

KALIXA

Terms and Conditions

Gateway – Aggregation – Acquiring

KALIXA's current Terms and Conditions are published on www.KALIXA.com.

1. Company Information

Company	KALIXA Accept Ltd.
Registration Number	5433326
FCA Number	504318
Located at	The Corn Mill, 1 Roydon Road, Stanstead Abbots, Ware, Hertfordshire, SG12 8XL, UK
Referred to as	"KALIXA"

2. Introduction

These Terms and Conditions ("**T&C**") outline the terms and conditions under which KALIXA will provide the **SERVICES** as specified in the **AGREEMENT**. In the event of a conflict between these T&C and other provisions of the **AGREEMENT**, the other provisions of the **AGREEMENT** shall prevail.

KALIXA and the **MERCHANT** shall ensure full compliance with the **RULES** of the relevant **CARD SCHEMES**, **OTHER FINANCIAL INSTITUTIONS** and **PAYMENT PROVIDERS**. In the event of a conflict between the **AGREEMENT** and these **RULES**, the provisions of these **RULES** shall prevail.

3. Definitions

ACQUIRER or **ACQUIRING BANK**: a financial institution which is a member of MasterCard International Limited and/or Visa International and thus licensed to acquire the **MERCHANT's TRANSACTIONS** and **PROCESS** them for **CLEARING** and **SETTLEMENT** purposes.

ACQUIRING SERVICES: the routing of **TRANSACTIONS** for **AUTHORIZATION**, **PROCESSING**, **CLEARING** and **SETTLEMENT** of funds.

AGGREGATION FEE: shall mean the fees KALIXA is charging the **MERCHANT** with for rendering the **AGGREGATION SERVICES**.

AGGREGATION SERVICES: the routing of **TRANSACTIONS** for **AUTHORIZATION**, **PROCESSING**, **CLEARING**, **SETTLEMENT** and concentration of funds by facilitating **OTHER FINANCIAL INSTITUTIONS** on behalf of the **MERCHANT**.

AGREEMENT: Gateway and/or Aggregation and/or Acquiring Agreement including all Schedules, these T&C and any other material agreement entered into between KALIXA and the **MERCHANT** with regard to the **SERVICES**.

APPLICABLE LAWS: all applicable laws and regulations, the prevailing rules and regulations of any regulatory authority and the **RULES** to which each party is subject to in respect of the performance of its obligations under the **AGREEMENT**.

AUTHORIZATION: the confirmation to the **MERCHANT**, in response to an enquiry from the **MERCHANT**, stating that a **TRANSACTION** involving a **CARD** or a non-**CARD** payment account is permitted.

BANKING DAY(S): a day or days on which banks are open for business in London and, where a payment is to be made in a currency other than in Euros, in the principal financial center of the country of such currency.

CARD: a current credit or debit charge card issued by **CARD ISSUERS** licensed by MasterCard International or Visa International or any other credit or debit card(s) as approved by KALIXA.

CARDHOLDER-NOT-PRESENT TRANSACTION: a **TRANSACTION** which is completed when neither the cardholder nor the cardholder's **CARD** is present at the point of sale.

CARD ISSUER: a **CARD SCHEME MEMBER** in its capacity as an issuer of a **CARD** or **Account**.

CARD SCHEME: Visa International, MasterCard International or such other card scheme as notified to the **MERCHANT** by KALIXA.

CARD SCHEME MEMBER: a financial institution which participates in the **CARD SCHEME**.

CHARGEBACK: an invalid or disputed **TRANSACTION** that is rejected by the **CARD ISSUER**, **CARD SCHEME** or financial institution.

CHARITY: an entity with an annual income of less than £1,000,000 which is an English and/or Welsh, Northern Irish, or Scottish charity in accordance with the **PSR**.

CLEARING: collecting and listing all **TRANSACTIONS**, which are subject to **SETTLEMENT** to the **MERCHANT**.

CUSTOMER ORDER LETTER: the correspondence initiating a **CARDHOLDER-NOT-PRESENT TRANSACTION** duly completed by a cardholder.

EEA: European Economic Area.

FLOOR LIMIT: the threshold where upon its exceeding a **TRANSACTION** has to be authorized. This threshold is defined

by KALIXA as a currency amount as a result of the KYC PROCEDURES.

FCA: Financial Conduct Authority UK.

GATEWAY SERVICES: shall mean the technical processing of TRANSACTIONS between an ACQUIRER, PAYMENT PROVIDER or KALIXA and the MERCHANT.

INTELLECTUAL PROPERTY RIGHTS: without limitation any patent, trade mark, trade name, business name (including domain names and URLs), copyright, registered design, database right, unregistered design right (including rights in semiconductors) or other intellectual or industrial property protection and any application for such protection, and all rights in any secret process, moral rights, know-how and inventions (whether patentable or registrable or not) or other confidential information in each case whether registered or unregistered and including applications for the grant of such rights and all other rights or equivalent forms of protection anywhere in the world.

KYC: Know Your Customer.

KYC PROCEDURES: the process carried out by KALIXA in order to fulfill the KYC requirements set forth by the CARD SCHEMES, OTHER FINANCIAL INSTITUTION or public authority.

MERCHANT NUMBER: the unique processing number allocated by KALIXA to each location/currency or origination/currency of SETTLEMENT.

MICRO-ENTERPRISE: an enterprise which employs fewer than 10 persons and has a turnover or annual balance sheet that does not exceed EUR 2,000,000.

NEGATIVE FILE/WARNING BULLETIN: a list of blocked Card Account Numbers supplied to the Merchant by KALIXA.

OTHER FINANCIAL INSTITUTION: any institution which regulates or is responsible for any OTHER PAYMENT SERVICE.

OTHER PAYMENT SERVICE: payment services other than ACQUIRING SERVICES. Such Service(s) as the parties may agree shall be provided by KALIXA to the MERCHANT including PROCESSING to collect payments for goods and/or services or providing connectivity between the MERCHANT and KALIXA, and KALIXA and any OTHER FINANCIAL INSTITUTION.

PAYMENT PROVIDER: a financial institution (OTHER FINANCIAL INSTITUTION) offering payment methods such as e-wallets, pre-paid vouchers, etc. to a MERCHANT or KALIXA.

PAYMENT SERVICES DIRECTIVE or **PSD:** Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC.

PAYMENT SERVICES REGULATIONS or **PSR:** Payment Services Regulations 2009, the implementation of the PSD in the UK.

PCI: Payment Card Industry.

PCI DSS: Payment Card Industry Data Security Standards.

PROCESS or **PROCESSING:** means (i) by KALIXA, the submission of transaction data to the payment processing

system of an ACQUIRER or a PAYMENT PROVIDER; (ii) by the ACQUIRER or KALIXA, the submission of transaction data to the CARD ISSUER or OTHER FINANCIAL INSTITUTION in order to obtain an AUTHORIZATION for the TRANSACTION and to obtain funds for SETTLEMENT (including CHARGEBACK or a REFUND).

REFUND: an amount for the credit of a cardholder's CARD account or a non-CARD account holder's account or as a result of the generation of a REFUND RECEIPT.

REFUND RECEIPT: any electronic or paper records the MERCHANT may use for the purpose of recording a REFUND to a cardholder's CARD or a non-CARD account.

RULES: all current and future by-laws, rules and regulations of CARD SCHEMES, OTHER FINANCIAL INSTITUTIONS or KALIXA, which are applicable to the SERVICES or other payment methods.

SERVICE(S): any services provided to the MERCHANT by KALIXA as agreed upon in the AGREEMENT; particularly the PROCESSING, CLEARING and SETTLEMENT of MERCHANT TRANSACTIONS and other payment related services by KALIXA to MERCHANT including (i) PROCESSING, CLEARING and SETTLEMENT, (ii) MERCHANT credit research, (iii) MERCHANT activation and approval, (iv) MERCHANT security and recovery, (v) back office services, and (vi) CHARGEBACK and retrieval services.

SETTLEMENT: the settlement via a bank transfer by KALIXA to the MERCHANT of the net relevant amount from TRANSACTIONS under the AGREEMENT.

SETTLEMENT CURRENCY: shall mean Euros or any other currency for SETTLEMENT as agreed in writing between KALIXA and the MERCHANT in accordance with the AGREEMENT.

SETTLEMENT CYCLE: shall mean the period of time as agreed during which KALIXA will collect funds on behalf of the MERCHANT before transferring these monies to the indicated bank account(s) of the MERCHANT and as set forth in the AGREEMENT.

SETTLEMENT VALUE: the net amount resulting from the submission of TRANSACTIONS and REFUNDS for CLEARING and after taking into account any deductions made as set out in the AGREEMENT.

THIRD PARTY SOLUTION PROVIDER: a provider of software and/or hardware facilitated by the MERCHANT in order to establish and maintain a valid and working connection to the KALIXA payment system, or being facilitated by the MERCHANT in addition and in parallel to the connection to the KALIXA payment system.

TRANSACTION(S): act of payment between a cardholder or a non-CARD account holder and a MERCHANT resulting in the generation of a TRANSACTION RECEIPT or other report.

TRANSACTION RECEIPT: an electronic or paper record of a TRANSACTION generated at the point of sale or website evidencing the purchase of goods or services by a cardholder or a non-CARD account holder from a MERCHANT using a CARD or any other electronically processed payment option.

4. Services

4.1. General

The SERVICES to be delivered by KALIXA to the MERCHANT are specified in an Aggregation and/or Acquiring and /or Gateway Agreement. KALIXA will provide the SERVICES to the MERCHANT only upon successful completion of its anti-money-laundering and risk due diligence and its KYC PROCEDURES. KALIXA will prior to accepting the MERCHANT, as well as on a recurring basis, execute its evaluation and assessment of the MERCHANT and carry out its KYC PROCEDURES upon which the specific risk and security arrangements for the MERCHANT shall be defined.

4.2. Changes to Services

Changes to the SERVICES shall be agreed upon between the parties in written form and shall be subject to the following process:

1. The MERCHANT shall submit a change request to KALIXA's commercial department for review.
2. Subsequently, KALIXA shall review the change request, consider its impact and at its sole discretion approve or reject the change request.
3. If the change request is approved, KALIXA shall provide an estimate of the expected implementation period and work effort.
4. The change request, if approved, shall be implemented into the AGREEMENT.

Notwithstanding the above, KALIXA may issue new policies with regards to the SERVICES, which will be published on www.KALIXA.com. KALIXA will notify the MERCHANT by giving 30 days' notice in advance, unless the change is required immediately due to legal or regulatory requirements. If the MERCHANT continues using the SERVICE(S) provided by KALIXA past the date when these new policies become effective, it is deemed that the MERCHANT has accepted these changes.

5. KALIXA Aggregation and Acquiring Services

5.1. General

The MERCHANT hereby instructs and authorizes KALIXA to claim on its own behalf, but for the account of the MERCHANT, the settled TRANSACTION amount from the relevant financial institutions and authorizes KALIXA to receive and to hold this amount on behalf of the MERCHANT.

5.2. Additional Agreements

Depending on the SERVICES the MERCHANT subscribed to with KALIXA, the MERCHANT may have to enter into additional agreements with OTHER FINANCIAL INSTITUTIONS and/or ACQUIRING BANKS in order for KALIXA to render the SERVICES to the MERCHANT. In case such an additional agreement is required, but not concluded for any reason, the effected payment method shall not be considered part of the SERVICES and KALIXA shall not be held responsible in any way whatsoever for the non-availability of the relevant payment method.

KALIXA has the right to permanently or temporarily disconnect the MERCHANT from certain payment methods if such payment methods cease to be supported by any corresponding OTHER FINANCIAL INSTITUTION. Under no circumstances will KALIXA be liable to the MERCHANT for any failure of any OTHER FINANCIAL INSTITUTION to effect payments or perform its service in any other way.

5.3. Processing Liabilities

KALIXA shall not be liable to the MERCHANT for any failure of a financial institution, including a financial institution's failure to effect payments.

5.4. Processing Limit

KALIXA shall apply a processing limit to the aggregate value of TRANSACTIONS in respect of any specified period. KALIXA is entitled to retain any amount processed in excess of the processing limit without prior approval for a period of up to 12 months. KALIXA may vary the processing limit at any time by giving the MERCHANT 30 days' notice.

5.5. Reserve Requirement

For all aggregated payment methods and the ACQUIRING SERVICES, a specific reserve requirement is stipulated in the AGREEMENT.

The reserve requirement can either be fulfilled by a deposit into the reserve account indicated by KALIXA (security deposit), as a third party guarantee accepted in writing by KALIXA (guarantee) or by an automatic transfer of a share of the SETTLEMENT amounts to the reserve account indicated by KALIXA until requirements are met (rolling reserve – paid out to the MERCHANT after an agreed time).

Upon termination of the AGREEMENT such reserve shall be retained by KALIXA to cover for any remaining potential liabilities regarding CHARGEBACKS. No interest will be paid to the MERCHANT. KALIXA reserves the right to adjust the reserve requirements by giving the MERCHANT 30 days' notice.

5.6. Settlement of Funds

KALIXA shall ensure that SETTLEMENTS to the MERCHANT's bank account are made at the latest 7 BANKING DAYS after the end of the SETTLEMENT CYCLE. In case any OTHER FINANCIAL INSTITUTION does not settle to KALIXA's account, the MERCHANT agrees that KALIXA does not have to settle before the involved OTHER FINANCIAL INSTITUTION has executed the corresponding settlement.

The MERCHANT acknowledges that KALIXA has no influence on the duration of the settlement periods maintained by financial institutions and agrees to cover any bank transfer costs related directly to the SETTLEMENT from KALIXA.

6. KALIXA Gateway Processing Services

6.1. Payment Methods

KALIXA has the right to permanently or temporarily disconnect the MERCHANT from certain payment methods if such payment methods are not provided by the relevant financial institution.

6.2. Additional Agreements

The performance of certain SERVICES or parts thereof may require the MERCHANT to enter into additional agreements with KALIXA, KALIXA's affiliates or one or more financial institutions. If such an additional agreement is required, but not concluded for any reason, the specific service to be covered by the additional agreement shall not be considered part of the SERVICES and KALIXA shall be held without responsibility.

6.3. Processing Liabilities

KALIXA shall not be liable to the MERCHANT for any failure of a financial institution, including a financial institution's failure to effect payments.

7. Merchant Obligations

7.1. Merchant Business Information

The MERCHANT represents and warrants that the information provided in the application and the KYC PROCEDURES is true and accurate and provides an accurate picture of the true nature of the MERCHANT's business. The MERCHANT will notify KALIXA immediately of any relevant changes, including, but not limited to:

- Legal representative(s)
- Bank account (for SETTLEMENT)
- Website/Online shop URL
- Major ownership
- Key geographical markets
- Financial standing
- Line of business

KALIXA shall receive such notification at least 30 days prior to the effectiveness of the change.

7.2. Implementation and Security

The MERCHANT is at its own costs and expenses responsible for the correct technical implementation of and connection to the technical systems of KALIXA. The MERCHANT will ensure that its technical systems are at all times kept fully functional and in compliance with the market standard particularly by taking appropriate security measures to avoid unauthorized access. KALIXA has implemented a number of security features into its system. The MERCHANT shall at its own costs and expenses ensure that these features take their full effect. KALIXA will support the MERCHANT by providing relevant technical guidelines.

The MERCHANT shall notify KALIXA at least 30 days in advance of any technical adjustments that could possibly affect the performance of the SERVICES.

KALIXA is at any time entitled to adopt, adjust, change or progress the API used to perform the SERVICES. KALIXA will notify the MERCHANT within due course. If such measure requires the MERCHANT to update its software or interface, the MERCHANT is obliged to perform such update within 6 weeks upon notification.

In case of facilitating CARD-related services, the MERCHANT is obliged to follow the rules and regulations set forward by

the PCI Council (www.pcisecuritystandards.org) and to provide a valid proof of compliance with the standards of PCI.

7.3. Use of the Services

The MERCHANT shall:

1. provide KALIXA with any information necessary to provide the SERVICES and respond promptly, at least within 5 BANKING DAYS, to requests of KALIXA to provide direction, information, approvals, authorizations or decisions that KALIXA deems necessary to perform the SERVICES;
2. assist KALIXA with the implementation and performance of the SERVICES, if necessary;
3. implement adequate security measures to prevent its programs from damage including data (re-)storage;
4. not forward its access data (User ID, password) for the SERVICES to any third parties. The MERCHANT acknowledges that, for security reasons, ghost names and pseudonyms cannot be used;
5. inform KALIXA immediately, if an employee or otherwise associate, who was given access to the SERVICES, resigns. KALIXA will close this access for security reasons; and
6. in case of facilitating CARD-related services, put the respective logos of the CARD SCHEMES at the Merchant's website on display.

If KALIXA is unable to perform the SERVICES for any reasons beyond the control of KALIXA which are caused by the MERCHANT, KALIXA shall not be held responsible in any way.

7.4. Business Conduct

While using the SERVICES, the MERCHANT undertakes

1. to provide such necessary information to its customers as required pursuant to APPLICABLE LAWS;
2. not to sell any goods or offer services prohibited pursuant to APPLICABLE LAWS;
3. to comply with the RULES set forth by CARD SCHEMES, OTHER FINANCIAL INSTITUTIONS or PAYMENT PROVIDERS involved in rendering the SERVICES;
4. to comply with applicable EU and/or national data protection laws;
5. to perform its obligations toward its customers, including the assumption of responsibility for the acceptance of a customer order and its fulfilment, in the agreed manner;
6. not to use the SERVICES for any improper purpose or in any manner, which may constitute a violation of APPLICABLE LAWS or which may cause damage to KALIXA's reputation or which may expose KALIXA to investigation, prosecution or legal action; and
7. to indemnify KALIXA and hold KALIXA harmless for all costs (including legal fees) and damages incurred resulting from a claim by a customer of the MERCHANT or any other third party in connection with the business model or an act or omission of the MERCHANT.

8. Payment Terms

8.1. Invoices

KALIXA will submit on a monthly basis in arrears invoices to the MERCHANT stating the fees and reimbursable expenses incurred. Each invoice shall clearly state the work performed, the TRANSACTIONS, requests and volumes handled and the reimbursable expenses incurred.

Notwithstanding the above, the setup fee will become due and payable (i) immediately after KALIXA has established the test environment for all SERVICES or (ii) 6 weeks after the commencement of the business relationship in case KALIXA is unable to perform the SERVICES because the MERCHANT violates its duty to collaborate.

In the month of the commencement of the business relationship between KALIXA and the MERCHANT monthly fees shall be invoiced on a pro rata basis. The fees for the last month of the business relationship are invoiced in full.

KALIXA shall be entitled to carry out payment transactions over the Merchant's KALIXA account for quality protection purposes. Such transactions will be invoiced to the MERCHANT in accordance with the applicable service fees.

8.2. Payment Details

The MERCHANT is obliged to pay all fees and expenses in the currency of the invoice by bank transfer to the account designated by KALIXA. All invoices shall be paid within 15 BANKING DAYS from the date of the invoice. The MERCHANT is not entitled to hold back any payments to KALIXA, regardless of the reason.

8.3. Set-Off

All payments to be made by the MERCHANT under the AGREEMENT shall be calculated and be made without any deduction for set-off or counterclaim.

KALIXA may set off any obligation due from the MERCHANT under the AGREEMENT against any obligation (whether or not matured) owed by KALIXA to the MERCHANT. If such obligations are in different currencies, KALIXA may convert either obligation at a current market rate.

8.4. Taxes

The MERCHANT shall pay directly or reimburse KALIXA for any taxes arising from or in connection with the provision of the SERVICES excluding any taxes on KALIXA's net income.

8.5. Late Payment

If the invoice is not fully settled within 20 BANKING DAYS from the date of the invoice, KALIXA is entitled to receive default interest at a rate of 1.5% per month on the overdue amount from the due date up to the date of actual payment.

In case of AGGREGATION and/or ACQUIRING SERVICES, KALIXA is entitled to deduce such overdue amounts from the next SETTLEMENT(S) to the MERCHANT.

In case of GATEWAY SERVICES, KALIXA is entitled to suspend the SERVICES in case an invoice is overdue provided that it has notified the MERCHANT in writing of such intended suspension by giving 30 days' notice in advance.

8.6. Fees

The MERCHANT shall bear all costs associated with its registration with an ACQUIRING BANK, the CARD SCHEMES, OTHER FINANCIAL INSTITUTIONS or PAYMENT PROVIDER.

The MERCHANT shall bear all costs charged by banks for the transfer of monies from KALIXA to the MERCHANT.

8.7. Increase of Fees

KALIXA is entitled to adjust the fees and the reimbursable expenses as set out in the AGREEMENT on the basis of the consumer price index (the "CPI", published on www.statistics.gov.uk), or any index replacing the CPI. Such adjustments shall be calculated on the basis of the annual inflation as of December of the respective year.

In order to adjust the fees and/or the reimbursable expenses, KALIXA shall notify the MERCHANT in writing of the envisaged adjustment within the first 6 months of each calendar year. If KALIXA does not adjust the fees and/or the reimbursable expenses in one or more years, it shall remain entitled to make such adjustments retroactively in each of the following years.

9. Warranties and Remedies

9.1. Warranties

Without limiting any other warranties in accordance with this AGREEMENT, KALIXA represents and warrants that it possesses the resources, expertise, knowledge and skills necessary to perform the SERVICES in accordance with the provisions set out in the AGREEMENT.

Without limiting any other warranties in accordance with this AGREEMENT, the MERCHANT represents and warrants that each TRANSACTION submitted for PROCESSING (i) represents a bona fide sale/rental of products or services not previously submitted; (ii) represents an obligation of the cardholder for the amount of the TRANSACTION; (iii) the amount charged in the TRANSACTION is not subject to any dispute set-off or counterclaim; (iv) does not represent the refinancing of an existing obligation of the cardholder; and (v) to the MERCHANT's knowledge does not indicate any facts or circumstances which would impair the validity or collectability of the cardholder's obligation.

9.2. Notice of Defects

In case the MERCHANT identifies a defect in the SERVICES, the MERCHANT shall immediately inform KALIXA. KALIXA will on an urgent basis make all reasonable efforts to repair the defect and deliver the SERVICES at the agreed level. In case of an unjustified defect notice, the MERCHANT shall compensate KALIXA for any expenses incurred.

9.3. Warranty Limitations

If the MERCHANT modifies, enhances, amends or connects with unauthorized software to KALIXA's interface, it shall not have a warranty claim against KALIXA in connection with such modification, enhancement, amendment or connection.

The MERCHANT has no warranty claim against KALIXA if a defect, interference, damage or a similar default occurs due to improper use, use which is not in accordance with the description, non-compliance with installation requirements,

improper equipment or data medium or because of other circumstances beyond the reasonable control of KALIXA.

9.4. Exclusions

KALIXA is not responsible for any infringements of third party copyrights, patents or trade secrets in case (i) the MERCHANT has made amendments to original documents, interfaces or similar works prepared by KALIXA without the express approval of KALIXA, or (ii) the MERCHANT fails to use the most recent versions of such SERVICES by KALIXA.

10. Liability

10.1. Limitation of Liability

KALIXA shall not be liable for any action or omission taken by it under or in connection with the AGREEMENT, unless directly caused by its gross negligence or wilful misconduct.

KALIXA shall not be liable for any indirect damage, loss, consequential damage or damage caused by the MERCHANT's failure to fulfil its contractual obligations, including loss of profits or anticipated savings or incidental damages.

In any case, KALIXA's liability shall be limited to the lower of EUR 100,000 or the fees paid to KALIXA within the last 6 months before the damage occurred.

10.2. Exclusions

KALIXA shall not be liable for any loss of data which occurred due to inadequate data storage or data re-storage of the MERCHANT.

Furthermore, KALIXA shall not be liable for damages resulting from TRANSACTIONS (e.g. Refund, outpayment) of employees or other associates of the MERCHANT and for statistic evaluation created out of data provided by KALIXA.

10.3. Force Majeure

Except in respect of payment liabilities, neither party shall be liable for any failure or delay in its performance due to reasons beyond its reasonable control, including acts of war, acts of God, earthquake, flood, riot, embargo, sabotage, governmental act or failure of the internet, provided that the delayed party gives the other party prompt notice of the reasons for such failure or delay.

11. Non-Solicitation

The MERCHANT shall not recruit and/or employ, even through third parties, any employee of KALIXA for a period starting from the date of the execution and ending 12 months following the termination or expiration of the AGREEMENT.

In the event of a breach of this clause, the MERCHANT shall pay (not subject to judicial mitigation) KALIXA the amount of one year's gross annual wage of the recruited employee.

12. Information and Data Security

KALIXA will manage information and data security with reasonable efforts to restrict unauthorized access and will use best efforts to ensure that its employees and representatives are fully aware of the risks associated with information and data security issues. KALIXA utilises encryption and other security technology to protect private information of the Merchant from unauthorized access.

KALIXA ensures that information and data under its responsibility is properly backed up on a daily basis and that arrangements for recovery processes are in place.

KALIXA further ensures that proper measures are in place to enable continuation of SERVICES, as far as reasonably possible, in case of the occurrence of an unexpected disruption event.

13. Intellectual Property Rights

Each party acknowledges the intellectual and industrial property rights of the other party whether registered or not. The MERCHANT shall pay full compensation to KALIXA for any violation of KALIXA's copyrights or other INTELLECTUAL PROPERTY RIGHTS. KALIXA will pursue any violation of its INTELLECTUAL PROPERTY RIGHTS with claims for injunctive relief and damages. KALIXA is entitled to refer to the MERCHANT as reference client and to use its name, brand and logo for all kinds of marketing activities and campaigns free of charge, including, but not limited to, the use in marketing folders. The MERCHANT herewith agrees that KALIXA's logo is displayed to the MERCHANT's customers, whenever the MERCHANT uses the standard payment selection page and/or standard payment details page.

14. Confidential Information

"CONFIDENTIAL INFORMATION" means any information belonging to or in the possession or control of a party that is of a confidential, proprietary or trade secret nature and that is furnished or disclosed to the other party, including, but not limited to, information concerning a party's business, ideas, products, customers or services. CONFIDENTIAL INFORMATION will remain the sole property of the disclosing party. CONFIDENTIAL INFORMATION shall not include information that is (i) lawfully in the possession of the receiving party prior to its receipt from the disclosing party, (ii) developed independently by the receiving party without access to the information disclosed by the disclosing party, (iii) is or becomes publicly available, otherwise than as a consequence of any wrongful or unlawful act of the receiving party (including a breach of the AGREEMENT) and (iv) lawfully received from a third party free of restrictions and without breach of this AGREEMENT.

CONFIDENTIAL INFORMATION shall not be disclosed to any third party. However, KALIXA shall be entitled to disclose CONFIDENTIAL INFORMATION to third parties if it reasonably deems such disclosure to be necessary or useful for the provision of the SERVICES.

CONFIDENTIAL INFORMATION may be disclosed in accordance with a judicial or other governmental order, provided that the recipient party gives the disclosing party notice prior to such disclosure and, if possible, reasonable opportunity to obtain a protective order or the equivalent.

Upon termination of the AGREEMENT, the receiving party, at the first request of the disclosing party, shall return or destroy all CONFIDENTIAL INFORMATION belonging to the other party, except data regarding financial transactions or any other data required to be kept under APPLICABLE LAWS or best practices. KALIXA shall ensure that all records relating to anti money laundering activities shall be kept for at least

7 years from the end of the business relationship.

15. Termination for Good Cause

Either party may terminate the AGREEMENT at any time with immediate effect by giving prior written notice if

1. the other party commits a material and irremediable breach of the AGREEMENT;
2. the other party commits a material but remediable breach of the AGREEMENT and does not remedy such breach within 20 BANKING DAYS upon receipt of a written notice stating the material breach and requesting remedy;
3. the other party becomes insolvent or any corporate action, legal proceedings or other procedure or step is taken or threatened in relation to (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation, (ii) a composition, assignment or arrangement with any creditor or (iii) the appointment of a liquidator, receiver, trustee in bankruptcy, judicial custodian, compulsory manager, administrative receiver, administrator or similar officer.

KALIXA is entitled to suspend its SERVICES if the MERCHANT fails to properly fulfil its obligations under the AGREEMENT. In that case KALIXA shall notify the MERCHANT thereof within 3 BANKING DAYS following the suspension. The right to extraordinary termination as set herein shall remain unaffected by such suspension.

KALIXA may at any time terminate the AGREEMENT or parts of the AGREEMENT with immediate effect if:

1. the MERCHANT fails to notify KALIXA of any material change in the nature of its business, goods and/or services or of any additional business the MERCHANT commences or any material business the MERCHANT closes down within 5 BANKING DAYS of such change;
2. an event occurs that may affect or a matter is brought to the attention of KALIXA which it considers may affect the MERCHANT's ability or willingness to comply with any or all of its contractual obligations or liabilities hereunder or if any other change in MERCHANT's circumstances or the circumstances of MERCHANT's business occurs (including a deterioration in or a change of the MERCHANT's financial position or ownership) which KALIXA, acting in good faith, considers material to the continuance of the SERVICES;
3. anything happens to MERCHANT or in relation to MERCHANT or arising from or incidental to MERCHANT's business or the conduct of the MERCHANT's business (including trading practices and individual activities) which KALIXA, acting in good faith, considers disreputable or capable of damaging the reputation of KALIXA or that of any financial institution, detrimental to KALIXA's business or that of any financial institution in its financial network or that may give suspicion of any criminal activity;
4. KALIXA, acting in good faith, reasonably considers any activity or omission of the MERCHANT to increase the risk of a claim against or loss or liability of KALIXA or a financial institution in its financial network;
5. any claim or action relating to the business relationship

between KALIXA and the Merchant is threatened or commenced by or against the MERCHANT or KALIXA which KALIXA, acting in good faith, considers material to the continuance of the SERVICES;

6. any security granted to KALIXA by the MERCHANT ceases to be enforceable, is withdrawn or loses considerable value;
7. the RULES require KALIXA to terminate the AGREEMENT or if a CARD SCHEME gives notice to KALIXA that it considers the provision of the SERVICES to the MERCHANT to constitute a breach of the RULES;
8. the MERCHANT treats KALIXA or any of its officers and employees in an improper manner;
9. the Merchant violates any duty to collaborate under the AGREEMENT;
10. the SERVICES are used by any third party or any third party benefits from the SERVICES without KALIXA giving its prior written consent;
11. KALIXA, acting in good faith, reasonably believes that the MERCHANT is involved in any activities or omissions that would qualify as a criminal offence pursuant to APPLICABLE LAWS;
12. the MERCHANT disrupts KALIXA's regular business activities by means of, for example, spoofing, parameter tampering, exploitation of bugs, brute force or denial of service attacks and any other malicious activities.
13. the MERCHANT exceeds any threshold set out in the RULES of CARD SCHEMES, OTHER FINANCIAL INSTITUTIONS, PAYMENT PROVIDERS or KALIXA;
14. the MERCHANT fails to successfully pass any anti-money-laundering or risk due diligence or KYC PROCEDURE executed by KALIXA or fails to provide to KALIXA the relevant PCI certificate or PCI Self-Assessment Questionnaire upon request.
15. the MERCHANT does not accept a variation of the risk and security arrangements (i.e. processing limit, reserve requirements) following any assessment or evaluation of the MERCHANT.
16. the MERCHANT is in default with the payment of any amounts payable to KALIXA.

In any case, termination shall not affect any liabilities incurred by the MERCHANT prior to termination.

16. Payment Services Regulations (PSR)

The AGREEMENT is subject to the PSR, the implementation of the PSD in the UK. In accordance with the PSR additional provisions with regards to MICRO-ENTERPRISES and CHARITIES as set out in Clauses 16.2 to 16.3 shall apply.

16.1. General Provisions

With regard to the PSR the following general provisions shall apply to the AGREEMENT:

1. Parts 5 and 6 of the PSR require the provision of certain information and prescribe certain rights and obligations arising in the context of payment services.
2. Except as otherwise specifically stated in the AGREEMENT,

Parts 5 and 6 of the PSR and the corresponding terms of this Clause 16.1 apply only where: the payment service provider of the other party to the payment transaction is located within the EEA and payment is effected in Euro or the currency of an EEA state which has not adopted the Euro.

3. If the MERCHANT is neither a Micro-enterprise nor a Charity, it agrees that Part 5 and regulations 54(1), 55(3), 55(4), 60, 62, 63, 64, 67, 75, 76 and 77 of the PSR do not apply to the AGREEMENT, and that the time period set out in regulation 59(1) of the PSR is replaced with a time period of 6 months.
4. In the event of any inconsistency between the terms of this Clause 16. and other provisions of the AGREEMENT, the terms of this Clause 16. shall prevail.
5. The MERCHANT will only be liable for charges levied by KALIXA and will not be liable for any fees of the payment service provider of the other party to the payment transaction.
6. KALIXA may not prevent the MERCHANT from (i) requiring payment of a charge or (ii) offering a reduction to, any payer for the use of any particular CARD or other means of payment.
7. KALIXA shall make funds available to the MERCHANT immediately after the funds have been credited to KALIXA's own account.
8. KALIXA shall be entitled to deduct the full amount of its own fees and charges from amounts received from payers for the account of the MERCHANT. Subject thereto, KALIXA shall ensure that the MERCHANT receives the full amount of each TRANSACTION and will ensure that the MERCHANT receives a statement incorporating details of those charges.
9. The credit value date for the MERCHANT's payment account will be no later than the BANKING DAY on which the corresponding payment is credited to KALIXA's account. KALIXA shall ensure that the amount is at the MERCHANT's disposal immediately after the amount has been credited to KALIXA's account. This applies regardless of whether the payer's payment service provider is located within or outside the EEA.
10. KALIXA shall ensure that the full amount of each payment TRANSACTION is credited to the MERCHANT, subject only to deduction of service fees as set out in the AGREEMENT.
11. KALIXA shall not be liable for any contravention of any of the requirements of this Clause 16.1 where:
 - the contravention is due to unforeseeable circumstances beyond KALIXA's control; or
 - the contravention is due to the obligations of KALIXA under any applicable provisions of national or EU law.
12. KALIXA may apply changes to the exchange rate it uses in providing foreign currency exchange to the MERCHANT. KALIXA's foreign currency exchange rate is based on the appropriate CARD SCHEME's exchange rate, which can be found on the relevant CARD SCHEME's website.

16.2. Micro-Enterprises and Charities

The provisions of this Clause 16.2 apply only where:

1. the MERCHANT is a MICRO-ENTERPRISE or a CHARITY;
2. the payment services provider of the other party to the payment transaction is located within the EEA; and
3. the payment is effected in Euro or the currency of an EEA State which has not adopted the Euro.
4. In the event of any inconsistency between the provisions of this Clause 16.2 and the other provisions of the AGREEMENT, the provisions of Clause 16.2 shall prevail.
5. The MERCHANT acknowledges that (i) it received a version of the AGREEMENT in draft form in good time before it became bound by its terms and (ii) the draft included the information as set forth in Clause 16.3.
6. If the MERCHANT so requests at any time during the contractual relationship, KALIXA will provide an additional copy of the AGREEMENT and/or of the information as set forth in Clause 16.3 below.
7. Where the MERCHANT is acting as a payer, KALIXA shall provide the MERCHANT at monthly intervals with a written statement, by electronic means or post, which will include in relation to each payment transaction (i) a reference identifying the payment transaction, and where appropriate, information relating to the payee, (ii) the amount and currency of the payment transaction, (iii) the amount and breakdown of any charges payable, (iv) any applicable exchange rate used by KALIXA, and the amount of the payment transaction after the currency conversation and (v) the debit value date.
8. Where the MERCHANT is acting as a payee, KALIXA shall provide the MERCHANT at monthly intervals with a written statement, by electronic means or post, which will include in relation to each payment transaction (i) a reference identifying the payment transaction (including, where appropriate, the payer and any information accompanying the payment transaction), (ii) the amount and currency of the payment transaction, (iii) the amount and breakdown of any charges payable, (iv) any applicable exchange rate used by KALIXA, and the amount of the payment transaction before the currency conversation and (v) the credit value date.
9. KALIXA shall not charge the MERCHANT for providing the information as specified in this Clause 16.2 and in Clause 16.3.

16.3. Mandatory Information

KALIXA hereby provides the following mandatory information in accordance with the PSR to the MERCHANT:

1. The name of the payment service provider and ACQUIRING BANK is Kalixa Accept Limited.
2. The address and contact details of KALIXA are set out in the AGREEMENT.
3. KALIXA is regulated by the FCA. KALIXA's registration number is set out in the AGREEMENT.
4. A description of the payment services to be provided, the information to be provided by the MERCHANT in order to

execute payment orders and the form and procedure for giving consent to the execution of payment transactions and for the withdrawal of consent are set out in the AGREEMENT.

5. Where Merchant is acting as a payer, the time of receipt of a payment order is the time at which the payment order is received by KALIXA. If the payment order is received on a day other than a BANKING DAY or after 16:30 hours on a BANKING DAY, the payment order is deemed to be received on the first BANKING DAY thereafter.
6. Where MERCHANT is acting as a payer, KALIXA shall ensure that the amount of the payment transaction is credited to the relevant payee's payment service provider's account by the end of the next BANKING DAY following the day of receipt of the payment order.
7. Details of the service fees to be levied by KALIXA in respect of the SERVICES are set out in the AGREEMENT.
8. Communications shall be sent to the respective party's notification address or to such other address as either party may designate in a written notice unless stated otherwise in the AGREEMENT. The manner and frequency with which information under the PSR must be provided or made available to the MERCHANT are set out in the AGREEMENT. The AGREEMENT is concluded in English and all communications are to be conducted in English.
9. The MERCHANT that is a MICRO-ENTERPRISE or CHARITY may request additional copies of the AGREEMENT free of charge at any time while the AGREEMENT is in force.
10. The MERCHANT must take all reasonable steps to keep safe any personalised security features issued to the MERCHANT by KALIXA which are used to authorise TRANSACTIONS, including any usernames, passwords or other security protocols. The MERCHANT shall notify KALIXA immediately on becoming aware of the misappropriation or unauthorised use.
11. KALIXA has the right to suspend the use of the SERVICES on reasonable grounds relating to its security or its suspected unauthorised or fraudulent use. Except where the notification would compromise reasonable security measures or is otherwise unlawful, KALIXA shall notify the MERCHANT of any such suspension and the reasons for the suspension in advance or, if unable to do so, immediately after. KALIXA shall issue the MERCHANT with a new payment instrument as soon as practicable after the reasons for the suspension cease to exist.
12. The MERCHANT that is a MICRO-ENTERPRISE or CHARITY shall notify KALIXA without undue delay, and in any event no later than 13 months after the debit date, on becoming aware of any unauthorised or incorrectly executed TRANSACTION.
13. Where the MERCHANT is acting as a payer, KALIXA shall immediately refund the amount of any unauthorised TRANSACTION to the MERCHANT and restore the debited account to the state it would have been had the unauthorised TRANSACTION not taken place.
14. Where the MERCHANT is a MICRO-ENTERPRISE or CHARITY and acts as a payer,
 - a. the MERCHANT is liable up to a maximum of £50 for any losses incurred in respect of unauthorised TRANSACTIONS arising from the misappropriation of the SERVICES;
 - b. the MERCHANT is liable for all losses incurred in respect of an unauthorised TRANSACTION where the MERCHANT has acted fraudulently or has with intent or gross negligence failed to use the SERVICES in accordance with the AGREEMENT; and
 - c. except where the MERCHANT has acted fraudulently, the MERCHANT is not liable for any losses incurred in respect of an unauthorised TRANSACTION arising after the MERCHANT has notified KALIXA of the unauthorised TRANSACTION.
15. Where a TRANSACTION is initiated by the MERCHANT that is a MICRO-ENTERPRISE or CHARITY and acting as a payer, KALIXA shall be responsible for the correct execution of the TRANSACTION. Where KALIXA is liable for the incorrect execution of a TRANSACTION, KALIXA shall without undue delay refund to the MERCHANT the amount of the non-executed or defective TRANSACTION and restore the debited account to the state in which it would have been had the defective TRANSACTION not taken place.
16. Where a TRANSACTION is initiated by the MERCHANT that is a MICRO-ENTERPRISE or CHARITY acting as a payee, KALIXA shall be responsible for the correct transmission of the payment order. Where KALIXA is liable for the incorrect transmission of a payment order, KALIXA shall immediately retransmit the payment order.
17. KALIXA shall give the MERCHANT that is a MICRO-ENTERPRISE or a CHARITY at least 2 months' notice before it changes any of the provisions set out in this Clause 16.3. In that event, the MERCHANT will be deemed to have accepted the changes upon the expiry of the notice period. However, the MERCHANT may terminate the AGREEMENT immediately without charge before the relevant changes come into effect.
18. The duration of the AGREEMENT is for an indefinite period unless stated otherwise elsewhere in the AGREEMENT.
19. The Merchant that is a MICRO-ENTERPRISE or CHARITY may terminate the AGREEMENT by giving KALIXA not less than 1 months' prior written notice to that effect. If the AGREEMENT has been in effect for a period of less than 12 months, the MERCHANT shall pay KALIXA a charge for such termination, which shall be reasonable and correspond to the actual costs of termination incurred by KALIXA. KALIXA may terminate the AGREEMENT by giving the MERCHANT not less than 2 months' prior written notice to that effect.
20. This AGREEMENT is subject to the Governing Law and Jurisdiction in accordance with Clause 17.11.
21. For any complaints about the SERVICES the MERCHANT shall contact KALIXA as set out in the AGREEMENT. KALIXA will endeavour to resolve any problems as quickly as possible in accordance with its customer complaints

policy. If a complaint made to KALIXA is not resolved to the MERCHANT's satisfaction, the MERCHANT that is a MICRO-ENTERPRISE or CHARITY may be able to refer such complaint to the Financial Ombudsman Service, which can be contacted by post at The Financial Ombudsman Service, South Quay Plaza, 183 Marsh Wall, London E14 9SR, by telephone on 0300 123 9123 (when calling from a mobile) or 0800 023 4567 (when calling from a fixed line), or by email at complaint.info@financial-ombudsman.org.uk.

22. Before resorting to the courts, the parties agree to use their best efforts to negotiate in good faith and settle amicably any dispute that may arise out of or relate to the AGREEMENT or a breach of the AGREEMENT. Only if negotiations fail to result in a settlement, the matter at the election of either party may be submitted for resolution to a court of competent jurisdiction.

17. General Provisions

17.1. Notices

Any notice shall be in writing and be deemed duly served:

1. if personally delivered, at the time of delivery;
2. if posted to an inland address in the UK, on the actual receipt; or
3. if sent by facsimile transmission, upon receipt by the sender of a successful facsimile transmission report.

If in the case of personal delivery or facsimile transmission such delivery or transmission occurs after 6.00 p.m. on a Banking Day or on a day which is not a BANKING DAY, receipt shall be deemed to occur at 9.00 a.m. on the next following BANKING DAY. Notwithstanding the above, any notices to the MERCHANT shall be deemed to have been received within 5 BANKING DAYS of posting or transmission as appropriate. The MERCHANT shall inform KALIXA immediately of any change of its address, facsimile number or email address.

17.2. Assignment

Neither party may assign or otherwise transfer the AGREEMENT or any rights and/or obligations thereunder without the prior written consent of the other party. However, KALIXA may transfer its rights and/or obligations under the AGREEMENT to any other company within its group of companies without the prior consent of the MERCHANT. KALIXA shall be liable for the performance of such company as for its own performance. KALIXA reserves the right to fulfil any of its duties and powers under this AGREEMENT by the use of agents or subcontractors.

This AGREEMENT shall inure to the benefit of and bind the respective successors and permitted assigns of the parties.

17.3. Third Party Solution Provider

The MERCHANT acknowledges that any THIRD PARTY SOLUTION PROVIDER appointed by the MERCHANT shall at all times remain the agent of the MERCHANT for the purposes of this AGREEMENT. The MERCHANT assumes full responsibility for the acts and omissions of any THIRD PARTY SOLUTION PROVIDER and acknowledges that KALIXA bears no responsibility or liability for such acts or omissions.

17.4. Consumer Data Privacy Policy

The MERCHANT shall post a consumer data privacy policy on its Site(s) as a condition of CARD SCHEME acceptance in accordance with APPLICABLE LAWS. Additionally, shall display its security capabilities and policies on its Site(s).

17.5. Property

Any equipment supplied by KALIXA shall remain the property of KALIXA and shall be returned to KALIXA upon request.

17.6. Severability

In the event that any provision of the AGREEMENT is void in whole or in part, the validity of the remaining provisions shall not be affected thereby. The parties undertake to replace the void provision by a valid provision, which comes closest to the economic purpose of the AGREEMENT.

17.7. Variation

No variation of the AGREEMENT shall be effective unless made in writing. KALIXA is entitled to amend the AGREEMENT from time to time. The MERCHANT shall be notified in writing no later than 30 days before the amendments become effective, unless these amendments are required immediately due to legal or regulatory requirements. Such amendments shall be deemed approved, unless KALIXA has received a written objection from the MERCHANT. The notification to the MERCHANT shall point out this consequence and lay out the material content of the amendments. In case the MERCHANT raises an objection, KALIXA shall have the right to terminate the AGREEMENT by giving 2 weeks' notice within 6 weeks following the receipt of the objection.

17.8. Waiver

No waiver by KALIXA of any breach of this AGREEMENT shall operate as a waiver of any subsequent or continuing breach.

17.9. Entire Agreement

This AGREEMENT together with the relevant RULES constitutes the entire agreement between the MERCHANT and KALIXA in relation to the subject matter therein and any previous agreements with similar effect shall terminate immediately on the commencement.

17.10. Compliance with Local Law

The MERCHANT shall ensure compliance with APPLICABLE LAWS in respect of its obligations under the AGREEMENT and shall immediately notify KALIXA of any circumstances that might prevent compliance with APPLICABLE LAWS and/or the AGREEMENT.

17.11. Governing Law, Jurisdiction

The AGREEMENT and all non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law, excluding the UN Convention on Contracts for the International Sale of Goods, the UK conflict of law rules and the UK international private law. The courts of England shall have exclusive jurisdiction to settle any dispute arising out of or in connection with the AGREEMENT. KALIXA shall, however, not be prevented from taking proceedings in any other courts with jurisdiction at its sole discretion.