

**Magnius Merchant Terms and Conditions**  
applicable to the Magnius Merchant Agreement

**Confidential**

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## A. GENERAL PROVISIONS

These Terms and Conditions comprise the following sections:

- A. General Provisions
- B. The Magnius Payment Services
- C. Sale of Magnius Terminals
- D. POS Transactions
- E. SEPA Mandate by the Merchant
- F. Definitions
- G. Service Level for the Transaction Processing Services

These Terms and Conditions apply to

- (1) the provision by Magnius and the use by the Merchant of the Services; and
- (2) if applicable, as agreed, the sale by Magnius and purchase by the Merchant of Terminals.

These Terms and Conditions are, by reference, fully incorporated in the Merchant Agreement.

In addition to the general provisions of section A, the clauses of section B, shall apply if and to the extent the **Magnius Payment Services** are provided under the Merchant Agreement. The clauses of section C apply to the **sale/purchase of Terminals** under the Merchant Agreement or under a separate Order. The clauses of section D apply if the Transactions processed through the Services are agreed to be **POS Transactions**. The clauses in section E are the terms and conditions which apply to the SEPA Mandate, provided by the Merchant in the Merchant Agreement. Section F contains an overview of definitions used and the meaning they shall have. The clauses of section G finally apply, if so agreed, to the Transaction Processing Services.

When any clauses of section A contradicts or is incompatible with any part of one of the other sections, as applicable, the clauses of the particular sections for the Magnius Payment Services or for POS Transactions shall prevail over those of section A.

### 1. THE MERCHANT AGREEMENT, EFFECTIVE DATE

- 1.1 Following a proposal made by Magnius for the provision of the Services or an application made by the Merchant for the use of the Services, the Merchant Agreement shall only become valid upon Magnius' acceptance of a Merchant upon Magnius' performance of legally required client due diligence checks and checks against the Acceptance Criteria. Magnius shall not be obliged to enable the Merchant's integration with the Magnius Interface, the Merchant's access to the Merchant Zone or the Dedicated Merchant Area or provide any services to a Merchant until the Effective Date.
- 1.2 The Merchant Agreement will be established on the date upon which Magnius notifies the Merchant that it has been accepted as a Merchant and that the Merchant Agreement becomes effective ("**Effective Date**"). On the Effective Date, Magnius will provide the Merchant the details required for the Merchant to integrate with the Magnius Interface, to obtain access to the Merchant Zone and to start using the Services.
- 1.3 Before and after the Effective Date, Magnius may request the Merchant to provide (at the Merchant's costs) all relevant, true and correct information and documentation needed in order for Magnius to assess the Merchant's business, ownership structure, type of goods and/or services, creditworthiness and other

details which may be relevant in the light of the Acceptance Criteria and the Merchant's use of the Services, and the Merchant shall pro-actively provide such information and documentation to Magnius to keep the Merchant file up-to-date.

1.4 After the Effective Date:

- (a) Magnius may make additions to or enhancements of the Magnius Services, which will be provided subject to the terms applicable thereto to the Merchant, only upon the Merchant's agreement and at the Magnius Fees additionally agreed – if any.
- (b) Notwithstanding clause 1.4(a), Magnius shall be entitled to change these Terms and Conditions at any time. Changed versions of these Terms and Conditions will be published in the Merchant Zone. Magnius will notify the Merchant of material changes ("**Change Notification**"). If the Merchant reasonably deems that the changes negatively and materially affect the Merchant's rights under the Merchant Agreement, the Merchant Agreement can be terminated by the Merchant giving Magnius notice of such termination within thirty (30) days after Merchant's receipt of the Change Notification. If the Merchant does not terminate the Merchant Agreement within the said thirty (30) days' period, the changes will be deemed accepted and will be effective per the date mentioned in the Change Notification.

1.5 None of any terms and conditions used by or referred to by the Merchant shall bind Magnius, as their applicability is hereby explicitly excluded.

## **2. SUBJECT MATTER OF THE MERCHANT AGREEMENT: THE SERVICES**

2.1 On the Effective Date, the Services may consist of:

- (a) Transaction Processing Services;
  - (b) Magnius Payment Services;
  - (c) Fraud Control Tooling Services;
  - (d) Reconciliation Support Services in regards to Transactions for which Magnius provides both (a) the Transaction Processing Services and (b) the Magnius Payment Services;
  - (e) Reconciliation Support Services in regards to Transactions for which Magnius provides the Transaction Processing Services, to the extent the Payment Services Partner supports the reconciliation of Transactions;
  - (f) Access to the Merchant Zone and the Dedicated Merchant Area therein; and
- 2.2 In addition to providing the Services, Magnius may sell Terminals to the Merchant (and the Merchant may purchase Terminals from Magnius) under the Merchant Agreement.
- 2.3 In the Merchant Agreement the Parties will explicitly agree:
- (a) which type of the Services Magnius will provide and the Merchant may use (subject to acceptance of the Merchant by Magnius as described in clause 1.1);

- (b) whether Magnius provides the Services in regards of (1) E-Commerce-Transactions or (2) POS- Transactions or (3) both E-Commerce-Transactions and POS- Transactions;
- (c) whether Transactions are being processed using the Drop-in-Form or the Hosted Payment Page;
- (d) whether Magnius sells and the Merchant purchases Terminals , and if so, the number and the Magnius Fees due for the Terminals ("**Order**");
- (e) the Payment Methods with which the Merchant can accept Payments; and
- (f) when Magnius is not providing the Magnius Payment Services in regards of a Payment Method or is not able to provide them alone, the name(s) of the Payment Services Partner(s) the Merchant will engage for the provision of a Partner's Payment Services.

2.4 When the Merchant needs access to or needs to be provided in any form with payment services which Magnius cannot provide or which Magnius cannot provide alone, the Merchant shall conclude its own agreement with the provider of such payment services, which, upon such agreement being concluded ("**Direct Agreement**"), becomes the Payment Services Partner to the Merchant. If a Direct Agreement is required, Magnius will assist the Merchant in providing, obtaining and performing all information, documentation and actions required to establish the Direct Agreement. However, Magnius shall under no circumstances be responsible for any decision of a Payment Services Provider to not conclude or any decision of a Payment Services Partner to terminate a Direct Agreement with the Merchant – in which event Magnius will not be able to provide the related Services. The Payment Services Partner will be strictly responsible for provision of the Partner's Payment Services to the Merchant.

2.5 If, in addition to the Merchant Agreement, a Direct Agreement is required, Magnius shall not start to provide the Services until the Direct Agreement is in place, as confirmed to the Merchant by Magnius or by the Payment Services Partner.

2.6 The Payment Services Partner may choose to limit its exposure to risks under the Direct Agreement with the Merchant. Magnius is not responsible for the ways in which a Payment Services Partner chooses to limit its exposure for such risks. Any coverage or other protective measures applied by a Payment Services Partner under the Direct Agreement shall not limit the options of Magnius to protect itself against the same, similar or related risks in the Merchant Agreement by requiring Coverage when providing the Magnius Payment Services.

2.7 Magnius shall only provide the Magnius Services as agreed in the Merchant Agreement to the Merchant ("**Services**"). Any efforts by Magnius made and any work carried out by Magnius in respect of the Services pursuant to a request or order from a government agency, a Payment Services Partner or the Merchant shall, upon notice by Magnius to the Merchant, be calculated and charged to the actual costs of the efforts at an hourly rate of € 150.00 (excl. V.A.T).

### 3. THE DIFFERENT TYPES OF MAGNIUS SERVICES

- 3.1 Generally, provision by Magnius and use by the Merchant of the Magnius Services enables the Merchant to accept the payment amount owed by Customers in regards of sale/purchase transactions concluded between those Customers and the Merchant ("**Payments**"). For this purpose Magnius establishes secure connections between the Magnius Interface and the infrastructure of other providers of payment services ("**Payment Services Providers**"), which, on their turn, enable Customers to make the Payments due to the Merchant in regards of their purchases from such Merchants, using a Payment Method.
- 3.2 **Transaction Processing Services:** The Transaction Processing Services strictly entail the technical processing, verification, authorisation, acceptance or rejection of Payments made as E-Commerce-Transactions or point-of-sale Transactions ("**POS-Transactions**"). In order to actually receive the Payments, the Merchant needs to be provided with a Partner's Payment Services or the Magnius Payment Services. Unless otherwise agreed, Transaction Funds will be Settled by the Payment Services Partner to the Merchant under the terms and conditions of the agreement applicable to the Partner's Payment Services.
- 3.3 Subject to the terms and options provided by the Payment Services Partners, Magnius may be able to offer 3D- Secure authentication as an option for the Merchant.
- 3.4 Magnius may be able to offer the Merchant the option of requesting pre-authorisation of Transactions, depending on the Payment Services Provider or the Payment Services Partner involved. A description of the pre-authorisation functionality is described in the Services Documentation. The Merchant is solely responsible for its use of the pre-authorisation functionality and its perception of the applicable Capture Period and acknowledges that for any Transaction captured beyond the Capture Period there is a risk that the Transaction shall, despite the pre-authorisation eventually not be settled.
- 3.5 **Magnius Payment Services:** In addition to the Transaction Processing Services, Magnius may provide the Magnius Payment Services which entail that, subsequent to the technical processing, verification, authorisation and acceptance in regards of a Transaction (the Transaction Processing Services), Magnius collects or receives the funds involved in the processed Transactions ("**Transaction Funds**") from the Payment Services Provider or the Payment Services Partner for transferring by Magnius to the Merchant in the form of the Onward Settlement.
- 3.6 **Fraud Control Tooling Services:** The Magnius Payment Services and certain payment services provided by the Payment Services Partners allocates the responsibility and risk relating to Chargebacks and fraud to the Merchant. If it is agreed that the Fraud Control Tooling Services shall be provided under the Merchant Agreement, all Transactions processed through Magnius, notably E-Commerce Transactions, will be screened in order for the Merchant to mitigate and reduce such risks. Depending on the Merchant's use of the Fraud Control Tooling Services , a number of checks is performed in regards of the Transactions, upon which a resulting total score is assigned to each Transaction. The score represents the likelihood of the Transaction being

fraudulent. It will be the Merchant's sole responsibility to eventually accept or reject a Transaction.

- 3.7 The Merchant shall be solely responsible for the management of the Services, in particular in regards of the Merchant's use of the Fraud Control Tooling Services. This means that the Merchant shall be the sole party that shall configure and monitor the settings and the parameters available as part of the Fraud Control Tooling Services, so determining how the Magnius Fraud Control tool will evaluate Transactions.
  - 3.8 The Fraud Control Tooling Services provides the Merchant with tools which can be used to evaluate the parameters that are known for indicating risks. Magnius does explicitly not guarantee that Transactions declined really were fraudulent nor that accepted Transactions in the end do not turn out to become subject of Chargeback or fraud. Magnius reserves the right to cancel any Transactions in respect of which it has reasonable grounds to suspect that they are fraudulent or involve other criminal activities, even if the Fraud Control tool failed to block the Transaction.
- 3.9 Reconciliation Support Services:** Depending on the integration
- (A) between Magnius and the Payment Services Provider or Payment Services Partner and/or
  - (B) between Magnius and the Merchant, the Magnius Reconciliation Support Services may be provided by Magnius and used by the Merchant. The Reconciliation Support Services match the Transactions processed with the Transaction Funds (to be) Settled or with the Onward Settlement (due to be) transferred to the Merchant.
- 3.10 If it is agreed that the Reconciliation Support Services shall be provided under the Merchant Agreement, the Merchant will have access to Reconciliation & Reporting through the Dedicated Merchant Area, where a real-time overview is given of (i) the Transactions processed, (ii) the Magnius Fees due, (iii) the Onward Settlement (due to be) transferred to the Merchant and, as applicable in the event that a Payment Service Partner provides the Partner's Payment Services to the Merchant pursuant to a Direct Agreement, (iii) the Payment Services Fees due and payable to the Payment Services Partners, (which may already have been paid by the Merchant as a result of the Payment Services Partner's deduction of the Payment Services Fees due from the Transaction Funds in accordance with the Direct Agreement).
  - 3.11 The design and the functions of the Transaction Processing Services, the Magnius Payment Services, the Fraud Control Tooling Services, the Reconciliation Support Services and the way in which the Merchant can access the Merchant Zone, the Dedicated Merchant Area and any other Services are provided on an "as available" basis, which the Merchant has been able to review before and accepted by entering into the Merchant Agreement.

#### **4. SERVICES AND FEES**

- 4.1 The Services and, if applicable, the Terminal(s) shall be provided at the Magnius Fees indicated in the Pricing Schedule of the Merchant Agreement. Magnius does not reimburse the Merchant for any Magnius Fees charged for

the processing of the Transaction in the event the related Payment is made subject to refund or Chargeback.

- 4.2 All Magnius Fees are exclusive of V.A.T.
- 4.3 Magnius will invoice the Merchant for the Services on a monthly basis. The invoice currency will be Euro. Magnius provides electronic invoices in the Dedicated Merchant Area as standard. Printed invoices or statements can be requested for via the Merchant Zone (additional costs may be charged by Magnius).
- 4.4 If payment has not been made on the due date then, without prejudice to the other rights Magnius may have under the Merchant Agreement, the amounts then due and payable shall be increased by the higher of the statutory interest and the quarterly Euribor plus 200 basis points compounded monthly over the period from the date of invoice to the date of payment in full, without prior notice being required.
- 4.5 Magnius shall be entitled to revise the Magnius Fees at any time, provided that Magnius gives written notice to the Merchant at least sixty (60) calendar days prior to the effective date of the change. If the Merchant does not agree to changes of the Magnius Fees, the Merchant has the right to terminate the Merchant Agreement by giving Magnius notice thereof within ten days after being notified of the changes, in which event the Merchant Agreement will end per the effective date of the change, except in the event the change is the result of the yearly inflation or the passing on of costs payable by Magnius which reasonably shall be deemed uncontrollable by Magnius, such as the fees payable by Magnius to the Payment Services Partner in connection with the provision of the Services to the Merchant.

## **5. INTEGRATION WITH THE MAGNIUS INTERFACE, USE OF THE SERVICES**

- 5.1 Magnius provides the Services through the flexible and easy-to-integrate online platform hosted by or on behalf of Magnius. The Services can be used via the Merchant's integration with the Magnius Interface.
- 5.2 Upon the Effective Date, the Merchant will be authorised to integrate with the Magnius Interface to enable the submission of Prescribed Transaction Data for Transactions and to use the Services. The authorisation is granted to the Merchant on a non-exclusive, non-transferrable and non-sub-licensable basis, and strictly for as long as the Merchant Agreement is effective.
- 5.3 The Merchant is responsible for its integration with, all access to and all use of the Services and must take reasonable steps to keep the Log-in Details safe and to prevent fraudulent access to and use of the Services by misuse of the Log-in Details. Log-in Details such as passwords and other access codes are considered Confidential Information to which clause 14 applies in full. As soon as the Merchant knows or has reason to suspect that any of the Log-in Details have come into the hands of any unauthorized party, the Merchant must promptly notify Magnius thereof, without prejudice to the Merchant's own obligation to take effective measures, including but not limited to changing the Log-in Details. Magnius may revoke or cancel any Log-in Details in case unauthorised use is at hand or suspected.

- 5.4 The Merchant's authorisation to integrate with the Magnius Interface and to use the Services does in no event include any right to:
- (a) remove any copyright, trademark or other proprietary notices from anywhere in the Magnius Interface, the Services and the Terminals;
  - (b) reproduce, modify, prepare derivative works based upon, distribute, license, lease, sell, resell, transfer, publicly display, publicly perform, transmit, stream, broadcast or otherwise exploit the Magnius Interface, the Services or the Software to the public and/or to any third party;
  - (c) decompile, reverse engineer or disassemble the Magnius Interface, the Services or any Magnius IP;
  - (d) link to, mirror or frame any part of the Magnius Interface, the Services, the Software or the Terminal(s);
  - (e) cause or launch any programs or scripts for the purpose of scraping, indexing, surveying, or otherwise data mining any part of the Magnius Interface and Services or unduly burdening or hindering the operation and/or functionality of any aspect of the Magnius Interface, the Software or the Services; or
  - (f) attempt to gain unauthorized access to or impair any aspect of the Magnius Interface, the Software or the Services.
- 5.5 It is the Merchant's sole responsibility to purchase and operate the infrastructure necessary to establish the integration to the Magnius Interface and to use the Services, such as computers and access to the internet. Magnius is never liable for damage or costs on account of transmission errors, malfunctions, non-availability or loss of computer, data or telecom facilities, including the internet.

## **6. THE DIFFERENT PAYMENT METHODS, CHARGEBACK RISKS, SERVICE ADJUSTMENTS**

- 6.1 The acceptance of Payments with certain Payment Methods involves financial risks, in particular for E-Commerce-Transactions. These risks lie within the circumstance that for E-Commerce Transactions, Customers cannot be authenticated as the authorised user of the Payment Instrument. As a result, the Payment Services Providers protect Customers (in their capacity of payers using the payment services of such Payment Services Provider) from unauthorized use of a Payment Instrument, other abuse or fraud by (1) allowing payers to subject or (2) making Payments subject to chargeback or other form of reversal ("**Chargeback**"). Other circumstances giving payers/Customers the right of Chargeback under the Rules may relate to the Merchant's non-compliance with its obligations towards such Customer, in accordance with the sale/purchase agreement and applicable laws. The Merchant acknowledges and agrees that Magnius shall bear no risk with respect to the Merchant's sale of products and/or services, including, without limitation any risk associated with fraud, Chargebacks in relation to a Payment Method, which risks may include Service Adjustments.
- 6.2 A Transaction having the status 'Authorised' ("**Authorised Transaction**") does not imply that the payment is guaranteed or that it is already due by the Payment Services Partner or Magnius to the Merchant. Authorised

Transactions, even for POS Transactions, may still appear to be fraudulent, the Payment Instrument used for making the payment may appear to be expired, to be the subject of unauthorised use, to be not sufficiently funded and there may be other reasons under the Rules which may cause an Authorised Transaction to not result in Settlement of the Transaction Funds (including the possibility of Chargeback) by the Payment Services Partner to the Merchant or to Magnius.

- 6.3 The Merchant acknowledges and agrees that the risk that an Authorised Transaction eventually does not result in Settlement of the Transaction Funds or that an Onward Settlement already transferred shall be reimbursed to Magnius, is a commercial risk which shall be solely borne by the Merchant. The Merchant shall reimburse Magnius in full (i) the Payment which has been made subject to Chargeback and any (ii) relating Service Adjustments.

## **7. OBLIGATIONS OF MAGNIUS**

- 7.1 Magnius shall provide the Services with the care and skill that can be expected of a leading and expert supplier of similar services and in accordance with applicable laws and the applicable Rules including, without limitation the PCI DSS, and the Services Documentation. Magnius aims to provide the Services with maximum availability and accessibility.
- 7.2 Magnius provides prescriptions and guidelines for the integration with Magnius Interface and the use of the Services. It is the Merchant's responsibility to ensure the correct integration and use of the Services.
- 7.3 Magnius shall provide support to the Merchant by giving access to (i) an online support page in the Merchant Zone, (ii) a FAQ section and (iii) a Merchant helpdesk. The Merchant helpdesk can be reached by telephone on Magnius Business Days during Working Hours through the number provided on the Website.

## **8. MERCHANT'S OBLIGATIONS**

- 8.1 The Merchant shall comply with (1) applicable laws, (2) the applicable Rules, (3) any and all of its obligations under (a) the Merchant Agreement including but not limited to any Service Conditions, any guidance and instructions reasonably given by Magnius and the instructions in the Services Documentation, (b) the Direct Agreement towards the Payment Services Partner (if applicable) and (c) the agreements with its Customers. In the event of any inconsistency between any provision of the Merchant Agreement and the Rules, the Rules will prevail.
- 8.2 The Merchant shall ensure that any information provided to Magnius shall be true, complete, up-to-date and correct in all respects and at all times.
- 8.3 The Merchant shall maintain an IBAN with a bank that is acceptable to Magnius for the purpose of making payments to Magnius under the SEPA Mandate (section F).
- 8.4 The Merchant shall notify Magnius if it believes that:
- (a) the number of Transactions, the Transaction Funds, the Magnius Fees, any Service Adjustments or the Onward Settlement due as reported in the

dedicated Merchant Area are incorrect, such notification shall be made within ten (10) working days after the relevant reporting date; or

- (b) there are deviations between the number of Transactions, the Transaction Funds, the Magnius Fees or Service Adjustments and the Onward Settlement transferred, such notification shall be made within ten (10) working days after the day Magnius transferred the Onward Settlement to the Merchant or the day on which the Merchant could have expected the reported Settlement.

8.5 Magnius shall not be obliged to act upon notifications that are received after the notice periods mentioned in clause 8.4.

8.6 The Merchant shall allow and facilitate Magnius, any regulator, any Payment Services Provider, any Payment Services Partner (and each of the third parties these parties may involve for doing so) to access the Merchant's systems, premises and terminals, if applicable, without undue delay in order to assess the Merchant's compliance with its obligations under the Merchant Agreement and the Direct Agreement.

## **9. DATA AND PCI COMPLIANCE**

9.1 The Merchant can choose to have Magnius process Transactions either by the Merchant's integration using the Drop-in-Form or the Hosted Payment Page.

9.2 The Merchant shall ensure that all data prescribed in the Services Documentation ("Prescribed Transaction Data") shall be submitted to Magnius for each Transaction for the processing of Transactions and provision of the Services. Magnius shall not be obliged or not even be able to provide the Services, if any Prescribed Transaction Data is missing or has been incorrectly submitted. Magnius is entitled to suspend the processing of Transactions or provision of the Services if the Merchant fails to provide complete and correct Prescribed Transaction Data.

9.3 The Merchant shall ensure that while using the Services in respect of Payments made by Cards, the Merchant shall have and maintain the appropriate level of PCI DSS compliance for the term of the Merchant Agreement. As part of the ensured PCI Compliance, the Merchant shall under no circumstances copy, capture or intercept credit card numbers, CVM codes or other transaction data, that are entered on the Drop-In-Form. Use of the Services is PCI DSS-compliant under Magnius' PCI DSS certification for the Drop-In-Form, provided that the Merchant complies with the prescriptions of the Services Documentation. The Merchant can, and shall upon Magnius' first request proof its PCI DSS compliance by submitting the appropriate Self-Assessment Questionnaire (SAQ). The Merchant shall notify Magnius immediately upon becoming aware of its failure to maintain PCI DSS compliance.

## **10. SERVICE CONDITIONS**

10.1 The Merchant acknowledges that its compliance with the obligations under clause 8.1 means, as a minimum, that the Merchant shall, generally:

- (a) not sell any goods or services the sale or use of which is prohibited under the laws of the countries in which it offers its goods and provides its services, or where the goods and/or services are purchased and used;
- (b) respect and not infringe the intellectual property rights of third parties with regards to the goods and/or services purchased by its Customers while accepting their Payments through the Magnius Services and upon becoming aware of any infringement of such rights to immediately terminate such infringement;
- (c) notify Magnius immediately of any changes to information about the Merchant and its representatives;
- (d) in order to prevent confusion which might lead to an increase of Chargebacks, notify Customers that their Payments will be processed via Magnius and that bank accounts held in the name of Foundation Magnius may be used, which name will be visible on the Customer's statement;
- (e) use the Magnius Services solely and strictly in relation to Payments for its own goods and/or services;
- (f) use the Magnius Services solely and strictly in relation to Payments made for goods and/or services sold through the Approved Website(s);
- (g) not surcharge a Customer for the use of a Payment Method;
- (h) notify Magnius in advance of any expected peak volume, either in respect of the value or the number of Transactions;
- (i) notify Magnius immediately of any changes to the information previously provided to Magnius about the Merchant, its representative, its UBO's, its business, its creditworthiness and any other information that may be deemed relevant in the light of provision of the Services and the related risks;
- (j) be responsible for the calculation and payment of any and all applicable taxes due in respect of the Transactions processed; and
- (k) cooperate with Magnius when Magnius wishes to investigate any situations of actual or potential fraud, misuse or other non-compliance.

10.2 Furthermore, the Merchant's compliance with the obligations under clause 8.1 means, in the light of Consumer Protection and Distant Selling, as a minimum that the Merchant shall:

- (a) provide to its online Customers in the appropriate way all information that is required pursuant to the laws of the countries in which it offers its goods and/or services implementing the electronic commerce directives of the EU;
- (b) more particularly, the Merchant shall clearly inform the Customer of any limitations applied by the Merchant in regards of returns of goods and/or services and shall allow the Customer to cancel its agreement with the Merchant in accordance with the laws of the countries in which the Merchant sells its goods and/or services.

10.3 Eventually, in relation to the Rules, the Merchant's compliance with the obligations under clause 8.1 means, as a minimum that the Merchant shall:

- (a) only process Transactions in respect of goods and/or services which commonly fall within the Merchant's business (as notified to Magnius prior to the Effective Date and from time to time, should the Merchant's business change);
- (b) not sell any goods or services the sale of which is prohibited under the Rules as stated in the list of Prohibited and Restricted Products and Services List of Magnius;
- (c) not change the goods and/or services it offers without prior notification to and consent of Magnius;
- (d) not re-enter or reprocess, notwithstanding any authorisation or request of a Customer, any Transaction which has been previously subject to Chargeback;
- (e) adhere to the MCC(s) assigned by Magnius; and
- (f) not otherwise use the Services for general improper activity.

## **11. INDEMNITIES BY THE MERCHANT**

- 11.1 The Merchant shall indemnify Magnius and shall keep Magnius harmless for any and all costs (including legal fees) and damages incurred by Magnius in connection with:
- (a) a failure (including an alleged failure) by the Merchant to perform its obligations under the Merchant Agreement and to comply with the Service Conditions;
  - (b) any Transaction processed under the Merchant Agreement;
  - (c) any claim by a Customer, a Payment Services Provider or any other third party, made by such party due to a failure (including an alleged failure) by the Merchant to perform its obligations under the Merchant Agreement or any other act or omission which is attributable to the Merchant; and
  - (d) any claim by a Payment Services Partner, made due to a failure (including an alleged failure) by the Merchant to perform its obligations under the Direct Agreement.
- 11.2 The indemnity obligations of the Merchant described in clause 11.1 shall exist irrelevant of whether such costs and damages are incurred in the form of Chargebacks, refunds, Service Adjustments or are otherwise claimed for.
- 11.3 The Merchant shall assist Magnius as Magnius may require in the handling of any claims or actions brought against Magnius by any third party and Magnius shall be entitled to settle or otherwise deal with such claims or actions at the sole discretion of Magnius.
- 11.4 Any dispute between the Merchant and its Customer about a Payment or Transaction shall be resolved solely between the Merchant and such Customer.

## **12. LICENCE, IP-RIGHTS**

- 12.1 All rights to any intellectual property in relation to any Software, systems, data and information used in the provision of the Services or Terminals are the exclusive property of Magnius or its licensors ("**Magnius IP**"). Unless

otherwise agreed, the Merchant Agreement does not transfer, and is not intended to transfer, any of the Magnius IP to the Merchant.

- 12.2 In order to promote the co-operation under the Merchant Agreement, a Party may use the other Party's logos, trademarks, trade names and other intellectual property rights. However, all such use by the Merchant, other than the strict mentioning of the name and placement of the logo of Magnius in order to show that Magnius enables the Merchant to accept payments, must be agreed upfront between the Parties.
- 12.3 Use by the Merchant of any intellectual property rights of which a Payment Services Provider is the sole and exclusive owner, shall strictly conform to the requirements of the Rules and the Merchant shall not contest the ownership of those intellectual property rights for any reason. Payment Services Providers may, at any time, immediately and without advance notice, prohibit the Merchant from using any of their intellectual property rights for any reason.

### **13. DATA PROTECTION**

- 13.1 In relation to Transactions, Magnius shall act as a data processor as meant in applicable Privacy Legislation and therefor, Magnius will only process the personally identifiable information ("**Personal Data**") in accordance with the instructions from the Merchant as part of the Services. The Merchant's submission of a Transaction to the Magnius Interface shall constitute instructions to process the Personal Data contained within the Prescribed Transaction Data for the purpose of provision of the Services to the Merchant. The Prescribed Transaction Data shall only contain Personal Data if and to the extent necessary for Magnius to provide the Services.
- 13.2 Magnius shall take appropriate technical and organizational measures in order to secure the confidentiality of Personal Data and to prevent its unauthorized disclosure. Magnius will restrict the further processing of Personal Data to the Payment Services Providers and Payment Services Partners involved in the effectuation of the Transaction.
- 13.3 The Merchant shall in its turn comply with all its obligations in its capacity of controller in accordance with applicable Privacy Legislation, including without limitation, providing proper notices to its Customers about how Personal Data may be used and stored and obtaining appropriate consents for the use of the Personal Data under the Agreement.

### **14. CONFIDENTIALITY**

- 14.1 A receiving party shall not use Confidential Information for purposes other than in direct relation with the Merchant Agreement. The receiving party shall hold the disclosing party's Confidential Information in strict confidence, treat the disclosing party's Confidential Information with at least the same degree of care as it would use in respect of its own confidential information of similar importance, but in any event a reasonable level of care. In particular, the receiving party shall not without the prior written consent of the disclosing party disclose, publish, disseminate or make accessible the disclosing party's Confidential Information, in whole or in part, in any way or form, to third

parties other than to its employees, subcontractors or agents who have a need-to-know in connection with the performance of the receiving party's obligations under the Merchant Agreement.

- 14.2 The restrictions and obligations in this clause 14 shall not apply to the disclosing party's Confidential Information, which:
- (a) had entered the public domain through no breach of the Merchant Agreement or other wrongful act of the receiving party;
  - (b) was already known to the receiving party prior to the Effective Date of the Merchant Agreement, as established by documentary evidence;
  - (c) was rightfully received by the receiving party from a third party and without failing to comply with any obligation of confidentiality of such third party to the owner of such information; or
  - (d) can be proven to be developed independently from such Confidential Information.
- 14.3 When Confidential Information is required to be disclosed by the receiving party by virtue of a court order or statutory duty, the receiving party shall be allowed to do so, provided that it shall without delay inform the disclosing party in writing of receipt of such order or duty and enable the disclosing party reasonably to seek protection against such order or duty.
- 14.4 Upon the first request of a disclosing party, the receiving party shall without delay (a) return all copies, samples and extracts of, and all other physical media containing, the disclosing party's Confidential Information, and (b) delete or destroy all data containing the disclosing party's Confidential Information and prove that they have been deleted or destroyed upon request.
- 14.5 In respect of the Log-in Details, the Merchant shall: (a) keep such Log-in Details confidential; (b) not allow any third parties to use the Log-in Details and (c) promptly notify Magnius if the Merchant believes that any Software, system, platform or information of Magnius, the Services or a Terminal have been compromised by use of the password.

## **15. LIABILITY**

- 15.1 In the event the Merchant discovers that any (part) of the Services or a Terminal(s) is or are not being provided in conformity with the obligations of Magnius under the Agreement, the Merchant shall report such non-conformity to Magnius. Magnius will, and for Terminals strictly subject to the limited hardware warranty of clause 29, use its reasonable efforts to correct the non-conformity at no additional charge to the Merchant.
- 15.2 Under no circumstances shall Magnius be responsible for or liable to the Merchant for the payment services (to be) provided or any decision taken by a Payment Services Partner or a Payment Services Provider.
- 15.3 The aggregate, cumulative liability of Magnius for direct damages incurred by the Merchant due to failure attributable to Magnius' to comply with its obligations under the Merchant Agreement or otherwise for an unlawful act, shall under no circumstances exceed the lower of (i) 100% of the Transaction

Fees paid by the Merchant during the six (6) month's period immediately preceding the date on which the event giving rise to the claim took place or (ii) EUR 10,000.00 (ten thousand Euros).

- 15.4 In no event shall Magnius be liable, either due to an attributable failure to comply with its obligations or on the account of an unlawful act or otherwise, for incidental, indirect, special, consequential or punitive damages, including any damages based on loss of profits or lost revenues, business interruption or loss or corruption of information or data, production failure, impairment of other goods, claims of Customers or other third parties with whom the Merchant has agreements in place.
- 15.5 None of the limitations and exclusions of liability are intended to limit or exclude:
- (a) the liability of a Party for gross negligence or wilful misconduct; or
  - (b) the liability of the Merchant under the Merchant's indemnities pursuant to clause 11.

## **16. FORCE MAJEURE**

- 16.1 A Party prevented to fulfil its obligations duly and timely because of an event of Force Majeure shall inform the other Party promptly, both orally and in writing, specifying the cause of Force Majeure and how it may affect its performance, including a good faith best estimate of the likely scope and duration of interference with its obligations, and shall make best efforts to terminate or avoid as soon as practicable the Force Majeure circumstances. The Parties shall consult with each other in order to minimize all damages, costs and possible other negative effects.
- 16.2 The Party prevented to fulfil its obligations shall not be required to remove any cause of Force Majeure or to replace or provide any alternative to the affected source of supply or the affected facility if that would require additional expenses or a departure from its normal practices.

## **17. TERM AND TERMINATION**

- 17.1 The Merchant Agreement shall commence on the Effective Date and be effective for an indefinite period. Either party may, subject to clauses 17.2 and 17.3, terminate the Merchant Agreement giving the other party one (1) month notice.]
- 17.2 A Party may terminate the Merchant Agreement with immediate effect by written notice, if the other Party:
- (a) fails to comply with any of its obligations under the Merchant Agreement which remains uncured after ten (10) days (or such longer period as specified by the Party giving the notice or agreed between the Parties) written notice thereof;
  - (b) or any creditor files or threatens to file, a petition for bankruptcy, becomes insolvent, or makes any arrangement or composition with or assignment for the benefit of its creditors, or a receiver is appointed for the other Party or its business, or the Party goes into liquidation either voluntarily or compulsorily;

the foregoing terms should be construed so as to cover similar steps or procedures in any jurisdiction in which the other Party is incorporated or where any of its assets are located;

- (c) is affected by an event of Force Majeure, preventing the other Party to perform its obligations under the Merchant Agreement, or any of them, continues for more than thirty (30) consecutive days.
- 17.3 Magnius may suspend, without being required to give notice of default, provision of a part or all of the Services for as long as Magnius may deem reasonable and/or terminate the Merchant Agreement immediately, without incurring any liability towards the Merchant and without limiting any other rights of Magnius under the Merchant Agreement:
- (a) if the Merchant no longer meets the Acceptance Criteria;
  - (b) if the Merchant is the party facing a situation as described in clause 17.2(b);
  - (c) if the Merchant fails to comply with applicable laws;
  - (d) if the Merchant is the subject of investigations performed or fines levied by a regulator or competent court;
  - (e) if the Merchant fails to comply with the Rules or is reasonably considered to be acting non-compliantly with the Rules or if an event occurs that may put or threaten to put the Merchant in breach of or act incompliantly with any of the Rules;
  - (f) if the Merchant is the subject or is likely to become the subject of Penalties levied by a Payment Services Provider or Payment Services Partner;
  - (g) if Magnius reasonably suspects that the Merchant misuses any of the Services;
  - (h) if Magnius reasonably suspects that a third party has compromised the Merchant's Log-in Details;
  - (i) if Magnius is requested or instructed to do so by a Payment Services Partner, a competent court or a regulator;
  - (j) if a Payment Services Partner has reasons to not enter into a Direct Agreement with the Merchant or if a Direct Agreement between a Payment Services Partner and the Merchant, is terminated;
  - (k) if Magnius or the Payment Services Partner reasonably suspects that the Transactions are fraudulent or otherwise irregular or that the Services are or have been used fraudulently or otherwise irregularly either by the Merchant or a third party;
  - (l) if Magnius or any of the Payment Services Providers deems the Merchant's conduct could injure the Payment Services Providers, their reputation, payment services, concepts, systems or confidential information (as defined in the Rules);
  - (m) a Merchant does not pay or Magnius cannot obtain payment of any amount due by the Merchant to Magnius when Magnius has notified the Merchant that they are overdue and has given a reasonable payment term;

- (n) if there is a deviation from or an otherwise notable pattern or change of a pattern, including but not limited to Transaction volumes or values exceeding the expected and/or agreed volume or value or the number of Chargebacks or refunds exceeding thresholds set by the Rules;
  - (o) if there is insufficient Coverage for the payments in regards of Magnius Fees and Service Adjustments due by the Merchant to Magnius under the Merchant Agreement; or
  - (p) if the Merchant has not been processing any Transactions for a period of more than six (6) months.
- 17.4 The Merchant shall cooperate promptly in any investigation of fraudulent or otherwise illegal behaviour relating to the Merchant Agreement, the Services, the Merchant's business or otherwise and shall provide Magnius, a Payment Services Provider, regulator or any other party performing the investigations with all requested and necessary information. Furthermore the Merchant shall stop such behaviour upon Magnius' first demand.
- 17.5 The suspension of the provision of a part or all of the Services will, as a minimum, sustain during the period where Magnius, either or not jointly with the Merchant, makes a satisfactory investigation regarding the Transactions and the Merchant's role and activities. Such suspension may include but shall not be limited to discontinuation of the processing of Transactions, the withholding of all or part of the Onward Settlement and disabling Merchant's access to the Merchant Zone and the Dedicated Merchant Area.

## 18. MISCELLANEOUS PROVISIONS

- 18.1 **Independent contractors.** The Parties are independent contractors. No Party shall have any power or authority to assume on behalf of or in the name of the other Party any obligations or duties or to bind the other Party to any contract, deed or undertaking vis-à-vis any third party.
- 18.2 **Promotional materials/ press releases.** Except for any announcement intended solely for internal distribution or any disclosure required by legal, accounting or regulatory requirements, all media releases, public announcements or public disclosures (including, but not limited to, promotional or marketing material) relating to the Merchant Agreement or its subject matter, or including the name, trade name or trademark of Magnius, are prohibited without the prior written consent of Magnius. Notwithstanding the foregoing, either party shall have the right to disclose the existence of the business relationship formed by the Merchant Agreement between Magnius and the Merchant.
- 18.3 **Severability.** If any provision in the Merchant Agreement is found to be invalid or unenforceable in any respect in any jurisdiction:
- (a) the validity or enforceability of such provision shall not in any way be affected in respect of any other jurisdiction and the validity and enforceability of the remaining provisions shall not be affected; and
  - (b) the Parties shall substitute such provision by a valid and enforceable provision approximating to the greatest extent possible the essential purpose of the invalid or unenforceable provision.

- 18.4 **Waiver.** Any waiver shall only have effect if it is specific and in writing. The failure of a Party to enforce any of the provisions of the Merchant Agreement shall in no event be considered a waiver of such provision. No waiver of a provision by a Party shall (a) preclude that Party from later enforcing any other provision of the Merchant Agreement; (b) operate as a waiver of any succeeding breach of the same provision of the Merchant Agreement.
- 18.5 **Assignment.** The Merchant may not assign any of its rights or obligations under the Merchant Agreement without the consent of Magnius. Magnius is entitled to assign the Merchant Agreement and any of its rights and obligations pursuant to the Merchant Agreement to any third party and shall inform the Merchant promptly of such assignment.
- 18.6 **Involvement of third Parties.** The Merchant may engage agents, subcontractors or any agent's or subcontractor's systems, with Magnius explicit consent. The Merchant will however be responsible to comply with its obligations under the Merchant Agreement as if the Merchant were not using such agent, subcontractor or an agent's or subcontractor's systems and shall be liable for any costs and damages incurred by Magnius in connection with an act or omission of any agent or subcontractor so engaged.
- 18.7 **Counterparts.** The Merchant Agreement may be executed in counterparts each of which shall be deemed an original and all such counterparts shall constitute one and the same Merchant Agreement.
- 18.8 **Existing obligations.** Notwithstanding the termination of the Merchant Agreement, each Party shall procure the due and timely performance of all obligations assumed by it prior to such expiry or termination.
- 18.9 **Administration.** The details of Transactions, the Magnius Fees, Terminal Fees and Service Adjustments due recorded by or on behalf of Magnius shall serve as complete proof thereof, unless the Merchant provides proof to the contrary.
- 18.10 **Continuing provisions.** The clauses of the Merchant Agreement relating to confidentiality, liability, indemnities, governing law and other provisions that expressly or by their nature are intended to continue to have effect, shall survive termination of the Merchant Agreement.
- 18.11 **Interim Remedies.** Each party acknowledges and agrees that due to the unique nature of Intellectual Property, licenses, and Confidential Information, there can be no adequate remedy at law for any failure to comply with its obligations hereunder, that any such failure may allow the breaching party or third parties to unfairly compete with the breached party resulting in irreparable harm to the breached party, and therefore, that upon any such failure to comply or any threat thereof, the breached party shall be entitled to seek injunctive relief.

## 19. APPLICABLE LAW AND DISPUTE RESOLUTION

- 19.1 **Applicable law.** The Merchant Agreement is governed by Dutch law.
- 19.2 **Court procedures.** All disputes arising out of or in connection with the Merchant that cannot be settled amicably, shall be referred exclusively to the competent courts in Amsterdam, the Netherlands.

## **B. Magnius Payment Services**

The Magnius Payment Services shall always be provided jointly with the Transaction Processing Services. If and to the extent the Merchant wishes to use and Magnius has agreed to provide the Magnius Payment Services under the Merchant Agreement, the clauses of this Section B shall apply in addition to those of Section A. Magnius can provide the Magnius Payment Services solely for the Payment Methods and types of Transaction (E-Commerce Transactions or POS Transactions) as shown in the "Overview of Services, Payment Methods and Transactions".

### **20. PROVISION OF THE MAGNIUS PAYMENT SERVICES, ONWARD SETTLEMENT**

- 20.1 When Magnius provides the Magnius Payment Services to the Merchant, Magnius shall, subject to clauses 20.2, and 20.5, transfer the Onward Settlement to the Merchant.
- 20.2 The obligation of Magnius to transfer the Onward Settlement only applies to the extent Transaction Funds were effectively Settled by the Payment Services Provider or the Payment Services Partner to Magnius and as such received or collected by Magnius.
- 20.3 The Transaction Funds equal the number of the Transactions processed under the Payment Processing Services multiplied by the Value of each of those Transactions. Transactions however, may be subject to refund or Chargeback. Therefore, the Payment Services Provider – or, if applicable, the Payment Services Partner under the terms of the Direct Agreement – may withhold or deduct all amounts of (a) refunds, (b) Chargebacks (if applicable) and (c) Service Adjustments from the Transaction Funds Settled to Magnius.
- 20.4 Magnius reserves the right and the Merchant authorizes Magnius to, when such is possible and without other notification than through the Dedicated Merchant Area, offset against or deduct from the Settled Transaction Funds:
- (a) any Magnius Fees due by the Merchant pursuant to clause 3; and
  - (b) any Service Adjustments.
- 20.5 Also, Magnius reserves the right to build up the amount applied as the Service Condition of clause 23.3(c) and to reserve the amount applied as the Service Condition of clause 23.3(b) by withholding those amounts from the Settled Transaction Funds.
- 20.6 Any set-off or deduction pursuant to clause 20.4 and any withholding pursuant to clause 20.5:
- (a) will result in the Onward Settlement, which will be payable (in Euros) by Magnius at the latest on the day following receipt or collection by Magnius of the Transaction Funds subject to application of the Service Condition of clause 23.3(a) (if applicable) Magnius shall be entitled to defer the transfer of the Onward Settlement until an amount of € 500.00 has been accrued; and
  - (b) can be effectuated as a result of Merchant's consent given herein to the right of Foundation Magnius to collect any amounts due by the Merchant to Magnius from the Settled Transaction Funds on behalf of Magnius (third party clause).

20.7 Nothing in these Terms and Conditions shall restrict or limit the Merchant's liability for Chargebacks, refunds and any Service Adjustments and such liability shall survive the termination of the Merchant Agreement for any reason.

## **21. SERVICE CONDITIONS: PRACTICAL REQUIREMENT**

The Merchant shall maintain an IBAN with a bank that is acceptable to Magnius for the purpose of receiving Onward Settlements from Magnius.

## **22. SERVICE CONDITIONS: LIMITS**

The Merchant shall comply with any limits imposed by Magnius on the Value of individual Transactions or the aggregate amount of Transaction Funds. Any such limits may be changed at any time, in the discretion of Magnius. When the Merchant processes Transactions exceeding the limits so imposed, Magnius will subject the transfer of the Onward Settlement in respect of such Transaction(s) to additional terms and conditions.

## **23. SERVICE CONDITIONS: COVERAGE**

- 23.1 When the Magnius Payment Services shall be provided, Magnius may, in addition to the checks made against the Acceptance Criteria, perform credit checks in respect of a Merchant and Magnius may require the Merchant to provide Coverage.
- 23.2 Such Coverage shall secure the risks run by Magnius when the Merchant may, for any reason, not be able to perform its payment obligations towards Magnius in regards of the Magnius Fees and Service Adjustments. Coverage may be required in addition to the right of Magnius to suspend provision of the Magnius Services or terminate the Merchant Agreement in such event. The Merchant acknowledges and agrees that any Magnius Fees and Service Adjustments due by the Merchant may be set-off against or deducted from any such Coverage.
- 23.3 Magnius may require Coverage. Any Coverage requirements (the type, form and further details) shall be made part of the Merchant Agreement and can be unilaterally applied by Magnius. Coverage shall be provided in one or more of the following forms:
- (a) Delayed Onward Settlement: When Magnius requires that a Delayed Onward Settlement shall apply, Magnius will retain the Onward Settlement for the period determined by Magnius in its absolute discretion as indicated in the Merchant Agreement;
  - (b) Rolling Reserve: When Magnius requires that a Rolling Reserve shall apply, Magnius will retain a percentage of the Onward Settlement for a certain period;
  - (c) Deposited Sum: When Magnius requires that a Deposited Sum shall apply, the Merchant shall pay, as a one-off payment, on a moment determined by Magnius (which may be a moment prior to Magnius starting to provide the Magnius Payment Services to the Merchant) in its absolute discretion, the amount determined by Magnius in its absolute discretion, each of which shall be indicated in the Merchant Agreement;

- (d) Bonded Account: When Magnius requires that a Bonded Account shall be opened or maintained, Magnius will determine the form of such Bonded Account and the amount to be provided on it as indicated in the Merchant Agreement; and/or
  - (e) Guarantee: When Magnius requires that a Guarantee shall be provided, the Merchant shall procure an independent guarantee subject to the further instructions given by Magnius.
- 23.4 If the Coverage provided under the Merchant Agreement appears to be or is potentially insufficient to cover for the Magnius Fees and Service Adjustments due by the Merchant, the Merchant shall provide additional Coverage to pay for or cover such Magnius Fees and Service Adjustments forthwith and within three (3) days after Magnius' first demand.
- 23.5 The Merchant will not receive interest in connection with any Coverage provided.
- 23.6 Magnius shall, for a period of nine (9) months after expiry or termination of the Merchant Agreement have the right to:
- (a) hold and dispose of any funds held as Coverage; and
  - (b) require the Merchant to maintain any other form of Coverage
- 23.7 Magnius reserves the right to extend the nine (9) months period, if such appears reasonably necessary to cover for any liability of the Merchant towards Magnius which may occur after the 9 months period.
- 23.8 The Merchant shall not be released from any liability occurring beyond the periods mentioned in clauses 23.6 and 23.7.

## **24. LIEN**

The Merchant herein provides to Magnius a first priority lien and security interest on and pledges any of the funds held as Coverage or Coverage in another form and any Settled Transaction Funds in the possession of Magnius at any time or as a result of the withholding of an Onward Settlement. In addition, Magnius shall be authorised to pledge these amounts and Coverage to Magnius in the name of the Merchant and to do everything that serves the pledge.

## **25. FOUNDATION MAGNIUS**

In accordance with the Dutch Financial Supervision Act (*Wet op het financieel toezicht*, "**Wft**") Magnius shall separate the Transaction Funds Settled to Magnius from the estate of Magnius in order to ensure that in the unlikely event of bankruptcy of Magnius, such bankruptcy will not affect the Merchant's claim to the Onward Settlement. Therefore, when the Magnius Payment Services are provided to the Merchant under the Merchant Agreement, the Payment Services Providers and, as the case may be, the Payment Services Partners Settle the Transaction Funds to the IBANs/bank accounts held in the name of Foundation Magnius. Upon Settlement of the Transaction Funds, Magnius shall direct Foundation Magnius to transfer the Onward Settlement to the Merchant's IBAN.

## **C. Magnius Terminals**

If it is agreed that the Magnius Services shall be provided for POS Transactions, the Merchant may wish to purchase Terminals from Magnius. The clauses of this section C apply to the **sale/purchase of Terminals** under the Merchant Agreement or under an Order.

## **26. ORDERING TERMINALS**

- 26.1 Either as agreed as part of the Merchant Agreement, as an Order made through the website of Magnius or as otherwise agreed, the Merchant can purchase Terminals from Magnius.
- 26.2 Terminals shall be prepared in a PCI DSS secured environment and delivered with the cables and supplies necessary to operate the Terminal as specified in the product sheet of the Terminal.
- 26.3 On each Terminal, Terminal Software will be installed and for each Terminal, the Merchant:
  - (a) shall have the right to use the Terminal Software and the right to receive Terminal Software support; and
  - (b) shall be authorised to integrate with the Magnius Interface.

## **27. DELIVERY OF TERMINALS**

- 27.1 Magnius shall arrange for the Terminals to be packaged and delivered to a location(s) designated by the Merchant by standard postal delivery to the Merchant's designated address and may take place in parts. Magnius aims to confirm Orders within five (5) Business Days. The Order confirmation of Magnius shall provide the expected date of delivery, which usually will be within fifteen (15) Business Days. For large Orders longer delivery times may apply.
- 27.2 The Merchant shall be available to receive the Terminal at the designated address on the confirmed day(s) of delivery.
- 27.3 Upon delivery of the Terminals, the Merchant shall be solely responsible for:
  - (a) the assembly and installation of connections, materials, accessories and power sources; and
  - (b) the integration of the Terminal with the Magnius Interface as described in clause 28.
- 27.4 The risk of loss, theft, misappropriation of or damage to the Terminal, the Terminal Software or otherwise shall pass to the Merchant when the Merchant comes into actual possession of the Terminal.

## **28. INTEGRATION OF THE TERMINAL WITH THE MAGNIUS INTERFACE**

- 28.1 In order to be able to access the Services and to submit Transactions to Magnius using the Terminal, the Merchant shall integrate the Terminal with the Magnius Interface as described in the Services Documentation.
- 28.2 The Magnius Services can be integrated with the Terminal through the Magnius App or several Third Party Apps, which are made available in the Apple App Store and Google Play for download on devices which shall interact

with the Terminal and the Services. The use of the apps and devices will be subject to the user terms which the Merchant shall accept upon downloading and starting to use it. Magnius is not responsible for the services provided by and the functioning of Third Party Apps or devices. The interaction between Third Party Apps and the devices to which they have been downloaded on the one hand and the Terminal or the Services on the other hand does not form part of the Services.

28.3 The Merchant's ability to access the Services and to submit Transactions to Magnius is dependent on services received by the Merchant from other third parties. Such third parties may charge the Merchant for access to the Services (e.g. for access to, and transfer of data on, the internet). The Merchant shall be solely responsible for payment of such fees.

## **29. HARDWARE WARRANTY**

29.1 Subject to the Merchant using proper care and use of the Terminal (s) in accordance with the intended purpose and the operating instructions, Magnius provides the Terminal(s) with a limited hardware warranty covering 1 (one) year starting at the date of delivery of the Terminal. Under this hardware warranty the Merchant is entitled to free replacement or repair of the Terminal within reasonable time after the Merchant's notification of the defect, if it appears that the Terminal cannot be used to submit Transactions to Magnius due to a defect in the Terminal. The process for arranging claims under this hardware warranty is provided in the Merchant Zone.

29.2 No claim(s) under the hardware warranty will be honoured if:

- (a) the defect is partly or entirely the result of incorrect, negligent or incompetent use, external causes such as fire or water damage
- (b) the defect is (partly) caused by any circumstances or treatment which are in conflict with the prescriptions of the operating instructions;
- (c) the Terminal has been used with other software than the Terminal Software or with other devices than those approved of by Magnius (as described in the Merchant Zone); or if
- (d) the Merchant or any third party authorised by the Merchant to do so, has made changes to the Terminal within the scope of the hardware warranty without the written consent of Magnius.

## **30. TERMINAL FEES**

30.1 The Magnius Fees charges for Terminals can be found in the Merchant Area. Magnius will invoice the Merchant for the Terminals at the day on the date of the Order confirmation.

30.2 Clause 2.4 applies in full: If the Merchant cannot, for whatever reason, use the Terminal(s), the Merchant is not entitled to suspend or withhold payment of the Terminal Fees or any other Magnius Fees or to terminate or rescind the sale/purchase of the Terminal.

30.3 Only upon payment of the Magnius fees for the Terminal, the Terminal shall become the property of the Merchant.

## **D. POS Transactions and Use of Terminals**

If it is agreed that the Services shall be provided for Payments made by Cards as POS Transactions, the clauses of this section D apply.

### **31. USE OF THE TERMINALS**

- 31.1 Unless it is explicitly agreed in the Merchant Agreement, that the Terminal is a Terminal for mobile use, it is not permitted in any case for the Merchant to move a Terminal outside the Merchant's company's location.
- 31.2 The Merchant shall use the Terminal(s) in compliance with the prescriptions in the Services Documentation and the obligations of the Merchant for POS Transactions as described in clause 31.
- 31.3 The Merchant shall perform all Terminal Location Activities and ensures that it has provided appropriate training to Merchant's employees dealing with POS Transactions and Terminals and that it shall assign designated employees for dealing with issues for which Terminal support is required and the interaction with Magnius for that purpose.
- 31.4 The Merchant shall update the Terminal Software and the apps used within the timeframes indicated by Magnius, which Magnius will provide with each notification of an update.

### **32. SERVICE CONDITIONS: OBLIGATIONS OF THE MERCHANT WHEN SUBMITTING POS TRANSACTIONS**

- 32.1 When the Services are provided for POS Transactions, the Merchant shall ensure that the Terminal is strictly only used by the Merchant and its authorised staff and never by the Customer, unless the Customer is required to enter the Card's PIN in the presence of the Merchant and/or its authorised staff.
- 32.2 Prior to accepting a Payment by Card as a POS Transaction, the Merchant shall:
  - (a) obtain authorisation for every Transaction, except when it is not required under the Rules;
  - (b) verify that the four (4) digits printed above (or under) the embossed Card Number match the first four (4) digits of the Card Number. Merchants whose Transactions relate to products that are representative of actual cash and which has stores or represents value, including but not limited to money orders, traveller's cheques, foreign currency, lottery tickets or casino gaming chips shall include the said digits on the Merchant's copy of the relevant receipt;
  - (c) verify that the signature on the Transaction receipt matches the name embossed on the face of the Card, the Customer's signature on the Card and the signature on any identification documents presented;
  - (d) verify that the person presenting the Card for making the Payment is the person whose name is embossed on the face of the Card;

- (e) verify that the embossed account number on the face of the Card matches the printed number on the back of the Card and the account number of the receipt;
- (f) verify that the Card, and in particular the signature panel is not visibly altered or mutilated;
- (g) verify that the Card has not expired;
- (h) if applicable, that the person presenting the Card for making the Payment resembles the person depicted in any photograph intended for identification on the Card;

32.3 Furthermore, the Merchant must:

- (a) keep the Card until the Customer signs the receipt, and
- (b) if the Card is not signed or the signature on the receipt differs from that on the Card, request identification by the person presenting the Card for making the Payment. In this case, the name and signature must match the identification documents presented and, upon a mismatch, the Transaction shall be rejected.
- (c) when the Card is a chip and PIN card, process the Card as prompted by the Terminal and the Customer shall be required to input the applicable PIN, when and if prompted by the Terminal; and
- (d) request manual telephone authorisation when (i) the Card is not signed, (ii) the Merchant is suspicious of the Transaction, (iii) the Merchant finds a match with a negative or stop list, or (iv) when the Transaction is processed manually.

32.4 Under no circumstances may the entry of the PIN on the Terminal be recorded on camera.

#### **E. SEPA Mandate by the Merchant**

As a condition for provision of the Services by Magnius, the Merchant shall agree to the SEPA Mandate provided for in the Merchant Agreement. The clauses of this Section E shall apply to the SEPA Mandate.

#### **33. PRE-AUTHORISED DEBITS**

33.1 When the Magnius Payment Services are not provided or when the Magnius Payment Services are provided as agreed in the Merchant Agreement and the Transaction Funds Settled to Magnius do not suffice to cover for the Magnius Fees, Service Adjustments and all other amounts owing by the Merchant to Magnius under the Merchant Agreement, the Merchant hereby authorises Magnius to draw on the IBAN as provided in the Merchant Agreement for the purpose of paying them to Magnius under the Merchant Agreement, without prior written notice to the Merchant of the amount of any debit or the date of any debiting.

33.2 The Merchant agrees that if any amounts drawn under this SEPA Mandate are reversed, and Magnius is not able to otherwise effectuate payment by the Merchant for any reason, then Magnius may hand over the claim for

collection. In that event all costs incurred by Magnius, in connection with overdue payments, such as legal costs and extra-judicial and judicial costs, including the costs of legal assistance, bailiffs and collection agencies, will be payable by the Merchant. The extra-judicial costs will equal no less than fifteen per cent (15%) of the invoiced amount subject to a minimum of € 250.00 (excluding VAT).

33.3 The Merchant shall notify Magnius of any changes of the IBAN used for the purpose described in clause 33.1 on the shortest possible notice.

## **F. Definitions and Interpretation**

The clauses of this section F and the headings of the sections and clauses are provided merely for convenience.

### **34. THE DEFINITIONS**

34.1 The following terms, written with an initial capital, shall be definitions with the meaning as provided below:

**Acceptance Criteria** means the criteria, set by Magnius in its sole discretion, which a Merchant shall meet in order to be accepted as a Merchant with the aim of proper risk management and which criteria include any checks, requirements and restrictions prescribed by applicable AML-CTF Legislation.

**Approved Website** means the url/ website used by the Merchant for the sale of goods and/or services the Payment of which will be enabled through the Services provided in respect of E-Commerce Transactions as approved and confirmed by Magnius.

**Approved Location** means the physical address of the shop as approved by Magnius.

**AML-CTF Legislation** means all and any anti-money laundering and counter-terrorism financing directives, laws, rules, guidelines relevant government sanctions, embargoes or comparable measures known as sanctions as applicable from time to time.

**Authorised Transaction** has the meaning given to it in clause 6.2.

**Business Days** are all days other than a Saturday, Sunday or festive day on which both the relevant Payment Service Provider is open for business as required for the execution of a Payment and the Payment Services Partner and Magnius, are open for the processing of a Transaction.

**Capture Period** means, in relation to the Pre-Authorisation Functionality, the limited maximum period during which an authorisation is valid.

**Cards** means a credit or debit or other card issued and licensed under a Card Scheme in respect of which (A) Magnius provides the Transaction Processing Services and the Magnius Payment Services under the Merchant Agreement or (B) Magnius provides the Transaction Processing Services under the Merchant Agreement and the Payment Services Partner provides the Partner's Payment Services under a Direct Agreement. Payments made with Cards can be accepted for E-commerce and POS Transactions.

**Card Scheme** means Visa, MasterCard or any other scheme relating to Cards, as agreed in the Merchant Agreement.

**Chargeback** has the meaning given to it in clause 6.1.

**E-Commerce-Transaction** means a Transaction between a Merchant and a Customer whereby the Customer is using a Payment Instrument without being physically present at the Merchant at the time of the Transaction.

**Confidential Information** means any data or information, oral or written, treated as confidential that relates to either party's (or, if either party is bound to protect the confidentiality of any third party's information, such third party's) past, present, or future research, development or business activities, including any unannounced products and services, any information relating to services, developments, the Services Documentation (in whatever form or media provided), inventions, processes, plans, financial information, Transaction data, revenue, Transaction volume, forecasts, projections, and the financial terms of the Merchant Agreement. Notwithstanding the foregoing, Confidential Information shall not be deemed to include information if: (i) it was already known to the receiving party prior to the Effective Date of the Merchant Agreement, as established by documentary evidence; (ii) it is in or has entered the public domain through no breach of the Merchant Agreement or other wrongful act of the receiving party; (iii) it has been rightfully received by the receiving party from a third party and without failure to comply with of any obligation of confidentiality of such third party to the owner of the Confidential Information; (iv) it has been approved for release by written authorization of the owner of the Confidential Information; or, (v) it has been independently developed by a party without access to or use of the Confidential Information of the other party. The words '*receiving party*' and '*disclosing party*' used in regards of confidentiality, mean the party receiving, respectively disclosing Confidential Information under the Merchant Agreement.

**Change Notification** has the meaning given to it in clause 1.4(b).

**Customer** means a natural person or legal entity who or which has purchased goods and/or services from the Merchant and where payment for such purchase is to be received by the Merchant through the Services.

**Dedicated Merchant Area** means the unique identifiers for the Merchant (and/or the Merchants) created and maintained in the Services to enable the Merchant to integrate the Services with the Merchant's Services and allow the Merchant's Merchants to use the Merchant's Services and where the Merchant can access and download activity reports, and inquire about Transactions processed by Magnius for the Merchant.

**Direct Agreement** means the agreement concluded between a Merchant and a Payment Services Partner governing the provision of the Partner's Payment Services to the Merchant directly.

**Drop-In-Form** means a way of submitting the Prescribed Transaction Data to the Magnius Interface for the provision of the Magnius Processing Services as further described in the Services Documentation.

**Effective Date** means the date upon which Magnius confirms that the Merchant Agreement is effective by providing the Merchant with the details required to

integrate with or access the Magnius Interface and to, if so agreed, obtain access to the Merchant Zone and the Dedicated Merchant Area.

**Force Majeure** means any and all circumstances beyond the reasonable control of the Party concerned, including, without limitation, acts of God, earthquake, flood, storm, lightning, fire, explosion, war, terrorism, riot, civil disturbance, transportation problems, sabotage, strike, lockout, slowdown, labour disturbances, accident, epidemic, emergency repair or maintenance, breakdown of public utilities, changes of law or an inability to obtain or retain necessary authorizations, licences or permits.

**Foundation Magnius** means Stichting Derdengelden Magnius, a foundation ('stichting') organised under the laws of The Netherlands, registered under number 65199340 in the Chamber of Commerce and having an office address at Bargelaan 26, 2333 CT Leiden, The Netherlands.

**Fraud Control Tooling Services** means the type of services described in clause 3.6, further details of use and options can be found in the Services Documentation.

**Hosted Payment Page** means a way, alternative to the Drop-In-Form, of submitting the Prescribed Transaction Data to the Magnius Interface for the provision of the Magnius Processing Services as further described in the Services Documentation.

**Initial Term** has the meaning given to it in clause **Fout! Verwijzingsbron niet gevonden..**

**Intellectual Property or IP** means patents, trademarks, service marks, design rights (whether registerable or otherwise), applications for any of the foregoing, copyrights (whether in database or otherwise), database rights, know-how, trade or business names, goodwill associated with the foregoing, Internet domain names and web site addresses and other similar rights or obligations, whether registerable or not, in any country (including but not limited to the countries where the Parties are incorporated), and all derivatives of the foregoing.

**Log-in Details** means the usernames, passwords, keys and other codes provided by Magnius to the Merchant or used by the Merchant in order to access and use the Magnius Service.

**Magnius App** means the mobile software application provided by Magnius as described in clause 28.2.

**Magnius Services** means all or any of the service types described in clause 3 and any newly added service types as meant in clause 1.4(a) which Magnius is or may become able to provide.

**Merchant** means the legal entity with whom Magnius has entered into the Merchant Agreement for the purpose of Magnius providing the Merchant with the Services and the Merchant using them.

**Merchant Agreement** means the document named 'Merchant Agreement' concluded between Magnius and the Merchant for provision and use of the Services including all annexes, schedules, addenda or other document supplementing it.

**Merchant Zone** means the password-restricted zone of the Magnius website located at <http://support.magnius.com> where the Merchant can download the Magnius

Interfaces, find technical documentation, search the knowledgebase, and access the Dedicated Merchant Area.

**Magnius Fees** means the Transaction Fees, refund fees, Chargeback fees, interchange fees or likewise, Terminal Fees and any and all other fees, such as one-off connection fees or subscription fees due under the Merchant Agreement.

**Magnius Interface** means the electronic connection method provided by Magnius to the Merchant for providing the Prescribed Transaction Data required by Magnius and to provide the Services.

**Magnius IP** has the meaning given to it in clause 12.1.

**Magnius Payment Services** means the type of services provided by Magnius which is described in clause 3.5, further details of use and options can be found in the Services Documentation.

**Merchant** means the parties to whom the Merchant provides the Merchant's Services based on an Merchant Agreement concluded between the Merchant and such party.

**Onward Settlement** means the amount which Magnius owes and shall transfer to the Merchant upon Magnius' receipt or collection of the Settled Transaction Funds when providing the Magnius Payment Services.

**Order** means the part of the Merchant Agreement relating to purchase/sale of Terminals.

**(a) Partner's Payment Services** means the payment services provided by a Payment Services Partner or the Payment Services Partner, such as Acquiring Services for payments paid with Cards.

**Payment** has the meaning given to it in clause 3.1.

**Payment Instrument** means a personalised device(s) and/or set of procedures used by the Customer, in its capacity of payment services user of a Payment Services Provider, in order to initiate the payment the Customer owes to the Merchant;

**Payment Method** means the methods of payment the Merchant has chosen and Magnius has agreed to make available for the Merchant to enable the Merchant's acceptance of payments due by Customers for the goods and/or services purchased from the Merchant, such as online and offline bank transfers, direct debits, Cards or other Payment Instruments for which a Payment Services Provider or Payment Services Partner provides the payment services to the Customer respectively the Merchant.

**Payment Services Fees** means the fees due by the Merchant to the Payment Services Partner in relation to the payment services provided to the Merchant by the Payment Services Partner subject to the terms and conditions of the Direct Agreement.

**Payment Services Partner** means the Payment Service Providers with whom Magnius has agreements and technical integrations in place enabling Magnius to enable the provision of payment services by the Payment Services Partner to the Merchant's Customers or the Merchant, in which latter case the Merchant shall conclude a Direct Agreement in order to be able to be provided with the Partner's Payment Services, as supported by Magnius.

**Payment Services Provider** means the provider of payment services with whom Magnius has agreements, technical connections and integrations in place in order to be able to provide the Services to the Merchant. The word Payment Services Provider include issuers, acquirers and (scheme) owners in relation to Payment Methods, where these are involved even where Magnius only contracts and integrates with the acquirer involved for such payment services.

**Penalties** means any charges (including any associated costs) which may be levied on Magnius or the Merchant by a Payment Services Provider or a Payment Services Partner as a result of the Merchant's failure to comply with the Rules.

**PCI DSS** means the Payment Card Industry Data Security Standards (as updated from time to time).

**Pre-Authorisation Functionality** means the option for a Merchant (or a Merchant) to check the availability of funds available for a customer making a payment so providing a certain level of assurance that a payment will eventually be Settled as further described in the Services Documentation.

**Prescribed Transaction Data** means the data which the Merchant is required to submit to Magnius with regards to Transactions, as prescribed in the Services Documentation for Magnius being able and willing to provide the Services.

**Pricing Schedule** means the document setting forth the fees chargeable by Magnius to the Merchant for the Services provided by Magnius hereunder, attached hereto and incorporated by reference.

**Privacy Legislation** means the EU Data Protection Directive 95/46/EC as it may be amended, restated, supplemented, substituted and implemented in local legislation from time to time.

**POS Transaction** means a Transaction between a Merchant and a Customer whereby the Customer is using a Payment Instrument that is physically present at the Merchant at the time of the Transaction and strictly relates to Payments paid by Cards.

**Reconciliation Support Services** means the type of services described in clause 3.9, further details of use and options can be found in the Services Documentation.

**Rules** means any and all rules, regulations, policies and procedures applicable to the issuing, use and provision of payment methods and the acceptance of payments made with them as set by the Payment Services Providers or Payment Services Partners.

**Self-Assessment Questionnaire (SAQ)** means the questionnaire for self-assessment made available by the PCI-Security Standards Council.

**SEPA Mandate** means the Merchant's authorisation to Magnius for (SEPA) direct debits, given for the purpose of section F.

**Service Adjustments** means mean any and all expected, potential or actual refunds, returns, adjustments, fees, Penalties, surcharges, expenses, interchange fees and similar fees and assessments, and other payments or amounts due from the Merchant to Magnius or from Magnius due to a Payment Services Provider in respect of the Services provided to the Merchant or the Merchant's Transactions (or from the Merchant to a Payment Services Partner under the Direct Agreement) or

for which Merchant is otherwise liable under the Merchant Agreement, and shall, for the avoidance of doubt where not mentioned separately include any amounts due as reimbursement of a Payment which has become subject to a Chargeback or refund.

**Service Credits** means the amounts which may become due by Magnius under clause **Fout! Verwijzingsbron niet gevonden..**

**Services** means the types of services provided by Magnius as agreed under the Merchant Agreement.

**Services Documentation** means collectively, the operation instructions, user manuals, help files and other technical information and material, in written or electronic form, delivered or made accessible by Magnius to the Merchant, or available in the Merchant Zone or on the Magnius website.

**Settle** means the payment of the Transaction Funds by the Payment Services Partner to, either (A) the Merchant, when the Payment Processing Services are provided or (B) Magnius, when both the Payment Processing and the Magnius Payment Services are being provided; **Settlement** is interpreted accordingly.

**Software** means the collective set of programs and data developed and/or operated by Magnius as needed to provide the Services to its Merchants, including the Magnius Interface and Terminal Software.

**Terminal** means the equipment, any PIN entry device and ancillary equipment enabling the submission of Prescribed Transaction Data for POS Transactions, the types of Terminals available are listed on the website of Magnius.

**Terminal Fees** means the fees due for the purchase of Terminals under the Merchant Agreement or a separate Order.

**Terminal Location Activities** means, amongst other things: instruct Merchant employees about use, support Customers making their Payments using a Terminal, perform basic troubleshooting analysis and solve issues in accordance with Terminal user instructions.

**Terminal Software** means the collective set of programs and data developed and/or operated by Magnius as needed to provide the Services to its Merchants installed on a Terminal as described in clause 26.3.

**Third Party App** means a mobile software application provided by a third party as described in clause 28.2.

**Transaction** has the meaning given to it in clause 3.2; a refund or Chargeback is also charged as a Transaction.

**Transaction Fee** means the fees charged per Transaction for the Transaction processing Services provided by Magnius.

**Transaction Funds** means, (A), when Magnius solely provides the Transaction Processing Services in respect of Transactions, the amount of funds (to be) Settled in respect of those Transactions by the Payment Services Partner to the Merchant under the terms and conditions of the Direct Agreement; or (B), when Magnius provides the Magnius Payment Services in respect of Transactions, the Transaction Funds (to be) Settled in respect of those Transactions to (and as such collected or received by) Magnius (in the account held in the name of Foundation Magnius) by

the Payment Services Provider or the Payment Services Partner, in which respect Magnius shall transfer the Onward Settlement to the Merchant pursuant to Section C of these Terms and Conditions.

**Transaction Processing Services** means the type of services provided by Magnius which is described in clause 3.2, further details of use and options can be found in the Services Documentation.

**Value** means the amount charged by the Merchant for the goods and/or services purchased by a Customer.

**Wft** means Wet op het financieel toezicht.

**Working Hours** are from 09:00 CET to 18:00 CET on Business Days in the Netherlands.

**3D-Secure Authentication** means the "Three-Domain Secure" protocol developed by Visa International Inc. (Visa) branded as "Verified by Visa" and "MasterCard SecureCode" developed by MasterCard International Inc. (MasterCard), including successive versions thereof and any amendments thereto, 3D-Secure Authorisation may be included in the Transaction Processing Services or the Magnius Payment Services.

34.2 Except as otherwise defined, in the Merchant Agreement:

- (a) references to a communication *in writing* shall include e-mail and electronic messages accessible and printable by commonly used software applications;
- (b) headings are for convenience only;
- (c) references to the singular include reference to the plural;
- (d) references to clauses and annexes are references to clauses and annexes to the Merchant Agreement, unless otherwise made explicit.

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