

## TERMS AND CONDITIONS

These are the terms and conditions on which Zenith Representatives Pty Ltd ABN 64 606 833 434 AFSL 479 263 of 471 Adelaide Street, Level 3 Brisbane Qld 4000 (**We/Us/Our**) provides managed discretionary account (MDA) Services to the person named above (**You/Your**):

### 1. DEFINITIONS

In this MDA Contract:

**Contributions** means all the money, moneys worth and Investments that you ask us to manage on your behalf pursuant to this MDA Contract.

**Investments** means cash and cash products, ASX listed securities, managed investment schemes and any other financial product on which we are authorised to advise and deal and which we, in our discretion, consider suitable for inclusion in your Investment Program.

**Investment Program** means the Investment Program attached to our Statement of Advice dated as above (or any Investment Program that replaces it).

**MDA Account** means the Contributions, and the Investments into which the Contributions have been invested pursuant to this MDA Contract.

**MDA Services** means the services that we provide to you in accordance with this MDA Contract.

**You** means the person named above.

### 2. APPOINTMENT

2.1 You appoint us to manage your MDA Account at our discretion, but always in accordance with this MDA Contract and your Investment Program.

### 3. OUR DISCRETIONS

3.1 Subject to clause 2, you authorise us to do the following on your behalf to enable us to manage your MDA Account:

- (a) Open (and if necessary close) accounts with any bank or financial services provider including, without limitation, cash management accounts and investment accounts;
- (b) Provide your tax file number, interest and dividend banking instructions and other personal information and instructions

required to open and operate those accounts to the provider;

- (c) Operate all such accounts including without limitation to making payments to or drawing cheques payable to third parties on your behalf;
- (d) Buy, subscribe for, apply for, deal with, accept transfers of, sell, transfer, repurchase or redeem Investments;
- (e) Exercise (and decline to exercise) all rights and privileges and perform all duties and obligations which now or may in the future apply to the Investments in your MDA Account;
- (f) Appoint any investment manager, broker or other service provider;
- (g) Reinvest any revenue earned in your MDA Account; and
- (h) Receive, hold and execute all necessary documents, pay all obligations and liabilities, undertake all acts and do all things that are necessary or convenient in order to implement the Investment Program.

3.2 You acknowledge that this will require us to and you authorise us to do the following in our absolute discretion:

- (a) Determine how any additional Contributions, revenue earned or surplus cash are allocated between your Investments;
- (b) Rebalance your Investments where there has been a variation from any of the asset allocations in your Investment Program;
- (c) Adjust the asset allocations within the ranges described in the Investment Program in order to achieve the objectives of the Investment Program;
- (d) Sell any Investments if there is an adverse rating change or we consider, for any reason whatsoever, that the Investment is no longer suitable for inclusion in the Investment Program;
- (e) Purchase any Investments we consider appropriate to replace those Investments; and
- (f) Determine which, if any, Investments will be sold to accommodate any withdrawals you wish to make.

#### **4. GIVING US INSTRUCTIONS**

- 4.1 Unless otherwise agreed, you must provide instructions regarding your MDA Account to us in writing (which includes email or facsimile) through your Financial Adviser.
- 4.2 We are under no obligation to act in accordance with your instructions if we reasonably consider that they are ambiguous, unclear or conflict with your Investment Program, any regulatory requirement or local market practice. We will notify you if we decline to act in accordance with your instructions for any reason.

#### **5. AUTHORISATIONS AND ACKNOWLEDGEMENT**

- 5.1 You acknowledge that:
- (a) We will make decisions regarding and changes to your MDA Account at our discretion without prior consultation with you regarding each change, and that you will be bound by our actions and the changes we make;
  - (b) There may be delays in processing purchases, subscriptions, applications, transfers, sales or redemptions of Investments. We will not be liable for delays caused by third parties or circumstances beyond our control;
  - (c) Our investment decisions may have capital gains or income taxation consequences for you depending on your personal or your entity's tax position.
  - (d) The Investments in your MDA Account will change from time to time in order to achieve the objectives of your Investment Program and as a result of changes in the economic outlook for those Investments;
  - (e) Any representations of expected performance provided to you are based on past performance and are not a guarantee of future performance;
  - (f) We do not guarantee or make any representations concerning the future performance of your Investments, return of capital, the success or taxation consequences of any strategy we may use or that our decisions will achieve your expectations and goals.

#### **6. YOUR RIGHTS AND OBLIGATIONS**

- 6.1 You must hold and maintain the minimum amount that we nominate in your MDA Account. We may vary the required minimum amount from time to time. We will provide you with 30 days' notice of any changes to the required minimum amount.
- 6.2 You must do the following:
- (a) Provide all information and written authorities that we require to enable us to fulfil our obligations to you under this MDA Contract;
  - (b) Ratify (if required) all or any actions that we take under this MDA Contract.
- 6.3 You must inform your Financial Adviser of any changes to your personal circumstances or investment objectives as soon as is reasonably practical after the change. You understand that if you fail to do so, your Financial Adviser will not be able to advise you if the Investment Program and/or this MDA Contract become unsuitable for you.
- 6.4 You may make further Contributions or withdraw funds from your MDA Account at any time.
- 6.5 If you instruct us to withdraw funds from your MDA Account, you must instruct us to whom the proceeds are to be paid.
- 6.6 Any withdrawals from your MDA Account will be paid to you, or as you direct, within 30 business days of your request or such longer period as we determine in our discretion or due to the time required to realise or transfer Investments. You acknowledge that there may be delays in processing Contributions and withdrawals due to matters beyond our control.

#### **7. REVIEW AND REPORTING**

- 7.1 Your Financial Adviser will review and advise you on the suitability of this MDA Contract and the Investment Program for your objectives, needs and financial circumstances at least every 13 months.

#### **8. UNDERTAKINGS**

- 8.1 We undertake to do the following when providing the MDA Services to you:
- (a) Act honestly and exercise the degree of due care and diligence that a reasonable person would exercise if they were in our position in providing the MDA Services to you;

- (b) Act in your best interests and give priority to your interests where they conflict with our interests;
- (c) Not use information we have about you through providing the MDA Services to gain an improper advantage for ourselves or any other person or to cause detriment to you;

## 9. FEES AND COSTS

**Fee Changes** – We may change our fees at our discretion on 30 days' notice.

- 9.1 You are responsible for all taxes, stamp duty or government charges incurred in relation to the Investments in your MDA Account and must reimburse us for any such amounts.
- 9.2 This clause 9 survives termination of this MDA Contract.

## 10. RESPONSIBILITY AND INDEMNITY

- 10.1 We agree to:
  - (a) Be responsible for the MDA Services that we have contracted to perform under this MDA Contract and for the acts or omissions of any person we engage to perform those functions as if they were our acts or omissions;
  - (b) Compensate you for any loss you incur due to the acts or omissions of any agent or other person that we engage in connection with the MDA Service as if their acts and omissions were our acts or omissions.
- 10.2 Notwithstanding clause 10.1 and except as required by law, we do not accept liability for any losses you sustain as a result of:
  - (a) The performance of the Investments in your MDA Account;
  - (b) The tax effect of your Investment Program;
  - (c) Any instruction that you provide to us in relation to your MDA Account which is different from the Investment Program;
  - (d) Any instruction from you which is not provided in a timely manner;
  - (e) Delay in implementing your instructions if it is not possible or practical to implement them or during any period required to obtain clarification of your instructions from you;
  - (f) Any act or omission undertaken on the instructions or advice of any person which

we had no reason to believe to be other than authentic or sound;

- (g) Events beyond our control where the loss could not have been avoided by the exercise of reasonable diligence; or
  - (h) Any act or omission required by law.
- 10.3 This clause 10 survives termination of this MDA Contract.

## 11. TERMINATION

- 11.1 You may terminate this MDA Contract at any time by providing us with 7 business days' notice in writing.
- 11.2 We may suspend the MDA Services if our fees or any charges remain unpaid for more than 3 months. We will not carry out any transactions on your MDA Account until the unpaid fees or charges are paid.
- 11.3 This MDA Contract will terminate automatically if:
  - (a) You close your account on the Platform;
  - (b) Our Australian Financial Services Licence is suspended, terminated or varied so that we are not authorised to provide the MDA Services; or
  - (c) The Australian Securities and Investments Commission notifies us that we may no longer rely on *ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968*.
- 11.4 This MDA Contract may be terminated immediately:
  - (a) By us – if you are in default of an obligation under this Contract and fail to rectify it within 5 business days' notice of the default;
  - (b) By us – if you enter a bankruptcy or any other insolvency arrangement or contract with creditors;
  - (c) By us - if you terminate the appointment of the Financial Adviser and have not appointed a replacement adviser to whom we have agreed;
  - (d) By us - if we reasonably believe that your MDA Account is being used fraudulently (including money laundering or terrorism financing);
  - (e) By us – if you become insolvent, are made bankrupt or enter into an arrangement with your creditors under the Bankruptcy Act or, being a company or trust, enter into any

arrangement with creditors, become subject to external administration or are liquidated or wound up;

- (f) By us – if you do not have the minimum balance we nominate in your MDA account;
  - (g) By you – if we enter into any arrangement with creditors, become subject to external administration or are liquidated; or
  - (h) By either party - if any fundamental part of this MDA Contract becomes unenforceable, void, illegal or invalid.
- 11.5 Termination of the MDA Contract does not affect transactions commenced before termination or any existing rights and obligations incurred prior to termination. We will do all things necessary to settle, exercise or meet all such transactions, rights or obligations after termination.
- 11.6 On termination of the MDA Contract:
- (a) We will not exercise any discretion in relation to your MDA Account.
  - (b) You must provide us with a written direction within 5 business days (or such longer time as is reasonably required) regarding the sale or, if possible, the in specie transfer of the Investments in your MDA Account.
  - (c) We will do all things reasonably necessary to transfer the Investments in your MDA Account in accordance with your directions as soon as possible, but in any event, you acknowledge that there may be delays that are outside our control, in transferring or disposing of the Investments in your MDA Account.
  - (d) If you do not provide us with those directions, we will not undertake any transactions in relation to your MDA Account and your Investments will remain as they were at the date of termination.
  - (e) We will not be liable for any losses you sustain as a result of the circumstances in sub-clauses (c) and (d) above.
  - (f) We will promptly (and in any event within 60 days after the investments are transferred in accordance with your directions) arrange for you to be provided with final accounts and reports in relation to your MDA Account.
- 11.7 We will maintain a written policy describing the steps we will take on termination of the MDA Contract to ensure that your portfolio

Investments are dealt with in accordance with clause 11.6. You may request a copy of this policy at no charge.

## 12. MISCELLANEOUS

- 12.1 Each of the parties will give notice to the other of any change of address, telephone number, email address and the like as soon as practicable. Any notice given under this MDA Contract must be in writing and, if sent to the last known address or facsimile number of the other party, is deemed to be received:
- (a) 3 business days after the date of posting, if posted; or
  - (b) On the next succeeding business day, if received or deemed to be received on a day which is not a business day.
- 12.2 We may vary this MDA Contract at any time by giving you 20 business days' notice. No variation of this MDA Contract will affect any right already accrued at the date of the variation.
- 12.3 We may assign, charge or otherwise deal with our rights and obligations under this MDA Contract without your consent. You may not assign, charge or otherwise deal with your rights under this MDA Contract.
- 12.4 An agreement, warranty, representation or obligation which binds or benefits two or more persons under this MDA Contract binds or benefits those persons severally but not jointly.
- 12.5 If any provision of this MDA Contract is found to be void, voidable, illegal or otherwise unenforceable, the parties will amend that provision in a manner which reasonably achieves the intention of the parties or, at our discretion, that provision may be severed from this MDA Contract and the remaining provisions of the MDA Contract will remain in full force and effect.
- 12.6 This MDA Contract is governed by the law of Queensland. The parties submit to the non-exclusive jurisdiction of the courts of that state and any courts which may hear appeals from those courts in respect of any proceedings in connection with this MDA Contract.
- 12.7 Unless the context otherwise requires:
- (a) A word which denotes the singular denotes the plural and vice versa;
  - (b) Any gender denotes the other genders; and
  - (c) A person includes an individual, a body corporate, trust and a government body.

12.8 Unless the context otherwise requires, a reference to:

(a) Any legislation includes any regulation or instrument made under it and where amended, re-enacted or replaced means that amended, re-enacted or replacement legislation;

(b) Any other agreement or instrument, where amended or replaced, means that agreement or instrument as amended or replaced; and

(c) A business day means a day other than Saturday on which banks are open for general banking business in the state or territory referred to in clause 12.6.