

## MERCHANT TERMS AND CONDITIONS – EFFECTIVE FROM 15 JULY 2026

### 1. DEFINITIONS AND INTERPRETATION

1.1 Capitalised terms not otherwise defined herein have the meanings given to them in the Order Form. The following words and expressions shall have the following meanings:

“**Access Fee**” has the meaning given to it in the Order Form.

"**Additional Fees**" means the Access Fees, the Administration Fees, and the Processing Fees

“**Administration Fee**” has the meaning given to it in the Order Form.

"**Affiliate**" means in respect of an entity, another entity that, directly or indirectly, Controls, is Controlled by, or is under common Control with the subject entity.

"**Agreed Purpose**" means the introduction by the Merchant to Zopa of individuals wishing to enter into a Credit Agreement, via Zopa’s platform, with delivery of such Goods or the performance of the Services being fulfilled by the Merchant as applicable.

"**Agreement**" means the Order Form and these Merchant Terms and Conditions.

“**Applicable Laws**” (i) any law and any legally binding rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body (including the Prudential Regulation Authority, the Financial Conduct Authority) and any legally binding industry code of conduct or guideline, in each case; and (ii) any non-binding rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body and any non-binding industry code of conduct or guideline, which, in in the case of limb (i) and limb (ii), applies to one or any of the Parties to this Agreement or relates to the subject matter or performance of this Agreement and which is in force from time to time.

"**Application Form**" means the form, signed by the Merchant, which the Merchant uses to provide Zopa with the information Zopa requires to determine whether to enter into the Agreement with the Merchant.

“**Authorised Firm**” means a person who has Part 4A permission from the FCA under FSMA to carry on one or more regulated activities.

“**Average Order Value**” or “**AOV**” has the meaning given to it in the Order Form.

"**Brand Guidelines**" means the Zopa guidelines setting out the manner in which Zopa’s Intellectual Property Rights may be used, the current version of which is set out in the Schedule to these Terms and Conditions (and which may be amended from time to time upon notice in writing by Zopa to the Merchant, including where required by Applicable Laws).

"**Business Day**" means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**"Change in Control"** will occur in respect of a person (the "relevant entity") where: (a) Control of the relevant entity is obtained (whether directly or as a result of obtaining Control of one or more other persons) by any person who did not at the date of this Agreement hold Control (whether directly or as a result of having Control of one or more other persons) of the relevant entity, or (b) a person who has Control (whether directly or as a result of having Control of one or more other persons) of the relevant entity at any time during the Term ceases to have Control (whether directly or as a result of having Control of one or more other persons) of the relevant entity.

**"Chargeback"** means an amount payable by the Merchant to Zopa should a Chargeback Event occur.

**"Chargeback Event"** means the occurrence of any of the following:

- (a) Customer Cancellation;
- (b) the Merchant's failure to resolve any Customer Complaint within a reasonable period of time, as agreed between the Parties;
- (c) the Merchant's failure to resolve any Customer Refund Request referred by Zopa to the Merchant to Zopa's satisfaction within the timeframe set by Zopa at the time of referral;
- (d) in the event that the Customer disputes Completion, the Merchant is unable to provide Zopa with any evidence Zopa has requested in accordance with clause 6.2.

**"Commencement Date"** has the meaning given to it in the Order Form.

**"Completion"** or **"Completed"** means the completion of all parts of the Services or delivery of the Goods by the Merchant in fulfilment of a Customer Order.

**"Confidential Information"** means information in whatever form (including, without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, clients, customers, products, affairs and/or finances of a Party, and trade secrets including, without limitation, technical data and know-how relating to the business of a Party, in each case whether or not identified as confidential.

**"Contract Year"** means the Initial Term or the relevant Renewal Term;

**"Control"** means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of another whether through the beneficial ownership of more than fifty per cent (50%) of the issued share capital, by agreement or otherwise and "Controlled" and "Controlling" shall be construed accordingly.

**"Corporate Merchant"** has the meaning given to it in the Order Form.

**"Credit Agreement"** means an agreement entered into between the Customer and Zopa under which Zopa provides credit in relation to the purchase by the Customer of Goods or Services from the Merchant.

**"Customer"** means any person who orders Goods and/or Services from the Merchant and who has entered into a Credit Agreement with Zopa in relation to such Goods or Services.

**"Customer Complaint"** means any oral or written expression of dissatisfaction, whether justified or not, by a Customer, regardless of whether it is reportable to the FCA under any Applicable Laws.

**"Customer Cancellation"** means the occurrence of any one of the following events:

- (a) Customer cancels or withdraws their Customer Order or the Credit Agreement for any reason;
- (b) the Goods and Services are not Completed or delivered in accordance with the terms of the Customer Order, Credit Agreement or the Merchant Terms, or are not completed or delivered within a reasonable period of time;

**"Customer Cancellation Limit"** has the meaning given to it in the Order Form.

**"Customer Refund"** means: (i) the amount paid by Zopa to a Customer following receipt by Zopa of a Customer Refund Request and (ii) any reasonable costs incurred by Zopa in dealing with the related Customer Refund Request, which may include, but will not be limited to, any costs Zopa is ordered to pay by the FOS, or any other Regulatory Body, or by a court, as part of any FOS or other Regulatory Body ruling and/or settlement and/or court direction.

**"Customer Refund Request"** means a Customer request for a refund of the purchase price of the Goods and/or Services (in whole or in part), damages and/or compensation in connection with the Goods and/or Services.

**"Customer Order"** means an order for the Goods and/or Services placed by a Customer with the Merchant which shall be paid for pursuant to a Credit Agreement.

**"Data Protection Legislation"** means all laws applicable from time to time relating to the processing of personal data and/or privacy, including (a) the UK Data Protection Act 2018, (b) the EU General Data Protection Regulation 2016/679 ("**GDPR**") as it forms part of the laws of the UK by virtue of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 (the "**UK GDPR**"), (c) the GDPR, and (d) the Privacy and Electronic Communications (EC Directive) Regulations 2003.

**"Deferred Payment Credit Product"** means Zopa's fixed sum loan product, (a) which meets each of the conditions set out in article 60F(2)(a) to (d) of the Financial Services and Markets Act (Regulated Activities) Order 2001(SI 2001/544); and (b) to which paragraph (7A) of that article applies.

**"Deletion Fee"** means the fee payable by the Merchant to cover Zopa's costs associated with the removal of software, if applicable, as set out in the Order Form.

**"Enterprise Merchant"** has the meaning given to it in the Order Form.

"**FCA**" means the Financial Conduct Authority of 12 Endeavour Square, London E20 1JN or any successor regulatory body.

"**Financial Promotion**" has the meaning given to it in section 21 of FSMA.

"**Financial Promotions Guide**" means the financial promotions guidance provided by Zopa which can be found at <https://dividebuy.co.uk/financial-promotions>, as amended or replaced from time to time.

"**FSMA**" means the Financial Services and Markets Act 2000, as amended.

"**Force Majeure**" means any cause preventing a Party from performing any or all of its obligations under the Agreement which arises from or is attributable to circumstances beyond the reasonable control of the Party so prevented, including without limitation strikes, lock-outs or other industrial disputes (whether involving the workforce of the Party so prevented or of any other Party), act of God, government actions, war (whether declared or not), riot, hostilities, armed conflict, terrorist attack, terrorist activity, nuclear, chemical or biological contamination, civil commotion, invasion, revolution malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, power failure, breakdown of plant or machinery, fire, flood, storm, disease, epidemic, default of suppliers or sub-contractors, difficulties or increased expense in obtaining raw materials, labour, fuel, parts or machinery, or import or export regulations or embargoes.

"**FOS**" means the Financial Ombudsman Service or any successor body;

"**Goods**" means the Merchant's products which are ordered pursuant to a Customer Order.

"**Initial Term**" has the meaning given to it in the Order Form.

"**Intellectual Property Rights**" means all vested, contingent and future intellectual property rights including but not limited to patents, goodwill, reputation, rights in confidential information, copyright, trade marks, logos, service marks, devices, plans, models, diagrams, specifications, source and object code materials, data and processes, design rights, patents, know-how, trade secrets, inventions, get-up, database rights, domain names in each case whether registered or unregistered, and any applications or registrations for the protection of these rights and all renewals and extensions thereof existing in any part of the world, whether now known or in the future created.

"**Liability**" means liability arising out of or in connection with the Agreement, whether in contract, tort, misrepresentation, restitution, under statute or otherwise, including any liability arising from a breach of, or a failure to perform or defect or delay in performance of, any of a Party's obligations under the Agreement and/or any defect in any of the Goods, in each case howsoever caused including if caused by negligence.

"**Merchant Classification**" has the meaning given to it in the Order Form.

"**Merchant Fee**" has the meaning given to it in the Order Form.

**"Merchant Personnel"** means any director, employee, agent or subcontractor of the Merchant, or any person connected with the Merchant (as defined by section 252 of the Companies Act 2006).

**"Merchant Customer Terms"** means the Merchant's terms and conditions (as may be amended from time to time) which apply to the sale of the goods or services to customers through the Merchant's Website.

**"Merchant Terms and Conditions"** or **"Terms and Conditions"** means these terms and conditions.

**"Merchant's Website"** means the Merchant's website through which it sells Goods and/or Services to customers, as set out in the Order Form.

**"Order Form"** means one or more documents in the form agreed and signed by the Parties from time to time in respect of the applicable Goods and Services (and any special terms specified therein) and incorporating these Terms and Conditions.

**"Party"** means a party to the Agreement as specified in the Order Form (and **"Parties"** shall be construed accordingly).

**"Price"** has the meaning given to it in the Order Form.

**"Processing Fee"** has the meaning given to it in the Order Form.

**"PRA"** means the Prudential Regulation Authority of 20 Moorgate, London, EC2R 6DA, or any successor regulatory body.

**"Public Company"** means a company whose shares are traded freely on a stock exchange (and "Public Companies" shall be construed accordingly).

**"Regulatory Authority"** means any governmental, statutory or regulatory body and any other competent authority or entity in England and Wales and in any jurisdiction which has responsibility for the regulation or governance of Zopa, the Merchant, this Agreement, the Zopa Merchant Services or any activities referred to in this Agreement.

**"Relevant Credit"** has the meaning given to it in the Order Form.

**"Relevant Requirements"** has the meaning given to it in clause 12.5.1.

**"Renewal Term"** has the meaning given to it in clause 10.1.

**"Representative"** means any director, officer, employee of or professional advisor to a Party.

**"Services"** means the services provided by the Merchant which are ordered pursuant to a Customer Order.

**"Shared Personal Data"** the personal data which is shared between the Merchant and Zopa and as more particularly described in the Order Form.

“**Term**” has the meaning given to it in the Order Form.

“**Zopa Lending Services**” has the meaning given in clause 4.4.

“**Zopa Merchant Services**” has the meaning given in clause 4.1.

- 1.2 Unless the context otherwise requires, words denoting the singular shall include the plural and vice versa, references to any gender shall include all other genders and references to persons shall include bodies corporate, unincorporated associations and partnerships, in each case whether or not having a separate legal personality.
- 1.3 Any words following the words "include", "includes", "including" or any similar words or expressions are to be construed without limitation and accordingly will not limit the meaning of the words preceding them and the ejusdem generis rule will not apply.
- 1.4 The summary and headings are for convenience only and shall not affect the interpretation of any provision of the Agreement.
- 1.5 References to any enactment shall include references to any statutory modification or re-enactment thereof.
- 1.6 Any reference to "day", "month" or "year" shall mean a calendar day, calendar month or calendar year.
- 1.7 Any reference to "in writing" or "written" includes facsimile and e-mail but not other methods of electronic messaging.
- 1.8 References to times of the day are to London time and references to a day are to a period of 24 hours running from midnight.
- 1.9 The Order Form forms part of the Agreement and any reference to the Agreement includes these Merchant Terms and Conditions and the Order Form.
- 1.10 The terms 'personal data', 'data subject', 'controller', 'process', 'personal data breach', 'special categories of data' and 'supervisory authority' have the meanings set out in the UK GDPR.

## **2. BASIS OF AGREEMENT**

- 2.1 The Agreement governs the relationship between Zopa and the Merchant where a Customer places a Customer Order.
- 2.2 The Agreement constitutes the basis of the agreement between Zopa and the Merchant and comprises the Order Form and these Terms and Conditions.
- 2.3 The Parties may agree to add Goods and/or Services from time to time by agreeing a new Order Form in writing. Once the Form has been signed by the Parties, such Order Form shall automatically form part of the Agreement.
- 2.4 The Agreement supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between the parties,

whether written or oral, and any terms and conditions which the Merchant seeks to impose, relating to its subject matter.

- 2.5 Nothing in the Agreement shall grant the Merchant authority to (a) grant or amend business on Zopa's behalf, (b) commit Zopa by contract or otherwise, (c) impose any obligation or liability on Zopa, (d) alter any Zopa document, including any Credit Agreement, (e) negotiate or settle any claim on Zopa's behalf, or give credit or effect instalments in Zopa's name.
- 2.6 Subject to clause 4.5, no variation of the Agreement shall be valid or effective unless it is in writing, refers to the Agreement and is signed or executed by, or on behalf of, each Party.

### 3. ZOPA'S WEBSITE

In the event that the Agreement requires the Merchant to access Zopa's website for purposes connected with the Agreement, any use thereof shall be subject to, and the Merchant agrees to comply with, the terms of use on Zopa's website (as such terms may be updated from time to time).

### 4. ZOPA'S OBLIGATIONS

- 4.1 Zopa shall provide the Merchant with such online support (either directly or via an Affiliate) as it reasonably believes is necessary to ensure the Merchant can carry out its obligations under this Agreement, which may include installing an API, supplying a white label/custom branded platform, telephone order system, and/or full online integration (the "**Zopa Merchant Services**").
- 4.2 Zopa may provide the Zopa Merchant Services through its Affiliates.
- 4.3 Zopa warrants to the Merchant to the best of its knowledge and belief that as at the date of the Agreement:
- 4.3.1 it is an authorised person as defined under FSMA and holds a valid FCA permission which covers all relevant categories of Regulated Activity it carries on in the performance of its obligations under the Agreement;
  - 4.3.2 it has full capacity and authority to enter into and to perform its obligations under the Agreement;
  - 4.3.3 it will perform its obligations under the Agreement in compliance with all Applicable Laws at all times, insofar as such Applicable Laws apply to such performance; and
  - 4.3.4 the Agreement is executed by its authorised representative
- 4.4 The Merchant acknowledges and agrees Zopa shall give consideration to any customer's application to enter into a Credit Agreement (the "**Zopa Lending Services**"), but Zopa will be entitled to accept or decline any request to provide credit to any Merchant customer at its sole discretion.

4.5 Without prejudice to clause 12.2, in the event that Zopa wishes to update the terms of the Agreement, it will issue a notice to the Merchant which sets out the proposed updates to the Agreement (the “**Update Notice**”). If the Merchant does not respond within ten Business Days following receipt of the Update Notice (the “**Acceptance Period**”), the Merchant will be deemed to have accepted such updates and these will take effect upon the expiry of the Acceptance Period. If the Merchant expressly rejects any proposed updates within the Acceptance Period, the Parties will promptly discuss and agree further reasonable amendments to the proposed updates.

## **5. MERCHANT OBLIGATIONS**

5.1 The Merchant shall provide the Goods and/or Services (as applicable) to the Customer in accordance with the Customer Order. Zopa shall never purchase Goods and/or Services from the Merchant or resell any Goods to the Customer.

5.2 The Merchant warrants to Zopa that:

5.2.1 it owns the Goods and has the right to sell, and shall supply, the Goods and/or the Services;

5.2.2 the Goods and Services shall comply in all respects with their most recent published specification and/or description and the Customer Order, and will be supplied with all reasonable skill and care;

5.2.3 the Goods and Services shall comply with all express and implied terms of the Sale of Goods Act 1979, the Supply of Goods and Services Act 1982 and the Consumer Rights Act 2015;

5.2.4 all Goods sold and/or Services provided to a Customer, and obligations carried out, under or in connection with the Agreement shall be provided with the levels of care, skill and diligence reasonably to be expected of an established, competent and experienced provider of the same or similar goods and/or services, with reasonable skill and care and in accordance with current best practice in the Merchant's industry;

5.2.5 it shall, at all times, comply with the provisions of the Merchant Customer Terms unless any provisions of the Merchant Customer Terms conflict with the remaining provisions of the Agreement, in which case the remaining provisions of the Agreement will prevail.

5.2.6 all Representatives engaged by the Merchant under or in connection with the Agreement have the necessary skills, expertise and diligence to undertake such work;

5.2.7 it shall ensure that it meets the Customer's requirements for the times and dates of delivery of the Goods or Services at all times;

5.2.8 it shall process personal data provided to it by Customers and/or Zopa in compliance with the Data Protection Legislation;

- 5.2.9 it has and shall maintain in force for the Term all licences, permissions, authorities, consents and permits required by it to perform its obligations under the Agreement;
  - 5.2.10 it shall at all times comply with Applicable Laws; and
  - 5.2.11 it shall only make the Goods and/or Services available to Customers based in the United Kingdom.
- 5.3 The Merchant warrants, represents and undertakes to Zopa that:
- 5.3.1 it has full capacity and authority to enter into and to perform its obligations under the Agreement;
  - 5.3.2 the Agreement is executed by its authorised representative; there are no actions, suits or proceedings or regulatory investigations pending or, to its knowledge, threatened against or affecting the Merchant before any court or administrative body or arbitration tribunal that might affect its ability to meet and carry out its obligations under the Agreement; and
  - 5.3.3 it will execute all documents and do all such acts as Zopa may require to give effect to Zopa's obligations under the Agreement.
- 5.4 The Merchant agrees to include digital banners promoting the Zopa Lending Services on its website in a prominent position visible to customers visiting the Merchant's home page, category pages and individual product pages, in the form and manner reasonably requested by Zopa from time to time. For the avoidance of doubt, the Merchant shall not process or use any customer personal data (including those from any cookies collected via the website) in order to include such digital banners promoting the Zopa Merchant Services.
- 5.5 The Merchant appoints Zopa to be its exclusive supplier of Relevant Credit in relation to any Goods or Services provided to the Merchant's customers for the Term, unless otherwise agreed in writing by Zopa.
- 5.6 The Zopa Lending Services and the Zopa Merchant Services are provided to the Merchant on a non-exclusive basis and Zopa shall be entitled to provide the same or similar services to other merchants.
- 5.7 The Merchant shall make available to customers on its website any such information as the Zopa may reasonably request, including a copy of the terms of a Credit Agreement and any Financial Promotions as provided by and amended by Zopa from time to time.
- 5.8 The Merchant shall comply with the Brand Guidelines as directed or approved by Zopa in writing clearly identifying Zopa as the owner of the Intellectual Property Rights and indicating, in the form and manner approved by Zopa, that the Intellectual Property Rights are used under licence from Zopa. Zopa may amend the Brand Guidelines upon notice in writing to the Merchant, including where required by Applicable Laws. If and to the extent that any amendments to the Brand Guidelines are made by Zopa pursuant to this clause 5.8, the Merchant will promptly (and in any event within 5 Business Days of notification of

such changes by Zopa, or such shorter timeframe specified by Zopa) implement such amendments and cease use of and remove any materials which are not being used in accordance with the Brand Guidelines. Any physical, outdated versions of the Brand Guidelines held by the Merchant shall be destroyed by the Merchant immediately upon the implementation of any updated versions of the Brand Guidelines.

- 5.9 The Merchant shall, during the Term and for a period of 5 years following expiry or termination of the Agreement, maintain professional indemnity insurance and public liability insurance at the levels set out in the Merchant Agreement From and shall provide to Zopa, on request, evidence of the existence of such insurance policy and of payment of the current premia.

## **6. PAYMENTS**

### **Zopa payments under the Agreement**

#### ***The Price***

- 6.1 Subject to clause 6.2 below, Zopa will pay the Price to the Merchant upon Completion.
- 6.2 Zopa reserves the right to require the Merchant to provide evidence proving that Completion has occurred, including by not limited to satisfactory evidence of delivery and (where applicable) installation of the Goods, and to withhold payment until it has received such evidence as it considers satisfactory.
- 6.3 The Price is inclusive of any VAT chargeable by the Merchant in connection with the supply of Goods or Services pursuant to the Customer Order. For the avoidance of doubt, Zopa shall not be liable in respect of any VAT charge in connection with a Customer Order, whether payable at the time of the Customer Order or at a later date. The supply of Goods or Services pursuant to the Customer Order is made between the Merchant and the Customer directly.

### **Merchant payments under the Agreement**

#### ***Administration Fee***

- 6.4 In the event that the number of Customer Cancellations exceeds the Customer Cancellation Limit, Zopa may at its discretion charge the Administration Fee in respect of all Customer Cancellations during that calendar month. For the avoidance of doubt, where a Customer Cancellation relates to a single Customer Order comprising multiple Goods or Services, the Administration Fee will be charged once in respect of each Customer Order (regardless of the number of Goods or Services to be provided thereunder).
- 6.5 Zopa may, at its discretion, either deduct the aggregate amount of Administration Fees payable for a particular month from any amounts payable to the Merchant, or send the Merchant an invoice for the amount, which the Merchant will pay by way of direct debit within 14 days of the date of the invoice.

#### ***Access and Processing Fees***

- 6.6 Zopa may, at its discretion, either deduct the aggregate amount of Access Fees and Processing Fees payable for a particular month from any amounts payable to the Merchant, or send the Merchant an invoice for the amount, which the Merchant will pay by way of direct debit within 14 days of the date of the invoice.

***Merchant Fee***

- 6.7 Zopa may amend the Merchant Fee rates set out in the Order Form, in the event of the following:
- 6.7.1 the actual AOV is materially less than the AOV specified in the Order Form for more than three consecutive months. Materially less is defined as 25% of the AOV;
  - 6.7.2 the Bank of England Base Rate has increased by 50 basis points or more at any time in either the previous calendar quarter or since the previous review of pricing, whichever is the greater.
- 6.8 If following any audit Zopa carried out under clause 9, Zopa determines that there has been a shortfall in the Merchant Fee and/or the Additional Fees during the period covered by the audit, Zopa may either adjust any subsequent Merchant Fee in proportion with the amount of such shortfall in order to recoup the relevant sums, or invoice the Merchant for the amount of such shortfall plus VAT (where applicable), to be paid by the Merchant within 30 days of the date of the invoice.

**Zopa's right to make deductions from payments to the Merchant**

- 6.9 Notwithstanding any other provision in the Agreement, Zopa may, at its discretion, require the Merchant to pay within 7 days of written demand from Zopa or, deduct from any sums owing to the Merchant, an amount equal to:
- 6.9.1 any sums Zopa paid the Merchant in respect of a Customer Order which is the subject of a Chargeback;
  - 6.9.2 any sums paid to the Merchant in error;
  - 6.9.3 any sums paid to the Merchant under the Agreement where the Merchant has failed to comply with the terms and provisions of the Agreement;
  - 6.9.4 any sums paid to the Merchant, its directors, officers and/or employees who have acted fraudulently;
  - 6.9.5 any sums under a Credit Agreement which are not paid by the Customer as a result of any dispute between the Customer and the Merchant prior to, during or after the provision of the Goods or Services; and
  - 6.9.6 sums paid under a Credit Agreement applied for by any Merchant Personnel.
- 6.10 All payments under the Agreement shall be made in pounds sterling unless the Parties otherwise agree in writing.

## **7. REFUNDS AND CHARGEBACKS**

### **Refunds**

- 7.1 Where the Merchant agrees to refund the price of the Goods and/or Services to a Customer, Zopa will refund to the Customer all sums the Customer has made under the Credit Agreement (or in the case of a partial repayment such part of the sums as agreed with the Customer) and send the Merchant a remittance advice which will set out the amount the Merchant will repay to Zopa and which Zopa will set-off against any sums owed by Zopa to the Merchant. Where Zopa is unable to set-off the amount owed by the Merchant, the Merchant will pay the amount directly into Zopa's bank account within 14 days of being requested by Zopa to do so. This clause 7.1 shall survive termination of the Agreement. .

### **Chargebacks**

- 7.2 Notwithstanding any other provisions in the Agreement, and subject to clause 7.3 and clause 7.4, if a Chargeback Event occurs the Merchant will pay Zopa the Chargeback within 7 days of Zopa notifying the Merchant of the Chargeback and Chargeback Event. Zopa may, at its discretion, deduct the Chargeback from any sums it owes the Merchant.
- 7.3 Zopa shall co-operate with the Merchant in good faith to resolve the issues giving rise to the Chargeback demand and Zopa agrees only to exercise its rights under clause 7.2 where:
- 7.3.1 it has given the Merchant as much notice as reasonably possible that it intends to raise a Chargeback together with full details of the issue(s);
  - 7.3.2 (if the issue(s) giving rise to the Chargeable Event (or potential Chargeback Event) is/are capable of being remedied) it has given the Merchant a reasonable opportunity to resolve the issue, which the Merchant will deal with in a professional and timely manner, and in accordance with all its relevant internal procedures including its complaints handling procedures; and
  - 7.3.3 the Merchant has not satisfied the requirements set out in clause 7.4 below.
- 7.4 In addition to agreeing to the conditions specified in clause 7.3, Zopa further agrees not to exercise the rights conferred on it by clause 7.2 where the Merchant has shown to its reasonable satisfaction:
- 7.4.1 the Chargeback Event did not occur; or
  - 7.4.2 the Chargeback Event did occur, but that it did not cause (or will not cause) any loss or damage or material distress or material inconvenience to the Customer; and
  - 7.4.3 where clause 7.4.2. applies, it has taken reasonable steps to resolve the issue(s) giving rise to the Chargeable Event and will provide Zopa with such evidence of resolution as it may reasonably require.

## 8. COMPLAINTS

- 8.1 Each Party shall maintain an effective Customer Complaints management process and shall deal with all Customer Complaints in accordance with Applicable Laws and in a way that does not prejudice the other Party or its reputation.
- 8.2 As a minimum in order to comply with the requirements set out in clause 8.1, each Party shall:
- 8.2.1 publish on its Customer facing website appropriate information regarding its internal procedures for the reasonable and prompt handling of Customer Complaints ("**Complaints Handling Procedures Summary**"), which shall include details of any out-of-court complaint and redress body available to Customers, e.g. FOS; and
  - 8.2.2 provide a copy of its Complaints Handling Procedures Summary to Customers upon request and when acknowledging a Compliant.
- 8.3 Zopa shall forward any Customer Complaint it receives relating to the Merchant's performance of any of its obligations under the Agreement (e.g. in relation to, or arising out of the Goods and/or Services or the promotion of the Credit Agreement) to the Merchant within 3 Business Days of receipt so that the Merchant (or Zopa) can comply with its obligations under Applicable Laws.
- 8.4 The Merchant shall forward any Customer Complaint it receives relating to Zopa's performance of its obligations under the Agreement (e.g., in relation to the Credit Agreement, including, but not limited to, Zopa's credit process, underwriting requirements, or its administration of the Credit Agreement) within 3 Business Days of receipt of the Customer Complaint.
- 8.5 Upon request, the Merchant will provide Zopa will details (as specified by Zopa from time to time) of all Customer Complaints the Merchant has received in any calendar month, within 5 Business Days of the request.
- 8.6 Each Party shall provide the other Party with such reasonable assistance as the other Party may require to manage any Customer Complaint.

## 9. AUDIT RIGHTS

- 9.1 Each Party (the "**Audited Party**") shall, during the Term and for a period of 12 months thereafter (or such longer period as required by Applicable Laws), permit the other Party (the "**Auditing Party**") its Affiliates and, Representatives or the Affiliates and Representatives of any Regulatory Authority (each being referred to as an "**Auditing Body**") to have such access on demand to the Audited Party's premises and to any of the Audited Party's Personnel, computer systems, files, and relevant records as may be required in order to:
- 9.1.1 fulfil any request by any Regulatory Authority;

- 9.1.2 undertake verifications of the accuracy of the calculation and payment of any fees payable under the Agreement and/or Customer Orders;
- 9.1.3 investigate suspected fraud;
- 9.1.4 undertake verification that the Audited Party is acting in accordance with the terms of the Agreement, including, but not limited to compliance with its obligations under clause 12;
- 9.1.5 enable the Auditing Party to:
  - 9.1.5.1 fully comply with all Applicable Laws (including any accounting, tax and filing obligations);
  - 9.1.5.2 respond to enquiries raised by any Regulatory Authority or deal with any investigation by, or order or direction of, any Regulatory Authority; or
  - 9.1.5.3 deal fully with enquiries, complaints or claims made by other third parties,

and shall promptly produce copies of the same, or allow any Auditing Body to make copies, as requested.

9.2 Each Party shall:

- 9.2.1 co-operate with all Regulatory Authorities in all matters relevant to the performance of this Agreement whenever requested by the other Party and will deal with them in an open and co-operative way. Each Party will keep the other fully and promptly informed in relation to any requests for co-operation from any Regulatory Authority in respect of the Zopa Merchant Services, the Zopa Lending Services and/or this Agreement.
- 9.2.2 respond fully, accurately and promptly to all approaches or queries made to it by any Auditing Body (including, the FCA and the PRA) in connection with the Agreement and shall provide information which is accurate and not misleading; and
- 9.2.3 provide each Auditing Body with all reasonable cooperation, access and assistance in relation to each audit.

9.3 The Auditing Party shall use its reasonable endeavours to procure that any Auditing Body (other than a Regulatory Authority):

- 9.3.1 provides reasonable prior notice of its intention to conduct an audit unless such audit is conducted in respect of a suspected fraud or suspected personal data security incident, in which event no notice will be required;
- 9.3.2 conducts the audit in a manner that minimises the disruption to the Audited Party's normal business hours; and

9.3.3 where reasonably appropriate, first enables to Audited Party to provide the required information in writing, instead of conducting an audit.

9.4 The Parties shall each bear their own costs and expenses incurred in respect of compliance with their obligations under this clause 9, unless the audit identifies a breach of this Agreement by the Audited Party, in which case the Audited Party will reimburse to the Auditing Party all its reasonable costs and expenses incurred in the course of the relevant audit.

## **10. TERM AND TERMINATION**

10.1 The Agreement shall commence on the Commencement Date and, subject to clause 10.3, shall continue in force for the Initial Term. On expiry of the Initial Term, the Agreement shall automatically renew for successive one-year periods (each a "**Renewal Term**") unless and until terminated in accordance with its terms.

10.2 Either Party shall be entitled to terminate the Agreement without cause on 3 months' written notice to the other, to expire on or after the expiry of the Initial Term or the then-current Renewal Term.

10.3 Either Party may terminate the Agreement immediately:

10.3.1 if the other Party commits any material breach of the Agreement and, in the case of a breach capable of remedy, fails to remedy it within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;

10.3.2 in the event that the other Party is involved in legal proceedings concerning its solvency, ceases or threatens to cease trading, enters into liquidation, whether compulsory or voluntary, other than for the purposes of a solvent amalgamation or reconstruction, or makes any arrangement with its creditors or an administration order is made or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other Party or notice of intention to appoint an administrator is given to the other Party or its directors or by a holder of a qualifying floating charge (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986) or the other Party has a receiver or administrative receiver or manager appointed over all or any part of its assets or generally becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or any analogous event occurs in any jurisdiction;

10.3.3 if the provision of the Zopa Lending Services or the Zopa Merchant Services will or is reasonably likely to breach Applicable Laws.

10.4 Either Party may immediately terminate or suspend the Agreement in the event that:

10.4.1 it reasonably considers, in its sole discretion, that to maintain the relationship with the other Party would adversely affect either: (i) the Customer(s); or (ii) its business and/or reputation; and/or

10.4.2 the other Party undergoes a Change in Control.

- 10.5 Following expiry or termination of the Agreement (for whatever reason):
- 10.5.1 any provisions or obligations under the Agreement which expressly or impliedly continue to have effect after expiry or termination of the Agreement will continue in force (including without limitation obligations to pay fees and clauses 6 (Payments), 14 (Confidentiality), 15 (Data Protection) and 20 (Indemnity)); and
  - 10.5.2 all other rights and obligations will immediately cease without prejudice to any rights, obligations, claims (including claims for damages for breach) and liabilities which have accrued prior to the date of expiry or termination.
- 10.6 If Zopa terminates the Agreement pursuant to clause 10.3 or if the Merchant terminates the Agreement within six months following expiry of the Initial Term, the Merchant shall pay Zopa the Deletion Fee in order to cover Zopa's costs associated with the removal of its software. The Parties acknowledge and agree that the Deletion Fee is a genuine pre-estimate of the loss which would be suffered by Zopa in the event that the Agreement were to be terminated at this point.
- 10.7 Within 30 days after the date of expiry or termination of the Agreement each Party will, subject to the exception set out in clause 10.8:
- 10.7.1 if requested to do so, return to each of the other Party all of the other Party's Confidential Information (including all copies and extracts) in its possession or control; and
  - 10.7.2 cease to use the other Party's Confidential Information.
- 10.8 Each Party may retain any of the other Party's Confidential Information which it has to keep to comply with any Applicable Laws or which it is required to retain for insurance, accounting or taxation purposes. The provisions of clause 14 will continue to apply to retained Confidential Information.

## **11. INFORMATION**

### **Generally**

- 11.1 The Merchant shall notify Zopa immediately and in writing:
- 11.1.1 of any change in its business address;
  - 11.1.2 any changes in the terms of any licences, permissions, authorities, consents and permits required by it to perform its obligations under the Agreement;
  - 11.1.3 of any change in its Merchant Classification during the term of the Agreement;
  - 11.1.4 in respect of Enterprise Merchants only, of all changes in the ownership, directors, partners or controllers of the Merchant particularly where a shareholding of 15% or more is involved, and, with the exception of Public Companies, of all changes in the name or trading name of the Merchant and any material change in capital structure;

- 11.1.5 if any owner, partner, director or controller of the Merchant is or becomes convicted of any criminal offence;
  - 11.1.6 if there is any material change in the cover afforded by the Merchant's insurance or if it cannot comply with the minimum level as set out in the Order Form or required by any applicable statutory enactment or regulation as amended from time to time; and
  - 11.1.7 of any other material change in its circumstances including, but not limited to, a Change in Control of the Merchant or material change in the Merchant's financial situation.
- 11.2 The Merchant agrees that Zopa may, to the extent legally permitted, verify (and will provide such assistance to Zopa as it may reasonably require in verifying) the information provided in the Application Form (including verifying corporate bank account details and conducting all required due diligence including relating to anti-money laundering, politically exposed persons, persons of significant control and sanctions).

### **The Application Form**

- 11.3 The Merchant hereby represents and warrants to Zopa that:
- 11.3.1 the information given in the Application Form is true and complete in all material respects; and
  - 11.3.2 it shall immediately inform Zopa of any material changes to the information supplied in the Application Form.
  - 11.3.3 it will provide such information as Zopa reasonably requires, subject to applicable legislation.

## **12. COMPLIANCE**

### **Generally**

- 12.1 Each Party is responsible for compliance with all its respective legal, licensing and regulatory requirements including industry codes of practice (whether imposed under any law or by the FCA, the PRA, or otherwise) applicable to its business.
- 12.2 In the event of any changes to Applicable Laws or the introduction of any regulatory requirements which affect or may affect the Agreement or the regulatory status of any Party, Zopa will be entitled to update the terms of the Agreement on reasonable prior notice of the Merchant. If the Parties are unable to agree the changes Zopa proposes to make to the terms, either Party may terminate the Agreement in accordance with clause 10.3.1.
- 12.3 Subject to the provisions in respect of termination in clause 10, where a Party's compliance with its respective legal, licensing and regulatory requirements including industry codes of practice necessarily requires assistance and/or information from the other Party, the other

Party will use reasonable endeavours to provide such assistance and/or information to the requesting Party as is reasonable in the circumstances.

- 12.4 Each Party shall keep and maintain during the Term, and for the longer of (i) 6 years; or (ii) any period required under Applicable Laws thereafter, such up-to-date and accurate records as may be necessary to give a complete record of its compliance with all Applicable Laws.

#### **Anti-bribery, anti-corruption and modern slavery**

- 12.5 Each Party shall:

12.5.1 comply with all Applicable Laws, regulations, codes and sanctions relating to anti-slavery, anti-bribery and anti-corruption, including but not limited to the Modern Slavery Act 2015 and the Bribery Act 2010 ("**Relevant Requirements**");

12.5.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;

12.5.3 have and maintain in place throughout the term of the Agreement its own policies and procedures to ensure compliance with the Relevant Requirements, and will enforce them where appropriate; and

12.5.4 ensure that all its employees or other persons who are supplying goods or performing services on its behalf comply with the provisions of this clause 12.5.

#### **Marketing and Financial Promotions**

- 12.6 A Merchant which is an Authorised Firm, shall:

12.6.1 at all times comply with all Applicable Laws relating to the preparation, use, communication and content of any marketing material and/or Financial Promotion, including (but without limitation) section 21 of FSMA; and

12.6.2 (notwithstanding the requirements set out in clause 12.6.1), not use, communicate or publish any marketing material and/or Financial Promotion about the Credit Agreement unless either (i) such material has been produced by Zopa or (ii) if not produced by Zopa, Zopa has reviewed and approved use of such material.

- 12.7 A Merchant which is not an Authorised Firm:

12.7.1 shall only market Zopa's Deferred Payment Credit Product to its customers;

12.7.2 Zopa shall be responsible for producing any marketing materials and/or Financial Promotions in relation to the Deferred Payment Credit Product and ensuring such materials comply with all Applicable Laws (the "**Approved Marketing Materials**"); and

12.7.1 shall at all times only use the Approved Marketing Materials, as directed by Zopa from time to time, to promote the Deferred Payment Credit Product.

12.8 All Merchants shall:

12.8.1 read, implement and at all times fully comply with the Financial Promotions Guide;

12.8.2 deliver such regular training to Merchant Personnel as Zopa shall require;

12.8.3 provide Zopa with written confirmation, immediately on request, that the Merchant:

12.8.3.1 has delivered the training required by clause 12.8.2;

12.8.3.2 has read and has and continues to comply with the Financial Promotions Guide; and

12.8.3.3 in the case of Merchants which are Authorised Firms, has and is continuing to comply with the requirements of all Applicable Laws relating to its marketing and promotion of the Credit Agreement;

12.8.4 communicate and co-ordinate with Zopa in an open and timely manner and make itself readily available for meetings with Zopa (or Zopa's Representatives) and/or any Regulatory Authority about its marketing or promotion of the Credit Agreement, as requested;

12.9 In the event that Zopa informs the Merchant that the representative APR and loan value to be displayed in the Merchant's Financial Promotions has changed, the Merchant will update all of its Financial Promotions, whether on or off-line, within 14 days of being informed of such.

### 13. INTELLECTUAL PROPERTY

13.1 All intellectual Property Rights in any materials, works, documents, computer software and hardware, which:

13.1.1 belong to Zopa; and/or

13.1.2 Zopa has the right to use or access; and/or

13.1.3 relates to business conducted under the Agreement for and on behalf of Zopa;

(the "**Zopa Property**") shall at all times remain owned by Zopa or each of its licensors (as applicable).

13.2 All Intellectual Property Rights in any materials, works and documents and computer software and hardware which:

13.2.1 belong to the Merchant; and/or

13.2.2 the Merchant has the right to use or access (other than the Zopa Property); and/or

13.2.3 relates to business conducted under the Agreement for and on behalf of the Merchant;

(the "**Merchant Property**") shall at all times remain owned by the Merchant or its licensors (as applicable).

13.3 If the Agreement is terminated or notice of termination is given, any Zopa Property which is in the Merchant's possession as at the date of termination must be delivered or returned to Zopa forthwith and any Merchant Property which is in Zopa's possession must be returned to the Merchant forthwith.

13.4 The Merchant grants to Zopa a non-exclusive, royalty free licence to reproduce, adapt or otherwise make use of its name, trademarks, service marks, logos, designs or Goods or Services imagery for the Term in any format for use in connection with this Agreement or general marketing.

13.5 Save as otherwise provided in the Agreement, the Parties shall not use or make use of any of the other Party's Intellectual Property Rights, name, trademarks, service marks or logos without first obtaining the written consent and approval of the other Party.

#### **14. CONFIDENTIALITY**

14.1 Except to the extent set out in this clause 14, or where disclosure is expressly permitted elsewhere in the Agreement, each Party shall:

14.1.1 keep the other Party's Confidential Information secret, safe and secure; and

14.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

14.2 Clause 14.1 shall not apply to the extent that:

14.2.1 such information was in the possession of the Party making the disclosure, without obligation of confidentiality, prior to its disclosure;

14.2.2 such information was obtained from a third party without obligation of confidentiality;

14.2.3 such information was already in the public domain at the time of disclosure otherwise than through a breach of the Agreement; or

14.2.4 such information was independently developed without access to the other Party's Confidential Information.

14.3 Each Party may only disclose each other's Confidential Information:

14.3.1 to the extent required by law, by an order of a court of competent jurisdiction or by any Regulatory Authority to which it is subject or to which it submits; and

- 14.3.2 to those of its Representatives who need to know the information so that such Party can perform its obligations and exercise its rights under the Agreement. Each Party shall ensure that such Representatives are aware of, and comply with, these confidentiality obligations.
- 14.4 The Parties shall not and shall procure that each of their Representatives do not, use any of the other Party's Confidential Information received otherwise than for the purposes of the Agreement.
- 14.5 The Merchant undertakes (except as may be required by law or in order to instruct professional advisers in connection with the Agreement) not to:
- 14.5.1 disclose or permit disclosure of any details of the Agreement to the news media or any third party; or
- 14.5.2 use Zopa's name or brand in any promotion or marketing or announcement without Zopa's prior written consent (except as provided under clause 5.4 of the Agreement).
- 14.6 Nothing in this clause 14 shall prevent any Party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of another Party's Confidential Information or an infringement of rights in Intellectual Property.

## **15. DATA PROTECTION**

- 15.1 The Parties agree that each of them acts as a separate data controller in respect of the Shared Personal Data, and shall process it for the Agreed Purpose, and shall not process it in a way which is incompatible with the Agreed Purpose.
- 15.2 Each Party shall (and shall ensure that any subcontractors shall):
- 15.2.1 comply with their respective obligations under the Data Protection Legislation;
- 15.2.2 process and disclose the Shared Personal Data on the basis of one of the lawful grounds listed in the Data Protection Legislation; and
- 15.2.3 obtain all permissions and consents necessary to disclose the Shared Personal Data to the other Party.
- 15.3 Each Party shall ensure that (to the extent of its reasonable knowledge and belief) the personal data it discloses to the other Party is accurate and up-to-date.
- 15.4 Each Party shall, in respect of Shared Personal Data, ensure that their privacy notices are clear and provide sufficient information to Customers and any other affected data subjects for them to understand what of their personal data is being shared, the circumstances in which it will be shared, the purposes for the data sharing and either the identity of the other Party, or a description of the type of organisation that will receive the personal data. The Merchant shall make a copy of Zopa's privacy notice clearly available to customers at or immediately prior to the point of purchase of the Goods or Services.

- 15.5 Each Party shall reasonably assist the other Party in complying with the applicable requirements of the Data Protection Legislation. Without limiting the foregoing, each Party shall:
- 15.5.1 notify the other Party without undue delay (and in any event within 48 hours of receipt) following receipt of a communication from a data subject or supervisory authority, including not limited to complaints and allegations, in relation to processing of the Shared Personal Data and provide the other Party with reasonable assistance in relation to responding to any such communications in relation to the processing of the Shared Personal Data;
  - 15.5.2 provide reasonable assistance to the other Party in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, personal data breach notifications, data protection impact assessments and consultations with supervisory authorities or regulators;
  - 15.5.3 notify the other Party without undue delay (and in any event within 48 hours of awareness) on becoming aware of any breach of the Data Protection Legislation involving any of the Shared Personal Data; and
  - 15.5.4 provide reasonable assistance to the other Party as is necessary to facilitate the investigation, handling, reporting and mitigation of the effects of any personal data breach affecting any of the Shared Personal Data in an expeditious and compliant manner.
- 15.6 Taking into account the latest standards of security measures, the costs of implementation and the nature, scope, context and purposes of the data sharing, as well as the risk to the rights and freedoms of natural persons, each Party shall implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to the risk, and adequate and appropriate measures for backup and recovery.
- 15.7 Each Party will nominate a contact person for data protection enquiries from the other Party, as set out in the Order Form.
- 15.8 Each Party acknowledges and agree that their lawful basis for disclosing the Shared Personal Data to the other Party is as follows:
- 15.8.1 the Article 6 UK GDPR processing justification: legitimate interests. Article 6(1)(f).
  - 15.8.2 the Article 9 UK GDPR processing justification: not relevant. No special category personal data is shared.
  - 15.8.3 the Article 10 UK GDPR and UK Data Protection Act 2018 processing justification. Not relevant. No criminal convictions and offences data is shared.

## **16 FORCE MAJEURE**

- 16.1 If any Party is prevented or delayed in the performance of any of its obligations under the Agreement by Force Majeure, that Party shall immediately serve notice in writing on the

other Parties specifying the nature and extent of the circumstances giving rise to Force Majeure, and shall, subject to service of such notice, have no liability in respect of the performance of such of its obligations as are prevented by the Force Majeure events during the continuation of such events, and for such time after they cease as is necessary for that Party, using all reasonable endeavours, to recommence its affected operations in order for it to perform its obligations under the Agreement.

- 16.2 If any Party is prevented from performance of its obligations for a continuous period in excess of 3 months, another Party may terminate the Agreement immediately on service of written notice upon the Party so prevented, in which case no Party shall have any liability to the other except that rights and liabilities which accrued: (i) prior to such Force Majeure; and (ii) to the extent not affected by the Force Majeure, prior to termination, shall continue to subsist.
- 16.3 The Party claiming to be prevented or delayed in the performance of any of its obligations under the Agreement by reason of Force Majeure shall use reasonable endeavours to bring the Force Majeure event to a close or to find a solution by which the Agreement may be performed despite the continuance of the Force Majeure event.

## **17 NO PARTNERSHIP OR AGENCY**

Nothing in the Agreement is intended to or shall operate to create a partnership, joint venture or other relationship of any kind between the Parties, or to authorise any Party to act as agent for the other, and no Party shall have authority to act in the name or on behalf of, make commitments, or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **18 CONFLICTS OF INTEREST**

The Parties will adopt and/or maintain procedures to ensure that each has in place arrangements for the identification and management of any conflicts of interest that may arise in relation to the business subject to the Agreement.

## **19 LIMITATION OF LIABILITY**

- 19.1 Subject to clauses 19.3 and 19.4 Zopa's (and its Affiliates) maximum Liability in aggregate in any Contract Year shall not exceed an amount equivalent to the total aggregate Merchant Fee (which Zopa has deducted from the Price) as at the date on which the default giving rise to the relevant claim occurred in the relevant Contract Year.
- 19.2 Subject to clauses 19.3 and 20.2 the maximum Liability of the Merchant in any Contract Year shall not exceed an amount equivalent to twice the total value of the Goods and/or Services financed by Zopa pursuant to the Agreement.
- 19.3 Nothing in the Agreement limits (a) any liability which cannot legally be limited, including but not limited to liability for death or personal injury caused by negligence, fraud and/or fraudulent misrepresentation; and/or (b) the Merchant's liability under any indemnity included in this Agreement.

- 19.4 Subject to clause 19.3 and clause 20.3 in the case of the Merchant, neither Party shall be liable to the other for any of the following (whether direct, indirect or consequential):
- 19.4.1 loss of profit;
  - 19.4.2 loss or corruption of data;
  - 19.4.3 loss of use;
  - 19.4.4 loss of production;
  - 19.4.5 loss of contract;
  - 19.4.6 loss of opportunity;
  - 19.4.7 loss of savings, discount or rebate (whether actual or anticipated);
  - 19.4.8 harm to reputation or loss of goodwill; or
  - 19.4.9 any other indirect, consequential or special losses
- 19.5 Nothing in this clause 19 will prevent or restrict the right of either Party to seek injunctive relief or specific performance or other discretionary remedies of the court.
- 19.6 Nothing in this clause 19 will prevent or restrict Zopa's right to charge the Merchant Fees, the Additional Fees, or the Deletion Fees in accordance with the terms of this Agreement.

## **20 INDEMNITY**

- 20.1 Zopa shall indemnify, and keep indemnified, the Merchant (and hold the Merchant harmless) against all liabilities, costs, expenses, damages and losses arising out of or in connection with:
- 20.1.1 Zopa's breach or negligent performance or non-performance of its obligations under the Agreement; and/or
  - 20.1.2 any breach by Zopa of the obligations listed in clause 15, or of the Data Protection Legislation.
- 20.2 The Merchant shall indemnify, and keep indemnified, Zopa (and hold it harmless) against all liabilities, costs, expenses, damages and losses arising out of or in connection with:
- 20.2.1 any breach of the warranty or warranties contained in clause 5;
  - 20.2.2 the Merchant's breach or negligent performance or non-performance of its obligations under the Agreement;
  - 20.2.3 any claim made by a Customer in connection with an alleged failure to provide Goods or Services that comply with the terms of the Consumer Rights Act 2015 (including any misrepresentation) or that comply with their most recent published specification and/or description, to deliver the Goods or Services in a

timely manner, provide support for the Goods or Services or any other undertaking by the Merchant in relation to the supply, use or replacement of Goods or Services;

- 20.2.4 any Customer claim successfully made against Zopa pursuant to section 56 and/or section 75, and/or section 140A of the Consumer Credit Act 1974 and which arises out of or in connection with any misrepresentation made by the Merchant to the Customer and/or any breach by the Merchant of the Merchant Customer Terms, or Zopa settles such a potential claim with the Merchant's agreement in accordance with the process set out in clause 20.3. For the purposes of this clause 20.2.4 and clause 28, a claim shall include a Customer complaint made to FOS as well as any claim commenced by the Customer by issuing court proceedings;
- 20.2.5 any claim made against Zopa by a third party arising out of or in connection with the supply of the Goods or Services, to the extent that such claim arises out of breach, act or omission, negligent performance or failure or delay in performance of the Agreement by the Merchant, its employees, agents or subcontractors;
- 20.2.6 any claim made against Zopa by a third party for death, personal injury or damage to property arising out of or in connection with the supply or use of defective Goods or Services; and/or
- 20.2.7 any breach of the obligations listed in clause 15, or of the Data Protection Legislation.

20.3 Subject to clause 28, if any third party makes a claim against, or notifies an intention to make a claim against Zopa which may reasonably be considered as likely to give rise to a liability under the indemnity in this clause 20 ("**Relevant Claim**"), Zopa shall:

- 20.3.1 give written notice of that matter to the Merchant, specifying in reasonable detail the nature of the Relevant Claim;
- 20.3.2 not make any admission of liability, agreement or compromise in relation to the Relevant Claim without notifying the Merchant;
- 20.3.3 provide reasonable assistance to the Merchant for the purposes of assessing the Relevant Claim, at the Merchant's cost; and
- 20.3.4 subject to the Merchant indemnifying Zopa to its reasonable satisfaction against any liability, costs, damages or expenses which may be incurred, take such action as the Merchant may reasonably request to avoid, dispute, resist, compromise or defend the relevant claim, at the Merchant's cost.

## 21 RIGHTS OF THIRD PARTIES

Except as expressly provided herein, no term of the Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a Party to the Agreement. Zopa's Affiliates shall be entitled to the benefits and rights granted to Zopa

under the Agreement and shall be entitled to enforce its terms under the Contracts (Rights of Third Parties) Act 1999.

## **22 NOTICES**

22.1 A notice given to a Party under or in connection with the Agreement shall be in writing and sent to the Party at the address or e-mail address set out in the Order Form or as otherwise notified in writing to the other Party.

22.2 The following table sets out methods by which a notice may be sent and, if sent by that method, the corresponding deemed delivery date and time:

| <b>Delivery Method</b>  | <b>Deemed Delivery Date and Time</b>   |
|---|--|
| Delivery by hand  | At the time the notice is left at the company address  |
| Pre-paid first class recorded delivery post or other next Business Day delivery service | 9:00am on the second Business Day after posting or at the time recorded by the delivery service if any   |
| E-mail  | If sent before 4.00 pm on a Business Day, that Business Day, otherwise on the next Business Day following the day on which the email was sent (in both cases, provided that no rejection notification is received from the receiving Party's server in relation to such e-mail). |

22.3 For the purposes of clause 22.2, if deemed receipt would occur in the place of deemed receipt on a day which is not a Business Day, deemed receipt is deemed to take place at 9.00am on the next Business Day.

22.4 For the avoidance of doubt, this clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **23 ASSIGNMENT**

23.1 The Merchant shall not, without Zopa's prior written consent (such consent not to be unreasonably conditioned, withheld or delayed), assign, transfer, charge or deal in any other manner with the Agreement or any of its rights under it, or purport to do any of the same, nor, subject to clause 25, sub-contract any or all of its obligations under the Agreement.

23.2 Zopa may at any time assign, transfer, charge, sub-contract or deal in any other manner with the Agreement and any of its right under it.

## **24 SUCCESSORS AND ASSIGNS**

The Agreement shall be binding upon and enure to the benefit of, the Parties and their respective successors and permitted assignees, and references to a Party in the Agreement shall include its successors and permitted assignees.

## **25 SUB-CONTRACTING**

With Zopa's prior written consent (such consent not to be unreasonably withheld or delayed) the Merchant may perform any or all of its obligations under the Agreement through agents or sub-contractors, provided that the Merchant shall remain liable for the performance of such agents and sub-contractors, and shall indemnify Zopa against any loss or damage suffered by Zopa arising from any act or omission of such agent or sub-contractors. The Merchant shall provide all information in relation to any agents or sub-contractors reasonably requested by Zopa so Zopa can conduct appropriate due diligence relating to such agents or sub-contractors in order to provide written consent.

## **26 ENTIRE AGREEMENT**

26.1 The Agreement constitutes the entire agreement and understanding between the Parties relating to its subject matter and supersedes and extinguishes any drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing, between the Parties in connection with the subject matter of the Agreement whether existing prior to or at the same time as the Agreement.

26.2 Each of the Parties acknowledges and agrees that in entering into the Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to the Agreement or not) other than as expressly set out in the Agreement. Subject to clause 19.5 in respect of Zopa, the only remedy available to the Parties for breach of a warranty under this Agreement shall be for breach of contract.

26.3 Nothing in this clause 26 shall be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.

## **27 WAIVER AND REMEDIES**

27.1 No failure, delay or omission by Zopa in exercising any right, power or remedy provided by law or under the Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

27.2 No waiver by any Party of any breach or non-fulfilment by any other Party of any provisions of the Agreement shall be deemed to be a waiver of any subsequent or other breach of that or any other provision and no failure to exercise or delay in exercising any right or remedy under the Agreement shall constitute a waiver of that right or remedy. No single or partial exercise of any such right, power or remedy shall preclude or impair any other or further exercise of it or the exercise of any other right, power or remedy provided by law or under the Agreement. A waiver of a breach of any of the terms of the Agreement or of

a default under the Agreement will not prevent a Party from subsequently requiring compliance with the waived obligation.

- 27.3 Any waiver of any right, power or remedy under the Agreement must be in writing and may be given subject to any conditions thought fit by the grantor. Unless otherwise expressly stated, any waiver shall be effective only in the instance and only for the purpose for which it is given.

## **28 SET-OFF**

- 28.1 Subject to clause 28.2, Zopa shall be entitled but not obliged at any time or times to set off any liability of the Merchant to Zopa against any liability Zopa has to the Merchant (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency of its denomination) and may for such purpose convert or exchange any currency. Any exercise by Zopa of its rights under this clause 28 shall be without prejudice to any other rights or remedies available to Zopa under the Agreement or otherwise.

- 28.2 Zopa may settle a potential claim covered by the indemnity provided by clause 20.2.4 and set off all liabilities, costs, expenses, damages and losses incurred in settling it (to the extent they would be recoverable in accordance with clause 20.2.4) against any liability Zopa has to the Merchant where:

28.2.1 the claim has been outstanding for more than 6 months;

28.2.2 the Merchant has been given an opportunity to make representations to Zopa on the merits of the claim; and

28.2.3 Zopa, taking into consideration any representations made by the Merchant and its review of the evidence it has, reasonably believes that the Customer has a greater than 50% chance of being successful in their claim.

- 28.3 The Merchant shall pay all sums that it owes to Zopa under the Agreement in full without any set-off, counterclaim, deduction or withholding of any kind, save as is required by law.

- 28.4 Without prejudice to clause 28.1 above, if any Party terminates the Agreement, Zopa may withhold any monies owing to the Merchant as at the date of termination, or if agreed in writing, a proportion thereof, for a period of 12 months for the purpose of satisfying the Merchant's existing or potential liabilities under the Agreement.

## **29 COUNTERPARTS**

- 29.1 The Agreement may be executed in any number of counterparts and by the Parties on different counterparts but shall not be effective until each Party has executed at least one counterpart.

- 29.2 Each counterpart shall constitute an original of the Agreement, but all the counterparts shall together constitute one and the same agreement.

## **30 SEVERANCE**

If any term of the Agreement is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term will be deemed to be severed from the Agreement and this will not affect the remainder of the Agreement which will continue in full force and effect. This clause 30 will not apply to a term which ceases to have effect under Section 233A or 233B Insolvency Act 1986. The Merchant agrees that where any term ceases to have effect under any of those sections because it is subject to an insolvency procedure as referred to in any of those Sections, if that insolvency procedure comes to an end without the Merchant becoming subject to a further such insolvency procedure, such term will be deemed once again to have effect in accordance with its terms.

## **31 GOVERNING LAW AND JURISDICTION**

- 31.1 The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.
- 31.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Agreement, its subject matter or formation (including non-contractual disputes or claims).