

KALIXA SERVICES

Terms and Conditions (AT)

Gateway

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

1. Company Information

Company	Kalixa Services GmbH
Registration Number	FN 294434 t
Located at	Marxergasse 1B, 1030 Vienna, Austria
Referred to as	"KALIXA SERVICES"

2. Introduction

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

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

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 GATEWAY 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 Vienna 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 PXP Financial.

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 PXP Financial.

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.

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

FCA: Financial Conduct Authority UK.

GATEWAY AGREEMENT: Gateway Agreement including all Schedules, the Service Terms Gateway and KALIXA SERVICES T&C and any other material agreement entered into between KALIXA SERVICES and the MERCHANT with regard to the GATEWAY SERVICES.

GATEWAY SERVICES: shall mean any services provided to the MERCHANT by KALIXA SERVICES as agreed upon in the GATEWAY AGREEMENT; particularly the submission and transfer of transaction data from the MERCHANT to the payment processing system of an ACQUIRER or a PAYMENT PROVIDER.

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

SERVICES in order to fulfill the KYC requirements set forth by the CARD SCHEMES, OTHER FINANCIAL INSTITUTION or public authority.

PXP Financial: means PXP Financial Ltd., Registration Number 5433326; FCA Number 504318, located at The Corn Mill, 1 Roydon Road, Stanstead Abbots, Ware, Hertfordshire; SG12 8XL, UK.

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 PXP FINANCIAL and the MERCHANT may agree are provided by PXP FINANCIAL to the MERCHANT including PROCESSING to collect payments for goods and/or services or providing connectivity between the MERCHANT and PXP FINANCIAL, and PXP FINANCIAL 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 PXP FINANCIAL.

PCI: Payment Card Industry.

PCI DSS: Payment Card Industry Data Security Standards.

PROCESS or **PROCESSING:** means (i) by PXP FINANCIAL, the submission of transaction data to the payment processing system of an ACQUIRER or a PAYMENT PROVIDER; (ii) by the ACQUIRER or PXP FINANCIAL, 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, PXP FINANCIAL or KALIXA SERVICES, which are applicable to the GATEWAY SERVICES or other payment methods.

SETTLEMENT: the settlement via a bank transfer by PXP FINANCIAL to the MERCHANT of the net relevant amount from TRANSACTIONS under the acquiring and/or aggregation agreement between PXP FINANCIAL and the MERCHANT.

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 payment system of KALIXA SERVICES, or being facilitated by the MERCHANT in addition and in parallel to the connection to KALIXA SERVICES' 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 GATEWAY SERVICES provided by KALIXA SERVICES to the MERCHANT are specified in a GATEWAY AGREEMENT. KALIXA SERVICES will provide the GATEWAY SERVICES to the MERCHANT only upon successful completion of its anti-money-laundering and risk due diligence and its KYC PROCEDURES. KALIXA SERVICES 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.

4.2. Changes to Services

Changes to the GATEWAY 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 SERVICES' commercial department for review.
2. Subsequently, KALIXA SERVICES 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 SERVICES shall provide an estimate of the expected implementation period and work effort.
4. The change request, if approved, shall be implemented into the GATEWAY AGREEMENT.

Notwithstanding the above, KALIXA SERVICES may issue new policies with regards to the GATEWAY SERVICES, which will be published on www.pxpfincial.com. KALIXA SERVICES 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 GATEWAY SERVICES provided by KALIXA SERVICES past the date when these new policies become effective, it is deemed that the MERCHANT has accepted these changes.

5. KALIXA SERVICES Gateway Processing Services

5.1. Payment Methods

KALIXA SERVICES 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.

5.2. Additional Agreements

The performance of the GATEWAY SERVICES or parts thereof may require the MERCHANT to enter into additional agreements with KALIXA SERVICES, PXP FINANCIAL or their 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 GATEWAY SERVICES and KALIXA SERVICES shall be held without responsibility.

5.3. Processing Liabilities

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

6. Merchant Obligations

6.1. 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 SERVICES immediately of any relevant changes, including, but not limited to:

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

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

6.2. 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 SERVICES. 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 SERVICES 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 SERVICES will support the MERCHANT by providing relevant technical guidelines.

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

KALIXA SERVICES is at any time entitled to adopt, adjust, change or progress the API used to perform the GATEWAY SERVICES. KALIXA SERVICES 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.

6.3. Use of the Services

The MERCHANT shall:

1. provide KALIXA SERVICES with any information necessary to provide the GATEWAY SERVICES and respond promptly, at least within 5 BANKING DAYS, to requests of KALIXA SERVICES to provide direction, information, approvals, authorizations or decisions that KALIXA SERVICES deems necessary to perform the GATEWAY SERVICES;
2. assist KALIXA SERVICES with the implementation and performance of the GATEWAY 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 GATEWAY SERVICES to any third parties. The MERCHANT acknowledges that, for security reasons, ghost names and pseudonyms cannot be used;

5. inform KALIXA SERVICES immediately, if an employee or otherwise associate, who was given access to the GATEWAY SERVICES, resigns. KALIXA SERVICES 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 SERVICES is unable to perform the GATEWAY SERVICES for any reasons beyond the control of KALIXA SERVICES which are caused by the MERCHANT, KALIXA SERVICES shall not be held responsible in any way.

6.4. Business Conduct

While using the GATEWAY 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 GATEWAY 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 GATEWAY SERVICES for any improper purpose or in any manner, which may constitute a violation of APPLICABLE LAWS or which may cause damage to KALIXA SERVICES' reputation or which may expose KALIXA SERVICES to investigation, prosecution or legal action; and
7. to indemnify KALIXA SERVICES and hold KALIXA SERVICES 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.

7. Payment Terms

7.1. Invoices

KALIXA SERVICES 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 and requests handled and the reimbursable expenses incurred.

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

In the month of the commencement of the business relationship between KALIXA SERVICES 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.

7.2. 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 SERVICES. 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 SERVICES, regardless of the reason.

7.3. Set-Off

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

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

7.4. Taxes

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

7.5. Late Payment

If the invoice is not fully settled within 20 BANKING DAYS from the date of the invoice, KALIXA SERVICES 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.

KALIXA SERVICES is entitled to suspend the GATEWAY 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.

7.6. Fees

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

7.7. Increase of Fees

KALIXA SERVICES is entitled to adjust the fees and the reimbursable expenses as set out in the GATEWAY AGREEMENT on the basis of the consumer price index (*Verbraucherpreisindex*, the "VPI", as published on www.statistik.at), or any index replacing the VPI. 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 SERVICES shall notify the MERCHANT in writing of the envisaged adjustment within the first 6 months of each calendar year. If KALIXA SERVICES 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.

8. Warranties and Remedies

8.1. Warranties

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

Without limiting any other warranties in accordance with this

GATEWAY 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.

8.2. Notice of Defects

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

8.3. Warranty Limitations

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

The MERCHANT has no warranty claim against KALIXA SERVICES 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 SERVICES.

8.4. Exclusions

KALIXA SERVICES 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 SERVICES without the express approval of KALIXA SERVICES, or (ii) the MERCHANT fails to use the most recent versions of such GATEWAY SERVICES by KALIXA SERVICES.

9. Liability

9.1. Limitation of Liability

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

KALIXA SERVICES 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 SERVICES' liability shall be limited to the lower of EUR 50,000 or the fees paid to KALIXA SERVICES within the last 6 months before the damage occurred.

9.2. Exclusions

KALIXA SERVICES 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 SERVICES 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 SERVICES.

9.3. 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.

10. Non-Solicitation

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

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

11. Information and Data Security

KALIXA SERVICES 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 SERVICES utilises encryption and other security technology to protect private information of the MERCHANT from unauthorized access.

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

12. 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 SERVICES for any violation of KALIXA SERVICES' copyrights or other INTELLECTUAL PROPERTY RIGHTS. KALIXA SERVICES will pursue any violation of its INTELLECTUAL PROPERTY RIGHTS with claims for injunctive relief and damages. KALIXA SERVICES 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 SERVICES' logo is displayed to the MERCHANT's customers, whenever the MERCHANT uses the standard payment selection page and/or standard payment details page.

13. 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 GATEWAY AGREEMENT) and (iv) lawfully received from a third party free of restrictions and without breach of this GATEWAY AGREEMENT.

CONFIDENTIAL INFORMATION shall not be disclosed to any third party. However, KALIXA SERVICES 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 GATEWAY 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 GATEWAY 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.

14. Termination for Good Cause

Either party may terminate the GATEWAY 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 GATEWAY AGREEMENT;
2. the other party commits a material but remediable breach of the GATEWAY 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 SERVICES is entitled to suspend its GATEWAY SERVICES if the MERCHANT fails to properly fulfil its obligations under the GATEWAY AGREEMENT. In that case KALIXA SERVICES 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 SERVICES may at any time terminate the GATEWAY AGREEMENT or parts thereof with immediate effect if:

1. the MERCHANT fails to notify KALIXA SERVICES 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 SERVICES 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 SERVICES, 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 SERVICES, acting in good faith, considers disreputable or capable of damaging the reputation of KALIXA SERVICES or that of any financial institution, detrimental to KALIXA SERVICES' business or that of any financial institution in its financial network or that may give suspicion of any criminal activity;
4. KALIXA SERVICES, 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 SERVICES or a financial institution in its financial network;
5. any claim or action relating to the business relationship between KALIXA SERVICES and the MERCHANT is threatened or commenced by or against the MERCHANT or KALIXA SERVICES which KALIXA SERVICES, acting in good faith, considers material to the continuance of the GATEWAY SERVICES;
6. any security granted to KALIXA SERVICES by the MERCHANT ceases to be enforceable, is withdrawn or loses considerable value;
7. the RULES require KALIXA SERVICES to terminate the GATEWAY AGREEMENT or if a CARD SCHEME gives notice to KALIXA SERVICES that it considers the provision of the GATEWAY SERVICES to the MERCHANT to constitute a breach of the RULES;
8. the MERCHANT treats KALIXA SERVICES or any of its officers and employees in an improper manner;
9. the MERCHANT violates any duty to collaborate under the GATEWAY AGREEMENT;
10. the GATEWAY SERVICES are used by any third party or any third party benefits from the GATEWAY SERVICES without KALIXA SERVICES giving its prior written consent;
11. KALIXA SERVICES, 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 SERVICES' 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 SERVICES;
14. the MERCHANT fails to successfully pass any anti-money-laundering or risk due diligence or KYC PROCEDURE executed by KALIXA SERVICES or fails to provide to

KALIXA SERVICES the relevant PCI certificate or PCI Self-Assessment Questionnaire upon request.

15. the MERCHANT is in default with the payment of any amounts payable to KALIXA SERVICES.

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

15. General Provisions

15.1. 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 Austria, 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 SERVICES immediately of any change of its address, facsimile number or email address.

15.2. Assignment

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

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

15.3. 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 GATEWAY AGREEMENT. The MERCHANT assumes full responsibility for the acts and omissions of any THIRD PARTY SOLUTION PROVIDER and acknowledges that KALIXA SERVICES bears no responsibility or liability for such acts or omissions.

15.4. 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, the MERCHANT shall display its security capabilities and policies on its Site(s).

15.5. Property

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

15.6. Severability

In the event that any provision of the GATEWAY 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 GATEWAY AGREEMENT.

15.7. Variation

No variation of the GATEWAY AGREEMENT shall be effective unless made in writing. KALIXA SERVICES is entitled to amend the GATEWAY 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 SERVICES 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 SERVICES shall have the right to terminate the GATEWAY AGREEMENT by giving 2 weeks' notice within 6 weeks following the receipt of the objection.

15.8. Waiver

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

15.9. Entire Agreement

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

15.10. Compliance with Local Law

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

15.11. Governing Law, Jurisdiction

The GATEWAY AGREEMENT and all non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with Austrian law, excluding the UN Convention on Contracts for the International Sale of Goods and the reference provisions of the act on international private law ("*Internationales Privatrechtsgesetz*") as well as other conflict-of-law rules. The courts of Austria shall have exclusive jurisdiction to settle any dispute arising out of or in connection with the GATEWAY AGREEMENT. KALIXA SERVICES shall, however, not be prevented from taking proceedings in any other courts with jurisdiction at its sole discretion.