

SOFT POS MERCHANT AGREEMENT

This Agreement covers the standard terms and conditions of the for the Soft PoS Merchant Agreement (the Agreement or this Agreement) entered into between you (the Merchant or you) and First Bank of Nigeria Limited, a limited liability Company incorporated in Nigeria and having its registered office at Samuel Asabia House, 35 Marina, Lagos (hereinafter referred to as "the Bank" which expression shall where the context so admits include its subsidiaries, agents, affiliates, successors-in-title and assigns).

You and the Bank are hereinafter referred to collectively as "Parties" and individually as "Party",

This Agreement is valid and shall bind both Parties, until terminated in accordance with the terms set out herein. You may be unable to use, access or enjoy the Soft PoS Service solution (the Service) if you do not agree to abide by all the terms and conditions of this Agreement. Therefore, it is advised that you carefully read this Agreement before you accept same. Your continuing usage of the Service shall amount to an acceptance of this Agreement and any amendment made thereto.

By clicking on the accept button at the end of this Agreement, you confirm that you have read and fully understood the terms herein and agree to be bound by all the terms of this Agreement. If the accept button is not present or disabled, accessing and using the Service indicates your acceptance of the terms and conditions of this Agreement.

Whereas:

- a. The Bank is a financial institution and an acquirer of payment cards that may be used in connection with payment services and provides transaction processing, as well as payment setup to persons using multiple channels/payment related solutions/services.
- b. The Merchant is engaged in a business and desires to accept the payment channels/solutions provided by the Bank, including the Service, as a payment method for the value of goods sold or services provided by the Merchant to its purchasers or Cardholders.
- c. The Parties hereby enter into this Agreement to govern their relationship in respect of the Service contemplated by the Parties as set out in this Agreement.

1. Definitions

In this Agreement, the following definitions apply:

"Acquiring Bank" means the bank or financial institution that processes credit or debit card payment requests on behalf of the Merchant.

"Affiliate" means, in relation to any Party, any entity in the same group as that Party, including but not limited to a subsidiary or a holding company of that Party and any direct or indirect subsidiaries of such holding company.

"Agreement" means this Soft PoS Merchant Agreement and any supplements, appendices, amendments, modifications, extensions and revisions to this Agreement.

"API" means Application Program Interface belonging to the Bank for the purpose of providing the Service.

"Applicable Law(s)" includes but is not limited to all Nigerian laws, regulations, code, guidelines, circulars, rules, policies, directives, including but not limited to the Central Bank of Nigeria (CBN) and Nigeria Inter-Bank Settlement System (NIBSS) requirements and any amendment(s) therein.

"Business Day" means any day other than Saturday, Sunday, or any other day on which banking institutions in Nigeria are open for business.

"Card" means a credit, debit or any other card issued by an Issuing Bank.

"CBN" means the Central Bank of Nigeria.

"Chargebacks" means the reversal of a transaction or request for repayment in respect of a transaction previously settled and/or remitted that comes from the Issuing Bank, Payment Scheme or other financial institution which can arise from several factors, including but not limited to any alleged unauthorized use of the card, or forgery of the Card, or other details; any charge/debit made on a Card that has been hot listed; non-receipt of goods and/or services purchased; cancelled or uncompleted pre-authorized transaction; duplicate processing; denial of a Transaction by a Customer as wrongly charged payment.

"Confidential Information" means any documents, data, or information related to each Party's business that is not generally known to the public.

"Customer or Cardholder" means a person to whom a valid Card is issued or who is authorized to use the Card and patronizes the Merchant in relation to a payment transaction processed through the Service.;

"Disclosing Party" means any one of the Parties under this Agreement that discloses Confidential Information to the other Party.

"Fees" means such fee and/or charges payable by the Merchant to Bank for the Service.

"Fines" means any fines, levies, fees, costs, expenses, charges, of any nature which the Payment Schemes or other financial institution require either the Merchant to reimburse or pay or which are otherwise directly or indirectly recovered from the Bank at any time and which relate to any aspect of this Agreement.

"Hot list" means list of deactivated cards that were reported missing, stolen, lost or damaged by the card holders.

"Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, trademarks, trade names and domain names, goodwill and the right to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future.

“Issuing Bank” means a financial institution that issues Cards to its Customers.

“NFC” means Near-Field Communication which is a short-range wireless connectivity technology that uses magnetic field induction to enable communication between devices when they are touched together or brought within a few centimeters of each other. This would be required for authenticating Transactions.

“Payment Gateway” means the infrastructure service of the Bank that enables authentication of Customers and authorizes payments for Merchants.

“Payment Scheme” means Visa, MasterCard, Verve, American Express, China UnionPay and any Affiliates thereof or any other card payment network and/or such other schemes governing the issue and use of credit, debit, charge, purchase or any other cards or payment methods, as approved by the Bank in writing.

“Payment Scheme Rules” means individually and collectively, any and all applicable rules, regulations, standards and operating guidelines issued by any Payment Scheme, as amended from time to time.

“Payment Service Provider (PSP)” means the Payment Gateway providers and Bank.

“Payments Terminal Service Aggregator (PTSA)” means Nigeria Interbank Settlement System (NIBSS), the only entity permitted to operate a terminal management system in Nigeria.

“Payments Terminal Service Provider (PTSP)” means an entity licensed by the CBN to deploy, maintain and provide support for PoS terminals in Nigeria. PTSPs shall offer services to acquirers covering all aspects relating to terminal management and support, including but not limited to purchase and replacement of spare parts, provision of connectivity, training, repairs, and development of value-added services, amongst other things.

“Receiving Party” means any person receiving Confidential Information from a Party under this Agreement.

“Refund” means a return of an amount to a Customer or the reversal of any other payment pursuant to a request or instruction from the Merchant to the Bank.

“Regulatory Authority” means any regulator or other public body having supervisory or regulatory authority over the Bank or the Merchant.

“Soft PoS” means the payment acceptance solution that converts a smartphone or smart device into a contactless payment acceptance device and eliminates the need for a merchant to transact with a hardware POS terminal.

“Terms and Conditions” means collectively the terms and conditions of this Agreement, as may be amended from time to time, including all exhibits, addendum, and schedules thereto.

“Territory” means the Federal Republic of Nigeria.

“Transactions” mean all transactions done on the Soft PoS.

In this Agreement, a reference to:

- i. A person includes a reference to any individual, body corporate, unincorporated association or partnership; and in the case of an individual, to that person's legal personal representatives, successors or assigns.
- ii. All references to the singular shall include the plural and vice versa.
- iii. One gender shall include all other genders.
- iv. An account means an account and any sub-accounts of that account and as each may be substituted, renewed, re-designated, replaced or renumbered.
- v. The clause headings in the Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- vi. Words and expressions defined in any sub-clause, shall for the purposes of the clauses of which the sub-clause forms a part, bear the meaning assigned to such words and expressions in that sub-clause.
- vii. If any definition is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive clause in the body of the Agreement, notwithstanding that it is only contained in the interpretation clause.
- viii. Any payment which is due to be made under this Agreement which falls on a day which is not a Business Day, shall be made on the first Business Day thereafter, except if it falls in the next month, in which case it shall be made on the previous Business Day.
- ix. A person who is not a party to this Agreement has no right to enforce any term of this Agreement.

2. Obligation of Parties

i. Obligations of the Bank

The Bank hereby agrees to:

- a. Onboard the Merchant on the Service and provide technology support services to the Merchant, when necessary.
- b. Ensure that all onboarded Soft PoS accept all payment cards (card agnostic).
- c. Ensure that the Soft PoS is connected directly to the PTSA.
- d. Perform prompt settlements of all monies collected by the Merchant in accordance with Applicable Laws and Payment Scheme Rules.
- e. Liaise with other banks, the PTSA and other stakeholders to ensure prompt resolution of disputed transactions.
- f. Grant to the Merchant limited, non-exclusive and non-transferable license / right to the Service.
- g. Liaise with the Merchant to integrate the technical specification and APIs in respect of the Payment Gateway.
- h. Provide post-onboarding support services to the Merchant and its customers, when necessary.

ii. Obligations of the Merchant

The Merchant hereby agrees to:

- a. Use its infrastructure/device, without any liability whatsoever on the Bank, to download the Soft PoS from the Bank's approved platform and ensure the Service is available.

- b. Exercise due diligence in carrying out Transactions on the Soft PoS.
- c. Exclude the Bank from any damage or interference to its device that may arise from accessing the Service and take full precaution to ensure that its device that would be used to access the Service is free from any interference that can damage or affect the operation of the device.
- d. Conceal the password and other log in details to the Soft PoS, as well as avoid using any password information that can be known to third parties.
- e. Ensure that adequate and up to date safety protocols including information security tools, solutions and measures are deployed or applied on the device that would be used for the Service.
- f. Conspicuously display any advert card, banner, or flier or any other advertisement placement that is provided by the Bank to advertise the Service.
- g. Accept all Cards as a method of payment for goods / services and promptly process all Transactions by Cardholders.
- h. Work with the Bank to implement the NFC card related requirements to authenticate Cardholder's Transactions.
- i. Display the payment device conspicuously enough for the Cardholder to observe the amount entered in the device before the Cardholder enters his/her Personal Identification Number (PIN) or concludes the Transaction.
- j. Inform the Cardholder of the Transaction Value and associated charges prior to consummation of the Transaction.
- k. Notify the Bank within 24 (twenty-four) hours of any actual or threatened security breach, compromise, misuse, irregularity, suspected fraudulent transaction or activities that may be connected with attempts to commit fraud or other illegal activity through the use of the Service; or if the device on which the Service is downloaded is damaged, missing or stolen and the corrective action the Merchant has taken. Respond to all fraud related enquiries within 24 (twenty-four) hours of receipt of the inquiry.
- l. Grant the Bank unrestricted access to the Soft PoS Solution.
- m. Ensure the Soft PoS solution is not used for any fraudulent or illegal activity and shall be held liable for any fraudulent or illegal transaction that is carried out *via* the Soft PoS Solution, arising from negligence and or connivance.
- n. Be responsible and liable to the Bank for all reasonable expenses associated with and any loss arising from a breach of this Agreement.
- o. Respond to all Chargebacks enquiries with sufficient proof and evidence of value/service delivery within one (1) Business Day of receipt of such enquiry.
- p. Be liable and would provide an equivalent sum for undisputed Chargebacks.
- q. Ensure that for all disputed transactions, the Chargebacks shall be subject to dispute resolution in line with the Applicable Law, the Payment Scheme and the Payment Scheme Rules.
- r. Agrees to ensure know your customer (KYC) documents (e.g. National Identification Card, Driving License, International Passport) are obtained from Customers for transactions in excess of N100,000.00 (One Hundred Thousand Naira only) or its equivalent in any currency.
- s. Ensure that transactions above \$500 (Five Hundred United States Dollars) (in total sales to card) are confirmed by the Bank before goods are released to the Cardholder. The Merchant must inform the Bank in order to enable the Bank contact the Issuing Bank for verification.

- t. Request for the Cardholder's authorization (which shall include the PIN, tokens, biometrics etc) where the Transaction amount is more than the stipulated limits per transaction/day.
- u. Authorise the Bank to debit any of its account for the full value plus other lawful charges in respect of any debt, fees, charges, or any amount owed the Bank and for all lawful transaction where the Cardholder is adjudged by the Payment Scheme to be entitled to a refund.
- v. Not engage in any activity that may lead to reverse engineering, decompiling, disassembling, or otherwise reduce any object code in the Soft PoS Solution.
- w. Ensure the security of Cardholders' information, the safe keeping of Transaction records, data and documents over the minimum period in line with extant record retention regulations/law and not violate the privacy of Cardholders.
- x. Always comply with all applicable Laws and Payment scheme rules in relations to the Service; and hereby authorize the Bank to make any amendment or changes to this Agreement to ensure compliance with all applicable laws, the CBN's regulation, circular, policy and Payment Scheme Rules.

3. Chargebacks and Refunds

- a. The Merchant acknowledges and agrees that in certain circumstances the Issuing Bank, Payment Scheme or other financial institutions may (i) refuse to settle a transaction, or (ii) impose Chargebacks on the Bank.
- b. The Merchant agrees that it may be required to reimburse the Bank for Chargebacks where the Merchant has accepted settlement in respect of the relevant transaction. The Merchant further agrees to promptly respond to Cardholder disputes and request for Chargebacks.
- c. The Merchant agrees that The Bank shall have the right to send non-settled transactions received from the Merchant Customers to the Issuing Bank/authorities concerned for the purpose of checking and in case of objection and/or opposition on the executed transactions by the Issuing Bank or the authorities concerned for any reason, The Bank shall not be bound to pay the Merchant the transaction amount during the period contained in this Agreement.
- d. Where Chargebacks occur, the Bank shall immediately be entitled to debit the Merchant's position or make a reversal at any time (even after the termination of this Agreement) from the Merchant's account and/or make a deduction from any remittance and /or invoice the Merchant to recover.
- e. The Bank shall not be obliged to investigate the validity of any Chargeback by any Issuing Bank, Payment Scheme or other financial institution, whose decision shall be final and binding in respect of any Chargebacks.

4. Tax

You agree to pay all applicable sales, value added tax (VAT) and any other taxes relevant to the Service or to any payments made to us where such relevant taxes apply.

5. Warranties

- a. You warrant that you shall not submit any Transaction that you know is illegal, fraudulent, restricted, or not authorized by the Customer.
- b. You warrant that you will conduct appropriate due diligence on all Customers.
- c. You warrant that you shall fully cooperate where any forensic investigation is being conducted on you until such time the investigation is completed.

- d. You warrant that you will use the Soft PoS in good faith, in accordance with the terms of this Agreement and in accordance with all Applicable Laws, CBN's regulation, circular, policy and Payment Scheme Rules.
- e. The Bank does not warrant that the use of the Payment Gateway, the Service or the operation thereof will be uninterrupted or error free, however, the Bank warrants that it shall use its best effort to ensure that the Payment Gateway functions optimally at all times and within generally accepted industry standards during the term of this Agreement.
- f. Parties warrant that they are duly registered and licensed (where applicable) and have the full capacity and approvals to enter into this Agreement and discharge the obligations herein.
- g. Each Party warrants to the other that this Agreement constitutes a legal, valid and binding obligation, and enforceable against it.

6. Indemnity

The Merchant shall indemnify the Bank against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties, legal costs and all other professional costs and expenses) suffered or incurred by the Bank arising out of or in connection with:

- a. Any breach of the obligations or warranties of the Merchant;
- b. The Merchant's breach or negligent performance or non-performance of this Agreement;
- c. Any action, demand, and or claim made against the Bank by a third party arising out of or in connection with the Service, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement by the Merchant and or its employees, assigns, privies or agents;
- d. The violation of any applicable law, statute or regulation by the Merchant and or its employees, assigns, privies or agents.

7. Termination

- a. The Bank may terminate this Agreement and delist you where the Bank has reason to believe that: you are acting fraudulently or engaging in any prohibited or illegal activity, you provided a false or misleading information to the Bank, you engaged in any activity that causes damage to the Bank, you are unable to meet the Bank's KYC requirement, you are in breach of this Agreement, you do not use the Service within any period that may be determined by the Bank.
- b. The termination of this Agreement (however occasioned) shall not affect any accrued rights or liabilities of any of the Parties nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

8. Security/Deposit

- c. At the point of termination of this Agreement, the Bank reserves the right to retain such amount, as may be determined by the Bank, from the account of the Merchant (if any), to cover any risk of refund, Chargeback, or any potential loss, damages, penalties, cost that the Bank may suffer for a period of not more than 180 (One Hundred and Eighty) days from the date of termination of this Agreement. If such retained amount is not sufficient to cover all outstanding

exposure of the Merchant post termination, the Merchant shall ensure that it pays the Bank all outstanding amounts within 10 (Ten) Business Days of receiving a demand notice from the Bank, authorize the Bank to lien its account for such amount and shall at all times keep the Bank indemnified in this respect.

9. Confidentiality

- a. Each Party acknowledges that certain Confidential Information about the other Party may be obtained in the course of this Agreement. The Parties recognize that such Confidential Information is valuable to the other and undertakes to keep the Confidential Information secret, and use or reproduce such information solely for the purpose of performing its obligations under this Agreement.
- b. Either Party may disclose Confidential Information on a need to know basis to: their legal and other professional advisers in order to advise them in relation to their rights under this Agreement; and to the extent required by law or by a lawful requirement of any government or governmental body, authority or agency or in connection with legal proceedings relating to this Agreement, subject to the disclosing party giving the other party sufficient notice of any proposed disclosure to enable that party to seek a protective order or other remedy to prevent the disclosure.
- c. Either party may disclose Confidential Information to their employees and/or contractors solely for the purpose of performing their obligations under this Agreement and subject to the disclosing party imposing on such persons obligations of confidentiality which are no less onerous than those imposed on the parties under this Agreement.
- d. Upon termination of this Agreement, or at any time upon the request of the other party, each party shall return all Confidential Information in the possession of such Party or in the possession of a third party (over which such party has or may exercise control).
- e. This Section shall survive any termination or expiration of this Agreement.

10. Data Protection

- a. Parties undertake to comply with the data protection laws, regulations and implementation framework (including but not limited to the Nigeria Data Protection Act 2023, the Nigeria Data Protection Law 2019) in force in the Federal Republic of Nigeria in the processing of personal data and other relevant data obtained during the performance of their respective obligations under this Agreement.
- b. Where any of the Parties utilize third party processors to perform its obligations under this Agreement, the Party shall ensure that the processor undertakes a similar confidentiality and data protection obligation as those contained in this Agreement. Each Party shall be liable for its unlawful processing of such data and that of its third-party processors.
- c. Parties shall ensure that they adopt and implement adequate physical and technical measures to guarantee the confidentiality, secure processing and storage of personal and sensitive data obtained and processed pursuant to their respective obligations under this Agreement.

11. Relationship Between Parties

- a. The relationship between the Parties hereto shall be one of collaboration for the single purpose of the business relationship herein created.
- b. Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture between the Merchant and the Bank or authorize either Party to act as agent for the other, and neither Party shall have the authority to act in the name or on behalf of or otherwise to bind the other Party in any way.
- c. This Agreement is not intended to confer on any person other than the Bank and the Merchant, any express or implied benefit or burden.

12. Intellectual Property

- a. Nothing set forth in this Agreement shall constitute a transfer or assignment by one Party to another Party of any Intellectual Property Rights owned or otherwise controlled by such Party, and each Party hereby retain all of its rights, title and interest in such Intellectual Property Rights.
- b. All Intellectual Property Rights in or related to the Service are and will remain the exclusive property of the Bank, whether or not specifically recognized or perfected under the laws of the jurisdiction in which the Soft PoS is used or licensed. The Merchant shall not take any action that jeopardizes the Bank's proprietary rights or acquire any right in the Soft PoS, or the Confidential Information, as defined herein. Unless otherwise agreed, the Bank will own all rights in any copy, translation, modification, adaptation or derivation of the Payment gateway or other items of Confidential Information, including any improvement or development thereof.

13. Assignment

- a. The, rights benefits or obligations under this Agreement may not be assigned or otherwise transferred by the Merchant in whole or in part without the prior written consent of all the Bank. Notwithstanding the above, the Bank may transfer its rights and obligations under this Agreement to another person without your consent. However, the Bank shall inform you in writing if this happens and will ensure that the transfer will not affect your rights under this Agreement.
- b. The Bank may sub-contract or delegate the performance of its obligations under this Agreement to third parties including any of its Affiliates; however, the Merchant shall remain responsible for the performance of its duties under this Agreement.

14. Waiver

The respective rights of the Parties (whether arising under this Agreement or under the applicable law) shall not be capable of being waived or varied otherwise than by an express waiver or variation in writing; and in particular any failure to exercise or any delay in exercising any of such rights shall not operate as a waiver or variation of that or any other such right; any defective or partial exercise of any of such right shall not preclude any other or further exercise of that or any other such right; and no act or course of conduct or negotiation on the part of either Party shall preclude them from exercising any such right or constitute a suspension or variation of such right.

15. Severance

In the event that any provision of this Agreement is declared by any applicable law, judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable or irrelevant, it shall to the extent required by such law or authority, be severed from this Agreement and rendered ineffective so far as is possible without modifying the remaining provisions of this Agreement.

16. Non-exclusivity

The Bank hereby grants the Merchant the non-exclusive right to use the Soft PoS.

17. Entire Agreement

This Agreement contains the whole agreement between the Parties with respect to the subject matter hereof and supersedes any prior written or oral agreement between them in relation to the Service and the Parties confirm that they have not entered into this Agreement upon the basis of any representation that are not expressly incorporated herein.

18. Governing Law and Dispute Resolution

- a. This Agreement shall be governed and construed in accordance with Nigerian laws.
- b. In the event of a dispute between Parties with respect to any issue arising out of or relating to this Agreement, resolution of which cannot be resolved amicably by the Parties through negotiation within thirty (30) days from the date of being informed of the dispute, shall be resolved by Nigerian Courts.
- c. The Bank shall not be involved in any way or manner in disputes that may arise between the Merchant and any of its Customers unless such dispute specifically relates to transaction settlement.

19. Notices

Any notice required or permitted by this Agreement to be given to either Party by the other shall be given by personal delivery to such Party or by registered or certified mail, or electronic mail, or any other means of communication that may be determined by the Bank.