger on terms that we have approved in advance) or an administrator or receiver is appointed or an insolvency event having equivalent effect occurs;
  - you fail to make available to us any of the information and documentation requested by us under the Agreement when required in a form acceptable to us;
- and the Agreement will terminate on receipt of the notice.
- 23.2 We may terminate the Agreement and end our relationship or terminate the provision of any Service immediately without giving notice if, in our sole discretion, we believe that:
- continuing to provide the Services would assist criminal activity;
  - continuing to provide the Services would constitute a breach of any Regulatory Requirement or may expose any member of the ZEDRA Group to action or sanction from any government, regulator or law enforcement agency in any jurisdiction or to reputational damage;
  - continuing to provide the Services may cause us or any other member of the ZEDRA Group to break any applicable law, regulation, code or other duty in any jurisdiction which applies to us;
  - continuing to provide the Services would be prejudicial to our interests or to the interests of any other member of the ZEDRA Group;
  - you have seriously or persistently breached this Agreement, the terms of the Governing Instrument, or any other agreement between us in respect to the Arrangement;
  - you have given us false information;
  - you or any Interested Person or the Arrangement have at any time failed to meet, or has become unable to meet, any applicable eligibility criteria (which prevents us from continuing to provide the Services); or
  - your behaviour makes it inappropriate for us in our sole discretion to continue to provide the Services.

23.3 Subject to any applicable legal or fiduciary obligations, we will have no liability to you for any Losses of any kind suffered by you, or by an Authorised Person, an Interested Person or an Arrangement or any other person which arises directly or indirectly from our decision to terminate the Agreement or terminate the provision of any Service in any circumstances.

23.4 The provisions of this clause 23 will be subject to the terms of, and to our fiduciary and legal obligations under, the Governing Instrument and all applicable laws.

## 24. Rights of retention

All fees and expenses including any actual or contingent liabilities are payable up to the date on which we transfer the Arrangement or the Agreement is terminated, whichever is later, and we may retain or use Assets in such amounts or value as we consider to be appropriate or necessary in order to discharge relevant liabilities, fees and expenses and transfer any Assets, as soon as the value of any liabilities have been ascertained. This is independent from and in addition to our rights under clause 8 and any security for liabilities provided by any new service provider to which we are entitled under the law or any Governing Instrument.

## 25. Continuation of provisions

The terms of this Agreement will remain in full force and effect until the Agreement is terminated or the Arrangement is wound up, its Assets distributed or is transferred to another service provider (whichever is later). However notwithstanding the foregoing, the sub-clause "Rights of Retention" as well as the clauses entitled "Indemnities", "Our Liability", "Discharging Liabilities arising under an Arrangement", "Data Protection and Confidentiality", "Third Party Rights", "Law and Legal Proceedings" and "Advice and Information" will be unaffected by the termination of the Agreement and the ending of the relationship between you and us or the termination of any of the Services and will remain in full force and effect.

## 26. Severability

If any provision of these Terms is or becomes invalid or unenforceable, the provision will be treated as if did not form part of these Terms, and the remaining provisions of these Terms will still be valid and enforceable.

## 27. Notices and correspondence

27.1 Any notice required to be given to us by you or any other person under these Terms will be in writing addressed to the ZEDRA Entity providing the Service at its registered office stated in correspondence or such other address as will be advised to you.

27.2 Any notice required to be given by us to you or any other person under these Terms will be in writing addressed to:

- a) the last known postal address of you or the other person or other address advised in writing; or
- b) the last known facsimile number or email address of you or the other person; or
- c) in the case of a company, the registered office of that company or such other address advised by the company in writing.

27.3 For these purposes, any notice:

- a) delivered personally or by courier will be deemed to have been given at the time of the delivery;
- b) sent by ordinary post will be deemed to have been given four Working Days after posting;
- c) sent internationally by airmail will be deemed to have been given ten Working Days after posting;
- d) sent by facsimile or email will be deemed to have been given at the time of dispatch unless we have reason to believe that it was not received.

27.4 Subject to any applicable law, for the purpose of us giving you notice under clause 11 ("Changes") and clause 13 ("Assignment"), if we are not reasonably able, in our sole discretion, to serve written notice on you personally, we may instead give you notice by publishing a notice of the transfer or the changes in any newspaper of general circulation in the jurisdiction in which the ZEDRA Entity providing the Services is incorporated or on our website [www.zedra.com](http://www.zedra.com).

## 28. Language

These Terms are supplied in English, and all communications between you and us will be in English. If we provide you with a translation of these Terms or any communication, the English language version will be the only legally binding version and will prevail if there is any inconsistency.

## 29. Third party rights

Unless a clause of these Terms provides otherwise, a person who is not party to these Terms will have no rights to enforce any of its provisions.

## 30. Law and legal proceedings

- 30.1 The Agreement is subject to and is to be construed in accordance with the laws of the Hong Kong Special Administrative Region of the People's Republic of China ("**Hong Kong**").
- 30.2 Subject to the option in favour of us set out in clause 30.3 below, all parties agree that any dispute, controversy or claim arising out of or relating to the Agreement (the "**Dispute**") shall be adjudicated by arbitration in Hong Kong in accordance with the UNCITRAL Arbitration Rules as at present in force. There shall be one arbitrator and the appointing authority shall be the Hong Kong International Arbitration Centre. The language to be used in the arbitration shall be in English.
- 30.3 Notwithstanding clause 30.2 above and at our option, all parties agree that the Hong Kong Courts shall have exclusive jurisdiction to settle any Dispute. For such purposes, you agree to submit to the exclusive jurisdiction of the Hong Kong Courts.
- 30.4 In the event that you commence arbitration proceedings pursuant to clause 30.2 above in respect of a Dispute, we shall have 60 days from the date of service of the Writ or Originating Summons on us to make the election to require that the Dispute be referred to the exclusive jurisdiction of the Hong Kong Courts under clause 30.3 above. In the event of such an election, the parties agree that the arbitration proceedings commenced by you shall be permanently stayed and you shall make an application to the arbitrator seeking an order to that effect.