



# Merchant Application Terms & Conditions (US)

## TERMS AND CONDITIONS

These Terms and Conditions (this **Agreement**) govern the relationship among the parties described below regarding the Merchant Application completed by the Merchant.

**1. Parties.** The parties to this Agreement are **Bank**, (as marked and described on the Merchant Application), **PayNetWorx, LLC**, a Texas limited liability company whose address is 160 N. Main Dr. P.O. Box 728 Van Alstyne TX 75495 (**PNX**), and the **Merchant** set forth on the Merchant Application form (**Merchant**).

**2. Definitions.** For the purposes of this Agreement and the Schedules referred to herein, the following definitions apply unless the context otherwise requires:

- (a) **Address Verification** shall mean a service that allows Merchant to verify the home address of Cardholders with the relevant Issuer.
- (b) **Association(s)** shall mean VISA USA, Inc. (Visa) and MasterCard International, Inc. (MasterCard), Discover Network (Discover Network), American Express (AMEX) or any payments association or payments network Bank or PNX supports whose cards or other payment forms Merchant is permitted to accept to accept pursuant this Agreement.
- (c) **Authorization** shall mean an affirmative response, by or on behalf of an Issuer to a request to affect a Transaction, that a Transaction is within the Cardholders available credit limit or available balance and that the Cardholder has not reported the Card lost or stolen. All Transactions require Authorization.
- (d) **Authorization Center** shall mean the facility or facilities designated from time to time by Bank or PNX to which Merchant shall submit all requests for Authorization.
- (e) **Business Day** shall mean any day other than (i) a Saturday or Sunday, or (ii) a day on which the Bank is authorized by law or executive order to be closed (and on which Bank is in fact closed).
- (f) **Card(s)** shall mean Association-branded credit card, debit card or other similar card that requires a PIN for identification purposes or pre-paid, stored-value or gift card.
- (g) **Cardholder** shall mean a person authorized to use a Card.
- (h) **Chip** shall mean an EMV-compliant microchip embedded on a Card containing cardholder and account information.
- (i) **Chargeback** shall mean a Transaction (or disputed portion) that is returned to Bank by the Issuer. Merchant is responsible for payment to Bank for all Chargebacks.
- (j) **Forced Sale** shall mean a sales Transaction processed without an approved electronic Authorization number being obtained for the full amount of the sales Transaction at the time the Transaction is processed.
- (k) **Card Not Present Transactions** shall mean mail orders, telephone orders, e-commerce (Internet) orders, Pre-Authorized Recurring Order Transactions, and other card not present sales.
- (l) **Issuer** shall mean a member of an Association that enters into a contractual relationship with a Cardholder for the issuance of one or more Cards.
- (m) **Magnetic Stripe** shall mean a stripe of magnetic information affixed to the back of a Card containing cardholder and account information.
- (n) **Merchant Statement** shall mean an itemized monthly statement of all charges and credits to the Operating Account (as that term is defined in Section 9 of this Agreement).
- (o) **Mid-Qualified Transactions** shall mean: (i) key-entered retail Transactions; (ii) Visa telephone or mail Transactions without Address Verification; (iii) any MasterCard telephone or mail Transaction; (iv) any Discover Network telephone or mail Transaction; (v) any Transaction designated as such by the organization designated by Bank to settle Transactions with the Associations.

(p) **Non-Bank Services** shall mean those products and/or services for which Bank is not responsible or a party to, including Discover and AMEX Transactions, Equipment leasing and other products and services as may be provided by or through PNX from time to time.

(q) **Non-Qualified Transactions** shall mean: (i) any Transaction submitted for processing more than 48 hours past the time the Authorization occurred; (ii) any Transaction missing required data; and (iii) any Transaction designated as such by the organization designated by Bank to settle Transactions with the Associations.

(r) **Normal Transaction** shall mean a Transaction in which the Card is swiped through a terminal, register or other device, capturing the Card information encoded on the Cards Magnetic Stripe or Chip.

(s) **Pre-Authorized Recurring Order Transactions** shall mean Transactions that have been pre-authorized by the Cardholder and for which the goods or services are to be delivered or performed in the future by Merchant without having to obtain approval from the Cardholder each time.

(t) **Qualified Transactions** shall mean: (i) retail Transactions in which the Card is swiped; (ii) Visa telephone or mail Transactions with Address Verification; or (iii) Transactions that are part of a special registered program approved by the Associations.

(u) **Services** shall mean the transaction processing services provided by Bank or PNX under this Agreement.

(v) **Transaction** shall mean the acceptance of a Card or information embossed on the Card for payment for goods sold and/or leased or services provided to Cardholders by Merchant and receipt of payment from Bank, whether the Transaction is approved, declined, or processed as a Forced Sale. The term Transaction also includes credits, errors, returns and adjustments.

(w) **Third Party Processor** shall mean a service provider that has the ability to deliver transactions directly to Associations on behalf of Bank.

**3. Merchant agrees to participate in program.** Merchant agrees to participate in the card processing services program established by Bank, subject to the terms of the Merchant Application, this Agreement and any schedules attached hereto. Bank and PNX will provide card processing services for Transactions submitted by Merchant from locations in the United States (excluding Puerto Rico, and other U.S. territories).

**4. PNX to provide Services to Merchant.** During the term of this Agreement, subject to the terms and conditions of this Agreement, PNX agrees to provide technical documentation and support in order to allow Merchant to accept and process Transactions. PNX shall provide technical support and customer support for all Transactions, including, without limitation, Authorization, settlement, Chargeback processing and reporting, twenty-four hours each day, seven days each week during the term of this Agreement. Non-Bank Services are also provided by PNX or third parties, not Bank. The provisions of this Agreement regarding Non-Bank Services constitute an agreement solely between Merchant and PNX and/or third parties. Bank is not a party to this Agreement insofar as it relates to Non-Bank Services, and Bank is not responsible, and shall have no liability, to Merchant in any way with respect to Non-Bank Services. PNX agrees to provide Merchant with the those Services which are not provided by Bank pursuant to Section 5 below, during the term of this Agreement, subject to the terms and conditions of this Agreement.

**5. Bank to provide Services to Merchant.** Bank is a member of the Visa and Mastercard Associations, permitting it to acquire Visa and Mastercard payment transactions. Bank will also acquire a portion of the debit transactions. PNX, not Bank, will provide the other merchant acquiring services that Merchant receives for any Association other than Visa and MasterCard, and certain debit Associations. The Bank sponsors PNX as a Member Service Provider under the applicable

Association rules, allowing PNX to acquiring processing services for Visa and Mastercard and certain debit transactions under the Banks direction. The Banks responsibilities are limited solely to the sponsorship and settlement of certain Card Transactions submitted in accordance with this Agreement and the Visa and Mastercard Association rules, and Bank will not have any obligation or liability of any nature in connection with any services of any kind provided by PNX or its affiliates or third party service providers. Bank agrees to provide Merchant with the Services indicated in this Section 5, as amended from time to time by Bank, during the term of this Agreement, subject to the terms and conditions of this Agreement.

**6. Independent Contractor.** In the performance of its duties hereunder, PNX shall be an independent contractor, and not an employee or agent of Bank.

**7. Compliance with Association Rules.** Merchant agrees to comply with the bylaws, rules, regulations, policy statements and guidelines of the Associations.

**8. Term.** This Agreement shall become effective when all parties sign the Merchant Application form to which this Agreement is connected and, unless sooner terminated, shall remain in effect for a term of one (1) year. This Agreement shall renew automatically for successive terms of one (1) year each, unless any party provides written notice of termination to the other parties at least 90 days prior to the end of the then-current term. Prior to termination and regardless of the circumstances for termination, Merchant grants PNX a right of first refusal in connection with any proposal made to Merchant by any other merchant services provider to provide a product or service that is the same or substantially similar to any product or service offered by Bank or PNX and which proposal Merchant wishes to accept. Merchant shall promptly notify PNX, in writing, of any such proposal and if Merchant's fails to provide such notice, PNX shall have the option to charge Merchant for liquidated damages (LD), as specified in Section 38 of this Merchant Agreement. The notice from Merchant shall reasonably and sufficiently describe both the price and the non-price terms of the products and services to be offered pursuant to the proposal. Within thirty (30) days from the date PNX received written notice from Merchant, PNX may elect to exercise its right of first refusal by offering the same or substantially similar product or service on the same or more favorable price and non-price terms as that of the other merchant services provider and so notifying Merchant in writing. In the event PNX fails to exercise its right of first refusal with respect to any such proposal, Merchant may accept that proposal, provided, however, that PNX failure to exercise its right of first refusal in any one instance shall not preclude or otherwise void or affect PNX right of first refusal with respect to any other proposal. All existing obligations, warranties, indemnities and agreements with respect to Transactions entered into before such termination shall remain in full force and effect, and Merchant shall remain liable for all obligations to Cardholders and Bank incurred while this Agreement was in effect.

**9. Merchant Operating Account.** Prior to accepting any Cards, Merchant shall establish a demand deposit account at Bank, or at a financial institution approved by Bank (Operating Account), through which fees, charges and credits due in accordance with this Agreement may be processed. Merchant hereby authorizes Bank or PNX to debit all amounts Merchant owes Bank or PNX hereunder from the Operating Account, whether maintained at Bank or another financial institution, at times deemed appropriate by Bank, through Automated Clearing House (ACH) entries or by a manual debit of the Operating Account. Merchant waives any claims for loss or damage arising out of any such charges or debits to the Operating Account against any other financial institution where the Operating Account is maintained. Merchant agrees to

notify Bank and PNX if the Operating Account is not funded, or if there are any changes to the Operating Account or the location where it is held.

**10. Reserve Account.** Upon, or at any time after, execution of this Agreement, Bank may establish and require Merchant to fund a reserve account at Bank or any other financial institution designated by Bank Reserve Account, for all future indebtedness of Merchant to Bank or PNX that may arise out of or relate to the obligations of Merchant under this Agreement, including, but not limited to, Chargebacks and fees, in such amount as Bank from time to time may determine in its sole discretion. The Reserve Account must be fully funded by Merchant within the time frame required by PNX. If necessary to prevent risk of loss in the event of suspected fraud or a Merchant event of default under this Agreement, Bank may require the immediate funding of the Reserve Account. Bank may fund the Reserve Account by deduction from payments due Merchant or a charge against Merchants Operating Account or against any of Merchants accounts at Bank. If required, the initial amount of the reserve account is provided for in Schedule B. The Reserve Account will be maintained for a minimum of six months after the termination of this Agreement and the date on which the last transaction is processed for Merchant under this Agreement or until such later time as Bank determines that the release of the funds to Merchant is prudent, in the best interest of Bank, and commercially reasonable, and that Merchants payment obligations to Bank, PNX and the Associations have been fully satisfied. Upon termination of the Reserve Account, any balance remaining in the Reserve Account will be paid to Merchant. PNX will inform Merchant in writing of any charges debited to the Reserve Account.

**11. Fees.** Merchant shall pay Bank and PNX all fees specified on Schedule A, as amended by Bank or PNX from time to time. Merchant also agrees to pay Bank or PNX the amount of any Chargebacks, fees, charges or penalties assessed against Bank or PNX by any Association or Issuer for violation by Merchant or its agents or representatives of the by-laws, rules, regulations, guidelines, policy statements or threshold requirements of such entities. Merchant shall pay Bank or PNX for any other services provided to Merchant by Bank or PNX and for all other fees shown on Schedule A, including, but not limited to monthly minimum fees, Chargeback fees and customer service fees. Schedule A also sets forth a link to current interchange rates as set by each Association.

**12. Billing.** All amounts Merchant owes Bank or PNX may be charged to the Operating Account or Reserve Account, recouped by adjustment to any credits due to Merchant, or set off against any account or property Bank or PNX holds for or on behalf of Merchant, without notice or demand to you (any such notice and demand being hereby expressed waived).

**13. Security Interest.** As security for the performance by Merchant of all of its obligations under this Agreement, Merchant hereby grants to Bank a security interest in the funds held in the Operating Account, in the Reserve Account and any other funds, account or property Bank or PNX holds for or on behalf of Merchant, whether now or hereafter due or to become due to you from us. Merchant will execute and deliver to Bank such documents, in form satisfactory to Bank, as Bank may reasonably request in order to perfect Banks security interest in the Operating Account, Reserve Account and any other funds, account or property Bank or PNX holds for or on behalf of Merchant, and will pay all costs and expenses of filing the same or of filing this Agreement in all public filing offices, where filing is deemed by Bank to be necessary or desirable. Bank is authorized to file financing statements relating to the Operating Account, the Reserve Account and any other funds, account or property Bank or PNX holds for or on behalf of Merchant, without Merchants signature where authorized by law.

**14. Power of Attorney.** Merchant appoints Bank as its attorney-in-fact to execute such documents as are necessary or desirable to accomplish perfection of any security interests. This appointment is coupled with an interest and shall be irrevocable as long as Merchant owes any amount to Bank or PNX.

**15. Equipment.** In processing Transactions, Merchant shall use only equipment or software programs provided or approved by the Authorization Center or PNX (Equipment) and related equipment installed or approved by PNX, subject to Banks approval, and the following additional terms:

- (a) The Equipment shall be suitable for processing the Services;
- (b) Merchant will provide, at Merchants expense, suitable electric power and communication services and will pay for any alterations to Merchants premises required to properly locate Merchants Equipment;
- (c) If Merchant is using Equipment, Merchant acknowledges receipt of a copy of the equipment Users Guide. Merchant will use and operate the Equipment only in accordance with the equipment Users Guide; and
- (d) Bank will have no liability to Merchant for any Equipment. PNX will not have liability to Merchant if any installation is delayed or cannot be completed for reasons not caused by the act or neglect of PNX. At no time will PNX liability exceed the amount of fees collected or reasonably expected to be collected from Merchant for this delay period.

**16. Documenting Transactions.** Merchant shall not submit a Transaction to Bank (electronically or otherwise) until Merchant has performed its obligations to the Cardholder in connection with the Transaction or obtained Cardholders consent for a Pre-Authorized Recurring Order Transaction. Merchant shall not transmit any Transaction to Bank that Merchant knows or should have known to be fraudulent or not authorized by the Cardholder. Merchant must retain enough Information necessary to identify a transaction and be able to reverse it upon request, including the date and amount of each Transaction, Card number and expiration date and any other Transaction detail required by the Associations.

Merchant shall submit the following information to PNX on behalf of Bank in connection with Transaction processing using the format and specifications provided by PNX:

- (a) The DBA name of Merchant (if any), name of Merchant and Merchants address;
- (b) Merchants customer service telephone number;
- (c) Merchants Internet address (if applicable); and
- (d) The merchant identification ID as assigned;
- (e) Information necessary to identify a transaction and be able to reverse it upon request, including the date and amount of each Transaction, and any other Transaction detail required by the Associations; and

Such additional information as may from time to time be required by Bank and/or the relevant Issuer, including copies of sales drafts for Merchants Transactions.

Merchant is responsible for its employees actions. Merchant may transmit a Transaction that effects a prepayment of services or full prepayment of custom-ordered merchandise, manufactured to a Cardholders specifications, if Merchant advises Cardholder of the immediate billing at the time of the Transaction and within time limits established by the Associations.

**17. Authorization for Transactions.** Merchant shall obtain Authorization for Transactions as follows:

- (a) **Electronically Transmitted Transaction.** Merchant shall submit each Normal Transaction for Authorization to the Authorization Center using the Equipment. The Authorization Center shall authorize or decline a Normal Transaction

transmitted for Authorization and shall capture and process for Merchant the information relating to the Normal Transaction.

(b) **Card Not Present Transactions.** The following additional requirements apply to Card Not Present Transactions:

- (1) All Card Not Present Transactions are at Merchants risk. As to each Card Not Present Transaction, Merchant warrants to Bank that the person whose name is submitted to Bank as Cardholder either made or authorized another to make the purchase. Upon breach of this warranty, Bank may charge back the Transaction to Merchant. If Bank charges back the Transaction to Merchant: (i) Merchant shall pay Bank the amount of the Transaction, any Chargeback fee set forth on Schedule A, plus any Association fine or assessment; and (ii) Bank may charge all such amounts to the Operating Account or Reserve Account without prior notice to Merchant;
- (2) All Card Not Present Transactions must be electronically authorized through the Authorization Center and, in addition to the information required in Section 16 of this Agreement, each such request for Authorization also shall include: (i) an Authorization code, if required; (ii) the Cardholders address and Address Verification results; and (iii) in lieu of the Cardholders signature, a notation of (A) mail order (MO), (B) telephone order (TO), (C) e-commerce order (EO), or (D) pre-authorized order (PO) on the signature line;
- (3) If Merchant accepts a Pre-Authorized Recurring Order Transaction, the Cardholder shall execute and deliver to Merchant a written request for this pre-authorization. This written request shall be maintained by Merchant and made available upon request to Bank. All annual billings must be reaffirmed at least once each year. Merchant shall not deliver goods or perform services covered by a pre authorization order after receiving notification from the Cardholder that the pre-authorization is canceled or from Bank that the Card covering the pre-authorization is not to be honored; and
- (4) Merchant shall verify Cardholders address and card security code from the Association network. For all telephone, e-commerce or mail order sales, Merchant shall transmit a ticket/invoice number and shall do an Address Verification to qualify for the Qualified Transaction discount rate.

**18. Prohibited Transactions.** Merchant shall not do any of the following with respect to any Transaction:

- (a) Establish a minimum or maximum dollar Transaction amount or other special conditions for accepting a Card;
- (b) Obtain multiple Authorizations for amounts less than the total sale amount;
- (c) Obtain Authorization for purposes of setting aside Cardholders credit line or available balance for use in future sales;
- (d) Transmit or accept for payment any Transaction that was not originated directly between Merchant and a Cardholder for the genuine and valid sale or lease of goods or the performance of services of the type indicated in the Merchant Application form to which this Agreement is attached;
- (e) Honor or accept a Card as payment for any legal services or expenses arising out of or related to: (i) the defense of any crime other than a traffic violation; (ii) any domestic relations matter where such services or expenses are furnished to a person whose name is not embossed on a Card; or (iii) any bankruptcy, insolvency, compromise, composition or other process affecting Cardholders creditors;
- (f) Use Merchants own Card, or one to which Merchant has access, to process a Transaction for the purpose of obtaining credit for Merchants own benefit;
- (g) Resubmit a previously charged Transaction, regardless of whether the Cardholder consents or Cardholder previously disputes;
- (h) Initiate a Transaction credit without a balance in the Operating Account equal to the credit;
- (i) Use the Equipment or any data received thereon for any other purpose other than for determining whether or not Merchant should accept checks or Cards in connection with a current sale or lease of goods or services;

- (j) Use the Equipment or any data received thereon for credit inquiry purposes or any other purpose not authorized by this Agreement;
- (k) Impose a surcharge on a Cardholder who elects to use a Card in lieu of payment by cash, check or other mode of payment;
- (l) Disburse funds in the form of travelers cheques, if the sole purpose is to allow the Cardholder to make a cash purchase of goods or services from Merchant;
- (m) Disburse funds in the form of cash unless specifically allowed by Association rules;
- (n) Accept a Card to collect or refinance an existing debt or collection of any dishonored financial item;
- (o) Add any tax to Transactions unless applicable law expressly requires that Merchant be permitted to impose a tax. Any tax, if allowed, must be included in the Transaction amount and not collected separately;
- (p) Require a cardholder to supply cardholder information on any plain view document, or document and store CVV information, or request CVV information in a card-present Transaction or other personal information that is not necessary to process the Transaction;
- (q) Submit any Transaction that is illegal or that the Merchant knows or should have known was illegal;
- (r) Factor any receivables owned by Associations; or
- (s) Accept direct payments from cardholders for goods and services that are included on the sales draft.

#### 19. Prohibition of Using and Disclosing Account Information; Data Breach.

- (a) Use and Disclosure of Account Information. Merchant must not, without the written consent from Bank and each applicable Association, Issuer and cardholder, use, disclose, store, sell or disseminate any cardholder information obtained in connection with a Card transaction except for purposes of performing Merchants obligations under this Agreement, except as otherwise required by a court or governmental agency request, subpoena or order. Merchant shall use appropriate safeguards to limit access to, and render unreadable prior to discarding, all records containing Card information. If Merchant stores any electronically captured signature of a cardholder, Merchant may not reproduce such signature except upon specific request of Bank or PNX. Merchant may not retain or store Magnetic Stripe data, Chip data or CVV codes after a Transaction has been authorized.
- (b) Data Breach. If Merchant discovers or becomes aware that there has been unauthorized access to or disclosure of Transaction data (Data Breach), Merchant will promptly notify Bank and PNX. Merchant will take prompt action to control, stop, and remediate any Data Breach. Merchant will provide reasonable details regarding the Data Breach to, and cooperate with, Bank, PNX, any Association, and any consulting firm that is involved in the investigation and remediation of a Data Breach. If requested by Bank or PNX, Merchant will engage an independent consulting firm, at Merchants expense, that is certified and approved by the Associations to conduct forensic information security investigation to assess the nature and scope of the Data Breach. Merchant will take all actions that the Associations require in connection with the investigation and remediation of a Data Breach. Merchant will reimburse PNX and the Bank for all fines, fees, penalties, assessments, or other obligations of any kind imposed by an Association or a regulatory authority due to a Data Breach caused by the Company or its third party service providers.

#### 20. Daily Reconciliation of Transactions.

- (a) **Electronically Transmitted Transactions.** Transactions will be settled with the Associations on a daily basis. Bank shall deliver payment to Merchant as soon thereafter as practicable by a credit to the Operating Account equal to the reconciled summary Transaction total of all of Merchants total summary Transactions since the previous credit. This credit will be reduced, if necessary, by: (i) the sum of all Cardholder charges denied, refused or charged back; (ii) all



refunds processed on account of Cardholders during said time period; (iii) the fees and charges, including Chargebacks, Merchant owes Bank or PNX hereunder; (iv) all taxes, penalties, charges and other items incurred by Bank that are reimbursable pursuant to this Agreement; and (v) all applicable rates, fees and charges described on Schedule A.

(b) **Reconciliation of Transactions.** Merchant shall reconcile each settled Transaction within fifteen (15) days after the date on which such Transaction occurred, and shall notify Bank and PNX immediately of any discrepancies or errors Merchant notes as a result of such reconciliation. Neither Bank nor PNX shall have any responsibility or liability for Transaction-related errors or omissions that are brought to their attention more than thirty (30) days after the date on which the Transaction to which such error or omission relates occurred.

(c) **Provisional Credit.** Any credits to the Operating Account are provisional only and subject to revocation by Bank until such time that the Transaction is final and no longer subject to Chargeback by the Issuer, Cardholder or Associations or any other fees, fines or other charges that may be imposed by Associations. Bank may withhold payment for a Transaction to Merchant, for any reason, until such time as the Transaction has been verified as legitimate by the relevant Issuer or Bank and/or PNX receive adequate supporting documentation from Merchant to authenticate the Transaction and mitigate Chargeback risk.

**21. Adjustments and Returns.** Merchant will maintain a fair exchange and return policy and make adjustments with respect to goods and services sold and/or leased to its customers whenever appropriate. If goods are returned, or services are terminated or canceled, or any price is adjusted, Merchant will prepare and transmit a credit or return Transaction, either electronically or by paper, for the amount of the adjustment as a deduction from the total amount of Transactions transmitted that day. If the amount of credit or return Transactions exceeds the amount of sales Transactions, Merchant shall pay Bank the excess. Merchant shall make no cash refunds on Transactions and shall handle all credit adjustments as provided in this Section 21. If no refund or return will be given, Cardholder must be advised in writing that the sale is a final sale and no returns are permitted at the time of the Transaction. Cardholder also must be advised in writing of any policy of Merchant that provides for no-cash refunds and in-store credit only. Merchant shall follow Association reservation/no-show policies. Merchant shall notify Cardholders in writing of this policy on all advance reservations. Merchant also shall notify Cardholders at the time of the reservation of the exact number of days required for reservation deposit refunds.

**22. Chargebacks.** The acceptance by Bank of any Transaction processed in accordance with the terms of this Agreement shall be with full recourse to Merchant.

In any such case, Bank shall not be obligated to accept a Transaction for credit to the Operating Account. If Bank has credited the Operating Account or Reserve Account for such a Transaction, Bank may return the Transaction to the Merchant, and Merchant shall pay Bank the amount of the Transaction. Merchant agrees that Bank, without prior notice to Merchant, may (i) charge the amount of the Transaction to the Operating Account or Reserve Account; (ii) recoup the amount of the Transaction by adjustment of the credits due to Merchant; or (iii) set off the amount of the Transaction against any account or property Bank holds for or on behalf of Merchant. If Merchant disagrees with Bank's decision to charge back a Transaction, Merchant must so notify Bank in writing within 10 days of the Chargeback, and provide documentation that the dispute has been resolved to Cardholders satisfaction or proof that a credit has been issued. Without limiting the generality of any other provision of this Agreement, if Bank or PNX takes legal action against Merchant for any Chargebacks or any amounts due Bank or PNX hereunder, Merchant shall pay the costs and attorneys fees incurred by Bank and/or PNX, whether suit is commenced or not.

**23. Merchant Statement.** At least once per month, PNX shall provide Merchant with an electronic statement (the Merchant Statement). All information appearing on the Merchant Statement shall be deemed accurate and affirmed by Merchant unless Merchant objects by written notice specifying the particular item in dispute within 30 days of the date of the Merchant Statement.

**24. Retention of Original Sales Information.** Merchant shall retain the information required by Sections 16, 17(a) and 26 for one year from the date of the Transaction. At the request of Bank or PNX, Merchant shall provide such information to Bank or PNX, as directed by Bank or PNX, within five (5) days of receipt of a request from Bank or PNX. Failure to meet such time frame or non-delivery of any item or delivery of an illegible copy of an item requested by an Issuer shall constitute a waiver by Merchant of any claims and may result in an irrevocable Chargeback for the full amount of the Transaction.

**25. Use of Third Party Processors.** Merchant understands that Bank or PNX may contract with a Third Party Processor to complete authorization and/or settlement services; provided that there must be an agreement for integration between PNX and that Third Party Processor. Merchant has the right, upon reasonable advance notice to Bank and PNX, to designate its own Third Party Processor (provided that there is an agreement with such Third Party Processor and Bank) must acknowledge any fee adjustments if Merchant chooses its own Third Party Processor. Merchant is responsible for any failures of its chosen Third Party Processor, Bank and PNX are responsible for any failures of its chosen Third Party Processor.

**26. ACH Processing.** When requested by Merchant, PNX will also provide ACH processing services at the rates specified in Schedule A. Merchant agrees that information supplied in this application may be used to establish a separate ACH account. If this service is requested, Merchant understands that a personal credit review may be deemed necessary and authorizes such an action. Merchant agrees that Bank and PNX will deduct processing fees from the Operating Account or Reserve Account on a daily basis unless a monthly basis is specified on Schedule A. Merchant also agrees to pay Bank or PNX the amount of any fees, charges or penalties assessed against Bank or PNX. Merchant agrees to abide by all National Automated Clearing House Association (NACHA) rules and regulations governing ACH processing and use of their networks.

**27. Honoring Cards.** (a) Merchant will accept all valid Cards when properly presented by Cardholders in payment for goods or services, subject to Visa, MasterCard, American Express and/or Discover Network rules requiring Merchant to elect whether it will accept credit only, debit only or both debit and credit Cards. Merchants election is set forth in the Application. (b) Merchant shall not establish minimum or maximum amounts for Card sales as a condition for accepting any Card. However, Merchant may not, by this term, be prevented from offering discounts to customers for cash purchases. (d) Merchant shall not engage in a Card Transaction (other than a mail order, telephone order, ecommerce or preauthorized sale to the extent permitted under this Agreement) if the person seeking to charge the purchase to his or her Card account does not present the Card to permit Merchant to compare the signature on the Card to the signature on the sales draft and obtain an imprint or otherwise use the physical Card to complete the Transaction.

**28. Important Merchant Responsibilities.** (a) Ensure compliance with payment card industry data security standard requirements and Association data security requirements specifically prohibiting the disclosure of any cardholder or transaction information to any third party without prior authorization from Bank. Merchant shall obtain timely PCI DSS

certification of its systems and processes (which must be maintained during the Term) as required under the Association rules and authorizes Bank, PNX and the Associations to audit Merchants PCI DSS compliance and information security systems to verify compliance with the terms of this Agreement. Merchant is responsible for any unauthorized access to any Transaction data from the Merchant or from third parties retained by or on behalf of the Merchant. (b) Maintain fraud and chargebacks below Association thresholds. (c) Maintain an active data breach insurance policy with at least \$50,000 in coverage. (d) Review and understand the terms of the Merchant Agreement. (e) Comply with all Association Operating Regulations. (f) Provide PNX and Bank with reasonable advance notice of any material change in the nature of Merchants business (including any change in control or any transfer or all or substantially all of Merchants assets or any change to Merchants operations that would materially effect the products and services sold by Merchant or Transactions contemplated under this Agreement. (g) Provide PNX and Bank with written disclosure identifying the third parties, systems, and services Merchant uses to receive, transmit, process, or otherwise manage information or its information technology systems (e.g., without limitation, encryption or firewall). The responsibilities listed do not supersede terms of the Merchant Agreement and are provided to ensure the Merchant understands some important obligations of each party and that the Bank is the ultimate authority should the Merchant have any problems.

**29. Customer Complaints.** Merchant shall respond promptly to inquiries from Cardholders and shall resolve any disputes amicably. If unresolved disputes occur with a frequency unacceptable to Bank, Bank may terminate this Agreement. Bank reserves the right to charge Merchant reasonable fees and reimbursement on account of excessive Cardholder inquiries, refunds or Chargebacks. Merchant agrees to maintain the following information in writing with respect to each claim or defense asserted by a Cardholder for which Merchant has received notice:

- (a) The Cardholders name;
- (b) The Card account number;
- (c) The date and time the Cardholder asserted the claim or defense;
- (d) The nature of the claim or defense; and
- (e) The action that Merchant took in an attempt to resolve the dispute.

Upon request, Merchant shall furnish Bank with this information in writing within 10 days.

**30. Confidentiality.** Merchant shall treat all information received in connection with this Agreement as confidential. Merchant shall prevent the disclosure of this information except for necessary disclosures to affected Cardholders, to Bank, to PNX and to Issuers.

**31. Associations and Issuers Requirements.** Merchant shall comply with all bylaws, rules, regulations, policies and guidelines of the Associations and any Issuer whose Cards are used to process Transactions in accordance with this Agreement. Merchant will display prominently at its place of business the relevant and official trademarks of the Associations and other promotional material and literature provided by Bank directly or through PNX. Subject to the prior written consent of Bank and the application Association and upon such conditions as authorized by Bank, Merchant may use Association marks or design marks in its own advertisement and promotional materials. Merchant will discontinue

the use of Association marks and design marks immediately following termination of this Agreement and shall not indicate that its products or services are endorsed by any Association, PNX or Bank.

**32. Compliance with Applicable Law.** Merchant represents and warrants that it has obtained all necessary regulatory approvals, certificates and licenses to sell any product or provide any service it intends to offer, and that it is in compliance with the Telephone Disclosure and Dispute Resolution Act and the regulations of the Federal Trade Commission and the Federal Communications Commission. Merchant shall comply with all present and future federal, state and local laws and regulations pertaining to Transactions, including, without limitation, the Federal Fair Credit Reporting Act, the Federal Truth-in-Lending Act, the Electronic Fund Transfers Act and the Federal Equal Credit Opportunity Act, as amended.

**33. Taxes.** Each party hereto shall report its income and pay its own taxes to any applicable jurisdiction. If Bank or PNX are required to pay any taxes, interests, fines or penalties owed by Merchant, said amount shall become immediately due and payable by Merchant to Bank or PNX. If excise, sale or use taxes are imposed on the Transactions, Merchant shall be responsible for the collection and payment thereof. Bank or PNX shall be entitled to recover of any of said taxes paid by it on behalf of Merchant from Merchant immediately after payment.

**34. Limitation of Liability.** In addition to all other limitations on the liability of Bank and PNX contained in this Agreement, neither Bank nor PNX shall be liable to Merchant or Merchants customers or any other person for any of the following:

- (a) Any loss or liability resulting from the denial of credit to any person or Merchants retention of any Card or any attempt to do so;
- (b) Any loss caused by a Transaction downgrade resulting from defective or faulty equipment regardless if owned by PNX or Merchant;
- (c) The unavailability of Services caused by the termination of contracts with computer hardware vendors, processors or installers, whether terminated by Bank, PNX or any other person for any reason; or
- (d) Interruption or termination of any Services caused by any reason except for failure of PNX to repair or replace equipment at Merchants expense. At no time will PNX liability exceed the amount of fees collected or reasonably expected to be collected from merchant for this delay period.

NEITHER BANK NOR PNX NOR ANY OF THEIR RESPECTIVE AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR SUBCONTRACTORS SHALL BE LIABLE FOR ANY LOST PROFITS, PUNITIVE, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES TO MERCHANT OR TO ANY THIRD PARTY IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE SERVICES TO BE PERFORMED BY BANK OR PNX PURSUANT TO THIS AGREEMENT, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE.

MERCHANT ACKNOWLEDGES THAT BANK HAS PROVIDED NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO ANY EQUIPMENT OR NON-BANK SERVICES AND THAT BANK HAS NO LIABILITY WITH RESPECT TO ANY EQUIPMENT OR NON-BANK SERVICES. BANK MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SERVICES IT PROVIDES HEREUNDER INCLUDING WITHOUT LIMITATION, ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR OTHERWISE. SHOULD THERE BE ERRORS, OMISSIONS, INTERRUPTIONS OR DELAYS RESULTING FROM BANKS OR PNX PERFORMANCE OR FAILURE TO PERFORM OF ANY KIND, BANKS AND PNX LIABILITY

SHALL BE LIMITED TO CORRECTING SUCH ERRORS IF COMMERCIALY REASONABLE OR SUPPLYING SUCH OMISSIONS IN THE WORK PRODUCT IN WHICH THEY HAVE OCCURRED.

**35. Limitation on Damages.** In no case shall Merchant be entitled to recover damages from PNX or Bank that exceed the fees retained by Bank and PNX pursuant to this Agreement during the six month period immediately prior to the event giving rise to the claim for damages.

**36. Indemnification.** Merchant agrees to indemnify and hold Bank and PNX and their respective affiliates, directors, officers, employees, and agents harmless from any and all losses, claims, damages, liabilities and expenses, including attorneys fees and costs (whether or not an attorney is an employee of Bank or Banks affiliates, PNX or affiliates of PNX) arising out of any of the following:

- (a) Merchants failure to comply with this Agreement;
- (b) Any act or omission of Merchant or its employees or agents;
- (c) Merchants failure to comply with the Equipments Users Guide;
- (d) Merchants failure to comply with any bylaw, rule, regulation, guideline or policy of any Association or Issuer;
- (e) Merchants failure to comply with any applicable law, rule or regulation;
- (f) Any dispute concerning the quality, condition or delivery of any merchandise or the quality of performance of any service or otherwise arising from Merchants provision of goods and services to cardholders;
- (g) The fraud or dishonesty of Merchant or Merchants employees, licensees, successors, agents and/or assigns;
- (h) Merchants selection of an Internet service provider or other telecommunication services provider;
- (i) The theft of or damage or destruction to any equipment;
- (j) Card Not Present Transactions, unauthorized Transactions and prohibited Transactions; or
- (k) Merchants use of the Services;

**37. Credit Investigation and Bank Auditing.** Bank, directly or through a designee, may audit, from time to time, Merchants compliance with the terms of this Agreement. Merchant shall provide all information requested by Bank or its designee to complete Banks audit. Merchant authorizes parties contacted by or on behalf of Bank to release the credit information requested by Bank, and Merchant agrees to provide Bank a separate authorization for release of credit information, if requested. Merchant shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Merchants financial condition. Such information shall be true, complete and accurate. [Without limiting the generality of the foregoing, Merchant shall provide to Bank and PNX its balance sheet and income statements not less frequently than every three calendar months during the term of this Agreement prepared in accordance with generally accepted accounting principles.]

**38. Termination of Agreement by Bank and PNX.** Bank may terminate this Agreement upon at least 30 days prior written notice to the other parties. In addition, Bank or PNX may immediately terminate this Agreement upon notice to Merchant under any of the below listed circumstances.

- (a) Any information concerning Merchant obtained by Bank is unsatisfactory to Bank in Banks sole discretion, including any change in Merchants business operations or the products and services sold by Merchant;
- (b) Any act of fraud or dishonesty is committed by Merchant, its employees and/or agents, or PNX or Bank believes in good faith that Merchant, its employees and/or agents have committed, are committing or are planning to commit any

acts of fraud or misrepresentation or activities that may create harm or loss to the goodwill of the Associations or the terminating Party;

(c) Chargebacks are excessive in the opinion of Bank;

(d) Breach of this Agreement by Merchant;

(e) Any representation or warranty made by Merchant in this Agreement is not true and correct;

(f) Merchant files a petition under any bankruptcy or insolvency law;

(g) Any assignment or transfer of voting control of Merchant or the sale of all or substantially all of Merchants assets;

(h) Merchant fails to maintain sufficient funds in the Operating Account to cover the amounts due to Bank hereunder;

(i) Merchants percentage of error Transactions or retrieval requests is excessive in the opinion of Bank;

(j) Any insurance policy obtained by Bank, PNx or Merchant relating to Transactions and/or Chargebacks is cancelled or terminated for any reason;

(k) Merchant suffers a data breach resulting in unauthorized disclosure of Card data or fails to maintain PCI DSS compliance or is not using a compliant Payment Application per Association mandates.

(l) Merchant fails to maintain an active policy indicating PCI breach insurance.

(m) Merchant fails to provide financial statements suitable to Bank on request;

(n) Banks relationship with PNx terminates or PNx does not or cannot perform its duties under this Agreement and Bank determines that it is not feasible to provide to Merchant the Services contemplated by this Agreement. Bank is not obligated to provide replacement Services if Banks relationship with PNx terminates or PNx does not or cannot perform; or

(o) An Association or governmental authority instructs Bank or PNx to suspend its performance under or terminate this Agreement.

Bank may selectively terminate one or more of Merchants approved locations without terminating this entire Agreement. In the event of termination, all obligations of Merchant incurred or existing under this Agreement prior to termination shall survive the termination. Merchants obligations with respect to any Transaction shall be deemed incurred and existing on the transaction date of such Transaction.

**39. Termination of Agreement by Merchant.** Merchant may terminate this Agreement upon at least 30 days prior written notice to the other parties if Bank amends Schedule A pursuant to Section 39 to increase the rates, fees or charges Merchant pays hereunder, except for fees or rates that result from a pass through from an Association. Merchant will be deemed to have accepted a rate increase hereunder if it continues to use Services after the effective date of the fee increase.

**40. Setoff.** In addition to any other legal or equitable remedy available to it in accordance with this Agreement or by law, Bank and/or PNx may set off any amounts due to Bank and/or PNx under this Agreement against any property of Merchant in the possession or control of Bank or PNx.

**41. Exclusivity** - Merchant shall submit, on an annual basis, not less than 75% of Merchant's total Transactions to Bank, unless Bank indicates to Merchant that it cannot or will not process that number of Transactions for Merchant. Additionally, Merchant shall provide to Bank the name and address of each other entity that Merchant elects to use to process Transactions, and copies of monthly statements from each such entity, in order to allow Bank to verify compliance by Merchant with the foregoing requirement.

In the event Merchant fails to submit to Bank at least 75% of the total number of Transactions processed for or on behalf of Merchant during any twelve-month period during the term of this Agreement, Merchant: (i) acknowledges and agrees that the actual damages sustained by Bank as a result of such failure would be difficult, if not impossible, to calculate with precision; and (ii) agrees to pay to Bank and PNx, as liquidated damages for such failure, an amount calculated as follows:

$LD = [(TT \times 0.75) - BT] \times 0.02$ ; where:

**LD** = the liquidated damages to be paid by Merchant;

**TT** = the total gross dollar volume of Transactions processed for Merchant during such twelve-month period; and

**BT** = the total gross dollar volume of Transactions processed by Bank for Merchant during such twelve-month period.

The obligations of Merchant under this Section 38 shall survive any termination or expiration of this Agreement.

**42. Amendments to this Agreement.** From time to time Bank may amend this Agreement as follows:

(a) **Amendment to Cards and/or Services.** Bank may amend or delete Associations or Services described in this Agreement by notifying Merchant in writing of any such amendment. All provisions of this Agreement shall apply to Associations or Services added to this Agreement. Bank or PNx shall notify Merchant of the fees to be charged for the additional Associations and Services. Acceptance by Merchant of a Card bearing the marks of the new Association as payment for a Transaction or use of a new Service after Bank has sent Merchant notice of an amendment shall constitute Merchants agreement to the amendment and the fees or charges related to these additions.

(b) **Amendment to Fees and Charges.** From time to time, Bank or PNx may change all rates, fees and charges set forth on Schedule A. Bank or PNx will provide written notice to Merchant of all such amendments. Bank or PNx may change the rates, fees and charges without prior written notice if Merchants sales volume or average Transaction amount does not meet Merchants projections contained in the Merchant Application form to which this Agreement is attached. If notice is required, Bank or PNx will give written notice on the Merchant Statement or by sending separate notice by mail. All new rates, fees and charges will become effective for the month immediately following the month in which the notice appeared on the Merchant Statement or was sent by mail, unless Merchant terminates this Agreement in accordance with Section 36.

(c) **Amendments to all other Provisions.** Bank may amend this Agreement in any manner other than as described in Section 39(a) or 39(b) above simply by providing written notice of such amendment to Merchant, and such amendment shall become effective on the latter of: (i) the date on which such written notice is received by Merchant; or (ii) a date specified by Bank in such written notice.

**43. Assignment.** This Agreement and Merchants rights and obligations hereunder may not be assigned by Merchant, by operation of law or otherwise, without the prior written consent of Bank. Bank and/or PNx may assign this Agreement without limitation. Assignment of this Agreement by Bank shall relieve Bank of any further obligations under this Agreement.

**44. Financial Accommodations.** Bank, PNx and Merchant intend this Agreement to be construed as a contract to extend financial accommodations for the benefit of Merchant under Section 365(c) of the U.S. Bankruptcy Code.

**45. Waiver.** To the extent that Merchant becomes a debtor under any chapter of title 11 of the United States Code and such event does not result in the termination of this Agreement, Merchant hereby unconditionally and absolutely waives any right or ability that Merchant may otherwise have had to oppose, defend against or otherwise challenge any motion

filed by Bank for relief from the automatic stay of 11 U.S.C. 362(a) to enforce any of Banks rights or claims under this Agreement.

**46. Cooperation.** In their dealings with one another, each party agrees to act reasonably and in good faith and to fully cooperate with each other in order to facilitate and accomplish the transactions contemplated hereby. Merchant agrees to allow PNX to use their name in proposals, brochures, banners, and press releases which may be used to promote PNX.

**47. Entire Agreement.** This Agreement, together with the Schedules attached hereto, supersedes any other agreement, whether written or oral, that may have been made or entered into by any party (or by any officer or officers of any party) relating to the matters covered herein and constitutes the entire agreement of the parties hereto.

**48. Severability.** If any provisions of this Agreement shall be held, or deemed to be, or shall in fact be, inoperative or unenforceable as applied in any particular situation, such circumstance shall not have the effect of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or sections herein contained shall not affect the remaining portions of this Agreement or any part hereof.

**49. Notices.** Except for notices provided by Bank to Merchant on the Merchant Statement, all notices, requests, demands or other instruments which may or are required to be given by any party hereunder shall be in writing and each shall be deemed to have been properly given when (i) served personally on an officer of the party to whom such notice is to be given, (ii) upon expiration of a period of three (3) Business Days from and after the date of mailing thereof when mailed postage prepaid by registered or certified mail, requesting return receipt, or (iii) upon delivery by a nationally recognized overnight delivery service, addressed as follows:

**If to BANK:**

Address listed on Merchant Application

With a Copy to: **PNX**

**If to PNX:**

PayNetWorx, LLC:

ATTN: Legal Department

160 N. Main Dr.

P.O. Box 728

Van Alstyne TX 75495

**If to MERCHANT:**

Address listed on Merchant Application

Any party may change the address to which subsequent notices are to be sent by notice to the others given as aforesaid.

**50. Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without regard to internal principles of conflict of laws, and federal law.

**51. Captions.** Captions in this Agreement are for convenience of reference only and are not to be considered as defining or limiting in any way the scope or intent of the provisions of this Agreement.



52. **No Waiver.** Any delay, waiver or omission by Bank to exercise any right or power arising from any breach or default of the other party in any of the terms, provisions or covenants of this Agreement shall not be construed to be a waiver of any subsequent breach or default of the same or any other terms, provisions or covenants on the part of the other party. All remedies afforded by this Agreement for a breach hereof shall be cumulative.

53. **Force Majeure.** The parties shall be excused from performing any of their respective obligations under this Agreement which are prevented or delayed by any occurrence not within their respective control including but not limited to strikes or other labor matters, pandemic or other public health crises, destruction of or damage to any building, natural disasters, accidents, riots or any regulation, rule, law, ordinance or order of any federal, state or local government authority.

54. **Execution.** The Merchant Application may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart. Counterparts may be delivered via facsimile, electronic mail (including .pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., [www.docusign.com](http://www.docusign.com)) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

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