General Terms and Conditions for Merchants — US

Latest update: March 2019

The following general terms and conditions (the "GTC"), together with the Merchant Services Agreement (the "Merchant Agreement"), any attachments, schedules, exhibits, appendices, guidelines and other documents incorporated herein or therein by reference are hereinafter referred to as the "Agreement." The Agreement governs Klarna’s provision of the Payment Option(s) selected by Merchant in the Merchant Agreement and all related services, including Deferred Payment, Slice it in X, Credit Product, and Third Party Payment Options, as applicable. Any capitalized term used but not defined herein shall have the meaning ascribed to such term in the Merchant Agreement. In the case of any discrepancy or inconsistency between the GTC and the Merchant Services Agreement, the relevant provision under the Merchant Services Agreement shall control.

1. Assignment, Shipping and Activation

(a) Upon finalization of the purchase by the Customer in the Authorized Store ("Customer Election"), a reservation is made in Klarna’s business transaction system ("Order Handling System") for Klarna to extend the applicable Deferred Payment, Slice it in X, Credit Product or Third Party Payment Option (a "Reservation"). Upon such Customer Election, the right to receive payment from the Customer or from any applicable provider of a Third Party Payment Option ("Third Party Payment Option Provider"), as authorized by the Customer, in connection with the Customer’s purchase (such right, a "Claim") is assigned to Klarna (an "Assigned Claim"). Upon such assignment, Klarna shall (a) have the sole and exclusive right to receive payment from the Customer or the applicable Third Party Payment Option Provider pursuant to the terms and conditions of the applicable Payment Option, and (b) be obligated to pay Merchant the amount corresponding to the purchase price inclusive of shipping and sales taxes ("Transaction Amount"); subject to the settlement terms set forth in Section 2, Klarna’s right to reversal of an assignment under Section 5, and, solely with respect to Credit Product transactions, the Issuing Bank’s settlement instructions, policies and procedures. Merchant warrants it is the sole and exclusive owner of each original Claim, and Merchant has the right to assign each Claim to Klarna.

(b) Merchant will ship the goods or perform the services ordered by the Customer as close to the date of the order placement as possible, but in no event later than the shipping date communicated to the Customer in accordance with applicable law and industry requirements.

(c) Unless otherwise agreed in writing, Merchant shall notify Klarna immediately upon the shipping of the goods or performance of the services ordered by the Customer via the Order Handling System, which shall take place no later than the twenty-eighth (28th) day from the order placement (such notification, an "Activation" or "Activated Claim").

2. Limited Payment Agent; Settlement

(a) Limited Payment Agent. To the extent applicable, Merchant: (i) appoints Klarna as Merchant’s limited payment collection agent solely for the purpose of accepting Customer’s payment as it relates to Services; and (ii) agrees that payment by Customer to Klarna (or to an affiliate of Klarna acting as an agent of Klarna) shall be considered the same as payment made directly by Customer to Merchant.

(b) Payment for each Activated Claim will be settled as set forth in this Section 2, unless as otherwise agreed to by the parties in writing. Klarna will settle to Merchant all Activated Claims within nine (9) days of Activation, less any Service Charges (as set forth in the applicable Merchant Agreement) and other fees and amounts Klarna is entitled to withhold hereunder (such net amount, the "Settlement Amount"), provided that if such scheduled settlement date is a Saturday, Sunday or U.S. bank holiday, the settlement shall occur on the following business day. Klarna reserves the right to increase or decrease the settlement period for a particular Merchant for fraud, risk control and/or other reasonable purposes.

3. Klarna’s Responsibilities

(a) Klarna is responsible for all credit decisions, financing, administration and customer service with respect to the Deferred Payment Slice it in X, Credit Product, including any related fees or charges applicable to Customers. Klarna will handle all administration and collection of any Assigned Claims, including any related fees or charges applicable to Customers.

(b) Klarna bears the credit risk and the fraud risk for each Assigned Claim, subject to Merchant’s compliance with Sections 1 and 4 and Klarna’s rights under Section 5. For such Assigned Claims, Klarna will bear the loss from default by the Customer, unauthorized purchases, or chargebacks imposed by any Third Party Payment Option Provider.

(c) Klarna will deliver, either directly or by Merchant, the terms and conditions, forms, policies and information for Customers relating to the Services (the "Customer Terms and Information"). Klarna may, in its sole discretion, change the Customer Terms and Information and any other Customer related material, solely as it relates to the Services. It will be Klarna’s responsibility to ensure that Customer Terms and Information are in conformity with any applicable laws and regulations.

(d) Unless otherwise agreed, Klarna is solely responsible for, and has the sole discretion over the form and content of, any notices, invoices, receipts, billing statements and other forms of communication with Customers regarding the Services. Klarna may use any medium, including e-mail, for such communication.

(e) Klarna will comply with Payment Card Industry Data Security Standard ("PCI-DSS") at all times. Subject to Merchant’s compliance with the terms and conditions of the Agreement and PCI-DSS, Klarna will be responsible for the security of cardholder data that Klarna possesses or otherwise stores, processes, or transmits while providing Services in connection with Third Party Payment Options, if any.

(f) Klarna shall comply with all applicable laws and regulations related to Klarna’s provision of the Services.

4. Merchant’s Responsibilities

Klarna Policies and Guidelines

(a) Merchant will use the Services only for legal purposes and in compliance with Klarna’s Ethics Instructions (the "Ethics Instructions"), and with any applicable policies of Third Party Payment Option Provider(s).

(b) Merchant will comply with Klarna’s integration guidelines available at Klarna’s Developer Website (the “Integration Guidelines”), as well as any other reasonable system related instructions Klarna may communicate to Merchant from time to time.

(c) Whenever applicable, Merchant will comply with Klarna’s Shipping Policy (the “Shipping Policy”) at all times and adhere to a delivery, shipping, return or refund arrangement that has been communicated to and acknowledged by Klarna during the Service integration with Merchant. Klarna will not be responsible for Claims that have not been delivered or cannot be delivered in accordance with the Shipping Policy (e.g., digital downloads).

(d) Merchant will at all times comply with Klarna’s Access Management Requirements (the "Access Management Requirements"). The Access Management Requirements govern Merchant’s access to, and use of, the Order Handling System. The Merchant is responsible for any actions taken with the use of its login
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details to the Order Handling System. The Merchant may not use the Order Handling System for the purposes of accessing Personal Data on a Customer except to the extent necessary to Activate the related Claim to Klarna.

Operation of Services

(e) Merchant shall provide Klarna, upon request from time to time during the term of the Agreement, with all requisite information necessary for Klarna’s performance of the Services, including financial statements and other information needed by Klarna in order to verify Merchant’s financial standing or compliance with the Agreement, or to identify the Customer.

(f) When requested by Klarna, Merchant shall provide the Customer with the Customer Terms and Information and confirm acceptance thereof by the Customer. Details are described in the Integration Guidelines.

(g) Merchant agrees not to impose any separate or additional fees or surcharges (including, for the avoidance of doubt, by charging a higher price for goods or services) on the Customers for their use of the Payment Option(s) offered by or through Klarna.

(h) Merchant will not, without Klarna’s prior written consent, enter into any agreement or arrangement with any third party restricting Merchant’s right to assign Claims to Klarna.

(i) If a Customer pays Merchant directly for any Assigned Claim, Merchant must immediately notify Klarna via the Order Handling System. Thereafter, Merchant shall promptly transfer the amount received from the Customer to Klarna and specify the corresponding order and Claim. Klarna reserves the right to alternatively withhold the Customer payment amount from the next Settlement Amount if Merchant fails comply with this subsection.

(j) Merchant will immediately notify Klarna through the Order Handling System in the event of any return or refund transaction, or any agreement with the Customer to reduce the purchase price for any reason.

(k) In the event the goods or services ordered by the Customer become unavailable, Merchant will immediately cancel the corresponding Reservation via the Order Handling System.

(l) Merchant will respond to Klarna’s inquiries regarding any Claims (assigned or otherwise) without undue delay. The parties agree to keep each other informed of any Customer dispute regarding the Customer’s obligation to settle the Claim.

(m) Merchant agrees to cooperate with Klarna to enable a pending order function, which shall be operational prior to the first Customer Election on Merchant’s website, which provides Klarna the ability to identify the Customer. Merchant may not use the Services for the sale of goods in physical stores or accept the return of goods purchased using the Services in its physical store(s). Subject to Klarna’s prior approval and compliance with the Shipping Policy, goods purchased using the Services may be made available for pick-up by the Customer at Merchant’s physical store.

(p) It is Merchant’s responsibility to determine what, if any, taxes apply to the payments Merchant makes or receives under the Agreement, and to collect, report and remit the correct tax to the appropriate tax authority. Neither Klarna nor any applicable Third Party Payment Option Provider is obligated to determine whether taxes apply, and neither Klarna nor any applicable Third Party Payment Option Provider is responsible to collect, report, or remit any taxes arising from any transaction.

Compliance; Marketing and Trademark Use

(q) Merchant is solely responsible for the performance of its obligations (and those of its employees, agents and representatives) under this Agreement and to the Customers, whether under any contract with the Customers or under any applicable law.

(r) Merchant represents and warrants that it will comply with all applicable laws and regulations, including without limitation, laws and regulations related to Merchant’s provision of its goods and services and marketing laws related to Merchant’s marketing any aspect of the Services. Merchant agrees it will comply with all of Klarna’s instructions with respect to compliance with applicable laws related to the Services.

(s) All marketing materials and consumer communications (i) regarding the Services or (ii) containing Klarna’s trademarks, service marks, trade name, logo or other proprietary designs and designations shall require Klarna’s prior written approval. Merchant agrees all marketing involving the Credit Product shall only be as directed by Klarna and shall only be conducted using Klarna supplied assets. Merchant shall coordinate any proposed marketing activities or consumer communications regarding the Services with Klarna in advance via marketing@klarna.com. Merchant acknowledges that Klarna may use Merchant’s trademarks or logo in its sales presentations, websites and other marketing materials without Merchant’s prior consent, some of which may be publicly available. Merchant also agrees to provide testimonial information related to the Services upon Klarna’s reasonable request.

(t) All sales of goods and services, and related transactions, to which the Services provided hereunder relate are subject to the export laws of the United States. Merchant will conduct all transactions, including the direct or indirect sale, export, import, re-export or trans-shipment of goods and services, and all related transactions, in compliance with applicable US export laws.

(u) Merchant must display the address of its permanent establishment, its privacy policy, shipping, refund and return policy, an active customer service e-mail address and a customer service telephone number at the Authorized Store(s).

(v) The Merchant shall display the logos of Klarna and any Third Party Payment Option Providers whose Payment Options are offered as part of the Services, as directed by Klarna.

(w) Merchant will comply with PCI-DSS at all times in connection with the use of Services. Klarna may from time to time request evidence that Merchant’s use of the Services is PCI DSS compliant (e.g. in the form of the applicable self-assessment form prescribed by the PCI council).

(x) In Klarna’s sole discretion, subject to review of Merchant’s customer service process by Klarna, Klarna may make available to Merchant, via Klarna’s merchant portal, the payment method used by a Customer at a purchase at the Merchant website (the “Protected Customer Information”). Merchant acknowledges and agrees that it may only use the Protected Customer Information solely
for the purpose of reviewing the Customer’s Klarna account in connection with providing purchase-related customer service and improving service call routing efficiency. Merchant further represents, warrants and covenants that it will not, and that Merchant will cause its employees, agents, subcontractors, service providers and other users of the Protected Customer Information under Merchant’s supervision or control not to, do any of the following: (i) use or disclose the Protected Customer Information for any other purpose, including for any marketing, eligibility or analytical purposes, or (ii) copy, record or otherwise store the Protected Customer Information for any purpose, in any form or manner.

(y) Third Party Payment Option Providers, the Issuing Bank, and their respective designees may from time to time conduct onsite reviews or audits to ensure compliance with applicable laws, applicable terms and conditions, and related purposes. Merchant agrees to provide the information requested for the completion of such reviews or audits. Merchant agrees to allow the Third Party Payment Option Providers, the Issuing Bank, and/or their respective designees such access to its premises and facilities, data, information and material as may be necessary for the conduct of such reviews or audits.

Third Party Payment Options

The terms and conditions under this subsection of “Third Party Payment Options” will only apply to Merchants offering Deferred Payment, Slice it in X, and/or Third Party Payment Options. A Customer may choose a payment option provided via a Third Party Payment Option Provider (i) to pay directly in the checkout, or (ii) to settle the debt to Klarna at a later stage. A list of the acquirers Klarna Inc. co-operates with from time to time are listed [here](#) (the "Acquirer List").

Klarna may share information regarding Merchant with Third Party Payment Option Providers (e.g. Visa or MasterCard) or designees and/or create specific accounts for Merchant at Third Party Payment Option Providers to the extent necessary for Klarna to provide the Services.

(z) With respect to Claims related to a Third Party Payment Option, Merchant agrees that:

(i) It will comply with all applicable Third Party Payment Option rules, regulations, bylaws, guidelines and similar materials, as amended from time to time, including as applicable any Third Party Payment Option data security requirements;

(ii) It will comply with instructions for Merchant issued by Third Party Payment Option Providers or their designees, in connection with the applicable third party payment method offered within Klarna Payments. Klarna will promptly inform Merchant in the event any such instructions are issued. Merchant agrees to comply with such instructions, provided that Klarna will be responsible for compliance affecting the aspects of Klarna Payments that Klarna controls.

(iii) It will not take any action that results or may result in a significant circumstance that creates harm or loss of goodwill to the Third Party Payment Option Provider;

(iv) If Merchant violates the Agreement with respect to obligations related to Third Party Payment Options, Klarna may report Merchant to the Third Party Payment Option Provider’s restricted or terminated merchant list;

(v) Merchant will pay all fines, fees, penalties and all other assessments or indebtedness levied by a Third Party Payment Option Provider to Klarna which are attributable, at Klarna’s discretion, to Merchant's business;

(vi) Klarna has the right to suspend or terminate Merchant’s ability to accept a Third Party Payment Option as payment, (i) at the direction of the relevant Third Party Payment Option Provider, Klarna’s payment processor or acquiring bank, or governmental authority; or (ii) for Merchant’s failure to comply with this subsection or any other provision of the Agreement relating to Third Party Payment Options; and

(vii) Merchant agrees to enter into additional payment processing terms and conditions with the applicable Third Party Payment Option Provider when required to do so by the applicable card network rules. For example, such additional terms and conditions will be required when Merchant is anticipated to process more than $100,000 in Visa transactions or $1,000,000 in MasterCard transactions in any 12-month period. IN FURTHERANCE OF THE FOREGOING, DURING THE TERM OF THIS AGREEMENT, MERCHANT HEREBY APPOINTS KLARNA ITS TRUE AND LAWFUL ATTORNEY-IN-FACT AND AGENT, TO SIGN ON BEHALF OF MERCHANT ANY TERMS AND CONDITIONS WITH THIRD PARTY PAYMENT OPTION PROVIDER MERCHANT IS REQUIRED TO EXECUTE UNDER THIS SECTION. UPON SIGNATURE BY KLARNA OF ANY SUCH TERMS AND CONDITIONS ON BEHALF OF MERCHANT PURSUANT TO THE FOREGOING AUTHORIZATION, SUCH TERMS AND CONDITIONS SHALL BE FULLY BINDING ON AND ENFORCEABLE AGAINST MERCHANT.

Seller Application Program

If applicable, Klarna has agreed to permit Merchant to offer the Klarna Payment Option(s) to Customers via the Merchant’s Seller Application Program, which is accessible through Klarna’s Merchant Portal (the “Seller Application Program”). The Seller Application Program enables Merchant to provide Klarna Services via in-store sales or telephone sales ordering functioning. Merchant agrees the following terms and conditions will apply to the Seller Application Program:

(aa) Merchant agrees to comply with any and all direction provided by Klarna regarding the Seller Application Program, including without limitation, any and all specific procedures and scripting Klarna requires Merchant’s employees to follow when a Customer desires to utilize the Klarna Payment Option(s) through the Seller Application Program (the “Klarna Procedures”).

(bb) Merchant will require its Customers to enter all sensitive Customer information (e.g., social security number, date of birth, and phone number) directly into the credit application themselves, on the Customers’ own devices, and Merchant shall ensure its employees do not enter information on behalf of Customers.

(cc) Merchant will implement any changes required from Klarna regarding the Seller Application Program in a timely manner, not to exceed seven (7) calendar days from receiving such change.

(dd) Merchant agrees Klarna may perform site visits at its physical location(s) utilizing the Seller Application Program.

(ee) For the telephone sales ordering functioning, Merchant agrees to maintain recorded phone call records for all Customer orders utilizing the Klarna Payment Option(s), and permit Klarna to review such recordings upon Klarna’s request.

(ff) Merchant agrees to ensure its employees who assist in customer sales and the managers of such employees complete the Klarna approved training program prior to utilizing the Seller Application Program, and such employees will review such training annually.

(gg) Merchant will not transmit, store, or process any Customer information submitted by the Customer as part of (i) the application for the purpose of reviewing the Customer’s Klarna account in connection with providing purchase-related customer service and improving service call routing efficiency. Merchant further represents, warrants and covenants that it will not, and that Merchant will cause its employees, agents, subcontractors, service providers and other users of the Protected Customer Information under Merchant’s supervision or control not to, do any of the following: (i) use or disclose the Protected Customer Information for any other purpose, including for any marketing, eligibility or analytical purposes, or (ii) copy, record or otherwise store the Protected Customer Information for any purpose, in any form or manner.
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process for the Klarna Payment Option(s), or (ii) any other stage of Customers’ utilization of the Klarna Payment Option(s).

(hh) Merchant agrees its employees will not steer Customers to utilize the Seller Application Program. Merchant will not provide any employee incentive compensation for utilizing the Seller Application Program without Klarna’s express written consent. Merchant agrees to comply with Klarna’s requirements and scripting for the Seller Application Program.

5. Reversal of Assignment
Klarna has the right to return Assigned Claims (whether Activated or otherwise) to Merchant and be refunded for any Settlement Amounts delivered to Merchant for such Claims, under the following circumstances:

(a) The goods or services are never delivered to the Customer, delivered unreasonably late or delivered to an address other than the one approved by Klarna at the time of the purchase.

(b) Merchant violates (i) any terms of the Agreement, including any of the Ethics Instructions, Integration Guidelines, Shipping Policy or Access Management Requirements, or (ii) imposes terms and conditions on Customers that deviate from the requirements of the Agreement.

(c) The Customer has a right to set-offs, discounts or other deductions against Merchant.

(d) In the event of a dispute between Merchant and the Customer regarding the Claim (other than a dispute that is solely based on the Customer’s unwillingness or inability to pay, including, for example, allegations about the goods or services being faulty or not delivered or performed in full).

(e) Underlying transaction relates to a natural or legal person who Klarna may reasonably consider to be sharing a financial interest with Merchant, including, but not limited to, a company affiliated to the Merchant, owners or an employee of the Merchant and/or such affiliated company. This subsection only applies to Merchants with less than thirty (30) employees.

(f) The Customer would acquire cash (e.g. currency exchange), check or money orders pursuant to the transaction.

(g) Merchant has not provided Klarna with the Customer’s IP-address, complete order list, telephone number and e-mail address in connection with the order.

(h) The Customer uses his or her lawful right to regret/cancel its purchase from Merchant and/or its agreement with Klarna, or where Merchant has extended to the Customer a return right of the goods or services that exceeds a reasonable amount of time or is in excess of what applies under applicable law.

(i) Merchant captures an order beyond the fourteenth (14th) day from the order placement, or Merchant does not capture the order, or permits the order capture to expire.

In the event of any returned Claim pursuant to the foregoing, Klarna is entitled to the Service Charges and any other costs incurred therefore.

6. Underwriting
As between Klarna and Merchant, Klarna will control, in its sole discretion, all decisions concerning credit application approval and underwriting of any payment option(s) offered by or through Klarna, including decisions on applicable credit limits for customers.

7. Module Support
Klarna reserves the right to discontinue, in its sole discretion, support for any outdated modules and APIs. In the event Klarna decides to cease support for any module or API, Klarna will first provide an advance notice of one (1) year. Information on Klarna-supported modules and APIs can be found at Klarna’s Developer Website.

8. Changes
Merchant is aware and accepts that the Payment Options included in the Services may change from time to time and that Klarna may remove any specific Payment Option(s) at any point in time. Klarna reserves the right to revise, temporarily suspend, discontinue, replace and/or make changes to any Service or any portion thereof including customer experience and customer data capture process, in its sole discretion for any reason from time to time and without notice, provided that Klarna will inform Merchant prior to any changes that will materially affect the provision of the Services.

9. Intellectual Property
(a) As used in this Section, “Intellectual Property Rights” means the rights in and to all (i) U.S. and foreign patents and patent applications claiming any inventions or discoveries made, developed, conceived, or reduced to practice, including all divisions, continuations, continuations-in-part applications, and reissues, re-examinations and extensions thereof; (ii) copyrights; (iii) Confidential Information and other information or data held as proprietary by either party that qualifies for trade secret protection; (iv) mask work rights; and (v) any other intellectual or other proprietary rights of any kind now known or hereafter recognized in any jurisdiction. “Klarna Technology” shall mean any information, designs, drawings, specifications, schematics, software programs (including source and object codes), manuals and other documentation, data, databases, technical or business processes, methods of operation, or methods of production that is owned, conceived, reduced to practice, authored, or otherwise created or developed by Klarna.

(b) Klarna hereby grants to Merchant a non-exclusive, non-transferable, revocable, non-sublicensable, limited license to use Klarna Technology solely as required and to the extent necessary in order to use the Services in accordance with the terms and conditions of the Agreement.

(c) In the event of degradation or instability of Klarna’s system(s) or an emergency, Klarna may, in its sole discretion, change or temporarily suspend Merchant’s access to any Service, including but not limited to the APIs, Order Handling System, databases and/or information accessed from the APIs, in order to minimize threats to and protect the operational stability and security of Klarna’s systems.

(d) Klarna retains all right, title and interest in and to the Services, Klarna Technology, and all Intellectual Property Rights therein. Except as licensed herein, the Agreement does not transfer any Intellectual Property Rights. There are no implied licenses under the Agreement, and any rights not expressly granted to Merchant in the Agreement are reserved by Klarna. Merchant shall not directly or indirectly reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from the Services. All rights and licenses granted to Merchant in the Services and Klarna Technology shall terminate automatically and revert to Klarna upon termination or expiration of the Agreement or upon termination of any Service to which the rights and licenses relate.

10. Confidentiality
(a) “Confidential Information” means (i) the terms and conditions of the Agreement and (ii) any other information disclosed by one party to the other party that is designated or declared as confidential or proprietary or, if not so designated or declared, should reasonably
understood by the receiving party as confidential from the context of disclosure or the nature of the information. For the avoidance of doubt, Confidential Information shall include, without limitation, information accessed via Order Handling System, APIs or other systems and tools, technical specifications and processes of either party, and performance indicators regarding the Services such as credit approval rates and loan volumes, and Klarna’s and Company’s customer information. Notwithstanding the foregoing, Confidential Information will not include information that: (A) is now or later becomes generally available to the public through no fault or breach on the part of the receiving party, (B) the receiving party can demonstrate to have had rightfully in its possession prior to disclosure to the receiving party by the disclosing party, (C) is independently developed by the receiving party without use of or reference to the disclosing party’s Confidential Information, or (D) is rightfully obtained from a third party who has the legal right to disclose it to the receiving party without limiting the receiving party’s use thereof. The receiving party may disclose Confidential Information to the extent required by law, or with the prior written consent of the disclosing party. Klarna is entitled to disclose Confidential Information to its subcontractors, external advisors and affiliates, provided that such parties are subject to the confidentiality obligations at least as protective as those set forth in this Section. In the event of legally required disclosure, the receiving party shall make reasonable efforts to give the disclosing party notice of such requirement prior to disclosure so that the disclosing party may seek a protective order or other appropriate remedy to prevent or limit the scope of disclosure.

(b) Each party agrees to protect the other party’s Confidential Information, using at least the same degree of care that it uses to protect its own confidential and proprietary information of similar importance, but no less than a reasonable degree of care. The receiving party may use and copy the Confidential Information only to the extent necessary for the performance of its obligations under the Agreement. The receiving party agrees not to disclose Confidential Information to any person except those affiliates and representatives who need to know such information in connection with the performance of the Agreement. The receiving party shall be responsible for any violation of the terms of this Section by its representatives or affiliates and shall promptly notify the disclosing party of any unauthorized use or disclosure of Confidential Information of which the receiving party becomes aware.

(c) Upon termination of the Agreement, the receiving party shall, within ten (10) business days of receipt of the disclosing party’s written request, either return all tangible Confidential Information to the disclosing party or provide disclosing party with written certification that all such tangible Confidential Information has been destroyed; provided, however, the receiving party may maintain an archival copy of Confidential Information for purposes of legal compliance.

11. Data Protection

As a result of the Agreement, a party may obtain certain personal data relating to Merchant or Klarna personnel, Customers or other individuals, including certain information relating to identified or identifiable individuals (‘Personal Data’). Each party shall ensure that, in its capacity as the processor, controller or owner of the Personal Data, all of its personnel assigned to perform the obligations under the Agreement collect, access, maintain, use, process and transfer such Personal Data in accordance with this Section and all Applicable Laws. If and to the extent a party processes Personal Data on behalf of the other, the parties shall in good faith discuss and agree upon a separate data processing agreement. Klarna will electronically process applicable Personal Data in order to provide the Merchant with the Services, administer the customer relationship and for commercial and marketing purposes on behalf of Klarna or trusted Merchants, and otherwise to perform its obligations under the Agreement. Personal Data may also be used by Klarna for statistical analysis and business reporting purposes, marketing and promotion, improvement of Klarna’s products and services, to protect Klarna’s property, interests and rights, during fraud investigations and to comply with Applicable Laws. Klarna may disclose Personal Data to its affiliates or third party service providers, and, solely with respect to the Credit Product, to the Issuing Bank, in each case which may also use Personal Data for the purposes described herein. Personal Data may be transferred outside the US to jurisdictions that may have different laws and regulations relating the protection of personal data. Klarna is committed to protecting Personal Data and will put in place adequate safeguards in order to protect Personal Data. Persons registered with Klarna will have the right to request access to the data related to them in writing once per year or with such frequency as Klarna may from time to time determine. Such persons will also have the right to correct such data and/or to opt out from receiving further marketing communication from Klarna. By providing Personal Data about its personnel or other persons, the Merchant warrants, represents and undertakes that it (A) has consented to disclosure and use of such data for the purposes and in the ways described herein and (B) has the right to disclose such data.

12. Duty to inform

For anti-money laundering and other lawful purposes, the Merchant agrees to immediately notify Klarna:

(a) regarding circumstances concerning Merchant and its parent or owner that result in or pose a significant risk to Merchant’s financial status;
(b) about changes relating to Merchant’s address, its management, its board or other changes having a significant effect on the Merchant’s ownership structure;
(c) if there are any material changes with regard to the type of products or services offered by Merchant as reported to Klarna in the applicable Merchant Agreement or if the name under which Merchant conducts its business is changed; and
(d) if there are any other material changes relating to Merchant or its activities.

13. Termination

(a) Either party has the right to immediately terminate the Agreement upon giving written notice to the other, in the event such other party:

(i) materially breaches any provision of the Agreement; or
(ii) breaches any provision of the Agreement and fails to cure such breach within thirty (30) days of receiving written notice from the non-breaching party.
(iii) becomes or is declared insolvent or bankrupt;
(iv) is the subject of any petition in bankruptcy or proceeding relating to its insolvency or liquidation;
(v) is the subject of the appointment of a receiver or trustee related to liquidation or insolvency; or
(vi) makes an assignment for the benefit of its creditors.

(b) Klarna has the right to immediately suspend or terminate the Agreement, without any obligation to refund any fees, if:

(i) Merchant notifies Klarna, or Klarna receives information that indicates, that Merchant does not meet Klarna’s underwriting or creditworthiness requirements, or Klarna
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experiences a significant level of fraudulent orders from Merchant’s Authorized Store;

(ii) Merchant offers goods or services in violation of Klarna’s Ethics Instructions; or

(iii) Merchant fails to comply with applicable laws or regulations in accordance with Merchant’s obligations under this Agreement, or Merchant fails to follow Klarna’s instructions regarding applicable laws and regulations.

In case Klarna terminates the Agreement under this Section, Klarna has the right to, after deduction of the Service Charges or any other charges which Klarna is entitled to claim under the Agreement, return to Merchant all unsettled Assigned Claims to Klarna and receive a refund for any Settlement Amounts already delivered to Merchant for such unsettled Assigned Claims.

The Merchant is aware and accepts that the Payment Options included in Klarna Checkout or in Klarna Payments may change from time to time, and Klarna may remove or add Payment Options at any point in time, e.g. due to a request of Issuing Bank or Third Party Payment Option Provider.

14. Right to retain payments; Set-off

(a) Klarna may temporarily retain payments due to Merchant in anticipation of liabilities, damages, fees, chargeback, refund and other reversal fees, fines, penalties and other amounts owed by Merchant to Klarna, including in the following situations:

(i) if Merchant, after a written warning, repeatedly fails to meet its obligations under the Agreement or is otherwise in material breach of the Agreement;

(ii) if Merchant experiences a significantly elevated level of chargebacks, returns or complaints relative to its historic figures; or

(iii) if Klarna reasonably suspects that Merchant’s financial situation has deteriorated significantly.

Prior to withholding funds pursuant to this Section, Klarna will inform Merchant of the reason for such withholding. Klarna will immediately release the withheld funds once the underlying reason for withholding such amounts has been cured.

(b) Klarna may, in its own discretion, offset any amounts owed to Merchant against any claims Klarna may have against Merchant.

(c) In the event of termination of the Agreement by either party, Klarna reserves the right to (i) retain further payments to Merchant until final accounting and (ii) settle the payments after Klarna has fully reviewed the status of the outstanding Claims and the deadline for product returns has passed.

15. Warranty Disclaimer

ACCESS TO KLARNA’S SYSTEMS OR DATABASES AND PARTICIPATION IN AND USE OF THE SERVICES, INCLUDING BUT NOT LIMITED TO USE OF THE KLARNA APIs (AND DATA ACCESSED FROM THE APIs), ARE PROVIDED UNDER THE AGREEMENT ON AN “AS IS” BASIS WITHOUT WARRANTY OF ANY KIND, EXCEPT AS EXPRESSLY STATED IN THE AGREEMENT, KLARNA DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF QUALITY, SUITABILITY, MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE

16. Limitation of Liability

(a) NOTWITHSTANDING ANYTHING IN THE AGREEMENT TO THE CONTRARY (EXCEPT AS SET FORTH IN THIS SECTION), IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF, IN CONNECTION WITH, OR IN ANY WAY RELATING TO, THE AGREEMENT, WHETHER IN CONTRACT, TORT (WHETHER IN NEGLIGENCE OR STRICT LIABILITY) OR OTHER LEGAL OR EQUITABLE THEORY, OR ANY LOSS OF PROFITS OR REVENUE, REGARDLESS OF WHETHER SUCH PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

(b) NOTWITHSTANDING ANYTHING IN THE AGREEMENT TO THE CONTRARY (EXCEPT AS SET FORTH IN THIS SECTION), IN NO EVENT SHALL KLARNA’S AGGREGATE, CUMULATIVE LIABILITY OR OBLIGATIONS, ARISING OUT OF, IN CONNECTION WITH, OR IN ANY WAY RELATING TO, THE AGREEMENT (INCLUDING FOR ANY AND ALL LOSSES, LIABILITIES, COSTS, EXPENSES, DAMAGES, CLAIMS, SUITS, CONTROVERSIES, OR BREACHES FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF ACTION, CAUSE OF ACTION OR LEGAL THEORY) EXCEED THE AMOUNT PAID BY MERCHANT TO KLARNA UNDER THE AGREEMENT IN THE PAST TWELVE MONTHS. THE EXISTENCE OF MORE THAN ONE CLAIM OR EVENT FROM WHICH LIABILITY ARISES WILL NOT ENLARGE THIS LIMITATION.

(c) THE FOREGOING LIMITATIONS SHALL NOT APPLY TO (I) MERCHANT’S INDEMNITY OBLIGATIONS HEREUNDER WITH RESPECT TO THIRD PARTY CLAIMS, (II) ANY PAYMENT OBLIGATIONS UNDER THE AGREEMENT, INCLUDING THOSE INCURRED UNDER SECTION 5 OR 13, OR (III) LIABILITIES ARISING FROM A PARTY’S BREACH OF SECTION 9 or 10.

17. Indemnification

(a) Each party (the “Indemnifying Party”) will defend, indemnify, and hold harmless the other party (the “Indemnified Party”) against any losses, liabilities, costs, expenses, damages, claims or actions during the term of the Agreement by any third party (“Indemnified Losses”), where the Indemnified Losses arise out of or result from the Indemnifying Party’s (i) material breach of any terms and conditions of the Agreement; (ii) gross negligence or intentional misconduct; (iii) violation of applicable law, or (iv) breach of Section 9 or 10.

(b) Merchant will defend, indemnify, and hold harmless Klarna against any Indemnified Losses, where the Indemnified Losses arise out of or result from (i) Merchant’s breach of Section 4(q), (ii) the relationship between Merchant and Customer set forth in Section 4(q), (iii) any fines, penalties, damages or other liabilities from any Third Party Payment Option Provider due to Merchant’s breach of any provision of the Agreement, or (iv) a significantly elevated chargeback level relative to average market levels in the Territory.

(c) The obligations of the Indemnifying Party to defend, indemnify, and hold harmless in this Section are conditioned upon the Indemnified Party notifying the Indemnifying Party promptly in writing of each claim for Indemnified Losses, (i) allowing the Indemnifying Party sole control of the defense of the claim, related settlement negotiations and settlement of the claim (for which written consent is not required so long as no financial or material burden is imposed on the Indemnified Party), (ii) cooperating and, at the Indemnifying Party’s request and reasonable expense, assisting in a timely manner in such defense, and (iv) complying with all terms of the Agreement. The Indemnified Party shall have the right to participate in such defense with its own counsel, at its own expense.
18. **Insurance**

Merchant agrees it shall maintain, during the term of this Agreement, standard insurance policies with generally accepted insurance amounts applicable to Merchant’s industry.

19. **Force majeure**

No party shall be liable for failure or delay of performance caused by lightning, fire, sabotage, earthquake, tornado, flood, explosion, embargo, war, terrorism, riot, act of God, act of public enemy, government restrictions, electrical, Internet or telecommunication outage or any other cause beyond a party’s reasonable control, that persists, despite reasonable care taken by the affected party and all efforts of the affected party to prevent it or mitigate its effects. If such event continues for more than thirty (30) days, either party may terminate the Agreement.

20. **Notice**

All notices required under the Agreement shall be made in writing by letter or e-mail to the contact details provided in the Merchant Agreement or as otherwise agreed by the parties in writing. E-mails to Klarna shall be sent to the following e-mail address: commercial.us@klarna.com, with a copy to legal.us@klarna.com.

21. **Amendments to the Agreement**

Amendments to the Agreement shall be in writing. Klarna is entitled to unilaterally change any terms and conditions of the Agreement. Klarna will notify the Merchant, in writing, of any changes affecting the economic terms of the Agreement. Upon receipt of such notification of amendment, Merchant is entitled to terminate the Agreement with a thirty (30) days’ advance written notice to Klarna. Such notice of termination shall be received by Klarna no later than sixty (60) days after Merchant’s receipt of Klarna’s notification of amendment.

22. **Assignment, Transfer**

Merchant may not assign or transfer its rights and obligations under the Agreement without Klarna’s prior written consent. Notwithstanding the foregoing, Klarna has the right to transfer, pledge or dispose of the Assigned Claims without Merchant’s consent. Nothing contained in this Section shall prohibit Klarna from engaging subcontractors in order to provide the Services.

23. **Exclusivity**

23.1 In relation to the provision of Klarna Payment Options, such as the Credit Product, Slice It in X, or Deferred Payment (whether provided via Klarna Checkout or Klarna Payments):

The Merchant may not offer any third party services nor any of Merchant’s own services that correspond to or in all material aspects are similar to the Klarna Payment Options provided under this Agreement.

23.2 In relation to the provision of Klarna Checkout:

The Merchant undertakes to ensure that all its sales via the Authorized Store(s) or any other purchase channel agreed between the parties are made through Klarna Checkout. Notwithstanding the foregoing, the Merchant is allowed to carry backup/failover solutions.

24. **Governing law and jurisdiction**

Delaware law shall govern the Agreement, without giving effect to conflicts of laws principles.

25. **Dispute Resolution**

(a) All disputes arising out of or related to the Agreement shall be finally settled under the Commercial Arbitration Rules of the American Arbitration Association before a single arbitrator appointed in accordance with such rules. In the event a dispute relates primarily to payments owed under Agreement, the parties will use the Expedited Procedures under the AAA Commercial Arbitration Rules. The arbitration shall take place in Columbus, Ohio.

(b) The parties shall keep confidential: (i) the fact that any arbitration occurred, (ii) any awards awarded in the arbitration, (iii) all materials used, or created for use in, in the arbitration, (iv) all other documents produced by another party in the arbitration and not otherwise in the public domain, except, with respect to each of the foregoing, to the extent that disclosure may be legally required (including to protect or pursue a legal right), or to enforce or challenge an arbitration award before a court or other judicial authority.

(c) The arbitrators shall award to the prevailing party, if any, its costs and expenses, including its attorneys’ fees. The prevailing party shall also be entitled to its attorneys’ fees and costs in any action to confirm and/or enforce any arbitration award in any judicial proceedings.

(d) Nothing in the Agreement shall prevent either party from seeking provisional measures from any court of competent jurisdiction, and any such request shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate. Merchant agrees that Klarna will be irreparably harmed and monetary damages may not be adequate compensation if Merchant fails to meet its obligations hereunder, and that in addition to other remedies, Klarna shall be entitled to seek injunctive relief or specific performance to prevent any threatened or continued breach. The parties hereby waive any requirements for security for obtaining any provisional relief.

26. **Independent Contractors**

The Merchant and Klarna are independent contractors and shall have no power or authority to assume or create any obligation or responsibility on behalf of the other. The Agreement shall not be construed to create or imply any partnership, agency or joint venture.

27. **No Third Party Beneficiary**

The Agreement is intended for the sole and exclusive benefit of the signatories and is not intended to benefit any third party.

28. **Severability**

If any provision of the Agreement is found illegal or unenforceable, it will be enforced to the maximum extent permissible, and the legality and enforceability of the other provisions of the Agreement will not be affected.

29. **Survival**

Sections 9, 10, 11, 13, 14, 15, 16, 17, 20, 24 through 29 of the Agreement shall survive termination of the Agreement.