

## **Credit Card Payment Gateway Agreement**

This contract (the “Contract”) was concluded for providing purchases settlement service through the Knet Electronic Payment Gateway between:

**First:** Commercial Bank of Kuwait (K.S.C.P) Address, Kuwait, P.O. Box# 2861, Safat 13029, Kuwait represented herein by Mr. Yasser Abdul Mohsen Muzaffar in his capacity the Head of Merchant Relations Unit, Telephone No. 22990484 Fax No. 22990232, email: [merchants@cbk.com](mailto:merchants@cbk.com) (Hereinafter referred to as “the First Party/ the Bank”)

**Second:** The Merchant whose particulars are included in the Electronic Payment Services Application Form (Hereinafter referred to as “the Second Party / Merchant/ Customer”).

Both parties are hereinafter referred to as “the parties”.

After both parties have declared their full competence and legal capacity to contract, they agreed as follows:

### **Preamble**

- (A) Whereas, the Bank as a member of Visa International (“**VISA**”), MasterCard International (“**MasterCard**”) and Union Pay International (“**Union Pay**”) provides services as further detailed and described in the this Agreement and incorporated herein (“**Services**”);
- (B) Whereas, the Bank and the Merchant (Customer) agree that the Bank shall provide Services through the internet to the Merchant (Customer);
- (C) Whereas, the Bank and the Merchant (Customer) agree that the duration and conditions of these services acquired via the internet shall govern the relationship between the Bank and the Merchant (Customer) for all the Merchant’s (Customer) Products and Services available on the internet;
- (D) Whereas, the Bank and the Merchant (Customer) agree that these E-commerce terms and conditions expressly govern, without limitation, software products, hosting services, secure payment gateway services and related support and maintenance services obtained through the Bank in connection with the Merchant’s (Customer) Products and Services available on the internet;
- (E) Whereas, the Merchant (Customer) understands and agrees that it may be required to enter into additional specific agreements for software products, hosting services or other E-commerce products and services as the Bank may determine at its sole discretion;
- (F) Whereas, the Merchant (Customer) in furtherance of its business operations, wishes to accept credit cards as further detailed and described in Definitions and incorporated herein (“the **Cards**”) issued by the members as further detailed and described in Definitions and incorporated herein (“**Scheme**”) and for the Bank to process the resulting transactions as further detailed and described in Definitions and incorporated herein (“**Transaction**”) pursuant to the terms and conditions set out in this Merchant (Customer) Agreement;
- (G) Whereas, the Bank has adopted written rules and regulations, system manuals, procedures and requirements as further detailed and described in Definitions and incorporated herein (“**Rules**”) relating to all aspects of transactions processing.

(H) Whereas, the Bank and Merchant (Customer) are independent parties contracting for services and neither is an agent, partner or joint venture of the other.

NOW THEREFORE, in consideration of the mutual promises made herein, and other valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

**2. Definitions:**

The terms used in this Electronic Payment Gateway Contract for Credit Cards shall have the following meanings set forth below:

“**Merchant (Customer)**” means the person or entity named in this Merchant Agreement (including the Merchant (Customer) Application under Appendix 1), and if approved and accepted by the Bank, the Merchant is engaged in the business of providing goods and/or services to its clients and desires to accept credit and/or debit cards bearing the name and logo of VISA, MasterCard or Union Pay International for which the Bank authorizes the Merchant (Customer) to accept as a means of payment for those goods and/or services.

“**Card**” means a valid credit card or a valid debit card or a valid pre-paid card bearing the service mark of VISA, MasterCard or Union Pay International.

“**Transaction**” means the initiation of a sale or a consummation of a sale/rental of Products in the form of credit to a Cardholder (Consumer/ Buyer) by the Merchant (Customer) through means of a Sales Record or Credit Record, respectively.

“**Rules**” means the written rules and regulations, system manuals, procedures and requirements, releases and interpretations thereof and other requirements (whether contractual or otherwise) imposed or adopted by any Scheme as the same may be amended from time to time. The Bank shall provide the Merchant (Customer) with the relevant Rules and advise it whenever there is any change to the Rules.

“**Authorization**” means approval by, or on behalf of, the Issuing Bank to validate a Transaction for a Merchant (Customer) or another affiliate bank. An Authorization indicates only the availability of the Cardholder’s (Consumer/ Buyer) credit limit at the time the Authorization is requested and is not a guarantee that the Transaction is legal/valid.

“**Batch**” means usually a day’s worth of Transactions, including Sales Records and Credit Records, to be processed by the Bank at the end of each Business Day.

“**Business Day**” means any day on which the Bank is open for business, other than Fridays, Saturdays or other bank holidays.

“**Cardholder (Consumer/ Buyer)**” means the individual whose name is embossed on a valid Card and any authorized user of such Card.

“**Chargeback**” means the procedure by which a Sales Record or other indicia of a Card Transaction (or disputed portion thereof) is denied or returned to the Bank or the Issuing Bank after it was entered into the appropriate settlement network for payment, in accordance with the Rules, for failing to comply with the Rules including, without limitation from Cardholder (Consumer/ Buyer) disputes, the liability of which is the Merchant’s (Customer) responsibility.

“**Credit Record**” means all documents or the Electronic Record of such documents used to evidence any refund or price adjustment given by the Merchant (Customer) to a Cardholder (Consumer/ Buyer) for a previous sale transaction, which must conform to the Rules. The format for each Credit Record must be approved by the Bank.

“**Discount Fee**” means the amount charged to the Merchant (Customer) for processing its daily Card Transactions, which is computed as a percentage of the gross amount of the Merchant (Customer)’s Sales Records. Discount Fee shall not be reimbursed to the Merchant (Customer) even when Merchant (Customer) needs to perform any refund or price adjustment after the Sale Record is completed. Discount Fee shall be deducted from the Gross Sales amount acquired by the Bank on behalf of the Merchant (Customer), and the net credit shall be paid to the Merchant (Customer) Settlement Account.

“**Electronic Record**” means data that is transcribed in a form acceptable to the Bank and suitable for electronic processing.

“**Interchange Fee**” means the fee that is paid daily by the Bank to VISA, MasterCard, Union Pay or other Scheme for entering Sales Records and Credit Records into their respective settlement networks.

“**Issuing Bank**” means the Bank that has issued a Card to the Cardholder (Consumer/ Buyer).

“**Merchant Account Number**” means the number assigned and issued by the Bank to the Merchant (Customer), once this Merchant (Customer) Agreement is accepted by the Bank. The Merchant (Customer) Account Number will be used to identify the Merchant (Customer) for accounting, billing, customer service and other related purposes in connection with the Services

“**Monthly Sales Processing Volume**” or “**Monthly Sales Volume**” means the gross Kuwaiti Dinars (KWD) amount of Card Sales Records, before return, refund, or exchange that are generated by the Merchant (Customer) and processed by the Bank during a calendar month pursuant to this Merchant (Customer) Agreement.

“**Products**” means goods and/or services sold, rented or rendered by the Merchant (Customer).

“**Purchaser**” is the individual conducting the transaction with the Merchant (Customer) for the purpose of purchasing Products and providing their information on the Merchant (Customer)’s web page, including but not limited to the information in the secure screen.

“**Recurring Transaction**” means a transaction whereby the Cardholder (Consumer/ Buyer) agrees that the Merchant (Customer) will periodically charge the Cardholder (Consumer/ Buyer)’s Card for recurring goods or services (e.g., monthly insurance premiums, yearly subscriptions, annual membership fees) that are to be delivered or performed periodically at predetermined intervals.

“**Sales Record**” means all documents or the Electronic Record of such documents used to evidence the sale of Products through the use of Cards. The format for each Sales Record must be approved by the Bank.

“**Services**” means the acquiring activities undertaken by the Bank (including by or through authorized third party service providers) to acquire and settle VISA, MasterCard or Union Pay

International Card Transactions undertaken by Cardholders (Consumers/ Buyers) at the Merchant's (Customer) internet website for goods/services purchase, whose business is registered in Kuwait, and all other activities necessary for the Bank to perform the functions required by this Merchant (Customer) Agreement for all other Cards, if any, that may be covered by this Merchant (Customer) Agreement.

“**Transmittal**” means the process whereby Sales Records and Credit Records are electronically transferred in the form of Electronic Records.

### **3.Integration Models and Communication Methods:**

There are two ways that you can communicate with the Payment Server to process transactions. These are the Redirect Method and the Direct Method (the “**Payment Client**”). The method you choose is directly related to the Integration Model (3-Party Payments or 2-Party Payments) that is used by the Merchant (Customer). e.g., you may have a Web Store that uses 3-Party payments, and at the same time a Call Centre taking phone orders using 2-Party payments. Both applications can be using the Payment Client system at exactly the same time.

For web applications, you must have an (Secure Sockets Layer) SSL certificate from a trusted certificate issuer for encrypting the data between the Cardholder's (Consumer/ Buyer) browser and the Merchant's (Customer) web site. For other applications the method of security will vary. However, you can securely gather card details and pass them into a transaction without storing them in a database.

In terms of data storage, both the 2-Party and 3-Party with card details integration models place certain obligations that you would be required to comply with if you store these card details. Your financial institution best defines the security requirements for gathering and storing card details as per the Payment Card Industry Data Security Standards (PCI-DSS) Mandates and recommendations <https://pcisecuritystandards.org>

#### **3.1 2-Party Payments Integration Model**

Merchants (Customers) who want full control over transactions and want to manage their own payment pages shall use the 2-Party/Direct Payments Integration Model.

Implementing the 2-Party/Direct Payments Integration Model requires you to securely collect the Cardholder's (Consumer/ Buyer) card details and then use the Virtual Payment Client to send the Transaction Requests directly to the Payment Server. This is also called the Merchant-managed or direct model. This model means that you are responsible for securing the Cardholder (Consumer/ Buyer) card number and details.

In the 2-Party Payments Integration Model, a Cardholder (Consumer/ Buyer) places an order and provides their card details (card type, card number and expiry date) to you by Mail Order or by Telephone Order (MOTO transactions) including Interactive Voice Response (IVR) systems, or some card present application like a ticketing system.

You can implement the 2-Party Payments Integration Model if you prefer Cardholders (Consumers/ Buyers) to provide their card details (card type, card number and expiry date) to you rather than to the Payment Server. 2-Party Payments carry a higher risk than 3-Party Payments, as you are responsible for protecting the Cardholder's (Consumer/ Buyer) card details.

1. A Cardholder (Consumer/ Buyer) decides to make a purchase and provides their card details directly to your online store.
2. Your application collects the details of the Cardholder's (Consumer/ Buyer) order.
3. In addition, it formulates the Transaction Request and sends it via a HTTPS POST over the Internet to the Payment Server via the Virtual Payment Client.
4. The Payment Server passes the transaction to the Merchant's (Customer) acquirer bank for processing.
5. After processing, the Payment Server generates a Transaction Response and passes it via the Virtual Payment Client to your online store. The Transaction Response shows whether the transaction was successful or not. The results can be stored by you for future reference.
6. A receipt is generated and either immediately passed to the Cardholder (Consumer/ Buyer) or included when shipping the goods.

\*\* For the Merchant (Customer) to avail 2-Party Payments Model PCI DSS, compliance is mandatory. It is important to remember that it is only required if you are receiving, storing or processing the Primary Account Number (PAN) or the main credit card number of the customer, which is usually no longer than 19 and no less than 16 digits in length. In addition, a Merchant (Customer) or acquirer must remember that if a PAN is being stored or processed, the other information such as CVV/CVC and card holder information must be protected as well <https://pcisecuritystandards.org>

### **3.2 3-Party Payments Integration Model**

3-Party Payments allow the Payment Server to manage the payment pages and collect the Cardholder's (Consumer/ Buyer) card details on your behalf. The Payment Server's payment pages could be Bank or Payment Provider branded to help assure the Cardholder (Consumer/ Buyer) of a secure transaction. The advantage of 3- Party payments is that the complexity of securely collecting and processing card details is handled by the Payment Server, allowing you to focus on your application's part of the payment process.

The following is the information flow in a purchase transaction:

1. A Cardholder (Consumer/ Buyer) browses your online store, selects a product and enters their shipping details into the Merchant's (Customer) online store at the checkout page where the cardholder's (consumer buyer) details are recorded and makes the payment.
2. The Cardholder (Consumer/ Buyer) clicks a pay button and your online store sends the payment request to the Payment Server by redirecting the Cardholder's (Consumer/ Buyer) Internet browser to the Payment Server.
3. The Payment Server prompts the Cardholder (Consumer/ Buyer) for the card details using a series of screens. The first screen displays the cards supported, for example MasterCard, VISA and Union Pay International. The Cardholder (Consumer/ Buyer) chooses the card type they want to use for the transaction. The second screen accepts the details for the chosen card such as card number, card expiry, and card security number if required.
4. The Payment Server passes the details to the acquirer bank to process the transaction. After processing, the Payment Server displays the result of the transaction with a receipt number if it was successful or an appropriate information message if it was declined. It then advises the Cardholder (Consumer/ Buyer) to wait while they are redirected back to the Merchant's (Customer) site.
5. The Payment Server then redirects the Cardholder (Consumer/ Buyer) back to Merchant's (Customer) site with the transaction response. The response contains the result of the transaction.

6. The online store interprets the response, displays the receipt and confirms the order to the Cardholder (Consumer/ Buyer) for their records.

#### **4. Specific Operating Procedures:**

- 4.1 The Merchant's (Customer) website should accept MasterCard/VISA/Union Pay International credit cards for payment. The Merchant (Customer), shall ensure, pursuant to section 16 of this Merchant Agreement, that it maintains a valid bank account with the Bank for the entire term of this Merchant Agreement and any corresponding renewal terms, as the case may be.
- 4.2 The contact information of the Merchant (Customer) must be clearly provided on the website. The website must provide full information about the shipment/delivery details, return policy and refunds etc.
- 4.3 The following information must be obtained from the Cardholder (Consumer/ Buyer) upon placing his/her order.
  - a) Credit Card Number
  - b) Expiry Date
  - c) Billing Address
  - d) Telephone Numbers
  - e) Email Address
- 4.4. Authorization must be obtained from the Bank for each order, and for the entire amount.
- 4.5. The data that is transmitted from the website must comply with the encryption standards as laid down by the Bank.
- 4.6. It is agreed that the Merchant (Customer) is solely responsible for the terms and conditions of services/goods delivery. In case of a dispute by a Cardholder (Consumer/ Buyer) on the goods/services, delivery, timeliness, etc. the Bank will not in any way be held liable for any lapse or shortcoming of the Merchant (Customer).
- 4.7. The transaction must be processed in a currency that matches the currency of the country of origin (Merchant "Customer" country) or the country of destination (Cardholder "Consumer/ Buyer") country)
- 4.8. The following items should be available on the Merchant (Customer) website in a clear format for the Cardholder (Consumer/ Buyer) to review:
  - A. Complete description of goods and services
  - B. Customer service contact information including email address as well as phone numbers
  - C. Return, refund and cancellation policy
  - D. Delivery policy
  - E. Country of Origin
  - F. Export restrictions
  - G. Privacy Statement
  - H. Information on when cards are charged
  - I. Order fulfillment information
  - J. A statement on website regarding security controls used to protect customer's personal information data
  - K. A statement encouraging Cardholders (Consumers/ Buyers) to retain a copy of the transaction receipt

#### **5. Secure Data Storage:**

The Merchant (Customer) is responsible to ensure secure storage of account numbers and Cardholder (Consumer/ Buyer) data on its website and/ or server. The Merchant (Customer) will be liable to pay for damages if it is discovered that the Merchant (Customer) was negligent in its use of data security measures within the Merchant's (Customer) system/server, which compromised Cardholder (Consumer/ Buyer) account numbers leading to fraudulent usage and losses. The Merchant's (Customer) liability is limited to negligent data security.

- 5.1. The Merchant (Customer) also agrees to provide all reasonable assistance to the Bank, and to the satisfaction of the Bank that the Merchant (Customer) has undertaken all reasonable precautions and controls to ensure secure data storage capabilities and restricted security access.
- 5.2. It is agreed that the Merchant (Customer) grants the Bank the right to submit the Merchant (Customer)'s website and the concerned security systems to a periodic review by an expert authorized by the Bank.

#### **6. Disputed Charge:**

For any disputed charge, the Bank will not bear any liability and all incoming Chargebacks from the card issuer will be debited to the Merchant's (Customer) account (charged-back). The charged-back amount would be deducted directly from the Merchant's (Customer) account with the Bank or from subsequent payments until payment of the Chargeback has been made in full.

#### **7. Chargebacks and Fees:**

The Merchant (Customer) agrees that the Bank will not be liable for any incoming Chargebacks, any amounts due or to become due under this Merchant Agreement, or based on your financial condition or in the event you submit transactions which are not authorized since the Bank as the acquiring bank will not bear any liability for any amount irrespective of the circumstances of the charge. This is as per the operating regulations of VISA, MasterCard, Union Pay or any other cards.

#### **8. Additional Rules for Mail, Telephone, E-Commerce (Internet) and Recurring Transactions:**

##### **8.1 Mail, Telephone and E-Commerce (Internet) Orders and Sale Transactions:**

The Merchant (Customer) understands that Mail, Telephone and E-Commerce (Internet) orders and sale Transactions have substantially higher risk of Chargeback and Cardholder (Consumer/ Buyer) dispute than Card "present" (e.g. in a face-to-face) Transactions, as the Merchant (Customer) will not have an imprinted or magnetically "swiped" Transaction with the Cardholder's (Consumer/ Buyer) signature on the Sales Record. The Merchant (Customer) understands that it will be assuming a greater risk associated with accepting Card "not present" Transactions, including Mail, Telephone and E-Commerce (Internet) Transactions. The Merchant (Customer) understands that Sales Records submitted for Mail, Telephone, Recurring Transactions, Pre-Authorized Orders and E-Commerce (Internet) Transactions are subject to the Bank's increased risk management and security review procedures and may result in delays or holds of funds being released to the Merchant (Customer).

##### **8.2 Mail, Telephone, Recurring Transactions and E-Commerce (Internet) Transactions:**

The Merchant (Customer) acknowledges that all mail order transactions, telephone order transactions, recurring transactions and E-Commerce (Internet) transactions are difficult to defend against Chargeback and the Merchant (Customer) agrees that it shall take reasonable precautions to protect against Chargebacks, including, but not limited to the following:

- (i) Delivering merchandise only to the Cardholder's (Consumer/ Buyer) billing address where the Issuing Bank sends the Cardholder's (Consumer/ Buyer) billing statement;
- (ii) Using a delivery service that maintains shipping logs and requires signatures by a person receiving merchandise;
- (iii) Obtaining CVV2/CVC2 verification from the Issuing Bank and
- (iv) If the Merchant (Customer) processes Recurring Transactions and charges a Cardholder's (Consumer/ Buyer) account periodically for recurring Products (e.g., monthly insurance

premiums, yearly subscriptions, annual membership fees, etc.) the Merchant (Customer) must also (in addition to, and not in lieu of, other applicable procedures and Rules) comply with the following:

- A. Have the Cardholder (Consumer/ Buyer) complete and deliver to the Merchant (Customer) a written request for such Products to be charged to the Cardholder's (Consumer/ Buyer) account. The written request must at least specify the transaction amounts, the frequency of recurring charges and the duration of time for which the Cardholder's (Consumer/ Buyer) permission is granted and upon a Cardholder's (Consumer/ Buyer) request for a copy of the same, it must be provided promptly;
- B. If the Recurring Transaction is renewed, the Cardholder (Consumer/ Buyer) must complete and deliver to the Merchant (Customer) a subsequent written request for the continuation of such Products to be charged to the Cardholder's(Consumer/ Buyer) account;
- C. The Merchant (Customer) may not complete a Recurring Transaction after receiving a cancellation notice from the Cardholder (Consumer/ Buyer) or Issuing Bank or after a request for Authorization has been denied;
- D. The Merchant (Customer) must perform a proper validation of the Cardholder's (Consumer/ Buyer) information and address for at least the first Transaction and then annually thereafter, if applicable. The Merchant (Customer) understands that penalties can be assessed by the Schemes for failure to comply with rules applicable to Recurring Payment transactions;
- E. A Recurring Transaction may not include partial payments for Products purchased in a single Transaction; and
- F. No finance charge may be imposed in connection with a Recurring Transaction.

In any case, all Transactions with an Authorization date more than fifteen (15) days prior to shipping date or the date services are rendered are subject to a greater risk of possible Chargeback.

8.3 E-Commerce (Internet): If the Merchant (Customer) is an E-Commerce (Internet) Merchant (Customer), and accepts orders via the Internet, the Merchant (Customer) agrees that it must also (in addition to, and not in lieu of, other applicable procedures and Rules) comply with the following:

- (i) Post its privacy and security policies on its websites, where such policies shall be clearly marked for consumers to see and review;
- (ii) Website must include all the following information in a prominent manner:
  - (1) Complete description of the Products offered;
  - (2) Returned merchandise and refund policy. If the Merchant (Customer) does not offer refunds or makes such other restrictions, the words "no refund", or other appropriate terminology, shall be prominently and legibly written or typed or displayed on the Merchant's (Customer) Internet web page for goods/service purchase used by the Merchant (Customer) with respect to performance of this Merchant (Customer) Agreement and provided to the buyer;
  - (3) A method for the Cardholder (Consumer/ Buyer) to acknowledge his acceptance of the terms and conditions for returned merchandise or for the refund policy; this acknowledgement should be in a format that complies with Schemes guidelines for proper disclosure;
  - (4) Customer service contact, including email address and/or telephone number;
  - (5) Transaction currency;

- (6) Any applicable export or legal restrictions;
- (7) Delivery policy;
- (8) Consumer data privacy policy; and
- (9) A description of the transaction security used on the Merchant's (Customer) website. The Merchant (Customer) acknowledges that an Internet Acquiring Transaction Indicator must be used to identify the Internet Acquiring Transactions in the Authorization request and clearing record.

**9. Chargebacks:**

The Merchant (Customer) is responsible for any and all Chargebacks for which the Schemes Rules has determined the Merchant (Customer) as liable, as well as Schemes fines, assessments and fees related to or arising out of such Chargebacks, and will pay the Bank upon demand, the face amount of any Chargebacks. Once the Merchant (Customer) is enrolled for 3Dsecure, then risk of Chargeback under the Schemes Rules will be reduced. the Bank shall have the absolute right, at any time and without notice, to charge back to you, and deduct, withdraw or set-off from payments due to you from transactions or from the settlement account, if applicable, any reserve account, any other account or from amounts due to Merchant (Customer), for the full amount of any item designated by the Bank.

The Merchant (Customer) shall reimburse the Bank for any Chargebacks, return items, or other losses resulting from the Merchant's (Customer) failure to produce a Card Transaction record requested by the Bank within the applicable time limits. The Bank shall have the right to debit the Merchant's (Customer) incoming Chargebacks, through the settlement account and to charge such Chargebacks to Merchant (Customer), including without limitation, and by way of example, in any of the following situations:

- A. Where goods have been returned or services cancelled by a Cardholder (Consumer/ Buyer) and the Cardholder (Consumer/ Buyer) requested a Credit Record and such Credit Record was not processed by the Merchant (Customer) within three (3) Business Days;
- B. Where the Transaction is for a type of Product sold other than as disclosed in the Merchant (Customer) Application portion of this Merchant (Customer) Agreement and approved in advance by the Bank and the sales transaction was charged back;
- C. Where a Cardholder (Consumer/ Buyer) contends or disputes in writing to the Bank or the Issuing Bank that:
  - (i) Products were not received by the Cardholder (Consumer/ Buyer); or
  - (ii) Products received by a Cardholder (Consumer/ Buyer) do not conform to the description on the Sales Record; or
  - (iii) Products were sold in a misleading fashion or manner by the Merchant (Customer); or
  - (iv) Products were defective; or
  - (v) The dispute reflects a claim or defense authorized against issuers or creditors by a governmental agency, a relevant statute or regulation;
- D. Where a Sales Record or Credit Record was not received by the Bank as required in accordance with the terms of this Merchant (Customer) Agreement;
- E. Where the Sales Record was not completed as required by this Merchant (Customer) Agreement or the Rules;
- F. The Cardholder (Consumer/ Buyer) has certified in writing to the Bank or the Issuing Bank that the Cardholder (Consumer/ Buyer) did not make or authorize such a transaction
  - (i) Where the Issuing Bank or the Bank has information or belief that the Merchant (Customer) fraud occurred at the time of the transaction(s), whether or not such

transaction(s) was properly Authorized by the Issuing Bank, and the Cardholder (Consumer/ Buyer) neither participated in nor authorized the transaction(s);

- G. In any other situation where the Sales Record was executed or depository credit was given to the Merchant (Customer) in circumstances constituting a breach of any representation or warranty of the Merchant (Customer) or in violation of the Rules, whether or not a transaction is charged back by the Issuing Bank. If, with respect to any one of the Merchant's (Customer) outlets, the amount of any Card counterfeit or fraud incidences becomes excessive, in the sole and absolute discretion of the Bank, the Merchant (Customer) may be charged back for all Transactions and this Merchant (Customer) Agreement shall be terminated immediately for cause.

The Merchant (Customer) understands that the Bank may assess a Chargeback Fee for each Chargeback plus the amount of any Chargeback fines or penalties assessed by VISA or MasterCard or Union Pay International against the Bank for Transactions arising from the activities of Merchant (Customer), or any other charges as may be established by the Bank from time to time. Furthermore, the Bank may assess Merchant (Customer) a fee for processing any fines or penalties that may be charged by VISA or MasterCard or Union Pay at the sole and absolute discretion of the Bank. If the actual Card is "not present", Merchant (Customer) understands and acknowledges that the Merchant (Customer) bears one hundred percent (100%) of the risk of Chargeback under the Rules, for all Card Transactions and any fees resulting from such Card "not present" transactions and hereby agrees, without limiting any other provisions in this Merchant (Customer) Agreement, to hold the Bank harmless from any losses, claims, and costs arising from or associated with all such Card Transactions, including any Authorizations. Merchant (Customer)'s obligation to pay chargebacks shall survive the termination or expiration of this Merchant (Customer) Agreement.

**10. Delay Settlement:**

The Bank has the right to delay the settlement of charge by the Merchant (Customer) if in the Bank's opinion, a review of the Merchant's (Customer) Internet transactions are warranted for a particular period; either on its own or on the instructions of VISA, MasterCard or Union Pay International or any other suitable authority. The delay in settlement will not exceed a period of Thirty (120) business days. The Bank will promptly communicate the period and the reasons for any delay in settlement to the Merchant (Customer).

**11. Disputes:**

The Merchant (Customer) will be fully responsible for any financial or legal disputes that may arise between the Merchant (Customer) and the Cardholder (Consumer/ Buyer) that are related to this Merchant Agreement. The Bank will not be in any way part of such disputes between the Merchant (Customer) and the Cardholder (Consumer/ Buyer).

**12. MasterCard E-Payment Gateway:**

Merchant's (Customer) website integration with the Bank-Payment Gateway (the Bank Payment Gateway System "MIGS" or "MPGS") is solely the responsibility of Merchant (Customer) and should be performed by Merchant (Customer). However the sample integration software codes and support will be provided by the Bank to the Merchant (Customer).

**13. Notifications:**

The Bank shall notify the Merchant (Customer) to take suitable corrective steps if it is found that the Merchant's (Customer) charge-back or claims received for operations performed without the authorization of the Cardholder (consumer/buyer) exceed 0.2% of the sales ratio in a month

and/or any other related norms set by the international credit card schemes (VISA, MasterCard or Union Pay International). The Merchant (Customer) is required to take immediate action to reduce the ratio of the operations performed without the authorization of the Cardholder (consumer/buyer) to the level mandated by the Bank. In case it is found that there is no reduction in the ratio of the operations performed without the authorization of the Cardholder (consumer/buyer) to the sales ratio in the subsequent month or in the event the Bank has reason to believe that the Merchant (Customer) has not taken adequate remedial steps, then the Bank will have the right to terminate this Merchant Agreement without any further notice.

**14. Merchant Indemnity:**

The Merchant (Customer) agrees to indemnify, defend and hold the Bank and its affiliates (including officers, directors, employees, attorneys, shareholders, representatives and agents) harmless from and against any and all liabilities, judgments, arbitration awards, actions, suits, claims, demands, losses, damages, costs, expenses and attorneys' fees, or fees in bankruptcy proceedings, incurred in connection with:

- A. An item that does not conform to the requirements of this Merchant Agreement, any applicable operating manual, the Rules or applicable laws
- B. Arising out of any Card transaction or any act or omission in connection with a Cardholder (Consumer/ Buyer)
- C. A breach or an alleged breach of any item, covenant, condition, representation, warranty or agreement by Merchant (Customer) with any Cardholder (Consumer/ Buyer), any card association or to the Bank, including any application, this Merchant (Customer) Agreement, these Rules, the Confidential Information Non-Disclosure Agreement and other attachments, under the Rule or any violation of applicable laws
- D. The rescission, cancellation or avoidance of Card transaction or item, by operation of law, adjudication or otherwise
- E. Any claim, counterclaim, complaint, dispute or defense, whether or not well-founded with respect to a Card transaction; or
- F. Damages, including death or injury caused by the goods or service purchased with the Card.

**15. Merchant (Customer) Representations, Warranties and Covenants:**

As a condition for transmitting any item to the Bank, Merchant (Customer) hereby continuously warrants, covenants and represents compliance with all of the representations, warranties and covenants contained in this Merchant Agreement, the Rules, and applicable law. The Bank may block the transactions or close terminals of Merchant (Customer) without prior notice for breaches or suspected breaches of this Section, for other reasonable cause and in the event of termination of this Merchant Agreement.

Merchant (Customer) agrees that obtaining authorization for any Card transaction does not constitute a guarantee of payment to Merchant (Customer) and does not relieve Merchant (Customer) of liability for Chargebacks. Merchant (Customer) will not submit any item which is:

- (i) not a bona fide, direct sales transaction between the Merchant (Customer) and the Cardholder (Consumer/ Buyer) in the Merchant's (Customer) ordinary course of business (not including any transactions with an agent or representative of Merchant (Customer) unless approved in advance by the Bank), or
- (ii) a transaction between a Cardholder (Consumer/ Buyer) and an entity or source other than the Merchant (Customer), or

- (iii) is a fraudulent transaction. The Merchant (Customer) is responsible for the actions of its employees and agents. The Bank may charge back any item at any time where a breach of any representation, warranty or covenant exists with respect to such item. The Merchant (Customer) will comply with applicable law. The Merchant (Customer) will provide business and financial information upon the Bank's request and will notify the Bank of any material change in name, location, ownership, nature of business, sale of products and/or services not related to its current business or any change in information furnished on any application or other information submitted to the Bank. The Merchant (Customer) understands and agrees that any independent sales organization or member service provider (ISO/MSP) is an independent contractor and is not an agent of the Bank. Any ISO/MSP must comply with Rules. No ISO/MSP has any authority to execute this Merchant (Customer) Agreement or alter its terms.

The Merchant (Customer) declares that all goods and services that are sold through the Credit Cards Payment Gateway, provided by the Commercial Bank of Kuwait, are goods or services which the Merchant (Customer) owns, and that he does not in any way use this service for collection on behalf of third parties or persons.

The Merchant (Customer) also undertakes to accept any measures or penalties that Commercial Bank of Kuwait may apply to him in case it is established for the Bank that the Merchant (Customer) has breached the commitments shown hereinabove.

The Merchant (Customer) agrees to notify the Bank with the type of goods/services that are provided to the Cardholder (Consumer/ Buyer) and to update the Bank immediately about any addition or change in the type of goods/services prior to providing them to the Cardholder (Consumer/ Buyer).

#### **16. Term and Termination of Merchant Agreement:**

- 16.1 The term of this Merchant Agreement is for one (1) year (the "Agreement Term") from the signing of this Merchant Agreement. The Agreement Term shall expire in the next year on the last day of the same month in which this Merchant Agreement was signed. At the expiration of the Agreement Term, this Merchant (Customer) Agreement shall be automatically renewed thereafter for successive one (1) year periods ("Renewal Term") unless Merchant (Customer) gives written notice of termination at least sixty (60) days prior to the expiration of the Renewal Term. The Bank reserves the right to terminate this Merchant Agreement without prior notice in case:
  - A. The Merchant (Customer) does not strictly adhere to the terms and conditions of this Merchant Agreement, and/or any other agreement signed with the Bank that regulates banking cards relationship between the two parties.
  - B. The Merchant (Customer) closes its account with the Bank designated for the online transactions through all banking cards.
  - C. The Merchant (Customer) fails to settle the monthly rental fees for 3 consecutive months
- 16.2 The Bank may terminate this Agreement immediately for whatever reasons the Bank deems necessary.
- 16.3 The Bank shall stop any accounts in case of suspicion of a legal violation, financial crime or suspicious transactions. The Bank is also entitled to withdraw and seize any account belonging to customers without need for serving notice or warning.

- 16.4 The Bank shall have the right to take legal actions against the Merchant (Customer) in accordance with Law No. 106/ 2013, Central Bank of Kuwait Instructions No. (2/BS/IBS/432/2019) and their subsequent amendments in the event of having any suspicion of money laundering and terrorist financing without the least responsibility on the Bank. The Bank may immediately set aside any transferred funds in the event that there are suspicions that such funds are associated with money laundering and terrorist financing transactions. The Bank may also delay the transfer of the funds for the purpose of verification, or refrain from enforcing the transfer due to suspicions that the transactions may be associated with money laundering or terrorist financing, or that the transfer is intended to individuals or companies that are included on the blacklist of any country or are subject to any internationally imposed sanctions, or that the transfer is to any fictitious name or entity.
- 16.5 The Bank shall have the right to amend, add or cancel any of these terms and conditions without notice to the customer in accordance with the Bank's applicable policies and procedures and as per the Central Bank of Kuwait's instructions.
- 16.6 The Bank reserves the right to refuse opening or to close any account without giving any reasons.

#### **17. Governing Law and Jurisdiction:**

- 17.1 The Merchant (Customer) shall hereby comply with all the laws in force in the State of Kuwait and the terms and conditions of Commercial Bank of Kuwait and the terms and conditions of both VISA and MasterCard worldwide and shall not use the service for any purchase transaction, getting services or any objectives that are in violation of the law. The Merchant (Customer) shall bear the full responsibility for any violation thereof. In this case, Commercial Bank of Kuwait has the right to stop dealing, withdrawals and blocking all Merchant (Customer) accounts.
- 17.2 These terms and conditions shall be subject to and interpreted by the laws in force in the State of Kuwait and all disputes and conflicts that may arise between the Merchant (Customer) and the Bank shall be subject to the exclusive jurisdiction of the courts of the State of Kuwait without prejudice to the Bank's right to take any legal action against the Merchant (Customer) before any court or judicial authority whether inside or outside the State of Kuwait.
- 17.3 In case of conflict between the Arabic text and the English text, the Arabic text shall prevail.

#### **18. Amendment:**

This Merchant (Customer) Agreement, the Rules and the Confidential Information Non-Disclosure Agreement may be amended by the Bank at any time by giving a notice to the Merchant (Customer) to its mail address registered in the Electronic Payment Service Application Form effective on the future date stated in the notice (the "Effective Date"). Submission of any item to the Bank on or after any effective date constitutes acceptance of any amendment.

#### **19. Assignment:**

This Merchant Agreement shall be binding upon the Merchant (Customer) and the Bank and respective heirs, successors and assigns. This Merchant Agreement shall not be assigned by the Merchant (Customer) without the express prior written consent of the Bank and any purported assignment without such consent shall be void. The Bank may assign this Merchant Agreement to any affiliate or successor.

**20. Miscellaneous:**

The Merchant (Customer) shall, prior to the execution of this Merchant Agreement or within Thirty (30) days thereafter, provide the Bank with the following documents:

- Commercial License
- Memorandum of Association (Co.) or Rent Contract(Est.)
- Civil ID Copy of the Authorized Signatory
- Signature Authorization
- The Banking Current Account ( company name )
- Contact Phones Number
- Authority attested From Ministry of Justice (listed by bank items)
- Merchant (Customer) has to have a Website
- Website details as per Visa / MasterCard / Union Pay International / the Bank format

**21. Discount and Fees:**

It is agreed that the fees and commissions charged under this contract shall be as stated in the Electronic Payment Service Application Form. The Bank shall have the right to amend such amounts of fees and commissions provided that the Merchant (Customer) is so notified in writing not less than one month prior to the date of such amendment.

The Merchant (Customer) acknowledges that it is aware of and fully understands all the terms and conditions set forth in this contract and further acknowledges its agreement thereon.

In witness thereof, both parties executed this Agreement by their authorized representatives who have the authority to commit the party they represent.

## **Confidential Information Non-Disclosure Agreement from Commercial Bank of Kuwait**

This Non-Disclosure Agreement (the “**Agreement**”) is entered between Commercial Bank of Kuwait referred to hereinafter as ”Discloser”, and the Merchant (Customer), to whom disclosure is made, referred to hereinafter as “the Recipient” .

Discloser and Recipient are collectively referred to as the “**Parties**” or each as a “**Party**”.

WHEREAS the Discloser possesses certain ideas and information relating to Online Payment that are confidential and proprietary to the Discloser and its business and operations generally, including without limitation, financial, technical, and commercial information as well as customers’ related information (“**Confidential Information**”); and

WHEREAS the Recipient is willing to receive disclosure of the Confidential Information pursuant to the terms of this Agreement for the purpose of Online Payment Services.

NOW THEREFORE, in consideration of the premises and the mutual agreements and covenants contained in this Agreement and other good and valuable consideration (the receipt and sufficiency of which is acknowledged by each of the Parties), the Parties covenant and agrees as follows:

### **1. Preamble:**

The above preamble shall be deemed an integral part of this Agreement.

### **2. Disclosure.**

The Discloser agrees to disclose, and Recipient agrees to receive the Confidential Information.

### **3. Purpose of Disclosure:**

Installation of the Discloser’s Internet Payment Gateway Services.

### **4. Use and Non-Disclosure:**

- A. The Recipient agrees to use its best efforts to prevent and protect the Confidential Information, or any part thereof, from disclosure to any person other than the Recipient's employees having a need for disclosure in connection with Recipient's authorized use of the Confidential Information.
- B. The Recipient agrees that the unauthorized use or disclosure of the Confidential Information, in its original form or by way of summary of analysis, by any officers, employees, agents, representatives or advisors of the Recipient to any unauthorized person shall cause the Discloser irreparable harm and damage.
- C. The Recipient agrees to hold the Confidential Information secret and in strict confidence at all times and not to disclose such Confidential Information in its original form or by way of summary or analysis, to any unauthorized person, and not use the Confidential Information for the Recipient’s benefit or for the benefit of third parties, except as provided in this Agreement.

### **5. Confidentiality:**

- A. “Confidential Information” means all oral information disclosed and conveyed by Discloser to Recipient at any time, all information previously made available to Recipient, and all information which from the date hereof is specifically marked as "Confidential" by the Discloser and which is transmitted in writing or electronically, and, without limitation, in the form of records, data, reports, correspondence, specifications, materials, customer

and technical data. Confidential Information includes materials given to the Recipient prior to this agreement.

- B. The Recipient agrees not to use the Confidential Information in any way, or to manufacture or test any product embodying Confidential Information, except for the purpose set forth above.
- C. The Recipient agrees to take all steps reasonably necessary to protect the secrecy of the Confidential Information, and to prevent the Confidential Information from falling into the public domain into the possession of unauthorized persons.
- D. The Recipient agrees, upon the written request of the Discloser, to return all Confidential Materials received from the Discloser after use. All copies or reproductions on any media made by Recipient of Confidential Materials are to be disposed of. Upon disposal of any material and/or instrument that contains Confidential Information, the Recipient will provide the Discloser with a written document indicating what has been disposed of, when this occurred, and the method used.

#### **6. Limitation of Confidentiality.**

Confidential Information mentioned below shall not be deemed proprietary and the Recipient shall have no obligation under this Agreement with respect to such information where the information:

- a) Was known to the Recipient prior to receiving any of the Confidential Information from the Discloser;
- b) Has become publicly known through no wrongful act of the Recipient;
- c) Was received by Recipient without breach of this Agreement from a third party without restriction as to the use and disclosure of the information;
- d) Was already in the public domain or was ordered to be publicly released by a final court order or a directive of a competent government agency.

#### **7. Ownership of Confidential Information:**

The Recipient agrees that all Confidential Information shall remain the property of the Discloser, and that the Discloser may use such Confidential Information for any purpose without obligation to the Recipient. Nothing contained herein shall be construed as granting or implying any transfer of rights to Recipient of the Confidential Information, or any patents or other intellectual property protecting or relating to the Confidential Information. For greater certainty, all data, computer programs, writings, and cardholders (consumer/buyer) data (customer names, account information, credit card information, and any information that may harm the cardholder "Consumer/buyer") disclosed by the Discloser to the Recipient under this Agreement shall remain the property of the Discloser.

#### **8. Rights Assignment:**

The Recipient shall have no right to assign any rights or obligations under this Agreement without any prior written approval from the Discloser.

#### **9. Duration and Termination:**

The obligations set out in this Agreement shall be continuing until the Confidential Information disclosed to the Recipient is no longer considered by the Discloser as confidential and the Discloser communicates this information to the Recipient in writing. This agreement may be amended, altered or changed only by and in accordance with the written agreement of both Parties.

#### **10. Losses and Damages:**

The Recipient shall be liable for any harm and against any loss, liability, damage, claim, cost and expense arising from the misuse and disclosure of Confidential Information by his employees or whoever he authorizes.

**11. Notices:**

All correspondences and legal & judicial announcements (as served by any of the parties to the other on the addresses set out in this contract or to the latest address provided via a registered letter with acknowledgement of receipt, SMS, e-mail or by any other modern means of communication that can be saved and retrieved) shall be valid, enforceable and legally binding, from all aspects, towards the other party. However, any change to the address of any party shall only be effective or valid from the date when the other party receives a written notification of the change of the address.

**12. Governing Law and Litigation:**

This is a special ratification and shall be deemed as addendum to provide the user with e-payment gateway for credit cards by the Discloser. This Agreement shall be governed by and construed in accordance with laws of Kuwait and the non-exclusive jurisdiction of the Kuwaiti courts.

In Witness thereof, parties executed this Agreement by their representatives who are duly authorized to commit the party they represent.

Version 1.0  
March 2022