



# ZEN E-commerce Terms

*Version 1.5.4\_B dated: 22/12/2020*

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## 1. Definitions

The following definitions shall apply throughout these E-Commerce Terms:

<b>3D Secure</b>	The latest applicable versions of the security protocols respectively developed and/or adopted by Visa International Inc. (Visa), MasterCard International Inc. (MasterCard) or EMVCo LLC that promotes frictionless consumer authentication and enables consumers to authenticate themselves with their card issuer when making card-not-present (CNP) e-commerce purchases.
<b>Account Holder</b>	A person authorized to use a Payment Method
<b>Acquirer</b>	A financial institution that is authorized by a Payment Method Provider to offer the use of a Payment Method to Merchants for the purpose of accepting Transactions and forwarding these to the Payment Method Providers or Issuing Banks as well as collecting and settling the resulting funds with the Merchant.
<b>AML</b>	Anti-money laundering
<b>API</b>	The interface provided to the Merchant for enabling secure online transfer of the Payment Details
<b>Authorization</b>	The permission granted to an Account Holder (or Merchant on Account Holder's behalf) by the Payment Method Provider or Issuer for the usage of a Payment Method as a means to pay for a Merchant's Service or Product
<b>Business Day</b>	A day other than a Saturday or Sunday on which banks are open for business in Lithuania
<b>Clearing Period</b>	The period in which an Authorized Transaction can be Cleared according to the relevant Payment Method.
<b>Clearing</b>	The confirmation by (or on behalf of) the Merchant to the Acquirer that a Transaction for which Merchant received an Authorization is to be executed and the Account of the Account Holder is to be actually charged for the Transaction.
<b>Cash Back transaction</b>	A purchase transaction in which the Cardholder chooses to receive cash in addition to paying for goods, services, or both.



<b>Card</b>	A payment card, device, or any other electronic or virtual product or account that is capable of completing a Transaction, is issued by an Issuer, and bears one of the marks owned by a Payment Method Provider.
<b>Card Scheme</b>	Visa, MasterCard or other similar schemes which process payments between Acquirers and Issuers using relevant Cards.
<b>Card Data</b>	The information embossed or printed on the front and/or back of the card, including the number, expiry date, CVV / CVC, CVV2 / CVC2 of a Card
<b>Cardholder</b>	A person who rightfully possesses and is authorized to use a Card and, where required on the Card, whose signature appears on the Card as an authorized user.
<b>Chargeback</b>	The successful return of a Transaction by an Issuer to an Acquirer.
<b>Chargeback Fee</b>	The fee charged by ZEN to the Merchant in respect of an application made or similar dispute raised by an Account Holder or Cardholder for a Chargeback.
<b>CNP or Card Not Present Transaction</b>	A Transaction initiated without the physical presence of the Cardholder at the point of sale and at the time of the Transaction.
<b>Confidential Information</b>	all information whether, written or oral, including financial statements, business plans, financial projections, trade secrets, internal financial, operational, strategic information or any other information that given the circumstances and nature of disclosure should reasonably be recognized as confidential information, the contemplated transaction as well as the status of the transaction, relating to any past, present or future business activities of such party.
<b>Currency Exchange Rate</b>	The foreign currency exchange rate applicable at the time of the Settlement or Transaction (as the case may be) based on the reference rates available on <a href="https://openexchangerates.org/">https://openexchangerates.org/</a>
<b>Delivery Date</b>	The delivery date of the relevant Merchant Product and/or Merchant Service to the recipient designated by the Account Holder.



<b>Delivery Pending Amount</b>	The total amount corresponding to the Authorized, Cleared and/or Settled Transactions of a relevant Merchant at a given time, for which the Merchant Products and/or Merchant Services have not been delivered to the relevant Account Holders or the recipients designated by the Account Holders at that time and/or for which the return rights or order cancellation rights of the Account Holder under the terms and conditions of the Merchant and/or applicable law have not yet lapsed.
<b>Effective Date</b>	The date on which both Parties' authorized representatives have signed the Merchant Agreement and the Registration Data has been provided by the Merchant in a manner that is satisfactory and sufficient for ZEN to provide the Services, whichever is later.
<b>Fine</b>	Any amount or fine, uplifted service fee or other additional payment (including any associated costs) which is directly or indirectly levied on ZEN by the Payment Method Providers and/or Acquirers, as a result of situations including but not limited to, an alleged breach of Payment Method Rules, the Merchant Agreement or the applicable laws by the Merchant or caused by the Merchant, excessive Fraud levels or excessive Chargeback levels.
<b>Initial Term</b>	The first 1 (one) year term of effectiveness of the Merchant Agreement which starts from the Effective Date
<b>Interchange Fee</b>	A fee that is set by the relevant Card Scheme which shall be paid by the Acquirer to the Issuer for each successfully completed Transaction.
<b>Issuer</b>	An institution that issues or enables Payment Methods to the Account Holder and whose name appears on the Card or bank account statement as the Issuer or who enters into a contractual relationship with the Account Holder with respect to the Payment Method.
<b>Mastercard Mark</b>	The names, logos, trade names, logotypes, trademarks, service marks, trade designations, and other designations, symbols, and marks that Mastercard International Incorporated, Maestro



International Inc., or their subsidiaries or affiliates own, manage, license, or otherwise control.

<b>Merchant</b>	A legal or natural person acting in commercial capacity to enter into a Merchant Agreement with ZEN and for whom ZEN processes Transactions related to the Merchant Service and/or Merchant Products.
<b>Merchant Agreement</b>	The agreement signed between ZEN and the Merchant for the provision of the Services to Merchant, which shall consist of the latest published version of these E-Commerce Terms and all its amendments, Schedules and other documents appended thereto by reference.
<b>Merchant Product</b>	A product offered by a Merchant.
<b>Merchant Service</b>	A service offered by a Merchant.
<b>Minimum Reserve</b>	The minimum level of Reserve which may be required from a Merchant from time to time pursuant to these E-Commerce Terms.
<b>Minimum Reserve Release Period</b>	The period that may be determined by ZEN, which specifies the term the Minimum Reserve can be held by ZEN subject to Section 12.8 of these E-Commerce Terms.
<b>MSC / Merchant Service Charge</b>	The percentage, fixed fee or a combination thereof, which shall be paid by the Merchant to ZEN for the use of a Payment Method in each Transaction.
<b>Party</b>	ZEN or Merchant, as the case may be (together “Parties”)
<b>Payment Currency</b>	The currency of the payment made by an Account Holder.
<b>Payment Details</b>	The details which are submitted to the Payment Interface together with a Transaction to enable the processing of the relevant Transaction and to perform fraud checks, including Card Data, details of the Account Holder, relevant authentication details and the payment amount.
<b>Payment Interface</b>	An electronic interface (including API) allowing the Merchant to communicate the Payment Details for individual Transactions to ZEN.



<b>Payment Method</b>	A payment method accepted by ZEN which can be used by Account Holders to complete Transactions with Merchants.
<b>Payment Method Provider</b>	The party offering and/or regulating the relevant Payment Method, including Card Schemes.
<b>Payment Method Rules</b>	The latest and applicable versions of any bylaws, rules, regulations, operating regulations, procedures and/or waivers issued by the Payment Method Providers, including VISA and Mastercard, as may be amended or supplemented over time and with which Merchant must comply when using the relevant Payment Method.
<b>PCI DSS</b>	Payment Card Industry Data Security Standards; the latest applicable version of the rules on payment cards' safety developed by the PCI Data Security Council appointed by the financial organizations to standardize the matters related to the data protection of the Cardholders, published at: <a href="http://www.pcisecuritystandards.org">http://www.pcisecuritystandards.org</a>
<b>Permitted Jurisdictions List</b>	The latest online version of the list of jurisdictions available on <a href="https://www.zen.com/files/tc/permitted_jurisdictions.pdf">https://www.zen.com/files/tc/permitted_jurisdictions.pdf</a> which may be updated by ZEN from time to time.
<b>Processing Fee</b>	A fixed and/or variable fee charged for each Transaction submitted for processing to the Payment Interface, regardless of the Payment Method used or the amount of Transaction. Processing Fee shall be charged in addition to the MSC.
<b>Redirected Payment Pages</b>	A page which incorporates the Payment Interface and where an Account Holder is redirected from the Merchant's website for the purpose of completing a Transaction.
<b>Refund</b>	A full or partial reversal of a Transaction which has already been processed, whereby the funds or a portion thereof are reimbursed to the Account Holder on the initiative or request of ZEN and the Merchant, or the Cardholder/Account Holder and ZEN, or the Cardholder/Account Holder and the Merchant, as the case may be.
<b>Refund Fee</b>	A fee payable by the Merchant for each Refund as explained under Section 17.5 below.



<b>Registration Data</b>	Any and all information and documentation related to the Merchant (including information about its shareholders and ultimate beneficial owners) required by ZEN for the compliance with applicable rules, laws and regulations including but not limited with those concerning prevention of money laundering and terrorist financing, as well as Know Your Customer (“KYC”) requirements of Payment Method Providers and/or Acquirers
<b>Renewal Term</b>	Each 1 (one) year term for which the Merchant Agreement shall be renewed following the end of the Initial Term or the previous Renewal Term, as the case may be.
<b>Reserve</b>	A sum of money which may be withheld by ZEN from funds to be Settled to the Merchant and/or separately deposited with ZEN by the Merchant on the request of ZEN as security for Chargebacks, Fines, fees due to ZEN and/or other liabilities, costs or expenses incurred in relation to the Services. Reserves shall include both the Minimum Reserve and the Rolling Reserve.
<b>Rolling Reserve</b>	A Reserve amount that is equal to the daily Transaction volume of the Merchant multiplied by the ratio determined by ZEN.
<b>Scheme Fee</b>	The fees to be paid by the Acquirer to the relevant Card Scheme for each attempted Transaction, whether the Transaction was successful or not.
<b>Service (s)</b>	The payment processing, payment routing, Settlement and/or other related services provided by ZEN to the Merchant under these E-Commerce Terms in order to facilitate the Account Holders using Payment Methods to pay for Merchant Products and Merchant Services.
<b>Service Availability</b>	The average minimum uptime of the Payment Interface described in Section 16 below.
<b>Settlement</b>	The payment of amounts owed by ZEN to the Merchant, with respect to settlements received by ZEN from Payment Method Providers or other Acquirers for Transactions successfully processed for the Merchant, minus the amounts for Refunds, Chargebacks,





	Transaction Fees and (if applicable) the amounts needed to keep the Merchant Reserve on the then current Minimum Reserve.
<b>Software</b>	The software, computer programs, code and data (including the Payment Interface and API) made available to the Merchant for the provision of the Services.
<b>E-Commerce Terms</b>	The current version of these terms and conditions of ZEN, as may be amended from time to time, which govern the use of Services.
<b>Transaction</b>	Any transaction between the Account Holder / Cardholder and the Merchant using the Services for the purchase of Merchant Products or Merchant Services, which is submitted to ZEN via the Payment Interface.
<b>Transaction Currency</b>	The currency of the Transaction as it was offered by the Merchant.
<b>Transaction Fee</b>	The sum of Merchant Service Charge (MSC) and Processing Fee.
<b>UnionPay Acceptance Mark</b>	The combined usage of the UnionPay logo which is owned and registered by China UnionPay through the Trademark Office of the State Administration for Industry and Commerce Management of the People's Republic of China, supporting graphics and scenario characters.
<b>Visa-Owned Marks</b>	All trademarks and other brand assets (for example: animation, sound, haptic) owned by Visa International Service Association or any of its subsidiaries and affiliates, and subsidiaries and affiliates of Visa Inc.
<b>ZEN</b>	The company providing the Services under these E-Commerce Terms; UAB ZEN.COM, a company registered in Lithuania at the address of Mesiniu str. 5, Vilnius under legal person code 304749651, having Electronic money license No. 35 issued by Bank of Lithuania on 2018/05/25. ZEN is supervised by the Bank of Lithuania located at Gedimino pr. 6, LT-01103, Vilnius, Lithuania, telephone no. +370 800 50 500. More information about the Bank of Lithuania is detailed by this link <a href="https://www.lb.lt/en/">https://www.lb.lt/en/</a>
<b>ZEN Account</b>	The electronic money account made available to the Merchant by ZEN and used for making Settlements to the Merchant.



**ZEN General User Terms**

The terms applicable to the creation and use of the ZEN Accounts, available on [https://www.zen.com/files/tc/general\\_user\\_terms.pdf](https://www.zen.com/files/tc/general_user_terms.pdf)



## 2. General Provisions

- 2.1. These E-Commerce Terms identify the terms and conditions applicable for payment collection, settlement as well as payment method and card acquiring services provided to the Merchant.
- 2.2. The E-Commerce Terms is an integral part of the Merchant Agreement and shall be construed as addendums to the original Merchant Agreement signed between the Merchant and ZEN.
- 2.3. Unless the context requires otherwise, all references made to the Merchant Agreement shall be interpreted to include the E-Commerce Terms; all references made to the E-Commerce Terms shall be interpreted to include the Merchant Agreement.
- 2.4. As further explained in Section 8.2 below, the Settlements under these E-Commerce Terms will be made to the ZEN Accounts created for the Merchant. The terms applicable to the ZEN Accounts are provided under ZEN General User Terms.
- 2.5. The Services are provided by UAB ZEN.COM, a company registered in Lithuania at the address of Mesiniu str. 5, Vilnius under legal person code 304749651, having Electronic money license No. 35 issued by the Bank of Lithuania on 2018/05/25.
- 2.6. Unless otherwise mentioned, ZEN acts as an Acquirer for the Merchant. Unless the context requires otherwise, references made to the Acquirer shall refer to ZEN.
- 2.7. ZEN is supervised by the Bank of Lithuania located at Gedimino pr. 6, LT-01103, Vilnius, Lithuania, telephone no. +370 800 50 500. More information about the Bank of Lithuania is detailed by this link <https://www.lb.lt/en/>
- 2.8. The Merchant hereby agrees that it is acting in commercial capacity and is a legal person or a sole trader (or equivalent) registered in a jurisdiction that is included in the Permitted Jurisdictions List.
- 2.9. ZEN and Merchant agree that the Chapter III and Articles 4(1), (2) and (3), Article 11(1), (2) and (5), Article 29(3), Articles 37, 39, 41, 44, 51, and 52 of Law of the Republic of Lithuania on Payments (law No XIII-1092) shall not be applicable for the Merchant under these E-Commerce Terms.

## 3. Payment Processing

- 3.1. The Merchant warrants that all information requested by ZEN in relation to a Transaction is duly submitted by the Merchant to ZEN at the time of the Transaction. ZEN shall be under no obligation to process a Transaction without receiving all data which was requested from the Merchant for the completion of the Transaction as well as relevant AML and fraud checks. The information which will be required for a Transaction (or specific types of Transactions) will be communicated to the Merchant via e-mail or the Payment Interface and may be changed by ZEN from time to time.
- 3.2. The Merchant shall not alter, tamper, remove or add data elements into Transaction messages submitted to ZEN for Authorization and Clearing.



- 3.3. In cases where ZEN acts as the Acquirer or ZEN contacts a third-party Acquirer on behalf of the Merchant to enable the use of the relevant Payment Method, the Merchant can make use of reconciliation services which would allow matching of processed Transactions with Settlement amounts received from the relevant Acquirers and/or Payment Method Providers. Unless otherwise agreed in writing by ZEN, in cases where Transactions are settled directly between the Acquirer (other than ZEN) or a Payment Method Provider and the Merchant, the Merchant shall not be eligible for the aforementioned reconciliation services.
- 3.4. Unless otherwise agreed in the Merchant Agreement, the Merchant shall redirect all Card Not Present Transactions of the Account Holders to the Redirected Payment Page for processing.
- 3.5. The Merchant shall not store Card Verification Value 2 (CVV2) information subsequent to Authorization.
- 3.6. The latest applicable versions of the 3D Secure authentication protocols shall be used for Transactions that are processed via Redirected Payment Pages, to the extent that it is technically possible and supported by the relevant Payment Provider or Acquirer.

#### **4. Merchant Registration Data and Due Diligence**

- 4.1. The Merchant shall provide Registration Data as requested by ZEN during the onboarding process and throughout the effective period of the Merchant Agreement. Provision of Registration Data by the Merchant shall be a condition precedent of the Merchant Agreement and shall also be provided by the Merchant as soon as practicable, if requested by ZEN any time after the execution of the Merchant Agreement. Merchant hereby warrants and guarantees that all Registration Data are correct, valid and up-to-date.
- 4.2. The Merchant shall inform ZEN about any changes in its Registration Data in writing, at least five business days prior to the occurrence of such changes. Supporting documentation or additional information concerning such changes shall be provided by the Merchant upon first request from ZEN. Merchant hereby grants ZEN and its employees or contractors the right to perform additional checks on its and its shareholders' / directors' / ultimate beneficial owners' creditworthiness, background and identity by contacting and consulting relevant registries and/or governmental authorities.

#### **5. Availability of Payment Methods**

- 5.1. ZEN does not guarantee that a Payment Method will be available for the Merchant or that all Merchants shall have access to the same Payment Methods. The availability of a given Payment Method is subject to the acceptance and fulfilment of specific rules and requirements of the relevant Payment Method Provider and/or Acquirer which may withhold or withdraw such approval in its own discretion at any time and without notice. Merchants shall acknowledge that they may be required to provide additional Registration Data due to changes in the requirements of a Payment Method Provider or additional request submitted to ZEN by a Payment Method Provider. Merchant hereby authorizes ZEN to submit its Registration Data with the relevant Payment Method Providers and Acquirers where necessary.



- 5.2. Additional Payment Methods may be provided in the future, in which case, the Merchant will have the option to enable them by agreeing to the pricing provided by ZEN.
- 5.3. Notwithstanding the circumstances provided in the paragraph above, the availability of Payment Methods will continue unless ZEN, in its reasonable discretion, decides that there is a material change in the financial circumstances, creditworthiness, applicable rules or laws, terms, costs or fees of the relevant Payment Method Provider or Acquirer. In the event that availability of a Payment Method or Acquirer is discontinued, ZEN will notify the Merchants via e-mail as soon as possible; however, depending on the reason for discontinuation, prior notification may not be possible.

## 6. Fraud Screening

- 6.1. In order to ensure a minimum level of fraud security or to limit the amount of Chargebacks, certain upper and/or lower risk configuration thresholds for accepting or rejecting Transactions may be imposed which cannot be modified by the Merchant.
- 6.2. ZEN has a right (but no obligation) to suspend or cancel any Transaction that it reasonably deems to be risky, fraudulent, unlawful or contrary to Payment Method Rules. This does not infer any liability on ZEN with regards to accepting or rejecting Transactions. The Merchant shall have the responsibility for Transactions processed for its Products or Services and to the extent that it is allowed under the rules of the relevant Payment Method and that it is not contrary to these E-Commerce Terms, shall have the right to cancel Transactions following their Authorization.

## 7. Merchant's Obligations

- 7.1. The Merchant shall ensure that its employees, officers, representatives, agents and/or contractors act in full compliance with these E-Commerce Terms. The Merchant is responsible for its employees' acts and omissions.
- 7.2. The Merchant shall notify ZEN in advance with regards to any material change in its legal status, financial circumstances, ultimate beneficial owners, shareholders, business activities, as well as the Merchant Services or Merchant Products.
- 7.3. The Merchant warrants that it shall be in full compliance with all Payment Method Rules that it uses for its Transactions and all relevant laws in the jurisdiction the Merchant operates in. The Merchant shall regularly review any changes which may occur in the Payment Method Rules or applicable laws and shall ensure that its employees are aware of the latest applicable versions of these rules or laws in order to ensure the Merchant's compliance. The Merchant shall immediately stop using a Payment Method and notify ZEN in writing when it becomes aware that it is not able to warrant its compliance with the relevant Payment Method Rules or applicable laws.
- 7.4. Merchant shall not allow third parties to use the Services or allow the Services to be used for the purchase of goods or services that are not Merchant's Products or Merchant's Services. Merchant shall keep ZEN harmless from any penalties, claims, loss or damages which may be suffered by ZEN, the Merchant and/or any third party in connection with such unauthorized use of the Services.



- 7.5. The Merchant shall not get into contact with a Payment Method Provider to change the Settlement account to an account other than the Merchant's ZEN Account. Otherwise, the Merchant will be responsible for any damages, losses, expenses which may arise as a result.
- 7.6. The Merchant represents and warrants that
  - 7.6.1. it is not established in an OFAC sanctioned country,
  - 7.6.2. it holds all necessary permits required under applicable laws and regulations to conduct its business activity and operations in its country of registration and operation,
  - 7.6.3. it complies with local tax laws and regulations and it pays or will pay income tax on profits attributable to Transactions in the country (to the extent that taxes apply) and is registered to collect (regardless of whether actually required to collect) indirect taxes, including but not limited to value-added tax (VAT), goods and services tax (GST), sales tax, and any similar tax applicable to the Merchant,
  - 7.6.4. the Transaction terms and conditions established by the Merchant state that the Merchant, as the contractual counterparty to the consumer (if applicable), is subject to the laws and courts of the country where the Merchant is registered or operating from.
- 7.7. The Merchant must ensure that a Cardholder understands that the Merchant is responsible for the Transaction, including delivery of Merchant Products or provision of the Merchant Services that are the subject of the Transaction, and for customer service and dispute resolution.
- 7.8. The Merchant warrants that the Services will solely be used in relation to purpose of receiving payment for the Merchant Services or Merchant Products which have been identified by the Merchant during the onboarding and KYC process or any subsequent additional underwriting / AML / KYC review. The use of the Services is strictly limited to these Merchant Products and Merchant Services. In the event that there is a change in the notified Merchant Products or Merchants Services, or there is a material change in their description as it was provided, the Merchant shall obtain the written permission of ZEN before the Services can be used for these Merchant Services and Merchant Products.
- 7.9. The Merchant shall not use the Services for facilitating the payment of Merchant Products and/or Merchant Services which have been listed in Schedule I of these E-Commerce Terms, and if the sale of these is considered illegal in the Republic of Lithuania, under the applicable Payment Method Rules, or the jurisdiction where (i) the Merchant Products or Merchant Services are being sent or offered from, (ii) the Merchant Products or Merchant Services are being sent or offered to, (iii) the Settlement for the underlying Transaction will be received. Schedule I may be amended by ZEN at its sole discretion from time to time, by notifying the Merchant either in writing or through ZEN's Merchant portal. For the avoidance of doubt, Merchant is solely responsible to ensure that its use of the Services and the sale and purchase of Merchant Products and Merchant Services is not restricted under the applicable laws or Payment Method Rules. Transactions shall be legal in both the Cardholder's and the Merchant's jurisdiction.



- 7.10. The Services of ZEN may not be used (and Transactions may not be submitted for processing) for prepaying Merchant Products and Services for which the Delivery Date is in part or in whole more than 12 months after the date the Transaction is submitted for processing.
- 7.11. The Merchant warrants that the following information is visible to all Account Holders that are processing a Card Not Present Transaction on the Merchant's website: Merchant's legal name, full and accurate description of the Merchant Products and/or Merchant Services offered, return, refund and delivery policies of the Merchant, contact details of the Merchant for customer support (including e-mail address or phone number), physical address of the Merchant from which the Merchant is conducting its business activity and operations, consumer data protection policy of the Merchant and all other information required by the applicable laws and Payment Method Rules to be provided to the Account Holder.
- 7.12. If the Merchant is provided with the Service for the acceptance of Visa-branded Cards for Transactions, the Merchant must display the appropriate Visa-Owned Marks to indicate which Cards it accepts for payment. The Merchant shall not use the Visa-Owned Marks in a way that implies endorsement of any other product or service. The Merchant shall ensure that any material on which the Visa-Owned Mark appears does not infringe, dilute, or denigrate any of the Visa-Owned Marks or Visa products or services or impair the reputation or goodwill of Visa or the goodwill associated with the Marks. The Merchant shall not refer to Visa in stating eligibility for its products, services, or misrepresent itself as a Visa member. The use or display of Visa-Owned Marks does not give the Merchant any ownership or interest in them.
- 7.13. If the Merchant is provided with the Service for the acceptance of Mastercard-branded Cards for Transactions, the Mastercard Marks must be prominently displayed wherever the payment option is represented, in accordance with the Mastercard branding requirements and guidelines available at <http://brand.mastercard.com>. The Merchant must use Mastercard Marks in accordance with the standards and rules published by Mastercard and the Merchant Agreement. The Merchant's use or display of any Mark will terminate effective with the termination of the Merchant Agreement, or upon notification by Mastercard to discontinue such use or display. The use or display of Mastercard Marks does not give the Merchant any ownership or interest in them.
- 7.14. If the Merchant is provided with the Service for the acceptance of UnionPay-branded Cards for Transactions, the UnionPay Acceptance Mark must be prominently displayed wherever the payment option is represented. UnionPay Acceptance Mark indicates the application environment can accept the bank cards with UnionPay logo and provide relative UnionPay product services. UnionPay Acceptance Mark includes online and offline acceptance mark, the design and usage shall comply with the UPI Operating Regulations.
- 7.15. The Merchant will honour, without discrimination, any Card properly submitted for payment by a Cardholder. Furthermore, the Merchant may not request from the Account Holder/ Cardholder any extra fee, charge or similar consideration for the use of a given Payment Method.



- 7.16. If a Cardholder presents a Card that is issued in the EEA and that is co-badged with two payment schemes accepted by the Merchant, the Merchant must both honour the Cardholder's choice of payment scheme and process the transaction according to the Cardholder's choice of payment scheme.
- 7.17. The Merchant will confirm the identity of the Cardholder and will not honour any Card that has expired, and, in addition, Merchant may require additional identification if the information is required to complete the transaction, such as for e-commerce transactions.
- 7.18. The Merchant will not add any amount to the agreed price of goods or services offered as a condition of paying with a Card.
- 7.19. The Merchant shall not use the Services for funds disbursement in the form of cash to Cardholders unless Merchant:
  - 7.19.1. is a financial institution providing cash disbursement, a hotel or cruise line as specified in the Payment Method Rules or perform a Cash Back transaction.
  - 7.19.2. is dispensing funds in the form of travellers' cheques. Disbursing funds in the form of travellers' cheques is forbidden if the sole purpose is to allow the Cardholder to make a cash purchase of goods and services from the Merchant.
  - 7.19.3. is dispensing funds in the form of travel cards of Payment Method Providers, or in foreign currency. In this case, the transaction amount is limited to the values of the travelers' cheques, travel cards, or foreign currency plus any commission or fee charged by the Merchant.
- 7.20. The Merchant shall not accept Cardholder payments for:
  - 7.20.1. collecting or refinancing an existing debt that has been deemed uncollectible by the Merchant providing the associated goods or services;
  - 7.20.2. previous Card charges;
  - 7.20.3. transactions that represent the collection of a dishonored cheque;
  - 7.20.4. other type of debt repayment unless it is permitted under the Payment Method Rules.
- 7.21. Unless applicable law expressly requires that a Merchant be permitted to impose a tax, the Merchant shall not add any tax to the Transaction amount. In the event that the Merchant is permitted to impose a tax on the Account Holder, any tax amount must be included in the Transaction amount and not collected separately.
- 7.22. The Merchant must not require, or indicate that it requires, a minimum or maximum Transaction amount to accept a valid and properly presented Card.
- 7.23. The Merchant will properly disclose to the Cardholder at the time of the card Transaction any limitation or condition it imposes on accepting returned merchandise. Merchant may not include any statement that waives or seeks to waive a Cardholder's right to dispute the transaction with a Card's Issuer.





- 7.24. The Merchant must submit to Acquirer records of valid Transactions only between the Merchant and a bona fide Account Holder. Merchant must present records of a valid Transactions no later than three (3) business days after the date of the transaction, except, the record must not be presented until after the goods are shipped or the services are performed unless, at the time of transaction the Cardholder agrees to a properly disclosed delayed delivery of the goods or services.
- 7.25. In the event that the Merchant uses or intends to use a service provider to store, transmit or process Card Data, the Merchant must:
  - 7.25.1. Provide ZEN with information about such service provider; and
  - 7.25.2. Validate that the relevant service provider is compliant with the PCI DSS or a similarly established security standard and provide that certification to ZEN.
- 7.26. The Merchant must not submit to Acquirer a Transaction that
  - 7.26.1. the Merchant knows or should have known to be illegal or fraudulent,
  - 7.26.2. was previously disputed and subsequently returned to the Merchant,
  - 7.26.3. was not authorized by the Cardholder, or that it knows or should have known to be authorized by a Cardholder colluding with the Merchant for a fraudulent purpose.
- 7.27. Merchant shall fully cooperate with ZEN in providing any information or documents which may be required for investigations related to fraud or AML, Chargebacks, similar queries forwarded by the Acquirers or the Payment Method Providers, or any other dispute which may be raised by the Cardholders, Account Holders or other related parties. Merchant shall keep the records of all details regarding the Transactions (including but not limited with correspondences with the Account Holder as well as relevant invoices) and their delivery (including but not limited with proof of shipping and delivery) for the 2 years following the processing date of the Transaction. In the event that the warranty period applicable for the Merchant Product or Merchant Service is longer than 2 years or the applicable laws require such records to be kept for a period longer than 2 years, the extended period shall apply for keeping the records.
- 7.28. If the Merchant is undergoing a forensic investigation connected with this Agreement, the Merchant must fully cooperate with the authorities handling investigation until the investigation is completed.
- 7.29. Any change made in the delivery address of a Merchant Product or Merchant Service after Authorization has been requested for the relevant Transaction shall not be accepted by the Merchant.



- 7.30. The Merchant is hereby reminded that Payment Method Rules impose extensive Fines or other penalties for non-compliance on ZEN as a result of acts or omissions of the Merchant. The Merchant shall immediately inform ZEN in the event that it becomes aware or suspects of any event which may give rise to a Fine, or any fraudulent, illegal, unauthorized or suspicious action taken on the Merchant account, API, Software or otherwise relating to the Transactions, Services, Cards, Cardholders, and/or Account Holders. The Merchant shall fully cooperate with ZEN in preventing such unauthorized or suspicious actions taken and share all information or documents which may be helpful in investigating, remedying or defending ZEN in the aforementioned circumstances.
- 7.31. Merchant represents and warrants that it shall not copy, capture or intercept the Payment Details of the Account Holder via any page/application/method or ask the Account Holder to enter the Payment Details on a website/application other than the Redirected Payment Page or API. Unless otherwise explicitly allowed under the Payment Method Rules or these E-Commerce Terms, the Merchant shall not disclose Payment Details to a third party.
- 7.32. The Merchant shall fully indemnify and hold ZEN harmless against:
- 7.32.1. Any Fines or;
- 7.32.2. Any loss or damage incurred by ZEN which arise in relation to the Merchant's breach (including negligent breach) of the applicable laws, Payment Method Rules, these E-Commerce Terms and/or the Merchant Agreement.
- 7.33. Notwithstanding anything to the contrary herein, Merchant's breach of any terms of this Section 7 will constitute a material breach of the Merchant Agreement. In addition to ZEN's right to suspend or terminate the Merchant Agreement, ZEN also has a right to increase the Fees or apply extra charges on the Merchant in the event of a material breach of the Merchant Agreement.

## **8. Authorization and Clearing**

- 8.1. For some Payment Methods it is possible to ask for Authorization of a payment (to check whether the Account Holder indeed has an Account that can be charged for the payment amount) without immediately Clearing the Transaction. The prior Authorization gives the Merchant some additional assurance that when the Transaction is Cleared, it will be Settled to the Merchant (and not be blocked or be subject to a Chargeback). The Merchant is responsible for providing the data required to Clear the Transaction; this can be realized via the API.
- 8.2. Certain Payment Methods allow the Merchants to confirm that the Authorization for a Transaction is granted before Clearing that Transaction through the API. In the event that the Merchant exceeds any maximum Clearing Period which may be determined by the relevant Payment Method Provider or the Issuer, the prior Authorization may no longer be valid. In such situations, the Merchant shall obtain additional Authorisation. The Merchant shall be solely responsible for taking the relevant Clearing Periods into consideration for Clearing Transactions.



## 9. Settlement

- 9.1. ZEN is responsible for making Settlements to the Merchant pursuant to the terms of the Merchant Agreement.
- 9.2. The Merchant agrees to create a ZEN Account by accepting the ZEN General User Terms available on the ZEN website. Four ZEN Accounts will be created for the Merchant in four currencies (EUR, USD, GBP, PLN). Unless otherwise agreed by the Parties in writing, Settlements will be made to the Merchant's designated ZEN Account. ZEN is not responsible for delays or failures to make Settlements arising out of the Merchant's failure to keep and designate an active ZEN Account.
- 9.3. Settlements will be made within the period specified in Annex A to the Merchant Agreement, following the date when the funds related to the underlying Transaction are settled between the relevant Acquirer or Payment Method Provider and ZEN ("Settlement Period"). The Merchant understands that payment periods or other conditions concerning the settlements to be made by each Acquirer or Payment Method Provider may vary. ZEN will use good-faith efforts (but cannot guarantee) to provide Settlements earlier than the Settlement Period, particularly for Payment Methods which take a long time to forward the Transaction amounts to ZEN. ZEN shall not be liable for any delays in Settlement or for receiving no Settlement due to the late performance or non-performance of an Acquirer or Payment Method Provider for any reason whatsoever (including but not limited to their insolvency or bankruptcy).
- 9.4. ZEN has a right to deduct any funds which were transferred to the ZEN Account of the Merchant in excess of the Settlement amounts by mistake.
- 9.5. In the event that ZEN, the relevant Acquirer or Payment Method Provider suspects that a Transaction which has been Cleared is related to illegal activities, fraudulent, or otherwise in breach of any applicable law or rule or is likely to be subject to a Chargeback or Fine, the Settlement for that Transaction may be withheld by ZEN until the suspecting party (or its agent) completes its investigation about the matter. Merchant is obliged to provide information or documentation regarding such a suspected Transaction which may be requested by ZEN, the relevant Acquirer or Payment Method Provider. The Merchant agrees that the result of the investigation held pursuant to the applicable laws or the relevant Payment Method Rules shall be binding and consequently Settlement may be refused.
- 9.6. In the event that a Settlement cannot be completed due to circumstances beyond the control of ZEN (in particular legal or regulatory restrictions or force majeure events) the obligation of ZEN with regards to the Settlement shall be suspended until the underlying circumstances cease to exist. The Parties shall inform each other as soon as possible after being aware of such circumstances and shall cooperate to find a solution for the finalization of the Settlement. For the avoidance of doubt, no interest shall be accrued on the Settlement amounts not transferred to the Merchant for any reason whatsoever.



- 9.7. In the event that a Transaction was not settled due to the reasons like Chargeback/Fraud or order cancelation at a time following its Settlement to the Merchant, the Merchant shall return the relevant funds to ZEN without delay. ZEN shall also have the discretionary right to set off such funds from future Settlement amounts with the Merchant.
- 9.8. Account Holders may have the option to pay in a Payment Currency that is different than the original Transaction Currency. If the Transaction Currency is EUR, USD, GBP or PLN, Settlements will be made to the Merchant's ZEN Account in the relevant currency without any conversion. If the Transaction Currency is in another currency, it will be converted to EUR based on the Currency Exchange Rates applicable at the time of Settlement. Additionally, a Foreign Exchange Fee will be applied for each currency exchange transaction made for the Merchant for the purpose of Settlement.
- 9.9. In no event shall the Merchant be eligible to receive any interest over the funds accumulated with ZEN.

## 10. Pricing

- 10.1. The Transaction Fees and/or Chargeback Fees can be modified by ZEN at its sole discretion. Such changes shall become applicable three (3) months after they have been notified to the Merchant. The Merchant shall have the right to terminate the Merchant Agreement by delivering a written termination letter to ZEN within 3 months following the date on which such modification in the Transaction Fees or Chargeback Fees have been introduced by ZEN. Increases in the Interchange Fees or other amounts levied by the Payment Method Providers, Acquirers or other third-party service providers will be reflected as they become applicable for ZEN or the Merchant, as the case may be.
- 10.2. The Transaction Fees and/or Chargeback Fees can also be modified each year by ZEN in line with the latest annual inflation rates published by Eurostat. Such adjustments will be notified to the Merchant 1 (one) month in advance; however, for the avoidance of doubt, the Merchant shall not have the right of termination as it was granted for other modifications in the Transaction Fees and/or Chargeback Fees pursuant to the paragraph above.

## 11. Fees and Payment

- 11.1. If the total Transaction Fees incurred by the Merchant for one month is below the Minimum Monthly Invoiced Fee that is agreed in the Merchant Agreement, the Merchant will be invoiced an amount that is equal to the Minimum Monthly Invoiced Fee for that month. If any monthly subscription fee is agreed with the Merchant, it will be charged in advance for each subsequent month.
- 11.2. In the case of any percentage-based fee (e.g. Processing Fee, Interchange Fee, Scheme Fee and/or MSC), the result of each individual fee will be rounded up to the nearest one hundredth of the relevant currency (e.g. all EUR amounts used in or resulting from any calculation of any fee will be rounded up to the nearest cent).



- 11.3. A detailed breakdown of the relevant Transaction Fees as well as other deductions made or amounts set-off from the Settlements will be provided with the invoices. Unless otherwise agreed between the Merchant and ZEN in writing, the Merchant will be invoiced in the pricing currency notified to the Merchant by ZEN (“Pricing Currency”).
- 11.4. The Fees, as well as all other amounts due from the Merchant, including but not limited with Chargebacks and Penalties will be deducted from the ZEN Account balance of the Merchant on an ongoing basis.
- 11.5. Notwithstanding other rights ZEN may have under the applicable laws, these E-Commerce Terms or the Merchant Agreement, if the balance on the designated ZEN Account of the Merchant is insufficient to cover the Fees, Chargebacks, Penalties or other amount due under these E-commerce Terms, ZEN has the right to deduct the unpaid amounts from other ZEN Accounts belonging to the Merchant. If the Pricing Currency is different than the currency of the aforementioned ZEN Accounts, ZEN will automatically issue currency conversion Transactions from these ZEN Accounts based on the Currency Exchange Rates applicable at the time of the conversion. The amount of the funds converted and deducted will be limited with the total amounts due from the Merchant to ZEN.
- 11.6. Notwithstanding other rights ZEN may have under the applicable laws, these E-Commerce Terms or the Merchant Agreement, if the total balance of all ZEN Accounts belonging to the Merchant is still insufficient to cover the payables of the Merchant to ZEN (such as Fees, Chargebacks or Penalties), ZEN may suspend the provision of Services to the Merchant until sufficient funds are transferred to the Merchants ZEN Accounts.

## **12. Reserve**

- 12.1. ZEN has the right to establish Minimum Reserve and/or Rolling Reserve for the Merchant in its sole discretion. The amount of the Minimum Reserve, the Minimum Reserve Release Period and the ratio of the Rolling Reserve (if any) will be determined by ZEN in its sole discretion based on factors including but not limited with the Merchant’s risk profile, business and financial conditions. All information about the Minimum Reserve, Minimum Reserve Release Period, Rolling Reserve will be notified to the Merchant by e-mail following the onboarding of the Merchant or each time these values have been modified by ZEN.
- 12.2. The determination of the Minimum Reserve shall be based on ZEN’s estimation of the Delivery Pending Amount of each Merchant, as well as other risk profiles of the Merchant such as the performance, average delivery times, refund and chargeback levels, customer satisfaction levels, or industry benchmark data. ZEN shall be entitled to modify the Minimum Reserve in its sole discretion from time to time based on the aforementioned factors.



- 12.3. In order to assist with ZEN's determination of the risk profile and estimation of the Delivery Pending Amount, the Merchant may also be required to submit satisfactory information regarding its financial status and its ability to provide Merchant Products and Merchant Services. In determining the Delivery Pending Amount, ZEN may take into consideration any risks or uncertainties involving the financial stability of the Merchant or the accuracy and completeness of the information received from the Merchant.
- 12.4. ZEN will determine the Minimum Reserve for the Merchant before the Merchant shall be allowed to use the Services under the Merchant Agreement. This initial determination will be based on the information and factors specified in the above paragraphs. The Merchant shall not use the Services before the Minimum Reserve is fully deposited with ZEN.
- 12.5. Throughout the term of the Merchant Agreement, the Merchant shall ensure that the Minimum Reserve is retained with ZEN. Without prejudice to other rights of ZEN to set-off or withhold payments due to the Merchant, ZEN shall have the right to ensure that the Minimum Reserve is retained by way of setting off the amounts necessary to complete the Minimum Reserve from Settlements of the Merchant. However, in the event that ZEN requests the Merchant to complete the Minimum Reserve, the Merchant shall transfer the funds that are sufficient to reach the required level of Minimum Reserve without delay. ZEN shall have the right to suspend the provision of its Services to a Merchant which fails to retain the Minimum Reserve as described herein.
- 12.6. ZEN may also keep a Rolling Reserve which will be calculated based on total daily Transaction volume of the Merchant and deducted from the relevant Settlement to the Merchant. The Rolling Reserve does not apply to the Merchant, unless otherwise notified by ZEN according to the procedure described in Section 12.1 above.
- 12.7. The application of the Rolling Reserve is based on the sole determination of ZEN. The amounts kept based on the Rolling Reserve will be released to the Merchant after 180 (one hundred and eighty) days or the amount of days agreed in the Merchant Agreement ("Rolling Reserve Release Period") has passed from the date corresponding to the daily Rolling Reserve calculation, whichever is earlier. The Merchant hereby agrees and acknowledges that ZEN retains the Rolling Reserve for the legitimate purposes of risk management and compliance with Payment Method rules as well as applicable laws and regulations.
- 12.8. ZEN has the right to retain the Minimum Reserve during the Minimum Reserve Release Period after the termination of the Merchant Agreement or after the Merchant Products or Merchant Services of the last processed Transaction have been delivered to the relevant recipient, whichever occurs later. ZEN may, in its sole discretion, release the Minimum Reserve back to the Merchant in monthly arrears throughout this period.
- 12.9. Notwithstanding Section 26.1 below, ZEN has a right to adjust the Minimum Reserve, Rolling Reserve, Minimum Reserve Release Period and/or Rolling Reserve Release Period in its reasonable discretion based on the risk profile of the Merchant.
- 12.10. For the avoidance of doubt, no interest shall accrue on the Reserves held by ZEN.



## 13. Taxes

- 13.1. All fees of ZEN are excluding applicable VAT, turnover and other taxes or levies which will be separately payable by Merchant where applicable to invoiced amounts or services.
- 13.2. Unless otherwise provided in writing, all fees payable to ZEN in relation to the Services are excluding any VAT or other taxes which may be applicable under the applicable laws. The Merchant shall be solely responsible to pay, indemnify, and hold ZEN harmless from (i) any sales, use, excise, import or export, value-added, or similar tax or duty, and any other tax or duty, and (ii) all government permit fees, customs fees and similar fees which ZEN may incur with respect to the Merchant Agreement and the E-Commerce Terms. Such taxes, fees and duties paid by Merchant shall not be considered a part of, a deduction from, or an offset against, payments due to ZEN hereunder.

## 14. MSC Calculation

- 14.1. The agreed method of calculating the MSC is provided for in the Merchant Agreement.
- 14.2. In the event that a significant change has occurred in relation to the usage data, characteristics or other assumptions which have been used as the basis of the calculation method agreed with the Merchant, or that these assumptions or data do not reflect the actual circumstances of the Merchant's use of the Services, ZEN has the right to make reasonable adjustments in the fee structure proposed to the Merchant in the Merchant Agreement in its sole discretion.
- 14.3. The applicable Interchange Fees or Scheme Fees may change from time to time. The basis of calculation for the Interchange Fees and Scheme Fees are published by the relevant Card Schemes.

## 15. API and Software Integration

- 15.1. The Merchant represents and warrants that it shall be fully compliant with PCI DSS and shall provide satisfactory proof of its compliance on a periodic basis or upon request by ZEN. The Merchant shall ensure that it is fully compliant with PCI DSS standards to the extent to which they apply and shall immediately notify ZEN in the event that circumstances arise which may affect its compliance. For the avoidance of doubt, the Merchant shall be solely liable for and hold ZEN harmless from any Fines, costs or damages which may arise in connection with its non-compliance with PCI DSS terms.
- 15.2. It shall be the responsibility of the Merchant to follow the instructions/guidelines required to connect its systems with the Payment Interface and other relevant Software, ensure the maintenance and security of the systems, and to keep them operational and up-to-date with the latest updates in the Software or API.



## 16. Service Availability

- 16.1. ZEN shall use its commercially reasonable efforts to ensure that Service Availability is not measured (on a quarterly basis) below 99.5%. Scheduled downtime for maintenance pursuant to Section 16.2 below, or interruptions caused by or arising out of events that are beyond the control of ZEN, acts or omissions of the Payment Method Providers, Card Schemes, Merchants, Issuers or Acquirers, telecommunication network providers or changes that are being made as a result of the Merchant's request or that are otherwise beneficial to the Merchant, shall be excluded from the calculation of downtime.
- 16.2. In the event that maintenance of the technical systems is necessary, Merchant will be informed as soon as practically possible. The maintenance will be scheduled on a date and time that would endeavour to ensure minimization of the potential impact of the maintenance on the Merchant.
- 16.3. Merchant is obliged to immediately notify ZEN of any unexpected downtime of the Services which it experiences and to provide all reasonably requested co-operation in investigating and resolving any such downtime.

## 17. Chargebacks and Refunds

- 17.1. Authorization shall not be deemed as a guarantee that the Transaction will be processed or that there will not be any Refunds, Chargebacks or similar event following the completion of the Transaction. Transactions for which Settlements have been completed may still be subject to Chargebacks; in which case, the Chargeback Fees and the relevant amount which is subject to the Chargeback will be set off or otherwise invoiced to the Merchant pursuant to the E-Commerce Terms.
- 17.2. ZEN monitors the Chargeback(s)/Fraud(s) levels for each Payment Method available for the Merchant. ZEN reserves its right to suspend or cancel the availability of a Payment Method to the Merchant in the event that ZEN, at its reasonable discretion, decides that the Chargeback(s)/Fraud(s) levels are (or can be expected to be) above reasonably acceptable levels, or that the Merchant Products or Merchant Services are likely to cause high Chargeback(s)/Fraud(s) volumes or are not in compliance with the applicable laws or Payment Method Rules. For the avoidance of doubt, this right does not infer any liabilities on ZEN to monitor or regulate Chargeback(s)/Fraud(s) or ensure Merchant's compliance with Payment Method Rules. The Merchant shall keep ZEN harmless from any Fines received in connection to Chargeback(s)/Fraud(s) related to Transactions of the Merchant.
- 17.3. The Merchant shall only issue Refunds to an Account Holder through the same Payment Method that was originally used for the Transaction, for the Payment Methods which allow issue Refunds. Failing to do so may result in a Chargeback being processed for the Transaction which has already been Refunded by the Merchant. ZEN accepts no responsibility for losses suffered by the Merchant as a result of its failure to abide by this provision.





- 17.4. The Merchant will be charged a Chargeback Fee of **25 EUR** for every Chargeback application made by an Account Holder or Cardholder, regardless of the outcome of such application. The Merchant agrees that the Chargeback Fee is not refundable.
- 17.5. All Refunds will be subject to the same Transaction Fees as the original Transaction. In addition to the Transaction Fees (and Chargeback Fee, if applicable), ZEN may charge the Merchant an additional Refund Fee. The Refund Fee is **2.5 EUR** per case. Unless otherwise agreed by ZEN in writing, the amounts corresponding to Refunds and Refund Fees will not be funded from the Reserve of the relevant Merchant. ZEN will not process the Refunds (i.e. return the Refund amount to the relevant Account Holder through the original Payment Method / Acquirer used for the Transaction) unless the next Settlement of the Merchant is sufficient to cover the Refund amount and Refund Fees in full.
- 17.6. The Merchant hereby acknowledges that the fees (including the Refund Fee, Transaction Fee, Interchange Fee, Chargeback Fee) charged for a Transaction which has been Refunded for whatever reason (including a Chargeback) are non-refundable.

## 18. Property Rights

- 18.1. ZEN may provide Merchant with certain software and documentation necessary to enable the use of the Services by the Merchant. ZEN hereby grants the Merchant a royalty free, non-exclusive, revocable, non-sublicenseable, non-transferable license to use the Services during the term of the Merchant Agreement. The Merchant acknowledges that all the materials provided for the Services and the software as well as other intellectual property rights related to the Merchant Agreement and the Services are owned by ZEN and its licensors.

## 19. Confidentiality

- 19.1. Each Party (the "Recipient") will retain in confidence all Confidential Information.
- 19.2. Recipient will protect Confidential Information against any unauthorized use or distribution to the same extent that the Recipient protects its own Confidential Information of a similar nature against unauthorized use or distribution but in no event using less than commercially reasonable efforts to protect the Confidential Information. Without limiting the generality of the foregoing:
- 19.2.1. the Recipient will use Confidential Information solely for the purposes for which it has been disclosed;
- 19.2.2. the Recipient will disclose such Confidential Information only to those of its employees, agents, consultants and other representatives who have a need to know the same for the purposes described in 19.2.1 above, and who understand and acknowledge their obligation and willingness to preserve and hold such Confidential Information in strict confidence;
- 19.2.3. the Recipient will not copy or authorize the copying of any Confidential Information, except as required for the purposes described in 19.2.1 above or otherwise authorized by the disclosing Party in writing;



- 19.2.4. any copy of any Confidential Information that is made or authorized by the Recipient will contain all copyright, confidentiality or other proprietary notices contained on such document; and
- 19.2.5. the Recipient will notify the disclosing Party promptly in writing in the event Recipient learns of any unauthorized use or disclosure of any Confidential Information and will cooperate in good faith to remedy such occurrence to the extent reasonably possible.
- 19.3. Confidential Information does not include any information that: (i) was known by Recipient without obligation of confidentiality prior to disclosure thereof; (ii) was in or entered the public domain through no fault of Recipient; (iii) is disclosed to Recipient by a third party legally entitled to make such disclosure without violation of any obligation of confidentiality; (iv) is required to be disclosed by Applicable Law or order provided, that in such event, the disclosing party shall provide the other party with notice of such law or order and provide reasonable cooperation in connection with any attempt to challenge or limit the scope of such disclosure; or (v) is independently developed by Recipient without reference to any Confidential Information.
- 19.4. This section of the E-Commerce Terms shall survive the termination of the Merchant Agreement for any reason whatsoever.

## 20. Data Protection

- 20.1. To the extent that they act as Data Controllers or Data Processors for the purpose of providing or receiving the Services, ZEN and Merchant shall act in full compliance to Regulation (EU) 2016/679 (“General Data Protection Regulation”) and other laws and regulations of the Republic of Lithuania, implementing or related to the General Data Protection Regulation. Both ZEN and Merchant warrant that they will take all necessary technical and organizational measures to ensure that Personal Data is processed, controlled or otherwise collected or shared in strict compliance with General Data Protection Regulation and relevant laws.
- 20.2. In the event that the Merchant becomes aware of an actual or suspected breach to the security, confidentiality or integrity of the Personal Data which may be processed by both ZEN and the Merchant, the Merchant shall notify ZEN within 24 hours of the identification of the breach and the Parties agree to assist each other in taking the steps necessary for investigating the issue or, mitigating or remediating any potential breach.
- 20.3. In particular, the Merchant shall ensure that it has obtained all the necessary consents from the Account Holders whenever their personal data is collected and/or transferred to and processed by ZEN (acting as Data Processor) for the completion of Transactions.

## 21. Term

- 21.1. The Merchant Agreement commences on the Effective Date and, unless terminated earlier in accordance with the provisions of the Merchant Agreement or these E-Commerce Terms, shall continue in full force and effect during the Initial Term and thereafter shall automatically be extended for the Renewal Term unless written notice of intent not to renew is given by either Party to the other at least thirty (30) days prior to the expiry of the Initial Term or any Renewal Term (as applicable).



- 21.2. After the Initial Term and subject to Section 22 below, either Party may terminate this Agreement at any time for any reason or no reason by providing the other Party with not less than ninety (90) days' prior written notice.

## 22. Termination

- 22.1. Merchant has a right to terminate the Merchant Agreement by notifying ZEN in writing in the event that ZEN fails to meet the Service Availability rate provided in the E-Commerce Terms for two consecutive quarters.
- 22.2. ZEN is entitled to terminate the Merchant Agreement and/or suspend the Services with immediate effect, including but not limited to processing or Settlement of Transactions for Merchant immediately in part or in whole if one or more of the following circumstances occurs:
- 22.2.1. ZEN has reasonable grounds to suspect that the Merchant Services, Merchant Products, Transactions or the Merchant's other commercial activities are in breach of the applicable rules and laws, including the Payment Method Rules;
- 22.2.2. ZEN reasonably suspects that the Merchant is engaged (or will be engaged) in activities that entail (or may entail) a substantial risk of creating loss or harm to the reputation or goodwill of ZEN or any Payment Method Provider;
- 22.2.3. Merchant is in material breach or ZEN reasonably suspects that Merchant will be in material breach of the Payment Method Rules, Merchant Agreement and these E-Commerce Terms;
- 22.2.4. Merchant has failed to notify ZEN in advance with regards to any material change in its legal status, financial circumstances, ultimate beneficial owners, shareholders, as well as the Merchant Services or Merchant Products;
- 22.2.5. An Acquirer, regulator or Payment Method Provider warns or informs ZEN about the Merchant's breach of the applicable laws, rules or regulations, or otherwise demands ZEN to terminate or suspend providing Services to Merchant;
- 22.2.6. It becomes apparent that the Merchant has provided incorrect or false information or documents to ZEN or the Merchant has repeatedly failed to provide information or documents that are required under the E-Commerce Terms and/or the applicable Payment Method Rules; or
- 22.2.7. The Merchant's ZEN Accounts used for Settlements are terminated for any reason.
- 22.3. If the Merchant does not make any Transactions for a one (1) month period, ZEN may suspend the Merchant Agreement or any specific Payment Method for security purposes, so that the Merchant will not be able to make any Transactions, use the Services or the relevant Payment Method, respectively. In order to reactivate the ZEN Merchant Agreement or the suspended Payment Method, the Merchant can (i) contact ZEN Customer Support via ZEN application submitting the request for removing the suspension and (ii) provide valid and up-to-date know-your-client documents upon ZEN's request.



- 22.4. The Merchant acknowledges that if the Merchant Agreement is terminated for cause by ZEN pursuant to Section 22.2 by a Card Scheme or the Acquirer, then the Merchant may be listed on the Visa Merchant Screening Service Database (VMSS) and/or Mastercard's Member Alert To Control High-risk Merchants (MATCH) which are databases of Merchants whose contracts with their Acquirers have been terminated for cause.
- 22.5. Notwithstanding any other provisions of the Merchant Agreement or these E-Commerce Terms, either Party may terminate the Merchant Agreement immediately at any time by giving notice in writing in the event that the other Party goes into receivership, administration or liquidation (other than following a bona fide restructuring of its business), becomes insolvent or enters into any composition, scheme or arrangement with its creditors, or any similar or equivalent procedure or circumstances in any jurisdiction, or ceases or threatens to cease to carry on its business.
- 22.6. The Parties may also terminate the Merchant Agreement by sending a written notice (e-mail included) to the other Party at least 1 (one) month prior to the date of termination. In the event that the Merchant terminates the Merchant Agreement earlier than 6 (six) months after its Effective Date, the Merchant may be required by ZEN to cover reasonable costs borne by ZEN in connection with the Merchant Agreement.
- 22.7. The Merchant acknowledges and agrees that, notwithstanding any termination of the Merchant Agreement for any reason, ZEN shall remain entitled to recover Chargebacks and Chargeback Fees and related Fines from the Merchant in respect of all Chargebacks that occur in relation to Transactions effected during the term of the Merchant Agreement.

## **23. Liability**

- 23.1. ZEN shall not be liable for the consequences and losses suffered by the Merchant or Account Holders, arising out of acts or omissions of third parties, including but not limited to Payment Method Providers, Issuers, and/or Acquirers, unless such events were caused by intent or gross negligence of ZEN.
- 23.2. The total liability of ZEN for any and all claims of any type or nature sustained or incurred by Merchant and any third party in connection with the Merchant Agreement or the Services or other subject matter hereof in the aggregate will not exceed the total amount of the fees paid or payable to ZEN for the Services hereunder in the previous calendar year (or within the same calendar year if the Merchant Agreement is in force for less than one year), regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise, however caused, even if ZEN has been informed of the possibility of such liabilities.



- 23.3. Notwithstanding any contrary provision in the Merchant Agreement or the E-Commerce Terms, or any failure of essential purpose or of any remedy of any kind, to the fullest extent permitted by applicable law and restrictions, ZEN shall not be liable to Merchant for any consequential, indirect, incidental, special, exemplary or punitive damages or liabilities or losses (including but not limited to claims for lost profits), arising from or related to or in connection with the Merchant Agreement or the subject matter hereof, regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise, however caused, even if such entities or persons have been informed of the possibility of such damages or liabilities or losses.
- 23.4. Neither Party excludes or limits its liability in the event of its negligence which may result in death or personal injury, or for fraud or wilful breach of the Merchant Agreement, or otherwise to the extent any exclusion or limitation of its liability is void, prohibited or unenforceable by laws or restrictions.

## **24. Indemnification and Fines**

- 24.1. ZEN shall indemnify the Merchant for damages, costs and expenses arising out of any breach or violation by ZEN of a third party's intellectual property rights.
- 24.2. The Merchant shall fully indemnify and hold harmless ZEN, its directors, officers, employees, agents, stockholders and affiliates from and against all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses (including attorney's fees and costs) which arise out of or relate to (i) Fines, (ii) any breach of any representation or warranty of Merchant contained in the Merchant Agreement or the E-Commerce Terms, (iii) any breach or violation of any covenant or other obligation or duty of Merchant under the applicable laws, Payment Method Rules, Merchant Agreement or E-Commerce Terms (iv) any alleged breach or violation by Merchant of intellectual property rights of a third party, (v) any claim that the Merchant or Merchant Products or Merchant Services infringe a patent or copyright, in each case whether or not caused by the negligence of ZEN and whether or not the relevant claim has merit. Merchant shall inform ZEN in writing of any claim, demand or suit and shall fully cooperate in the defence thereof. Merchant will not agree to the settlement of any such claim, demand or suit prior to the final judgment thereon without the consent of ZEN, whose consent may be withheld at ZEN's sole and entire discretion.

## **25. Marketing and Trademarks**

- 25.1. Merchant hereby grants to ZEN, its affiliates and relevant Payment Method Providers a non-assignable, non-transferable, royalty-free license during the term of the Merchant Agreement to use Merchant's trademarks and any materials supplied by Merchant from time-to-time necessary for or related to the provision of the Services or ZEN's regular marketing and promotional activities (collectively "Merchant's Trademarks"). Merchant's license authorizes ZEN, in order to maximize Merchant's exposure and sales, to utilize Merchant's Trademarks for promotional purposes on ZEN's website, on the internet, in print, at conferences and in any other manner or means ZEN deems commercially necessary.



## 26. Changes to the E-Commerce Terms

- 26.1. If ZEN amends or otherwise changes these E-Commerce Terms, or any Schedules therein, the Merchant shall have two (2) months to review any such changes, afterwards any such changes become binding upon the Merchant. If the change has a material adverse effect on the Merchant and the Merchant disagrees with such changes thereto, Merchant shall notify ZEN and the Parties shall attempt in good faith negotiations to reconcile said disagreement. If, following said notice by Merchant, the Parties are unable to reach a mutual resolution within fourteen (14) days, Merchant may terminate the Merchant Agreement upon notice to ZEN.
- 26.2. The above procedure shall not apply for amendments which ZEN made in these E-Commerce Terms in order to comply with applicable laws and regulations or requirements imposed by the relevant Acquirers, Card Schemes and/or Payment Method Providers. Such changes may become effective immediately (or with a shorter term granted for the Merchant's review) if it is necessary to ensure compliance with applicable laws or applicable rules of the Acquirers or Payment Method Providers. In such cases, ZEN will inform the Merchant as soon as possible about the amendment made and the review period granted to the Merchant (if any).

## 27. Customer Support and Dispute Resolution

- 27.1. The Merchant may submit questions, requests, notifications such as suspected fraud, suspicious customer activity, suspected or actual breach of payment data, suspected incident or actual breach personally identifiable information, contact from law enforcement, complaints and feedback via ZEN application (merchant's panel - <https://portal.zen.co>), via contact form on the website ([www.zen.co](http://www.zen.co)), to the dedicated email address: [hello@zen.com](mailto:hello@zen.com) or in writing to the following address: Name/Department, UAB ZEN.COM Mėsinių g. 5, LT-01133 Vilnius, Lithuania.
- 27.2. The Merchant shall not refer its customers to ZEN for any disputes and shall handle the disputes in accordance with the Payment Method Rules. Notwithstanding any requests related with personal data, it should be made clear that the customers shall not contact ZEN directly for any issues or disputes regarding the Transactions or otherwise.
- 27.3. These E-Commerce Terms will be governed by and construed under the laws of the Republic of Lithuania.
- 27.4. ZEN has the right to bring claims for any kind of damages, losses, penalties, unpaid fees, debts, or other outstanding receivables from the Merchant to the courts of Vilnius or to the competent courts where the Merchant's business is located or registered, in ZEN's sole discretion. This includes initiating debt recovery processes or otherwise applying for injunction or interim relief connected with the aforementioned receivables.



27.5. If any other dispute, claim, controversy or difference (“Contractual Dispute”) arises out of or in connection with or in relation to the Merchant Agreement and/or these E-Commerce Terms, then the Merchant must notify ZEN according to Section 27.1 above and the Parties shall first attempt to amicably reconcile the dispute through good-faith negotiations. In the event that a dispute has not been settled amicably, the Parties hereby agree that such disputes shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with the said Rules. The place of arbitration shall be London. The arbitration proceedings shall be conducted in English.

## 28. Final Provisions

- 28.1. These E-Commerce Terms are provided in English. In the event of a discrepancy between different translation which may be provided, the Parties agree that the English version of the E-Commerce Terms shall prevail.
- 28.2. ZEN has the right to assign or transfer any part of its rights or obligations under this Agreement, without the prior written consent of the Merchant by issuing a seven (7) days’ notice to the Merchant in advance. Such notice can be sent to the Merchant via e-mail or through the ZEN Application or ZEN Website. For the avoidance of doubt, ZEN will not assign the provision of payment services to third parties who are not licensed to provide such services under applicable laws and regulations.
- 28.3. In the event that any provision of the Merchant Agreement or these E-Commerce Terms is found by a court, arbitrator or other tribunal to be illegal, invalid or unenforceable, then such provision shall not be voided, but shall be enforced to the maximum extent permissible under applicable law, and the remainder of this Agreement shall remain in full force and effect.
- 28.4. These E-Commerce Terms and the Merchant Agreement, together with all Schedules contain the entire agreement of the Parties on the date of the execution of the Merchant Agreement. No prior or contemporaneous promises, representations, warranties, or understanding between the Parties shall have any legal effect at all if they are not contained in this document or the above listed components.
- 28.5. Unless otherwise set forth explicitly in the Merchant Agreement or these E-Commerce Terms, no modification, annex, amendment, supplement to or waiver of the Merchant Agreement, these E-Commerce Terms or any of their provisions shall be binding upon the Parties hereto unless made in writing and duly signed by all Parties to this Agreement. In the event that there is a discrepancy between the Merchant Agreement and these E-Commerce Terms, the former shall prevail.



## SCHEDULE I – List of Prohibited Items

Merchant is strictly prohibited from utilizing ZEN Services for any of the following listed goods or services. ZEN reserves the right to update this list at any time without prior notice to Merchant.

- Any form of illegal activity or transactions with items whose sale, distribution or offering for sale is prohibited by any applicable law;
- Operating a business that requires a license or a special permit without obtaining such license or permit;
- Adult goods and services, including pornography, any sexually suggestive materials involving minors and any obscene or sexually violent content;
- Escort or prostitution services;
- Any association with human trafficking or sex slavery;
- Transactions with body parts which includes organs or other body parts;
- Illegal or prescription drugs and paraphernalia;
- Bulk marketing tools which includes email lists, software, or other products enabling unsolicited email messages (Spam);
- Cable descramblers and black boxes which includes devices intended to obtain cable and satellite signals for free;
- Items that infringe another party's copyright, patent, trademark, design right, database right, or other intellectual property or other proprietary right, pirated software, CDs, videos and DVDs, OEM software, copyright unlocking devices or other devices designed to circumvent copyright protection, hacking and cracking materials which includes manuals, how-to guides, information, or equipment enabling illegal access to data, software, servers, websites, or other protected property; stolen or illegally obtained goods;
- Counterfeit and unauthorized goods which includes replicas or imitations of designer goods; items without a celebrity endorsement that would normally require such an association; fake autographs, counterfeit stamps, and other potentially unauthorized goods;
- Drug test circumvention aids which includes drug cleansing shakes, urine test additives, and related items;
- Government IDs or documents which includes fake IDs, passports, diplomas, and noble titles;
- Regulated goods which includes air bags; batteries containing mercury; freon or similar substances/refrigerants; chemical/industrial solvents; government uniforms; car titles; license plates; police badges and law enforcement equipment; lock-picking devices; pesticides; postage





meters; recalled items; slot machines; surveillance equipment; goods regulated by government or other agency specifications;

- Traffic devices, which includes radar detectors/hammers, license plate covers, traffic signal changers, and related products;
- Time sharing;
- Servicing MLM (Multi-Level Marketing) merchants;
- Selling, hosting, distributing, producing or promoting offensive materials, including material that incites racial hatred or promotes discrimination based on race, sex, religion, national origin, physical ability, sexual orientation or age;
- Transactions with living animals and endangered species, including plants, animals or other organisms (including product derivatives) in danger of extinction;
- Transactions with intoxicating liquor and tobacco, including home-made alcoholic beverages (except where the seller is properly licensed under applicable law and received pre-approval from ZEN in writing);
- Transactions with items subject to export restrictions or special declaration or clearance (e.g. Cuban cigars, certain encryption software, items that may have historical or museum value);
- Offensive weapons, poisons and dangerous substances (as defined by the applicable law or laws); firearms and ammunition, including hazardous, toxic, flammable, and radioactive materials and substances;
- Debt collections / Collection Agencies (unless they received a written pre-approval by ZEN);
- Loan modification and debt repair services;
- Financial services operating anonymous accounts or accounts in fictitious names or numbered accounts; and
- Servicing clients known or reasonably suspected to be involved in criminal or illegal activities or activities that are incompatible with ZEN company values.

