

## TERMS OF ENGAGEMENT

These Terms of Engagement (“**Terms**”) set out the basis on which ODI LLP, a limited liability partnership the registered offices of which are at Davčna ulica 1, 1000 Ljubljana, Slovenia and its affiliated offices in Croatia, Serbia and Macedonia (ODI LLP and its affiliated offices are hereinafter collectively referred to as “**ODI**”) provide legal services. Please visit [www.odilaw.com](http://www.odilaw.com) for more information about ODI and the relevant regulators in each of the jurisdiction where ODI operates.

### 1. CONTRACTING PARTIES

- 1.1. The ODI entity which first accepts instructions from you on any particular matter, is the contracting party to a service contract in relation to that matter. This ODI entity will act for you on the terms set out in these Terms and applicable legal and professional rules in the relevant jurisdiction. These Terms can be varied or supplemented on the basis of a special service contract with you, for example by, including details of who will be working for you and the applicable fee structure. The below references to “we” or “us” are to the particular ODI entity which has concluded a service contract with you on the relevant matter.
- 1.2. These Terms will apply to any matter where ODI is instructed by you, and by instructing ODI, you agree that the terms contained herein apply to your relationship with ODI in respect of such particular matter. For the avoidance of doubt, the foregoing shall apply also in case you have instructed ODI by way of electronic mail or any other standard form of correspondence, regardless of whether a formal agreement on provision of legal services is concluded. References to “you” are to the entity or entities which have concluded a service contract with ODI on each such matter. The relevant services on each matter are provided solely for such entity or entities, and no other person or entity has, unless otherwise agreed in writing, any rights to enforce any term of the relevant contract.

### 2. OUR SERVICES

- 2.1. In providing our services we will need your full co-operation. We will rely on you to provide us or to cause others to provide us with the necessary information and assistance to carry out the service in a timely, effective and professional manner.
- 2.2. The services that we will provide to you in relation to a particular matter will be agreed at the outset of the matter and may be varied by agreement during the course of the matter.
- 2.3. Our services will include advice on tax-related issues only if and to the extent that is specifically agreed, but not otherwise.
- 2.4. Except in matters where we have been mandated by you with the explicit aim of resolving a dispute via litigation or arbitration, our services in any matter do not automatically extend to representation in contentious proceedings. In the event that a dispute occurs which necessitates litigation or arbitration measures, we will consider with you the extent

to which we can assist you, but may, at our own discretion, refrain from acting in litigation or arbitration against another party.

- 2.5. It may be necessary during the course of a matter to instruct or arrange for you to instruct one or more experts or third party suppliers outside ODI on issues beyond our expertise, such as accountants, consultants, litigation support services or specialist counsel. We will discuss this with you at the appropriate time, including the assessment of who might be suitable and the costs likely to be involved. We do not accept any liability for the accuracy or completeness of advice or performance or adequacy of services provided by any such experts or third party suppliers instructed by us on your behalf.

### **3. BASIS OF OUR CHARGES**

- 3.1. We will agree separately the basis of our charges for acting for you on any particular matter, including the potentially required advance payment. In the absence of any other agreement our charges will be based on standard hourly rates of persons involved in your matter, subject to an appropriate agreed mark-up reflecting complexity, size and importance of the matter to you, and the circumstances where particular success has been achieved. If your instructions mean that we have to work outside of office hours, we reserve the right to increase the hourly rates accordingly. In particular, the agreed hourly rates shall increase by 25 % for work during weekends and public holidays. Courts and other authorities and other legal entities which decide on attorney fees in relevant procedures will not take into consideration this paragraph 3.1 in their assessment of attorney fees, except in an attorney-client dispute deriving from such agreement. Hourly rates are reviewed, and may be adjusted, periodically. Details of these rates are available on request from the partner responsible for a particular matter. Additional charges, including expenses incurred, will also be billed.
- 3.2. We take your initial instruction to us as your authority for us to incur, without further reference to you, any reasonable expenses. If such expenses are substantial, we will generally ask you for the advance payment before we incur any liability, or arrange for the expenses to be paid by you directly.
- 3.3. Where expenses are not included within our normal charges as an overhead, they are billed at cost. In the case of printing and related services carried out in our offices, any charges are consistent with the cost which would have been incurred had outside services been used. Further details of our policy on expenses can be obtained on request by e-mail to [slovenia@odilaw.com](mailto:slovenia@odilaw.com).
- 3.4. In certain countries ODI is obliged to charge value added tax (VAT) or a similar sales tax in respect of work carried out in that country. In any such case, the relevant tax will be added to the fees charged and (where necessary) to any disbursements, at the rate from time to time in force in the country concerned. Any figure given by way of estimate, quote, hourly rate or other cost information is exclusive of VAT or other applicable taxes.

#### **4. PAYMENT OF OUR INVOICES**

- 4.1. Unless we agree otherwise, we will charge you for our services weekly. If you have any queries on any invoice, please raise them with the partner responsible for the matter as soon as possible. We ask that our invoices are paid upon receipt, unless a different payment date is indicated in a particular invoice. If any element of an invoice is queried, that part of the invoice which is not subject to query should be paid immediately. If any amount owed to us remains outstanding more than 15 days after issue of the relevant invoice or a different payment date indicated therein, then until all amounts which you owe us are paid, we may (subject in each case to applicable local bar rules and/or statute):
- 4.1.1. charge interest on the outstanding amount (including VAT and any expenses) from the date of our invoice or other payment date indicated in such invoice: the rate will be 3% per annum above the rate at which banks generally offer to make deposits (in the currency of the invoice) with prime banks for periods of one month, as published or certified by a prime bank selected by us, having its principal place of business in the jurisdiction of the relevant currency,
  - 4.1.2. stop acting on your behalf, and
  - 4.1.3. retain documents and papers belonging to you, together with our own records.
- 4.2. When we are holding financial means for you, we may use them toward payment or part payment of our invoices outstanding from you, unless otherwise agreed in writing. We will always provide you an account statement when this is being done.

#### **5. WITHHOLDING OR REDUCTION FOR TAXES AND EXCHANGE CONTROL**

- 5.1. Our fees are to be paid free of any withholding or deduction in respect of any taxes or duties. If you are required by law to withhold or deduct tax then the amount of each invoice is to be treated as increased to the extent necessary to ensure that after any withholding or deduction we receive and retain a net sum equal to the amount of the invoice. If, where this has been done, we determine that we have subsequently received any value for the amount withheld or deducted (for example by way of utilised credit for tax treated as withheld or deducted), we will remit the amount of such value to you (up to the amount of the tax withheld or deducted) provided our overall net of tax position is not prejudiced.
- 5.2. If your payment of our fees or our receipt of such payment is subject to exchange or other similar control you will use your best endeavours to obtain (or where appropriate help us to obtain) the necessary consents as soon as possible after each invoice is rendered and then ensure we receive prompt payment in accordance with such consents. If exchange control approval has not been obtained within 6 months from the date of our invoice then, if so lawfully requested by us at any time thereafter, you shall pay into a local account designated by us the amount in local currency equivalent to the amount outstanding (converted at that date).

## **6. CONFLICT OF INTEREST AND CONFIDENTIAL INFORMATION**

- 6.1. Whenever ODI is asked by you to act on a matter, ODI will determine whether it is free to do so by reference to the laws/regulations/rules relating to conflict of interest which apply in the jurisdiction(s) where any ODI office would be acting on that matter for you. Similarly, if any ODI entity is asked to act adverse to your interests on any matter unrelated to any work it (or another ODI entity) does for you, it will determine whether a conflict prevents such representation by reference to the laws/regulations/rules which apply in the countries where ODI is asked to so act.
- 6.2. ODI will only consider you as a current client for conflict purposes where it is retained on at least one current matter for you. For these purposes, a matter in respect of which a final invoice has been submitted, or a matter which has been inactive for more than six months (except for any ongoing judicial proceedings) is not a current matter, even if it is possible or even likely that at some future date further work may arise related to the original work undertaken for you.
- 6.3. We may act generally for another client which, for you, is a market competitor.
- 6.4. We owe a duty of confidentiality to all our clients and accordingly, subject to any overriding legal obligation on you or us:
  - 6.4.1. ODI will keep all documents and information which it receives as a result of acting for you, including the content of its case file, confidential, and in particular will not disclose them to any other client without your express agreement; and
  - 6.4.2. you acknowledge that ODI will not disclose to you or use on your behalf any documents or information in respect of which ODI owes a duty of confidentiality to another client (or any other person).
- 6.5. You agree that the fact that we hold documents and/or information in respect of which we owe a duty of confidentiality to you and which are or may be relevant to a matter on which ODI is instructed by another client will not prevent ODI from acting for that other client on that matter without any further consent from you. However, in such a case we will put in place such arrangements as we consider appropriate (if any) in the circumstances to ensure that the confidentiality of your documents and/or information is maintained.
- 6.6. It is sometimes necessary or useful for us to outsource or offshore certain administrative or support services such as printing, document production, paralegal transaction and case support, accounting, finance, IT maintenance and development, security and cleaning. Where this is the case, we take all reasonable steps to ensure that there is no breach of confidentiality. By confirming your agreement to these Terms, or by giving us further instructions or by continuing with existing instructions, you implicitly consent to such outsourcing or offshoring arrangements.
- 6.7. You agree that where we have acted for you on a matter which has been publicly announced, we may disclose that we acted for you in the matter in question provided that we do not – except in case we obtain your consent – otherwise disclose any details which are not already in the public domain.

## **7. LIMITATION OF LIABILITY**

- 7.1. Our advice is being given exclusively for the purposes of specific matter and only to the client, and, without our prior written consent, may not be used for any other purpose, or disclosed to any person other than the client's other advisors (who may not rely on such advice).
- 7.2. Unless otherwise agreed in writing, our total liability towards you (in respect of any founded claims for relevant negligence, breach of fiduciary duty, breach of contract or otherwise) is limited to the lower of the following amounts: (i) the maximum amount of insurance coverage for professional liability of ODI entity which has contracted with you, applicable at the time, or (ii) five times the sum of all (actually received) remuneration of such ODI entity from working on the matter giving rise to your claim. This sum includes any damages, costs and interest that may be awarded against us. If, in addition to ODI entity which has contracted with you, any other ODI entity carried out services in respect of the matter giving rise to your claim, only ODI entity which has contracted with you shall be liable in respect of such claim, whereas liability of other participating ODI entities will be completely excluded.
- 7.3. Having regard to our interest in limiting the personal liability and exposure to litigation of ODI partners, lawyers, employees, associates and representatives, it is a fundamental term and condition for our engagement (subject to any relevant statutory provision limiting our ability to do so) that you will not put forward any motion or bring any claim in respect of any damage directly against any of our partners, lawyers, employees, associates and representatives personally.
- 7.4. In recognition of our policy of limiting personal liability of ODI partners, lawyers, employees, associates and representatives you agree that where such protection is not afforded by local law, any claims against ODI may only be enforced against those assets or property which comprise partnership assets or property of ODI entity which has contracted with you.

## **8. PROPORTIONATE LIABILITY**

- 8.1. Where you have a number of persons, including us, advising you on a matter, there is a risk that we will be prejudiced by any limitation or exclusion of liability which you agree with any of those other persons. This is because such a limitation or exclusion of liability might also operate to limit the amount which we could recover from that other person by way of indemnity or contribution if we were required to pay to you more than our proportionate share of the liability for which the other person was also responsible. Accordingly, subject to the provisions of paragraph 8.2 below, you agree that our position will not be adversely affected by the limitation or exclusion of the other person's liability. In other words, we will not be liable to you for any amount which we would otherwise have been able to recover from that other person but which we are not entitled to recover by reason of your agreement to limit or exclude their liability.
- 8.2. The agreement in previous paragraph 8.1 will not:

- 8.2.1. operate to limit or exclude any liability which cannot be lawfully limited or excluded under any legal or professional rules in any relevant jurisdiction;
- 8.2.2. apply if, and to the extent that, it would reduce our liability below any minimum sum permissible under any legal or professional rules in any relevant jurisdiction. In such circumstances, our liability under previous paragraph 8.1 will be for any such minimum permissible sum.

## **9. OWNERSHIP OF WORK PRODUCT**

- 9.1. Original materials, derivative works and compilations which we generate for our clients are protected by copyright, which belongs to ODI. The fee you pay for our work entitles you to make use of those materials for the purposes for which they were obtained, but you do not obtain ownership of the copyright in the ODI work product unless we specifically agree to this in writing. Nevertheless, should the materials we generate incorporate information which is confidential or proprietary to you, we will safeguard such information and will not use or divulge it to third parties.
- 9.2. Ownership of any patent rights to any invention conceived or developed during the course of our engagement by our clients will be owned solely or jointly as determined by applicable law. In the case of joint ownership, each owner may exercise applicable rights without the consent of or accounting to any other owner. Nevertheless, we will not use or divulge to third parties any information which is confidential or proprietary to you in connection with obtaining or exercising any of our patent rights.

## **10. DOCUMENTS, COMMUNICATION AND DATA PROTECTION**

- 10.1. Except where local rules require otherwise, ODI will retain any file or other material relating to a matter on which we have acted for you for five years after the matter is completed. Unless we agree otherwise we will then dispose of the relevant material without further reference to you.
- 10.2. Whilst we use anti-virus software to check incoming and outgoing electronic communications, we cannot guarantee that transmissions will be free from infection. To maximise the potential of our anti-virus procedures we discourage the use of encryption except where special arrangements are made in advance. We do not support communication by Instant Messaging. Where you ask us to participate in such communication, it is on the basis that we do not accept any liability for advice given through this means of communication or for any loss of confidentiality.
- 10.3. We will take appropriate technical and organisational measures to protect any personal data that we may process on your behalf against unauthorised or unlawful processing and against accidental loss, destruction or damage. We will only process such data in order to carry out your instructions.
- 10.4. In order to facilitate the provision of our services to clients and for internal purposes, ODI offices may mutually share information countries which do not have standards of data protection equivalent to those required by the European Data Protection Directive

95/46/EU. By instructing ODI, you agree that, within the framework explained above, and subject always to our duties of confidentiality and the provisions of previous paragraph 10.3, we may disclose data relating to you and the matters on which you have instructed us to other ODI offices and their wholly-owned service companies.

## **11. MISCELLANEOUS REGULATORY ISSUES**

- 11.1. There are a number of statements which, under relevant laws and regulations, we are required to make in the context of services we provide in certain countries where we practise. These statements can be accessed on our website at <http://www.odilaw.com/>.

## **12. APPLICATION OF THESE TERMS AND AMENDMENTS**

- 12.1. While we ask you to confirm your agreement to these Terms by letter or email, we provide our services to you on the basis of this document and any other retention letter which supplements it. If you retain us as agent for a third party, you confirm that you have authority to retain us on these Terms. If you disagree with any of the contents of this document, you should so advise us immediately. These Terms also supersede any earlier document sent or published by us in regard to our terms of business or terms of engagement.
- 12.2. From time to time, it may be necessary for us to amend the terms on which we act. Where this is the case, we will publish such proposed changes on our website and, unless we hear from you in writing to the contrary within one month, such amendments will be deemed to come into effect from the end of that period. If such amendment is required in order for us to comply with any applicable legislation, such amendment may, exceptionally, enter into force in a shorter period of time.

## **13. DISPUTES**

- 13.1. All matters arising out of or relating to the engagement agreement with ODI shall be governed and construed in accordance with the laws of the place of office of ODI entity which contracted with you on the matter in question in accordance with paragraph 1.2 above (without giving effect to the principles of conflict of laws thereof).
- 13.2. Any dispute, controversy or claim arising out of or relating to engagement agreement with ODI, or the breach, termination or invalidity thereof, shall be referred to and finally settled by arbitration in accordance with the UNCITRAL Arbitration Rules. The UNCITRAL Rules can be accessed at <http://www.uncitral.org/pdf/english/texts/arbitration/arb-rules-2013/UNCITRAL-Arbitration-Rules-2013-e.pdf>.
- 13.3. The arbitral tribunal shall be composed of three arbitrators. If the appointment procedure fails to produce a tribunal, the appointing authority will be the Vienna International Arbitral Centre.
- 13.4. The language of the arbitration will be English.

- 13.5. The seat, or legal place, of the arbitration will be the capital city of the jurisdiction of the office of the ODI entity which contracted with you on the matter in question in accordance with paragraph 1.2 above.
- 13.6. Pursuant to Article 32, paragraph 3, of Slovene Out-of-Court Resolution of Consumer Disputes Act, you acknowledge that ODI does not accept any provider of out-of-court resolution of consumer disputes (IRPS) services.

If you have any queries relating to these Terms, please address them by e-mail to [slovenia@odilaw.com](mailto:slovenia@odilaw.com).

Terms agreed,

Signed \_\_\_\_\_

Name \_\_\_\_\_

On behalf of \_\_\_\_\_

Date \_\_\_\_\_