

## **Soft Point of Sale (SoftPOS) Service Agreement**

This contract (the “**Contract**”) was concluded 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 / the Merchant/ the Customer”).*

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

### **Preamble:**

The Bank is a banking institution that provides its Soft point-of-sale service “SoftPOS” to its merchant customers, so that cardholders (Consumers/Buyers) with a K-Net logo or any other cards acceptable at the Bank can transfer the amounts to the Merchant (Customer) account in payment for the value of its sales/services (Hereinafter referred to as "the Service").

Whereas, the Merchant (Customer) maintains accounts with the Bank and wishes to obtain the SoftPOS service provided by the Bank, both parties have agreed that the Bank will request the service on behalf of the customer and provide the customer with the user credentials to access the SoftPOS application (available on the google store) and connect them with the central computer system of the Bank through the central computer system of the Shared Electronic Banking Services Company (Knet) and allowing the cardholders (Consumers/Buyers) having cards with the (Knet) logo or holders of any other cards acceptable to the Bank to use this service.

The Merchant (Customer) acknowledges full legal and judicial responsibility for all transactions executed through the Bank’s SoftPOS service whether by the Merchant (Customer) or by any of his employees, staff or third parties. The Merchant (Customer) also undertakes to protect the SoftPOS against any misuse by others. The Bank shall not be liable for any losses that may arise.

In case the term (Merchant) refers to more than one person, then such persons shall, jointly and severally, assume their obligations under this contract.

1. The above preamble is an integral part of this contract.
2. The Bank has agreed to provide banking services to the Merchant (Customer) and install the SoftPOS and connect them through the Company's computer system to the Bank's central computer system.
3. In exchange for availing the service referred to in the Clause No. 2, the Merchant (Customer) shall pay the fees and commissions designated in the Electronic Payment Service Application Form. The Bank shall debit the amounts of such fees and commissions from the Merchant’s account referred to in Electronic Payment Service Application Form or in any other way the Bank deems appropriate. The Bank shall have the right to amend the value of the fees or commissions provided that the Merchant (Customer) is notified in writing not less than one month from the date of such amendment.

4. All amounts of the Merchant (Customer) daily sales resulting from the use of the "Service" shall be recorded at the end of each day in the Merchant (Customer) Account with the Bank.
5. The term of this contract shall commence on the date of signing the Electronic Payment Service Application Form and shall expire after the elapse of one year from that date. Thereafter, the contract shall be automatically renewed unless the Merchant (Customer) notifies the Bank in writing of his desire not to renew, at least one month before the expiry date of the original or renewed period, as the case may be. In all cases, the Bank may terminate this Contract immediately for any reasons deemed mandatory by the Bank.
6. The Merchant (Customer) undertakes the following:
  - A. To maintain the SoftPOS subject of this contract and comply with its operating instructions. The Merchant (Customer) shall be fully responsible for any malfunction of the SoftPOS due to misuse or violation of the operating conditions which form an integral part of this contract.
  - B. The Merchant (Customer) agrees that the Bank shall appoint the Shared Electronic Banking Services Company (Knet) as its agent for the installation, preparation and maintenance of the Soft POS Terminal.
  - C. The Merchant (Customer) shall provide the appropriate hardware and all the necessary connections and electricity supply and maintain this place along with all equipment so as to be suitable for the operation of the SoftPOS terminal throughout the term of this contract and its renewals.
  - D. The merchant declares that he is aware that the service will not work in case the mobile used is connected to a Public/Unsecured Network.
  - E. The Merchant (Customer) must have a non-compromised Android 11 mobile or higher (USB Debugging enabled) and the mobile should support NFC
  - F. The Merchant (Customer) shall not transfer the SoftPOS terminal(s) from a place to another without prior notice to the Bank and obtaining the Bank's approval.
  - G. The Merchant (Customer) shall immediately notify the Shared Electronic Banking Services Company (Knet) of any malfunction that appear in the SoftPOS terminal.
  - H. The Bank reserves the right of ownership of the SoftPOS application that will be installed as well as ownership of the related documents and software. The Merchant (Customer) shall act in utmost good faith as a custodian, and the programs, documents and papers relating to the SoftPOS Terminal resulting from the Merchant's use shall be regarded as proprietary information which the Merchant (Customer) shall not be entitled to disclose.
  - I. The Merchant (Customer) shall enable Knet Company, its agents or subcontractors to enter the Merchant's shop at all appropriate times for the purpose of maintaining, modifying or repairing any technical malfunction thereof - without prejudice to Clause (6-A) of this Contract, and the Merchant (Customer) shall pay Knet Co. the costs arising therefrom.
  - J. The Merchant (Customer) hereby irrevocably authorizes the Bank to deduct all commissions, fees and actual damages due to the Bank under this Contract, regardless of any dispute arising between the Merchant (Customer) and his customers about the goods and services provided by him to them and any matters related to the price payment or perfect delivery thereof. The Merchant (Customer) discharges the Bank and Knet Co. from any liability arising out of his disputes with his customers about the goods and services provided by him to them or for any of the cards used by customers to provide this service.

- K. In case the SoftPOS terminal is irresponsive to the operating instructions at any time or ceases operation for any reason, the Merchant (Customer) shall implement the procedures as requested by the Bank.
- L. The Merchant (Customer) acknowledges that he is responsible for any fees that the card issuer may impose in connection with the use of the card (other than the fees due on the Cardholders “consumers/buyers”) and any other fees imposed by any third party, whether governmental or non-governmental, for the use of the SoftPOS.
- M. The Merchant (Customer) agrees to indemnify the Bank against all losses, costs, damages, fines and actual expenses (including the cost of repair of the SoftPOS), notwithstanding the obligation of Knet Co. in connection with maintenance) arising from any act or omission by any of his employees, agents or subcontractors or any damage or loss to the SoftPOS terminal while in his premises, whether such damage or loss is caused by misuse or negligence by any of his employees, agents, subcontractors or third parties.
- N. The merchant (Customer) shall allow the consumers (Cardholders/Buyers) to take a copy of the transaction sale slip by taking a photo of the sales slip displayed on the device used for the SoftPOS service or by emailing a copy of the receipt to the consumer(cardholder/buyer)
- O. The Merchant (Customer) shall not accept any card submitted to him for getting cash amounts unless this is permitted in writing by the Bank. Further, the Merchant (Customer) shall not provide any person with the Terminals that enable such person to execute transactions on the card or provide transaction details of the card to the Bank that are not the result of a transaction executed between the cardholder (consumer/buyers) and the Merchant (Customer).
- P. The amounts which the Bank is entitled to recover under this Contract shall be deemed a due debt on the Merchant (Customer). The Bank shall have the right to deduct or retain the full amount or any portion thereof from the Merchant (Customer) accounts to pay for any of the Merchant (Customer) due obligations under this Contract.
- Q. If, under this contract, the Bank refrains from making payments for transactions performed on the Card for a reason attributable to the card issuing bank or for any other reason associated with the card integrity or the accuracy of such transactions; or if the amounts of such transactions made on the card are refunded, then the Bank shall not be liable for payment of the amounts of such declined transactions or dealing directly with the cardholder (consumer/buyer) in respect of such transactions. The Merchant (Customer) shall undertake not to re-submit the details of the declined transactions on the card in any form.
- R. The Merchant (Customer) shall not use the SoftPOS terminal to pay for any goods or services that are prohibited from trading or that are in violation of the public order and laws of the State of Kuwait.
- S. The Merchant (Customer) shall comply with the principles and rules set by The PCI Security Standards Council related to Data Security Standards “PCI DSS”.
- T. The Merchant (Customer) acknowledges his full responsibility for all transactions executed on the SoftPOS terminal. In the future, the Merchant (Customer) may not object to the entries or notices of such transactions which will be deemed final. The Merchant (Customer) acknowledges that the Bank is not responsible for any errors that may result from transactions performed by the Merchant (Customer) on the SoftPOS terminal subject of this Contract or due to the failure, interruption or malfunction of computers or telephone lines of the Bank or the central computer of the Knet Co..

- U. The Merchant (Customer) undertakes to take all necessary steps and procedures to enable the Bank to process any claim by the cardholder (consumer/buyer) against the Bank. The Bank shall have full discretion to accept or reject the claim or to negotiate with the cardholder (consumer/buyer) for any settlement which will be binding upon the Merchant (Customer).
  - V. The Merchant (Customer) shall provide the Bank upon its request with the necessary assistance to detect and avoid fraud cases and shall promptly inform the Bank of any material change of the nature or size of its business. Failure to notify the Bank with the same shall be deemed fraudulent by the Merchant (Customer).
  - W. It is prohibited for the Merchant (Customer) to copy or save the credit data stored on the card or on the card magnetized tape or smart chip. In the event of the Merchant (Customer) breach of this obligation, the Merchant (Customer) shall be fully responsible for all actual damages (material or immaterial) arising therefrom.
  - X. The Merchant (Customer) declares that all goods and services that are sold through the SoftPOS terminal provided by 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 the Commercial Bank of Kuwait may apply to him in case it is established for the Bank that the Merchant (Customer) has breaches this commitment.
7. The Merchant (Customer) authorizes the bank which he deals with to settle all payment requests submitted to the Merchant (Customer) by the Bank in respect of any amounts due on the Merchant (Customer) to the Bank under this Contract.
  8. It is prohibited for the Merchant (Customer) to save, collect or use any lists containing the names of cardholders (consumer/buyer), card numbers or any other information related to the Bank's business for any purposes other than those stipulated in this Contract. This prohibition includes any disclosure of any information contained in Clause No. (9). The Merchant (Customer) is also prohibited to disclose any information contained in the preceding Paragraph to any third party unless such party is a technical advisor, an agent or a subcontractor who has been appointed under Clause No. (19) of this Contract except otherwise prescribed within the limits under law.
  9. The Merchant (Customer) agrees that the Bank shall use any card transactions data for any purpose without disclosing any confidential information relating to such data or any confidential information relating to the Merchant (Customer) or his business or customers outside the Bank's domain unless after obtaining the prior written consent of the Merchant (Customer) save as otherwise required or authorized under law.
  10. The Merchant (Customer) Acknowledgements:
    - a) The Bank's SoftPOS terminal(s) shall be operated under the Merchant's direct supervision and that he has the right to supervise and direct his employees.
    - b) All transactions processed by the Bank's SoftPOS terminal(s) under the Merchant (Customer) control and operating under his supervision shall be valid and executed by the Merchant (Customer) or his authorized employees. The Merchant (Customer) may neither object to any entry made by the SoftPOS terminals nor object to such entries in future.
    - c) The data contained in the statement issued by the Bank for all transactions made by the Merchant (Customer) or its affiliated persons shall be correct and irrefutable evidence of the validity of any transaction made by the Merchant (Customer) or its affiliated persons. The Merchant (Customer) shall not have the right to challenge its validity or to file any future claims raising doubts on the validity of such entries.

- d) The Bank shall not bear any legal or judiciary responsibility for any entries that the Merchant has processed through using the services mentioned in Clause (2) above via SoftPOS terminal(s). The Bank shall not be liable for paying compensations against any errors that may arise from any transactions performed by the SoftPOS terminal(s) in possession of the Merchant.
  - e) The Bank shall not bear any legal or judiciary responsibility for any loss, delay, damage or otherwise, which may result from, interruption or malfunction of the central computer system of the Bank, telephone line or central computer system of the Shared Electronic Banking Services Company (Knet) or the SoftPOS terminal(s) if the Bank is unable to provide the service for a limited period for reasons beyond its control.
  - f) The Bank may terminate this Contract regardless of the period agreed upon under Clause (5) above in the event of any force majeure conditions that prevent the Bank from continuing to provide this service to the Merchant. In such case, the Bank shall inform the Merchant (Customer) of its decision to terminate the Contract.
  - g) 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.
  - h) The number of SoftPOS terminals that the Merchant (customer) requires to use shall be determined according to the mutual correspondence between the Bank and the Merchant (Customer) which is considered to be complementary to this Contract.
11. The Merchant (Customer) shall, in the event of his request to cancel any SoftPOS service before the expiration of the original or renewed contract period in accordance with the terms of the contract - is obligated to compensate the bank with a cancellation fee of 25 Kuwaiti dinars in addition to the fees for withdrawing the device according to item No. (15), and the contract is considered terminated regarding the service on this device only. Devices that were installed three years prior to the date of cancellation are excluded from this fee...
12. If the customer fails to pay the monthly rent for three consecutive months to the Bank, the Bank shall have the right to terminate the agreement immediately and collect fees not exceeding KD 35 for each SoftPOS terminal plus the due amounts or fees.
13. In the event of loss, damage or misuse of the SoftPOS terminal by the Merchant (customer), the Bank has the right to assess the value of damage, and the Merchant (Customer) shall compensate the Bank by an amount equal to the value of the damages as estimated by the Bank.
14. In case the Bank or Knet Company visits the site and finds that the site is not ready for reasons such as disapproval of the Site owner on the installation or lack of an electric power intake, which impedes the installation of the SoftPOS terminal, the Bank is entitled to apply a fee of KD 10 for failure to install each SoftPOS terminal. Such fee amounts shall be charged for each SoftPOS terminal and not for each site.
15. In case of withdrawal of the SoftPOS terminal, the Bank may apply withdrawal fee of 10 KD for SoftPOS each terminal plus the fees prescribed in Clause No. 11.
16. In the event that the merchant (customer) fails to pay any of his obligations, the bank has the right to cancel the service, and in the event that the bank is unable to communicate with the merchant (customer), the bank has the right to charge the merchant (customer) the value of

canceling the service for each device in addition to the cancellation fees according to item No. (11) and (15).

17. The amounts which the Bank is entitled to recover under this Contract shall be deemed a due debt on the Merchant (customer). The Bank shall have the right to deduct or retain the full amount or any portion thereof from the Merchant (Customer) account, set in this contract or any other accounts of the merchant (customer), to pay for any of the Merchant (Customer) due obligations under this Contract. All merchant (customer) accounts opened with the bank are considered guarantees for the fulfillment of the debt owed by him resulting from the use of this service
18. The Bank's tolerance of the Merchant (Customer) breach of any of the terms of this Contract shall not be deemed as a waiver of any subsequent or current breach. The Bank's failure for any reason to terminate the Contract at the occurrence of any breach incident shall not prejudice the Bank's right to terminate this Contract at any time thereafter without need to notify the Merchant (Customer) with such termination. The Merchant's (Customer) obligation under this Contract shall remain in effect until the designated date of termination.
19. The Merchant (Customer) may neither assign his rights and obligations under this Contract nor appoint an agent or subcontractor to implement any of the contract terms unless a prior written consent of the Bank is obtained. In case of the Bank's approval on any of them, the Merchant (Customer) shall be responsible for ensuring that the agent or subcontractor complies with the terms in force in this Contract. The conditions set forth in Clause (6- M) and the phrases referring to the Merchant (Customer) shall be deemed as referring to the agent or subcontractor. The Bank shall have the right to refuse the continuation of the agent or subcontractor in the execution of this Contract at any time at the discretion of the Bank.
20. In the event that a payment is not made to the Merchant (Customer) due to the reversal of transaction entry for any reason, the Merchant (Customer) shall inform the Bank within 20 days.
21. The Bank shall be completely and irrevocably discharged from any liability if the Bank is unable to fulfill its obligations as a direct or indirect consequence of the interruption of any device or system for the transmission of information or a device linking the transmission or for an industrial dispute or for any reason beyond the control or the will of the Bank, its agents and subcontractors.
22. The Bank shall have the right to amend, add or cancel any of these terms and conditions without notice to the Merchant (Customer) in accordance with the Bank's applicable policies and procedures and as per the Central Bank of Kuwait's instructions.
23. The Bank reserves the right to refuse opening or to close any account without giving any reasons.
24. 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 shall not use the service for any purchase transaction, getting services or any objectives that are in violation of the law. Merchant (Customer) shall bear the full legal responsibility for any violation in this regard. In this case, the Commercial Bank of Kuwait has the right to stop dealing, withdrawals and blocking all Merchant (Customer) accounts.
25. 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 a notice or warning.
26. 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.

27. 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.
28. In case of conflict between the Arabic text and the English text, the Arabic text shall prevail.
29. The Merchant (Customer) acknowledges that he has read and understood this Contract, known its contents and agreed to the terms, conditions and obligations contained therein.

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