

PROCESSING TERMS AND CONDITIONS

These Processing Terms and Conditions ("Processing Terms" or "Agreement") are made among SpotOn Transact, LLC, having its principal office at 100 California St, 9th Floor, San Francisco, CA 94111 (together with its affiliates, referred to as "SpotOn") and the person or entity set forth in the Merchant Application ("Client") having its principal office at the address set forth on the Merchant Application. These Processing Terms are part of the "Contract" as defined in the Merchant Terms and Conditions which are located on SpotOn's website at: <https://www.spoton.com/legal/merchant-terms/> ("Standard Terms"). These Processing Terms hereby incorporate by reference: (a) the Standard Terms; (b) the applicable Merchant Application; (c) the associated Fee Summary and Terms document ("Fee Summary"); (d) any other documents and terms applicable to the services provided by SpotOn or published on SpotOn's website ("Website") at <https://www.spoton.com/legal/> ("Service Terms"); and (e) any applicable exhibits, schedules, addenda, amendments, or other documents and materials attached hereto or to (a) – (e) above.

These Processing Terms will take effect on the date SpotOn approves Client to use the Processing Services and issues Client a merchant identification number ("Effective Date"). SpotOn is entering into these Processing Terms as an agent of Processor and/or Member Bank. Customer service phone numbers are listed on the Merchant Application.

THESE PROCESSING TERMS INCLUDE DISPUTE RESOLUTION AND MANDATORY ARBITRATION TERMS, WHICH ARE SET FORTH BELOW, AND A WAIVER OF PURSUING CLAIMS BY CLASS ACTION.

THESE TERMS ARE A LEGAL AGREEMENT BETWEEN YOU AND SPOTON. PLEASE READ THESE TERMS OF USE CAREFULLY BEFORE USING ANY OF SPOTON'S SERVICES. BY USING SPOTON'S SERVICES YOU AGREE TO BE BOUND BY THESE TERMS.

SpotOn and Client agree as follows:

1. Definitions. For the purposes of these Processing Terms, the following terms will have the meanings set forth below:

Account means an open depository account owned by Client at a financial institution acceptable to SpotOn which Member Bank, SpotOn, or their agents can access through the ACH system and which has been designated by Client in its Merchant Application.

Account Change means a change in the Account or the financial institution where the Account is located as required to be communicated to SpotOn as set forth herein.

ACH means the Federal Reserve's Automated Clearing House system.

American Express means American Express Travel Related Services Company, Inc. and any successor or assigns.

Bank Rules means the Member Bank rules or policies (including credit risk policies and Card processing policies) provided to Client, as amended from time to time, which are incorporated into this Agreement by reference.

Cardholder means any person using a Card or the accounts established in connection with a Card to make a purchase of goods or services from Client.

Card Network means Visa, Mastercard, Discover, American Express or any other network or payment network in which Client participates under these Processing Terms.

Cards means Card Network cards, account numbers assigned to a Cardholder, or other forms of payment accepted by SpotOn.

Dashboard means the non-public section of the Website accessible by Merchant with its unique username and password.

Data Incident means any alleged or actual compromise, unauthorized access, disclosure, theft, or unauthorized use of a Card or Cardholder information or Client credentials, regardless of cause, including, without limitation, a breach of or intrusion into any system, or failure, malfunction, inadequacy, or error affecting any server, wherever located, or hardware or software of any system, through which Client credentials or Card or Cardholder information resides, passes through, and/or could have been compromised.

Discover means Discover Financial Services, Inc. and any successor or assigns.

Event of Default means each event listed in Section 16 (*Default*).

Faster Funding means the settlement of funds owed to Client pursuant to this Agreement via ACH (including Same Day ACH), FedNow, Real Time Payments ("RTP"), push to card including Original Credit Transactions ("QCT"), or through any other payment method or network that SpotOn may support from time to time. Faster Funding is subject to Client's compliance with the applicable Operating Regulations.

Float Event means a circumstance where SpotOn and/or Member Bank, for whatever reason, advances settlement or any amounts and/or delays the assessment of any Fees, assessments, or other amounts due.

Force Majeure Event means any event beyond SpotOn's or Member Bank's reasonable control, including, without limitation: fire, weather or other casualty, power outages, funding delays, labor disputes, pandemics, errors in

data provided by or attributable to Client or others, or governmental orders or regulations.

Mastercard means Mastercard Inc. and any successor or assigns.

Member Bank means the financial institution which is a member of the Card Networks and which has sponsored SpotOn to participate in programs affiliated with the Card Networks in connection with these Processing Terms. As of the Effective Date, the Member Bank is the bank or other financial institution identified in the Fee Summary and in your Dashboard, or as otherwise notified by SpotOn.

Merchant Application means the attached Merchant Application, which is incorporated into these Processing Terms by reference, in the form approved by SpotOn setting forth, among other material terms, the name and address of Client.

Operating Regulations means the by-laws, operating regulations and/or all other rules, guidelines, policies and procedures of the Card Networks and all other applicable rules, regulations and requirements of SpotOn, Member Bank, processors, banks, institutions, organizations, Card Networks, or networks which govern or affect any Processing Services, and all state and federal laws, rules and regulations which govern or otherwise affect the activities of Client, including, but not limited to, those of the National Automated Clearing House Card Network (NACHA), the Federal Trade Commission (FTC), and the Consumer Financial Protection Bureau (CFPB) as the foregoing may be amended and in effect from time to time. If the Operating Regulations are amended, these Processing Terms will automatically be deemed to be revised to conform to the revised Operating Regulations.

PCI means the Payment Card Industry Data Security Standard.

Processing Services means those services identified and listed on the Merchant Application, which are provided by SpotOn, Processor, or Member Bank to Client pursuant to these Processing Terms in connection with Card transactions. For clarity, the Processing Services only include those activities set forth in these Processing Terms.

Processor means the entity sponsored by Member Bank to participate in programs affiliated with the Card Networks in connection with these Processing Terms. As of the Effective Date, the Processor is Worldpay, LLC.

Security Standards means all rules, regulations, standards, or guidelines adopted or required by the Card Networks or the Payment Card Industry Security Standards Council relating to privacy, data security, and the safeguarding, disclosure, and handling of Payment Card Information, including, without limitation, PCI, Visa's Cardholder Information Security Program, Discover's Information Security & Compliance Program, American Express's Data Security Operating Policy, Mastercard's Site Data Protection Program, Visa's Payment Application Best Practices, the Payment Card Industry's Payment Application Data Security Standard, Mastercard's POS Terminal Security program, and the Payment Card Industry PIN Transmission Security program, in each case as they may be amended from time to time.

Third Party Provider means a third party used by Client or SpotOn in connection with the Processing Services received under these Processing Terms, including but not limited to, software providers, equipment providers,

and/or third-party processors. Astra, Inc., a Delaware corporation with a principal place of business located at 595 Pacific Ave., 4th Floor, San Francisco, CA 94133 ("Astra") is a Third Party Provider of SpotOn. Faster Funding may be provided by or through Astra, as determined by SpotOn.

Visa means Visa, Inc. and any successor or assigns.

2. Rules Summary and Operating Regulations: Bank Rules

(a) The Card Networks make excerpts of their Operating Regulations available online, including via:

- <https://www.mastercard.us/en-us/business/overview/support/rules.html>;
- <https://usa.visa.com/support/consumer/visa-rules.html>;
- <https://www.americanexpress.com/merchantopguide>;
- https://servicecenter.discovernetwork.com/accountcenter/pdf/Card_Present_CID_Guide.pdf.

Each applicable Card Network's complete Operating Regulations are incorporated by reference into this Agreement and will control with respect to any conflict in terms between this Agreement and such Operating Regulation. Client must comply with all Operating Regulations. Should any Operating Regulation(s) not be publicly available or otherwise made available to the Client such unavailability will not alter or limit Client's obligation to comply with the Operating Regulations. Notwithstanding any assistance provided by SpotOn in understanding the Operating Regulations, Client expressly acknowledges and agrees that it is assuming the risk of Client's and its employees', contractors', third party providers', and affiliates' compliance or non-compliance with the Operating Regulations, regardless of whether Client and/or its employees, contractors, third party providers, and affiliates have possession of those provisions.

(b) Client understands that it is not a third-party beneficiary under any agreement with a Card Network; however, a Card Network may be a third-party beneficiary of these Processing Terms, and will have the rights, but not any obligation, necessary to fully enforce the terms of this Agreement against the Client.

(c) Client must fully comply with all of the terms and obligations of the then-current Bank Rules, as may be modified or updated from time to time. Client expressly acknowledges and agrees that it is assuming the risk of Client's and its employees', contractors', third party providers', and affiliates' compliance or non-compliance with Bank Rules.

3. Application: Change in Business.

(a) Client represents that all information supplied to SpotOn in connection with its Merchant Application, in any other request for services, or in response to any inquiry by SpotOn, whether provided by Client or a third party is complete and accurate in all material respects. On an ongoing basis, Client must provide SpotOn with the current address of each of its offices, all "doing business as" (DBA) names used by Client, and a complete description of goods sold, and services provided. Client agrees to provide additional information to SpotOn upon SpotOn's request. Client represents and warrants that it has express written authorization to include the respective personal information of Client's officers, directors, principals, and/or beneficial owners in the Merchant Application. Such authorization specifically authorizes Client to provide that information (including, without limitation, the individual's name, address, government identification number, email address and telephone number) to SpotOn and for SpotOn to: (a) use such information to: (i) verify the identity of such persons (including the performance of background checks); and (ii) conduct risk assessments and underwriting in connection with the Processing Services; and (b) provide such information to Member Bank, Processor, and Card Networks in connection with the provision of the Processing Services (and the application to receive Processing Services).

(b) Client authorizes SpotOn to conduct checks of background, credit, or banking information, as necessary, of Client (including its beneficial owners, such as any person that owns or controls 25% or more of the company's equity or voting rights, or that exercises managerial control over the company), and agrees that all information obtained under these Processing Terms may be shared with a Card Network, Processor, or Member Bank. Client represents and warrants that it has obtained, and will provide to SpotOn upon request, written instructions and authorization from each such individual for SpotOn to obtain (and for a consumer reporting agency to provide) such information including consumer reports of such individual to SpotOn, and for SpotOn to share such individual's information as described here. Client will cooperate with and provide SpotOn with any information or documentation needed for the SpotOn to obtain such information from consumer reporting agencies. Client is responsible for its employees' actions, it will notify SpotOn

of any third party that will have access to Cardholder data, and it will immediately report all instances of a data breach to SpotOn immediately after it reasonably identifies an incident.

(c) Client must provide SpotOn with reasonable prior written notice of Client's intent to change its business form or entity in any manner (e.g., a change from a limited liability company to a corporation), of Client's intent to sell or otherwise transfer a substantial portion of its stock, assets, or voting power to another entity, and/or of any change in Client's business or operations which would cause any information provided by Client to SpotOn to be incorrect, incomplete, or misleading, or which would have a material effect on Client. In any of the foregoing cases, SpotOn reserves the right to terminate these Processing Terms or require additional reserve or other conditions on Client and/or its proposed assignee in SpotOn's sole discretion (including but not limited to cash collateral, letters of credit, guarantors, additional underwriting, or any condition required by the Card Networks).

(d) Client represents and warrants that neither Client nor any of its principals, directors, or beneficial owners have been reported to or listed on the Terminated Merchant File (TMF), MATCH list or similar listing and has not received a non-compliance assessment from any Card Network.

4. Use of Marks: Card Network Enforcement. Client will display the Card Networks' credit card logos and other intellectual property marks of the Cards accepted in accordance with the Operating Regulations. Client recognizes and agrees that each Card Network is the sole owner of its respective marks and Client agrees not to contest the ownership of any marks. The Card Networks may at any time, immediately and without advance notice, prohibit Client from using any Card Network marks for any reason. Client's use of a Card Network mark in advertising, acceptance decals, or signs must be in accordance with the Operating Regulations and standards relating to reproduction, usage, and artworks (as may be in effect from time to time) and will terminate effective with the termination of these Processing Terms or immediately upon notification by any Card Network or SpotOn to discontinue such use. Client will not use the Card Network marks in a way which suggest Client or its products or services are endorsed by a Card Network or in a way which would injure or create a risk of injury to any Card Network or its intellectual property rights. Client acknowledges and agrees that each Card Network has the right to enforce any provision of the Operating Regulations and to prohibit Client and SpotOn from engaging in any conduct the Card Network deems could injure or could create risk to the Card Network, including injury to reputation, or that could adversely affect the integrity of the interchange system, the Card Network's confidential information, or both; and Client will not take any action that could interfere with or prevent the exercise of this right by the Card Network. SpotOn has certain responsibilities to Member Bank (as between SpotOn and Member Bank) which include oversight of the Card acceptance policies and procedures of Client. Accordingly, SpotOn may require changes to Client's website or systems that it deems necessary or appropriate to require Client to remain compliant with the Operating Regulations governing the use of the Card Networks' marks.

5. Transaction Processing. When accepting any Card and completing any Card transaction, Client must follow all procedures and rules in the Bank Rules and the Operating Regulations. The descriptor field for each sales transaction must include the name of both SpotOn and Client, however SpotOn may elect to abbreviate its name at SpotOn's sole discretion. In the event, for whatever reason that Client elects not to wait to obtain an authorization for any Transaction from a Card Network (whether due to system delays, connection issues, or any other reason) (each an "Offline Transaction"), Client agrees that remains solely liable for such Offline Transactions including any declined or chargedback Offline Transactions. Client acknowledges that if it conducts any Offline Transactions, it assumes that risk that it has provided its goods or services to Cardholders and such Offline Transaction may not be approved. Offline Transactions may only be conducted in accordance with criteria established by SpotOn and Member Bank. Client has identified to SpotOn the products and/or services for which it intends to accept Cards as payment. Client will only complete and deliver to SpotOn sales transactions produced as the direct result of bona fide sales made by Client to Cardholders for such identified products and/or services, unless otherwise agreed by SpotOn in writing and Client is expressly prohibited from presenting, and will not present, sales transactions for any purposes related to any illegal or prohibited activity, including but not limited to money-laundering or financing of terrorist activities. SpotOn will cause Member Bank, Processor, or a third-party provider designated by SpotOn to initiate payment to Client of the total face amount of each sales transaction acquired and accepted under these Processing Terms, subject to the terms and conditions of these Processing Terms, the Bank Rules, the Operating Regulations, and applicable law. Unless otherwise agreed to in writing by SpotOn, Client will electronically deliver to SpotOn and in a format

acceptable to SpotOn all credit vouchers and sales transaction records within two (2) business days after the applicable transaction date (or such shorter period as determined by the applicable Card Network), except (i) in the case of a delayed merchandise delivery, when the sales transaction record will be delivered within two (2) business days of the merchandise delivery, or (ii) as specified otherwise in the Bank Rules. Client will deliver sales transaction records to SpotOn at least every business day. The preparation and delivery to SpotOn by Client of sales transactions will constitute an endorsement to SpotOn by Client of each sales transaction, and Client authorizes SpotOn or its representative to place Client's endorsement on any sales transaction at any time. For U.S. transactions, Client will be permitted to use terminal processing services of any Card Network to deliver Visa transactions captured at the point of transaction directly to Visa for clearing and settlement. SpotOn may refuse to acquire any sales transaction or claim the amount of which, in whole or in part, it could charge back to the Client pursuant to these Processing Terms, if it had acquired the sales transaction or claim. Client acknowledges and agrees that SpotOn is not responsible for any action or inaction taken by the financial institution or other entity that issued the Card(s) to the Cardholders or the provider of such Card(s). Client acknowledges and agrees that the actions prohibited below may mislead, disadvantage, defraud, or damage Cardholders, Member Bank, issuing banks, settlement banks, Card Networks, SpotOn, and other third parties and that SpotOn will have the right to take any and all available steps and precautions to prevent fraud, theft, or misappropriation of Cardholder data. Accordingly, Client will not take, and will not permit its employees, contractors, or representatives (all of whose conduct Client agrees to be responsible for), or any third party to take, any action in violation of these Processing Terms.

6. Sales Transactions. Client will not submit any sales transaction to SpotOn: (a) that adds any surcharge to the transaction, except to the extent authorized by these Processing Terms, the Operating Regulations, and applicable law; (b) that adds any tax to the transaction, unless applicable law expressly allows for the Client to impose a tax (any tax amount, if allowed, must be included in the transaction amount and not collected separately); (c) unless expressly authorized by SpotOn and in compliance with the Operating Regulations, that represents the refinancing or transfer of an existing Cardholder obligation that is deemed to be uncollectible, constitutes the refinancing of an existing debt or collection of a previous Card charge, or arises from the dishonor of a Cardholder's personal check or from the acceptance of a Card at a terminal that dispenses scrip; (d) that does not result from a sale of Client's own good or services as set forth in the Merchant Application to a bona fide Cardholder; (e) that is illegal or that Client knows or should have known to be illegal, fraudulent or not authorized by the Cardholder, or that it knows or should have known to be authorized by a Cardholder colluding with the Client for a fraudulent purpose; (f) until after the products are shipped or the services are performed, and/or the Client has completed the transaction, unless the Client has obtained Cardholder consent for a recurring transaction; (g) where a valid authorization was required but not obtained; (h) where multiple authorizations for amounts less than the total sale amount have been obtained; (i) which results in a disbursement of cash or cash equivalent to a Cardholder, unless Client is participating in full compliance with a program approved by SpotOn and supported by a Card Network for such cash disbursements, and Client is disbursing funds in the form of travelers cheques, TravelMoney, or similarly authorized cards, or foreign currency (in which case the transaction amount is limited to the value of the travelers cheques, TravelMoney, or similarly authorized cards, or foreign currency, plus any properly charged commission or fee); (j) 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; (k) that establishes a minimum or maximum dollar sale transaction amount, except to the extent authorized by the Operating Regulations (a minimum transaction amount must not differentiate between issuers, must not differentiate between Mastercard and another acceptance brand, and must not exceed \$10 USD or any higher amount established by the Federal Reserve by regulation; a maximum transaction amount may only be set if the merchant is a department, agency, or instrumentality of the U.S. Government, is a corporation owned or controlled by the U.S. Government, or is an education institution merchant whose primary business is reflected by MCC 8220, 8244, or 8249; and a maximum transaction amount must not differentiate between issuers and must not differentiate between Mastercard and another acceptance brand); (l) that was previously charged back and subsequently returned to the Client, irrespective of Cardholder approval; (m) that involves counterfeit goods or any goods or services that infringe on any patent, trademark, copyright, or any other intellectual property right of any person. Client must not receive payment on behalf of or, unless authorized by law, redirect payments to any other party; or (n) that includes a fee that is or may be deemed a "junk fee" or "drip fee" as defined or determined by any regulator (including as

described in regulatory guidance) or otherwise deemed to be unfair or deceptive.

Transactions must be legal in both the Cardholder's and Client's jurisdictions. Client will ensure that the Cardholder is easily able to understand that it is responsible for the transaction, including delivery of the goods or provision of the services that are the subject of the transaction, and for customer service and dispute resolution, all in accordance with the terms applicable to the transaction. Client will prominently and clearly disclose to the Cardholder that it is the merchant, at all points of the interaction, and provide the Cardholder its location (physical address) so that the Cardholder can easily distinguish Client from any other party, such as a supplier of products or services. The Client name and location, as disclosed to the Cardholder, must be the same as provided in authorization and clearing Transaction messages. Client may accept Cards only at locations in the regions or areas specified on the Merchant Application. Each transaction authorization and clearing transaction message must identify Client and include Client's acceptor business code/MCC that accurately reflects its primary business. Client will not discriminate against Cards or issuers (e.g., limited acceptance options) except in full compliance with the Operating Regulations.

7. Refund Transactions. Client will not submit any refund or other credit transaction to SpotOn: (a) that does not correlate to an original sales transaction from the Cardholder; (b) that exceeds the amount shown as the total on the original sale transaction, unless the excess represents the exact amount required to reimburse the Cardholder for postage paid by the Cardholder to return merchandise in accordance with a policy applied consistently by the Client to all its customers; (c) for returned products that were acquired in a cash purchase from the Client; (d) that would cause an overdraft; or (e) more than three (3) business days following either a regulatory requirement granting a Cardholder's right to a refund, or a non-disputed Cardholder request.

8. Other Prohibited Activities. Client will not: (a) use any Cardholder data or other transaction data for any purpose not expressly authorized by these Processing Terms; (b) disclose any Cardholder data or other transaction data to any person or entity except for necessary disclosures to affected Cardholders, and through SpotOn to affected Card Network entities; (c) provide to SpotOn any inaccurate, incomplete, or misleading information; (d) fail to provide SpotOn with timely notification of events that have caused or could cause material changes in the Client's ability to fulfill its obligations under these Processing Terms, including but not limited to adverse changes in Client's financial health, adverse changes in Client's business conditions or environment, actions by governmental or non-governmental agencies; (e) transfer or attempt to transfer its financial liability by asking or requiring Cardholders to waive their dispute rights; (f) submit transactions on behalf of another person or entity; (g) submit transactions for its locations other than those locations in the United States; (h) engage in any service or activity that: (1) is deceptive, unfair, predatory, or prohibited by one or more Card Networks or regulatory body; (2) that represents a violation of any applicable law, statute, or regulation; or (3) that involves counterfeit goods or any goods or services that infringe on any patent, trademark, copyright, or any other intellectual property right of any person; (i) submit sales for payment that resulted from another commercial entity providing goods or services to the Cardholder (including business that may otherwise qualify as a Payment Service Company or Payment Facilitator); (j) engage in any activity that may result in undue economic hardship or damage to the goodwill or reputation of SpotOn, Processor, Member Bank, or any Card Network; or (k) have excessive chargebacks as determined solely by SpotOn. Client may not require a Cardholder to complete a postcard or similar device that includes the Cardholder's account number, Card expiration date, signature, or any other Card account data in plain view when mailed, and may not request the Card Verification Value 2 (CVV2) data on any paper order form.

9. Exception Items. Client agrees to reacquire and pay SpotOn the amount of any sales transaction, and SpotOn will have the right at any time to charge Client's Account such amounts with notice in accordance with SpotOn's standard operating procedure, for any return (whether or not a credit voucher is delivered to SpotOn), chargeback, compliance case, any other Card Network action, or if the extension of credit for merchandise sold or services or sales transactions performed was in violation of law or the rules or regulations of any governmental agency, federal, state, local or otherwise; or if SpotOn has not received payment for any sales transaction, notwithstanding prior payment to Client for such sales transaction. Not limiting the generality of the foregoing, Client agrees that any operational and/or other Processing Services performed on behalf of Client, including but not limited to, production of drafts in response to copy requests, response to compliance cases, augmentation of Client data for interchange, transaction stand-in, digital draft storage and retrieval, etc. will in no way affect Client's obligations and liability in these Processing Terms including those in the

foregoing sentence. Client may instruct SpotOn in the defense of chargebacks, compliance cases and similar actions, and Client agrees that it will promptly provide any such instructions to SpotOn. When SpotOn has determined it has all necessary information and instructions, Client authorizes SpotOn to engage in efforts to resolve chargebacks and respond to retrieval requests and other inquiries without further consulting Client.

10. Third Party Providers.

(a) **Client Third Party Providers.** Client may use one or more Third Party Providers in connection with the Processing Services or the processing of some or all of its Card transactions. Client will provide SpotOn with prior notice of its intention to use any such Third Party Providers, and Client agrees that it will be reimbursed only for transactions delivered by the Third Party Providers to the Card Networks. In no event will Client use a Third Party Provider unless such Third Party Provider is compliant with PCI and the PCI Software Security Framework (PCI SSF), or its successor requirements, depending on the type of Third Party Provider, as required by the Operating Regulations. Client acknowledges and agrees that Client will cause its Third Party Provider to complete any steps or certifications required by any Card Network (e.g., registrations, PCI SSF, PCI, audits, etc.). Client will cause its Third Party Providers to cooperate with SpotOn in completing any such steps or certifications (if applicable), and in performing any necessary due diligence on such Third Party Provider. Client will be solely responsible for any and all applicable fees, costs, expenses and liabilities associated with such steps, registrations, and certifications. Client will bear all risk and responsibility for conducting Client's own due diligence regarding the fitness of any Third Party Providers for a particular purpose and for determining the extent of such Third Party Provider's compliance with the Bank Rules, the Operating Regulations, and applicable law, and Client assumes responsibility for any failure by a Third Party Provider to comply with the Operating Regulations. Client expressly agrees that neither SpotOn, Processor, nor Member Bank will in any event be liable to Client or any third party for any actions or inactions of any Third Party Provider used by Client, even if SpotOn, Processor, or Member Bank introduced and/or recommended the use of such Third Party Provider to Client, or never objected to the use of such Third Party Provider, and Client expressly assumes all such liability.

(b) **SpotOn Third Party Providers.** SpotOn may partner with and use the services of Third Party Providers in its sole discretion. Specifically with respect to Faster Funding, Client acknowledges and agrees that Client will not knowingly or intentionally (i) attempt to reverse engineer (except as permitted by applicable law), decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of Faster Funding; (ii) modify, translate, or create derivative works based on Faster Funding; (iii) make Faster Funding (or any derivative work thereof) available to, or use Faster Funding (or any derivative work thereof) for the benefit of anyone other than Client; (iv) sell, resell, license, sublicense, distribute, rent or lease any Faster Funding to any third-party, or include any Faster Funding (or any derivative work thereof) in a service bureau, time-sharing, or equivalent offering; (v) publicly disseminate information from any source regarding the performance of the Faster Funding; (vi) attempt to create a substitute or similar service through use of, or access to, Faster Funding Processing Services; (vii) remove or deface any notice of confidentiality, trademark or other indicia of ownership that may be contained in any Astra technology or displayed via Faster Funding Processing Services; (viii) alter, remove or cover the proprietary rights notice in or on the software and related storage media; (ix) infringe or otherwise violate the copyright, patent, or other proprietary right of Astra; or (x) transmit any material containing or embodying any virus, worm, Trojan horse or other contaminating, destructive or harmful computer code or other feature through the Faster Funding Processing Services. Notwithstanding anything to the contrary, Client accepts and assumes all responsibility for complying with all applicable laws and the Operating Regulations in connection with all of Client's activities involving any Faster Funding Processing Services. Client acknowledges and agrees that as a condition of Faster Funding and by accepting this Agreement, **Client hereby consents to opening a user account with Astra and hereby accepts and agrees to comply with the Astra Terms of Service** (located at: <https://astra.fi.com/terms/>) and the **Astra Privacy Policy** (located at: <https://astra.fi.com/privacy/>) as they may be updated from time to time (collectively, "**Astra Terms**"). Client is bound by the Astra Terms on the earlier of: (1) the Effective Date of this Agreement, or (2) the date Client first accesses or uses Faster Funding. Astra may amend the Astra Terms at any time without specific notice to Client. Client's continued use of Faster Funding in any way after such amendment constitutes Client's agreement to any amended or updated version of the Astra Terms. Client represents and warrants that the representative accepting the Astra Terms on Client's behalf is Client's authorized representative with the requisite

authority to bind Client to the Astra Terms through the acceptance of this Agreement.

11. Cardholder Information. The Card Networks have implemented standards and programs to protect Cardholder data and Client agrees to comply with all such programs, including but not limited to Visa's Cardholder Information Security Program (CISP), MasterCard's Site Data Protection Program (SDP), and PCI-DSS. Client will not request, use, disclose, sell, purchase, provide, or exchange Cardholder name, address, account number or other information to any third party other than to SpotOn, Processor, and Member Bank or a Card Network for the purpose of completing a sales transaction (as payment for Client's goods or services) unless specifically permitted by the Security Standards and other Operating Regulations, or in response to a valid government demand. Client must notify SpotOn of any service provider or other third party that will have access to Cardholder data. Client represents and warrants that neither it nor Third Party Providers will retain or store CVV2 data subsequent to the authorization of a sales transaction, nor any other data prohibited by the Security Standards. Client will take all available steps and precautions to prevent fraud, theft, and misappropriation of Cardholder data, including but not limited to fully complying with all Security Standards. Client is responsible for, and will control, the conduct of its employees, contractors, Third Party Providers, and representatives, and must demonstrate compliance by it and its employees, contractors, Third Party Providers, and representatives of all Security Standards and all subsequent updates.

12. Fees. Client agrees to pay SpotOn the fees and charges set forth on the Fee Summary provided to Client in connection with these Processing Terms ("**Fees**"). SpotOn may update or modify the Fee Summary from time to time upon prior notice to Client in accordance with SpotOn's standard operating procedure ("**Fee Change**"). If a Fee Change is made pursuant to changes or additions of fees or assessments by Card Networks, other third parties, or other pass-through fees, the Fee Change will be effective on the date determined by SpotOn as set forth in the notice. SpotOn may implement any other Fee Change upon no less than thirty (30) days' prior notice to Client in accordance with SpotOn's standard operating procedures. Upon receiving a notice of a Fee Change, Client may terminate these Processing Terms prior to the effective date of the Fee Change, in which case the termination will be effective as of the date of the Fee Change. If SpotOn has not received written notice of termination from Client by such date, Client will be deemed to have accepted and agreed to Fee Change and/or revised Fee Summary.

13. Third Party Assessments. Notwithstanding any other provision of these Processing Terms, Client is solely responsible for all amounts imposed or assessed to Client, SpotOn, and/or Member Bank in connection with Client's use of the Processing Services or Client's actions or inactions in connection with these Processing Terms (including transactions processed hereunder) by third parties including, but not limited to, a Card Network or a Third Party Provider (including telecommunication companies). Such amounts include, but are not limited to, fees, fines, assessments, loss allocations, registrations, costs, expenses, certifications expenses and other amounts, however labeled or defined, imposed by Card Networks or other third parties as a result of or in any way relating to Client's actions, omissions or use of the Processing Services. Client agrees that all such obligations and amounts incurred will be deemed direct, not indirect or consequential, damages, and will be collectible from Client and not subject to any limitation, notwithstanding any provision in these Processing Terms to the contrary. Such amounts are immediately due and payable by Client at the time they are imposed by the applicable third party in accordance with SpotOn's standard operating procedure.

14. Exclusivity. SpotOn and Member Bank reserve the right to enter into other agreements pertaining to the Processing Services with other persons and/or entities, including, without limitation, other merchants. The parties agree that SpotOn will be the exclusive provider of Processing Services to Client for all of its locations during the Term of these Processing Terms. Client must not receive Processing Services or products or services that are similar to the Processing Services from any other provider during the Term of these Processing Terms.

15. Term and Termination

(a) This Agreement shall be binding upon Client upon the earlier of: (i) Client's acceptance of these Processing Terms through its submission of its Merchant Application; or (ii) Client's first use of the Processing Services. The term of these Processing Terms shall be deemed accepted and binding upon SpotOn, upon the Effective Date. Either party may terminate this Agreement at any time, for any reason or no reason, upon providing the other party with thirty (30) days' prior written notice of termination.

(b) Termination of these Processing Terms for any reason will not relieve Client from any liability or obligation to SpotOn or Member Bank, and all obligations of Client incurred or existing under these Processing Terms as of the date of termination will survive such termination. Without limiting the foregoing, after termination of these Processing Terms, Client will continue to be liable for chargebacks, refunds, fees, Card Network liabilities, credits, and adjustments resulting from or relating to transactions processed pursuant to these Processing Terms. Client will also reimburse SpotOn for any damage, loss or expense incurred by SpotOn as a result of a breach by Client, including any damages set forth in any addendum, schedule, or exhibit of these Processing Terms and including all past due, unpaid and/or future invoices for services rendered by SpotOn in connection with these Processing Terms. All such amounts will be due and payable by Client upon demand. SpotOn will also have the option to require Client to reacquire all outstanding sales transactions acquired by SpotOn under these Processing Terms. In addition to, and not in limitation of the foregoing, SpotOn may refuse to provide the Processing Services in the event it has not been paid for any amounts due as provided in these Processing Terms.

(c) Upon termination of these Processing Terms for any reason, Client will owe to SpotOn and immediately pay all outstanding amounts owed on equipment and services purchased or financed in connection with these Processing Terms. If Client's termination of these Processing Terms for any reason is effective within two (2) years of installation of such equipment, Client will owe to SpotOn the full, list price for the equipment and services as reflected on the Fee Summary (with a credit for any amounts already paid). Accordingly, upon termination of these Processing Terms, Client will pay SpotOn the difference between the initial, discounted purchase price of the equipment (i.e., the amounts paid to date for such equipment) and the full, list price. SpotOn will have a security interest in and lien upon any equipment purchased at any price lower than the full list price of the equipment, until such full list price has been paid, in accordance with Section 36 (*Security Interest and Setoff*).

(d) Notwithstanding anything to the contrary contained in these Processing Terms, any Card Network (or SpotOn, Processor, or Member Bank on behalf of a Card Network) may immediately terminate, limit the terms of, or enforce these Processing Terms; and nothing in these Processing Terms will be construed to interfere with or lessen the right of SpotOn, Processor, Member Bank, or the Card Networks to terminate Client's ability to process Cards at any time.

16. Default

(a) Each of the following events will be deemed an "Event of Default": (i) Client becomes subject to any voluntary or involuntary bankruptcy, insolvency, reorganization or liquidation proceeding, a receiver is appointed for Client, or Client makes an assignment for the benefit of creditors, or admits its inability to pay its debts as they become due; (ii) Client fails to pay or reimburse the fees, expenses or charges referenced in these Processing Terms when they become due; (iii) Client violates the Operating Regulations, the Bank Rules or applicable law; (iv) Client is subject to any adverse legal or regulatory actions by governmental or non-governmental entities; (v) Client fails to mitigate, remediate, or resolve risks identified by SpotOn in accordance with Section 28 (*Financial Statements; Risk Mitigation*); (vi) SpotOn reasonably believes that there has been a material deterioration in Client's financial condition; (vii) any standby letter of credit, if and as may be required pursuant to Section 19, (*Reserve; Letter of Credit*) will be cancelled, will not be renewed, or is not in full force and effect; (viii) Client is no longer in good standing with any Card Network, a Card Network prohibits SpotOn from providing the Processing Services under these Processing Terms, a Card Network instructs SpotOn to cease allowing Client to use the Processing Services, Member Bank instructs SpotOn to cease allowing Client to use the Processing Services (or SpotOn's agreement with Member Bank or Processor is terminated), or Member Bank or Processor instructs SpotOn to cease allowing Client to use the Processing Services; (ix) Client ceases to do business as a going concern, or there is a change in ownership of Client which changes the identity of any person or entity having, directly or indirectly, more than 25% of either the legal or beneficial ownership of Client; (x) Client engages in any activity deemed to be fraudulent or otherwise wrongful by SpotOn, Member Bank, or a Card Network; or (xi) Client is otherwise in default of any terms or conditions of these Processing Terms whether by reason of its own action or inaction or that of another, and fails to cure such default within thirty (30) days of SpotOn's notice of default.

(b) Upon the occurrence of an Event of Default, SpotOn, Processor, Member Bank, or the Card Networks may immediately terminate these Processing Terms by giving Client written notice of termination. In addition, these Processing Terms will automatically and immediately terminate upon

request of the Card Networks or if the Card Networks deregister SpotOn or if Member Bank ceases to be a member of the Card Networks for any reason or if Member Bank fails to have a valid license with the Card Networks to use any of the Card Network marks accepted by Client.

(c) In the event of any Event of Default, Client agrees that SpotOn and/or Member Bank may be required to report Client and/or its principals to the Card Networks for placement in the Terminated Merchant File (TMF), MATCH list or similar report and Client expressly consents to such reporting and waives any claims against SpotOn and Member Bank and agrees to hold them harmless from any and all losses, costs, expenses and liabilities resulting from the Event of Default or relating to such TMF or MATCH reporting.

(d) In the event Client, in good faith, reasonably believes that SpotOn has substantially failed to provide the Processing Services, other than as a result of a failure by Client (or any Third Party Provider or other third party acting at the request of or on behalf of Client) to perform any obligation under the Agreement or any Force Majeure Event, Client agrees to notify SpotOn in writing within ten (10) days of the date upon which such failure first occurred. Such notice will be sent in accordance with the terms of this Agreement and will specifically describe the nature of such failure by SpotOn, specify the date such failure first occurred and specifically reference this Section. Client may terminate these Processing Terms with written notice if SpotOn has not cured the failure within thirty (30) days of receiving Client's notice regarding such failure.

17. Taxes. Any sales, use, excise or other taxes (other than SpotOn's income taxes) payable in connection with or attributable to the Processing Services provided to the Client per these Processing Terms will be paid by Client. SpotOn may, but will not have the obligation to, directly or indirectly pay such taxes. In the event SpotOn pays such taxes, whether directly or indirectly, Client will immediately reimburse SpotOn or SpotOn may, at SpotOn's sole option, charge Client's Account.

18. Settlement; Float Events. Client must always maintain an open Account. Client irrevocably authorizes SpotOn, and authorizes SpotOn to instruct Member Bank, Processor or its other third party provider to debit and/or credit the Account in order to settle any and all Fees and other amounts due under these Processing Terms, and such authority will remain in effect for as long as Client may have any obligation to pay or be paid any amount under these Processing Terms, whether before or after termination of these Processing Terms, regardless of whether Client has notified SpotOn of an Account Change as defined below. Client will always maintain the Account with sufficient cleared funds to meet its obligations under these Processing Terms. Additionally, Client agrees that SpotOn may set off any amounts due to SpotOn from amounts owed to Client hereunder, including but not limited to amounts related to chargebacks, refunds, or any other amounts owed to SpotOn or Member Bank. In the event Client desires an Account Change, Client will give SpotOn thirty (30) days' prior written notice of any such change, and SpotOn will use reasonable commercial efforts to effect such Account Change; however, such Account Change will not be effective until the date on which SpotOn actually makes such Account Change on SpotOn's system. In no event will SpotOn have any liability for any amounts directed to an Account that has been designated by any purported representative of Client or its Third Party Provider at any time during the term of these Processing Terms, regardless of any Account Change. All amounts due SpotOn under these Processing Terms will be paid without set-off or deduction, and will be due from Client as of the date SpotOn originates an ACH debit transaction record to Client's Account or the date specified on any invoice provided to Client. Any fees or other amounts due to SpotOn not collected from Client by SpotOn when due will bear interest at one (1) percentage point per month but in no event more than the highest rate permitted by law. The acceptance by SpotOn, SpotOn's affiliate or other financial institution of Client's closing (or termination of) its Account will not constitute a mutually agreed upon termination of these Processing Terms. SpotOn and Member Bank are authorized by Client to charge the amount of daily chargebacks, fees and other amounts owed to SpotOn under these Processing Terms: (i) against each day's sales transactions; (ii) against any reserves; or (iii) by making an ACH debit against the Account. In the event of a Float Event, SpotOn reserves the right to assess to Client, and Client will pay to SpotOn, a cost of funds associated with the Float Event (which SpotOn may at its option assess as a transaction surcharge), the amount of which will be determined by SpotOn in its reasonable discretion (but no greater than the product of: (a) the rate equal to two basis points above the prime rate reported by The Wall Street Journal on the day of the Float Event, and (b) the dollar amount of the Float Event), and which may be changed by SpotOn from time to time, and such cost of funds will be effective as of the start of the Float Event and will be immediately payable by Client when assessed by SpotOn.

19. Reserve; Letter of Credit. As a specifically bargained for inducement for SpotOn to enter into these Processing Terms with Client, for the purposes of providing a deposit and a source of funds to pay SpotOn for any and all amounts owed by Client, SpotOn at its option reserves the right to (i) direct Member Bank to establish from amounts payable to Client under these Processing Terms, and/or cause Client to pay, a reserve of funds in an amount satisfactory to SpotOn to cover anticipated fees, chargebacks, returns, any other applicable assessments and any other actual or anticipated liabilities incurred or in good faith anticipated to be incurred by SpotOn or Member Bank on behalf of Client ("Reserve") and/or (ii) require Client to establish an irrevocable standby letter of credit, including additional and/or replacement letters of credit if required by SpotOn, with a beneficiary designated by SpotOn, and which are issued from a financial institution other than Member Bank or any of its affiliates, that is acceptable to SpotOn, in a format, with an expiration date, and in an amount acceptable to SpotOn in its sole discretion ("Letter of Credit"). The Reserve will be held in a depository account owned and held by Member Bank ("Reserve Account") as collateral but are the property of the Client. Additionally, SpotOn will have the right to debit or direct Member Bank to debit the Account to establish or maintain funds in the Reserve Account. Member Bank may deposit (or SpotOn may direct Member Bank to deposit) into the Reserve Account funds they would otherwise be obligated to pay Client hereunder, for the purpose of establishing or maintaining the Reserve in accordance with this Section. The Reserve funds will be maintained in the Reserve Account until each of the following has occurred: (a) these Processing Terms have been terminated, and (b) Client has paid in full all amounts owing or that could ever be owed under these Processing Terms, including, without limitation, all outstanding/uncollected amounts and chargebacks and trailing liabilities. Member Bank or SpotOn may, at any time, require that the amount on deposit in the Reserve Account be increased. Client understands and agrees that if Client is required to establish a Reserve Account, Client has an obligation under these Processing Terms to maintain at all times a balance in the Reserve sufficient to protect SpotOn against losses resulting from transactions initiated by Client. Client will only have a contingent right to repayment of the Reserve after all liabilities are paid in full, and in no event will Client be entitled to a return of any sums remaining in the Reserve Account before two hundred seventy (270) days following the effective date of termination of these Processing Terms. In the event Client fails to establish, for any reason whatsoever, a Reserve or a Letter of Credit as required above, SpotOn will have all of the rights and remedies available to SpotOn in these Processing Terms, including but not limited to exercising the rights and remedies of SpotOn for an Event of Default under Section 16 (*Default*).

In the event Client's sales transactions ("Daily Proceeds") after chargebacks, refunds, reserve withholdings, fees, and settlement payments for any given fiscal day are less than zero (\$0), the overdraft fees set forth in these Processing Terms will be charged to Client. SpotOn may fund overdrafts, liabilities and/or reserve deficits by instructing Member Bank and/or Processor to initiate deductions from subsequent Daily Proceeds. If such collections are inadequate, SpotOn may, at its option, obtain the required sums by making an ACH debit (or directed Member Bank to make such ACH debit) from the Account or Reserve Account. In addition, SpotOn may i) require that Client make a wire transfer to the Reserve Account within one (1) banking business day of notice; ii) collect under any guaranty; iii) make set-offs against any amounts due under these Processing Terms or any obligations owed by SpotOn to Client or any of its affiliates; and iv) take any other action authorized by law. Member Bank or SpotOn may, without notice to Client, withdraw from and apply deposits in the Reserve Account against any outstanding amounts Client owes under these Processing Terms or any other agreement between Client and Member Bank or SpotOn. In addition, SpotOn or Member Bank may debit the Reserve Account to exercise their rights under these Processing Terms to collect any amounts due to Member Bank or SpotOn, including, without limitation, rights of set-off and recoupment.

20. Special Obligations. Without limiting Client's other obligations set forth in these Processing Terms and in the Operating Regulations, Client acknowledges and agrees it is subject to the following: (i) Client is liable for all transactions submitted in connection with these Processing Terms, including but not limited to all acts, omissions, Cardholder disputes, and other Cardholder customer service-related issues related to Clients, (ii) Client must not submit, process, or deposit transactions on behalf of any other person or entity, (iii) SpotOn and/or Member Bank may immediately terminate these Processing Terms and/or hold all funds of Client upon the belief that Client will owe amounts to SpotOn under these Processing Terms or that Client has committed fraudulent activity or other activities as specified in the Operating Regulations or Bank Rules, or if Client is outside the credit policy approved by SpotOn, or if requested by a Member Bank, Card Network or

governmental entity, (iv) Client operates and accepts transactions only in the United States, (v) Client, nor its principals or affiliates, have never been terminated at the direction of the Card Networks, a member of the Card Networks and/or a government agency, (vi) Client is not engaged in any illicit or illegal activity, (vii) Client will only process transactions for the services and goods set forth on the Merchant Application and sold directly by Client, in accordance with all Operating Regulations and Bank Rules, (viii) SpotOn may refuse to process any or all transactions for any Client in SpotOn's reasonable discretion, and (ix) Client, and not SpotOn, will be responsible for resolving any issues, problems, or disputes with Cardholders.

21. Indemnification

(a) **By SpotOn.** Subject to the other limitations, terms and conditions of these Processing Terms, SpotOn will indemnify, defend, and hold harmless Client, and its directors, officers, employees, affiliates and agents from and against all third party proceedings, claims, losses, damages, demands, liabilities and expenses whatsoever, including all reasonable legal and accounting fees and expenses and all reasonable collection costs, incurred by Client, its directors, officers, employees, affiliates and agents to the extent solely and directly arising out of SpotOn's willful misconduct.

(b) **By Client.** Client will indemnify, defend, and hold harmless SpotOn, and its directors, officers, employees, affiliates and agents from and against all proceedings, claims, losses, damages, demands, liabilities and expenses whatsoever, including all reasonable legal and accounting fees and expenses and all reasonable collection costs, incurred by SpotOn, Processor, and/or Member Bank, its directors, officers, employees, affiliates and agents resulting from or arising out of or related to: (i) these Processing Terms, the Processing Services, the Astra Terms, and any services provided to client by a Third Party Provider, (ii) Client's processing activities, (iii) the business of Client or its customers, (iv) any sales transaction submitted hereunder and acquired by SpotOn, Processor, or Member Bank, (v) Client's negligence or willful misconduct; (vi) Client's breach of these Processing Terms; (vii) Client's noncompliance with any law, the Bank Rules, the Operating Regulations, or any other rules or regulations promulgated by or in conjunction with the Card Networks; (viii) any issue, problems, or disputes between Client and any customer; (ix) any Data Incident, any infiltration, hack, breach, or violation of the processing system of Client, Third Party Provider, or any other third party processor or system; or (x) any breach or nonperformance of any provision of these Processing Terms on the part of the Client, or its employees, agents, Third Party Providers, or customers.

(c) The indemnification of each party will survive the termination of the Agreement. The indemnified party will: (i) provide prompt written notice of any claim to the indemnifying party; (ii) cooperate with all reasonable requests of the indemnifying party; and (iii) surrender exclusive control of the defense and settlement of any third party claim to the indemnifying party provided that the indemnifying party will obtain the indemnified party's written consent prior to agreeing to any settlement or agreement that requires the indemnified party to make any admission of fault or to pay any amounts in connection with such settlement or agreement that are not fully paid for by the indemnifying party. The indemnified party will not unreasonably withhold or delay any consent required under this Section. The indemnified party may elect to participate in the action with an attorney of its own choice at its own expense.

22. Review of Settlement Activity and Reports; Notice of Failure by SpotOn.

Reports are provided electronically by SpotOn in accordance with its standard operating procedures and include an accounting for each currency with supporting detail of transaction activity, Daily Proceeds, Reserves, and funds transfers for transaction settlement services. It is Client's obligation to print and retain reports provided online, SpotOn makes no guaranty as to availability and may remove such reports from the Dashboard at any time. Reports will be upgraded, enhanced and/or modified by SpotOn in its sole discretion. Client agrees that it will review all reports, notices, and invoices prepared by SpotOn or its agent and made available to Client including but not limited to reports, notices, and invoices provided via SpotOn's online reporting tool. SpotOn reserves the right to send some or all of the reports and/or invoices and/or notices of any pricing changes permitted under these Processing Terms via email or other electronic transmission which SpotOn may change from time to time upon notice to Client in accordance with SpotOn's standard operating procedure. Client expressly agrees that Client's failure to notify SpotOn that Client has not received settlement funds within five (5) business days from the date that settlement was due to occur, or fails to reject any report, notice, or invoice within thirty (30) business days from the date the report or invoice is made available to Client, will constitute Client's acceptance of the same and waiver of any claims or errors not notified within such time period. In the event Client believes that SpotOn has failed in any way to provide the Processing Services, Client agrees to provide

SpotOn with written notice, specifically detailing any alleged failure, within thirty (30) days of the date on which the alleged failure first occurred.

23. Limit of Liability; Force Majeure; Limitation on Claim Period

(a) EXCEPT FOR THOSE EXPRESS WARRANTIES MADE IN THIS AGREEMENT, SPOTON AND MEMBER BANK DISCLAIM ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CLIENT ACKNOWLEDGES THAT THERE ARE RISKS ASSOCIATED WITH THE ACCEPTANCE OF CARDS AND CLIENT ASSUMES ALL SUCH RISKS EXCEPT AS MAY BE EXPRESSLY SET FORTH IN THIS AGREEMENT.

(b) Without limiting the foregoing, SpotOn will not be liable for lost profits, lost business or any incidental, special, consequential or punitive damages (whether or not arising out of circumstances known or foreseeable by SpotOn) suffered by Client, its customers or any third party in connection with the Processing Services provided under these Processing Terms. In no event will SpotOn be liable for any damages or losses that are wholly or partially caused by the Client, or its employees, agents, or Third Party Providers. In addition, in no event will SpotOn be liable for any damages or losses that are wholly or partially caused by SpotOn or its employees or agents that should have been reported to SpotOn in the manner provided under these Processing Terms, or that first occurred more than thirty (30) days prior to SpotOn's receipt of written notice from Client.

(c) The aggregate liability of SpotOn, Processor, and Member Bank related to or arising out of these Processing Terms will in no event exceed an amount equal to the lesser of (i) actual monetary damages incurred by Client, or (ii) the Fees paid to and retained by SpotOn for the particular Processing Services in question for the three (3) calendar months immediately preceding the date on which SpotOn received a written notice from Client detailing SpotOn's material nonperformance under these Processing Terms.

(d) SpotOn will not be deemed to be in default under these Processing Terms or liable for any delay or loss in the performance, failure to perform, or interruption of any Processing Services resulting, directly or indirectly, from a Force Majeure Event. Upon such an occurrence, performance by SpotOn will be excused until the cause for the delay has been removed and SpotOn has had a reasonable time to again provide the Processing Services.

(e) No cause of action, regardless of form, will be brought by either party more than one (1) year after the cause of action arose, other than one for the nonpayment of fees and amounts due SpotOn under these Processing Terms. Any restriction on SpotOn's liability under these Processing Terms will apply in the same manner to Processor and Member Bank. In the event Client has any claim against Member Bank arising in connection with the Processing Services, rights, and/or obligations defined these Processing Terms, Client will proceed against SpotOn (subject to the limitations and restrictions in these Processing Terms), and not against Member Bank, unless otherwise specifically set forth in the Operating Regulations. This Section will survive termination of these Processing Terms.

24. Controlling Documents. This Agreement (including the Merchant Application, the Personal Guaranty, and all addenda and schedules and exhibits of these Processing Terms and all documents and materials referenced in these Processing Terms) supersedes any and all other agreements, oral or written, between the parties with respect to the subject matter of these Processing Terms, and sets forth the complete and exclusive agreement between the parties with respect to the Processing Services and, unless specifically provided for in these Processing Terms, other services are not included as part of these Processing Terms. If there is a conflict between these Processing Terms and an addendum or schedule or exhibit attached to or referenced in these Processing Terms, the addendum or schedule or exhibit will control. If there is a conflict between the Bank Rules and these Processing Terms, the Bank Rules will prevail. If there is a conflict between Operating Regulations and these Processing Terms, the Operating Regulations will prevail. If there is a conflict between the Standard Terms or the Service Terms and these Processing Terms, these Processing Terms will prevail with respect to the Processing Services.

25. SpotOn's Right to Suspend or Cease Processing Services.

SpotOn may, immediately and without prior written notice, suspend or cease providing any Processing Services in these Processing Terms to Client if, in SpotOn's reasonable opinion (a) such Processing Service violates or would violate the Operating Regulations, Bank Rules, or any federal, state or local statute or ordinance or any regulation, order or directive of any governmental agency or court, (b) Client is accused by any federal, state or local jurisdiction of a violation of any applicable statute or ordinance or any

regulation, order or directive of any governmental agency or court; (c) Client's prior Card processing agreement was terminated at the direction of the Card Networks or a governmental agency; (d) Client is engaged in illicit or illegal activity (e) Client creates an undue financial, security, regulatory or other risk to SpotOn, Member Bank or the Card Networks, and/or (f) such Processing Service is in connection with a transaction that is high risk, outside of SpotOn's underwriting criteria, or likely to result in a chargeback. SpotOn may also suspend or cease providing any Processing Service in these Processing Terms to Client if directed to do so by Processor, Member Bank, or any Card Network. Should Client not process sales transactions through SpotOn's system for a period of one (1) year or more, SpotOn may remove Client from SpotOn's systems without notice, without relieving Client from any of Client's obligations under these Processing Terms.

26. Conversion; Deconversion. Client will, at Client's sole expense, take all necessary steps to, and will, promptly convert to SpotOn's system for the Processing Services in these Processing Terms no later than thirty (30) days after the execution of these Processing Terms by SpotOn or other such time period as agreed to by the parties in writing. Client's obligation to pay any fees and expenses incurred by SpotOn, including those fees and expenses from third parties, in connection with Client's conversion, will remain the sole responsibility of Client. Client agrees to be responsible for all direct and indirect costs (including but not limited to those incurred by SpotOn, its affiliates and/or agents) in connection with and/or related to Client's conversion from SpotOn at the termination of these Processing Terms and/or related to any conversion or programming effort affecting the Processing Services after Client's initial conversion to SpotOn.

27. Confidential Information

(a) **Confidential Information Supplied by SpotOn.** Client acknowledges that SpotOn will be providing Client with certain confidential information, including but not limited to, these Processing Terms and information relating to the finances, systems, methods, techniques, programs, devices and operations of SpotOn, Processor, Member Bank, and/or the Card Networks. Client will not disclose any such confidential information to any person or entity (other than to those employees and Third Party Providers of Client who participate directly in the performance of these Processing Terms and need access to such information). Without limiting the foregoing, Client agrees that it will fully comply with any and all confidentiality and security requirements of the Card Networks or as required by applicable law or regulation.

(b) **Client Information.** SpotOn will treat the confidential information of Client disclosed by Client to SpotOn in accordance with SpotOn's privacy policies, which may be updated or amended from time to time at SpotOn's sole discretion. Additionally, SpotOn may disclose any and all information and data about Client (including the personal information of Client's officers, directors, principals, and/or beneficial owners included in the Merchant Application) and its transactions to Processor, Member Bank, any Card Network, and any Third Party Providers (including without limitation, Astra), and any other third party used by SpotOn in connection with the Processing Services regardless of any other prior, contemporaneous, or subsequent agreement to the contrary between SpotOn and Client. Client should direct any questions or requests about SpotOn's privacy policies to a SpotOn customer service representative or Client's primary relationship manager, if applicable. Notwithstanding anything to the contrary in any privacy policy adopted or maintained by SpotOn or in these Processing Terms, SpotOn may use, disclose, share and retain any information provided by Client and/or relevant to the Processing Services, during the term and thereafter: (i) with Client's franchisor, Client's franchisee(s), Card Network(s) to which Client belongs and/or belonged as of the commencement of these Processing Terms, (ii) any affiliate of Client; (iii) in response to subpoenas, warrants, court orders or other legal processes; (iv) in response to requests from law enforcement agencies or government entities; (v) to comply with applicable laws or regulations; (vi) with SpotOn's affiliates, partners and agents, (vii) to perform analytic services for Client, SpotOn and/or others including but not limited to analyzing, tracking and comparing transaction and other data to develop and provide insights for such parties as well as for developing, marketing, maintaining and/or improving SpotOn's products and services; or (viii) to offer or provide the Processing Services or otherwise in performance of these Processing Terms.

(c) **Miscellaneous.** The parties acknowledge that the injury that would be sustained by the disclosing party as a result of the other party's violation of this Section cannot be compensated solely by money damages, and therefore agrees that the disclosing party will be entitled to seek injunctive relief and any other remedies as may be available at law or in equity in the event of a violation of the provisions contained in this Section. The restrictions contained in this Section will not apply to any information which becomes a matter of

public knowledge, other than through a violation of these Processing Terms or other agreements between the parties. This Section will survive termination of these Processing Terms.

(d) **Publicity.** Client agrees that SpotOn may issue a press release after the execution of these Processing Terms and/or after the conversion of Client to SpotOn's Processing Services. In any event, Client acknowledges and agrees that SpotOn may make public the execution of these Processing Terms by Client and/or any of Client's affiliates, and/or the Processing Services that may be or have been provided under the Agreement. Client agrees that SpotOn may include Client's name and logo on a list of SpotOn's customers, which may be made public. Client agrees that, upon SpotOn's request, Client will provide testimonial information related to the Processing Services used or received by Client under these Processing Terms. Client may not disclose the existence or terms of this Agreement without SpotOn's prior written consent.

28. Financial Statements; Risk Mitigation. If at any time Client is not a publicly traded company, Client must provide SpotOn with an audited financial statement for Client's most recent fiscal year end and/or quarterly financial statements prepared and certified by Client's chief financial officer (or equivalent position) within fifteen (15) days of SpotOn's request. Additionally, in the event that SpotOn's risk monitoring of Client indicates a risk of loss or regulatory concern to SpotOn and/or Member Bank or if SpotOn is required to do so by Member Bank or a Card Network, Client will promptly perform any or all of the following actions, as requested by SpotOn: (i) provide any documentation SpotOn requires to verify Client's business operations; (ii) modify its business practices; and/or (iii) take any risk mitigation steps necessary as identified by SpotOn.

29. Insurance. During the term of these Processing Terms, Client will maintain reasonable insurance coverage based on Client's business type, size, and operations, including but not limited to a commercial general liability insurance policy, an error and omissions policy, and a data/computer security and privacy policy. Such insurance coverage must cover Client's activities, obligations, and potential liability (including but not limited to the activities and obligations of its affiliates, agents, and subcontractors). Client will provide SpotOn with copies of such policies upon SpotOn's request. Client will be responsible for all claims, expenses, and loss payments, including but not limited to the cost of procuring such insurance policies and any deductibles.

30. Compliance with Law. Client represents and warrants to SpotOn that it complies with all applicable federal, state, and local laws and regulations in connection with Client's receipt of the Processing Services and as applicable to Client's business operations. SpotOn will comply with federal, state, and local laws and regulations applicable directly to SpotOn in its provision of the Processing Services.

31. Security, Data Incidents. Client will be solely responsible for the security, quality, accuracy, and adequacy of all transactions and information supplied under these Processing Terms, and will establish and maintain adequate audit controls to monitor the security, quality, maintenance, and delivery of such data. Without limiting the generality of the foregoing, Client warrants to SpotOn that it has implemented and will maintain secure systems for storing and processing information and for transmitting information to SpotOn. Client will ensure that it at all times complies with all PCI standards and adopts security and procedures sufficient to prevent unauthorized access or disclosure of SpotOn's confidential information, Cardholder data (including but not limited to Card numbers), any credentials issued to Client, or any personally identifiable information. In addition to Client fully complying with PCI, Client will, at Client's sole expense, within thirty days of the Effective Date and on an annual basis thereafter (or more frequently if required by SpotOn), obtain from an independent third party acceptable to SpotOn a certification of PCI compliance and submit a copy of such certification to SpotOn. SpotOn's acceptance of such PCI certification does not constitute a representation or warranty that Client is PCI compliant, nor does it relieve Client of any of its obligations or liabilities related to PCI compliance or data security under these Processing Terms, applicable law, or otherwise. Neither SpotOn nor Member Bank will have any liability whatsoever for the security or availability of any communications connection used in connection with the Processing Services provided under these Processing Terms. Client acknowledges that SpotOn is responsible only for the security of its own proprietary systems, and not for the systems of any third party, including, without limitation, any Third Party Provider. SpotOn will maintain all applicable PCI DSS requirements. Client will notify SpotOn immediately if Client becomes aware of or suspects a Data Incident. Client agrees to fully cooperate with SpotOn and any Card Network with respect to any investigation and/or additional requirements related to a suspected Data Incident. This section will survive termination of these Processing Terms.

32. Audits. At any reasonable time upon reasonable notice to Client, Client will allow auditors, including the auditors of any Card Network, Member Bank, or any third party designated by SpotOn or the applicable Card Network, to review the files held and the procedures followed by Client at any or all of Client's offices or places of business. Client will cooperate with and assist such auditors as may be necessary for them to complete their audit. In the event that a third-party audit is requested by a Card Network, Member Bank or regulatory agency, and/or required by the Operating Regulations or applicable law, SpotOn may, at its option, and at Client's sole expense, either retain a third party to perform the audit, or require that Client directly retain a specific third party auditor. If SpotOn requires that Client directly retain the auditor, Client will arrange immediately for such audit to be performed, and will provide SpotOn and the Card Networks with a copy of any final audit report. If Client is undergoing a forensic investigation (including at the time these Processing Terms are signed), Client must fully cooperate with the investigation until completed.

33. System Requirements and Upgrades. Client agrees that the Processing Services will be provided in accordance with SpotOn's then current systems, standards and procedures and that SpotOn will not be required to perform any special programming, to provide any special hardware or software or to implement any other system, program or procedure for Client. Unless otherwise agreed in writing by SpotOn, all sales transaction, settlement and other data and information used in connection with the Processing Services will be provided in SpotOn's then-current data formats and by means of SpotOn's then-current telecommunications configurations and protocols. SpotOn may make changes in the Processing Services based upon, but not limited to, technological developments, legislative or regulatory changes, or the introduction of new services by SpotOn. Client will comply with all time deadlines, equipment and software maintenance and upgrading requirements which SpotOn may reasonably impose on Client from time to time.

34. Title to the Processing Services. Client agrees it is acquiring only a nontransferable, non-exclusive right to use the Processing Services. SpotOn will at all times retain exclusive title to the Processing Services, including, without limitation, any materials delivered to Client under these Processing Terms and any invention, development, product, trade name, trademark, service mark, software program, or derivative of or relating to the Processing Services developed in connection with the Processing Services or during the term of these Processing Terms.

35. Limited Acceptance. If so indicated on the Merchant Application, Client acknowledges and agrees that it wishes to be a Limited Acceptance Client, which means that Client has elected to accept only certain Visa/Mastercard card types as indicated on the Merchant Application or via later notification. SpotOn has no obligation other than those expressly provided under the Operating Regulations and applicable law as they may relate to limited acceptance and SpotOn's obligations do not include policing card types at the point of sale. As a Limited Acceptance Client, Client will be solely responsible for the implementation of its decision for Limited Acceptance. Client will be solely responsible for policing, at the point of sale, the card type(s) of transactions it submits for processing by SpotOn. If Client submits a transaction for processing for a card type it has indicated it does not wish to accept, SpotOn may process that transaction and Client will pay the applicable fees, charges, and assessments associated with that transaction. For Client's convenience, a general description of Visa/Mastercard card types are:

(a) **Consumer Credit:** a consumer credit card issued by a U.S. issuer or a commercial credit card issued by a non-U.S. issuer; this category does not include Visa- or Mastercard-branded signature-based debit cards.

(b) **Consumer Debit:** a Visa- or Mastercard-branded signature-based debit card (including certain stored-value and prepaid cards).

(c) **Commercial:** a Visa- or Mastercard-branded credit card issued by a U.S. issuer that bears the descriptive term "Business Card," "Corporate Card," "Purchasing Card," "Fleet Card," or similar descriptive term indicated pursuant to the Operating Regulations.

The Merchant Application or applicable fee schedule will distinguish any card acceptance-related fees and pricing methodology associated with each limited acceptance category. Only if selected on the Merchant Application, Client wishes to be a Limited Acceptance Client, which means that Client will accept only the Visa/Mastercard card types indicated below:

- Visa Credit Cards
- Visa Debit Cards (signature based)
- Mastercard Credit
- Mastercard Debit Cards (signature based)

36. Security Interest and Setoff. This Agreement will constitute a security agreement under the Uniform Commercial Code. Client grants to SpotOn a security interest in and lien upon: (a) all funds at any time in the Account, regardless of the source of such funds, (b) all funds at any time in any Reserve Account, regardless of the source of such funds, (c) present and future sales drafts, (d) any amount which may be due to Client under these Processing Terms, including but not limited to all rights to receive any payments or credits under these Processing Terms, (e) the proceeds thereof, and (e) all inventory, cash, receivables, intellectual property, and other assets held by Client (collectively, the "Secured Assets"), to secure all of Client's obligations under these Processing Terms and any other agreements now existing or later entered into between Client, SpotOn, and/or Member Bank, including but not limited to its obligation to pay any amounts due and owing to SpotOn or Member Bank. In addition, the Secured Assets include, and SpotOn will have a security interest in and lien upon, any equipment purchased from SpotOn at a discounted price (which is any price lower than the list price of the equipment), until the full list price for such equipment has been paid. With respect to any Secured Assets maintained by Member Bank, Client authorizes Member Bank to comply with all demands made by SpotOn with respect to the Secured Assets without further consent or direction from Client, and Member Bank agrees to comply with the same. This security interest may be exercised by SpotOn without notice or demand of any kind by making an immediate withdrawal or freezing the Secured Assets. As such, SpotOn has control and a perfected security interest in the Secured Assets with Member Bank. Pursuant to Article 9 of the Uniform Commercial Code, as amended from time to time, SpotOn has control over and may direct the disposition of the Secured Assets, without further consent of Client. Client represents and warrants that no other person or entity has a security interest in the Secured Assets. With respect to such security interests and liens, SpotOn will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. Client acknowledges that SpotOn may file a UCC-1 Financing Statement or any other financing statement or document against the Secured Assets, and Client agrees to execute such financing statements or other documents to evidence SpotOn's security interest. Client will obtain from SpotOn written consent prior to granting a security interest of any kind in the Secured Assets to a third party. If a third party has an existing security interest in the Secured Assets, Client agrees to obtain a waiver from such third party acknowledging SpotOn's prior preferred interest in a form satisfactory to SpotOn. Client agrees that this is a contract of recoupment and SpotOn is not required to file a motion for relief from a bankruptcy action automatic stay to realize on any of the Secured Assets. Nevertheless, Client agrees not to contest or object to any motion for relief from the automatic stay filed by SpotOn or Member Bank. Client authorizes SpotOn and appoints SpotOn its attorney in fact to sign its name to any financing statement used for the perfection of any security interest or lien granted under these Processing Terms. In addition to the security interest in the Secured Assets, SpotOn will have a contractual right of setoff and right of recoupment against the Secured Assets.

SpotOn's contractual right of setoff and right of recoupment means that SpotOn may offset any outstanding/uncollected amounts owed to it from: any amounts it would otherwise be obligated to deposit into the Account and from any other amounts SpotOn or Member Bank may owe Client under these Processing Terms or any other agreement. Every such right of setoff will be deemed to have been exercised immediately upon the occurrence of an Event of Default without any action by SpotOn or notation in the SpotOn's records, although SpotOn may enter such set off on its books and records at a later time. Client warrants and represents that no other person or entity has a security interest in the Secured Assets. If a bankruptcy proceeding is filed by or against Client (whether the petition is filed voluntarily and/or involuntarily) under Title 11 of the U.S. Code ("Bankruptcy Code"), Client waives any applicable protection related to the automatic stay provisions of Bankruptcy Code § 362 (or any replacement section) and consents to an appropriate reserve of funds being established between the parties pursuant to these Processing Terms or by Court Order. In furtherance of the foregoing, Client acknowledges that in order to provide adequate protection under Bankruptcy Code § 362 to SpotOn, Client must create or maintain the Reserve Account as required by SpotOn, and SpotOn will have the right to offset against the Reserve Account for any and all obligations which Client may owe to SpotOn, without regard to whether the obligations relate to sales drafts initiated or created before or after the filing of the bankruptcy petition.

37. Authorization. Each of the parties represents and warrants on behalf of itself that it has full power and authority to enter into these Processing Terms (including but not limited to on behalf of those persons subject to the Personal Guaranty set forth in the Merchant Application and in these Terms and Conditions); that the execution, delivery and performance of these Processing Terms has been duly authorized by all necessary corporate,

limited liability company or partnership or other appropriate authorizing actions; that the execution, delivery and performance of these Processing Terms will not contravene any applicable by-law, corporate charter, operating agreement, partnership or joint venture agreement, law, regulation, order or judgment; that execution, delivery and performance of these Processing Terms will not contravene any provision or constitute a default under any other agreement, license or contract which such party is bound; and, that these Processing Terms are valid and enforceable in accordance with its terms.

38. Member Bank. SpotOn, Processor, and Member Bank may jointly or individually assert or exercise any rights or remedies provided to any of them under these Processing Terms. SpotOn, Processor, and Member Bank reserve the right to allocate the duties and obligations assigned to them under these Processing Terms between themselves, as they deem appropriate in their sole discretion. Member Bank has certain obligations to Client pursuant to the Operating Regulations. The Member Bank may delegate certain or all of its rights and/or duties to an affiliate of the Member Bank at any time, including but not limited to Processor, without notice to Client. The Member Bank and/or Processor may be changed, and its rights and obligations assigned to another party by SpotOn at any time without notice to Client. The identity of the applicable Member Bank will be made available in your Dashboard, as may be updated from time to time. Member Bank, the Card Networks, and those third parties to which Member Bank has delegated certain rights and obligations under these Processing Terms, including but not limited to third party processors, will be deemed third party beneficiaries under these Processing Terms and may, at their sole discretion, directly enforce these Processing Terms against Client.

39. Settlement Process; Agent of the Payee Designation. Unless otherwise indicated, SpotOn's role is limited to issuing payment instructions to Processor and Member Bank, and all settlement activity and other handling of processed transaction funds will be performed by Processor, Member Bank or such other third party provider as designated by SpotOn, not SpotOn. SpotOn will not take possession of Client's funds at any time. Client acknowledges and agrees that its settlement funds (a) may be held in a pooled depository account held at Member Bank or other financial institutions designated by SpotOn for the benefit of Client (or SpotOn's clients generally) before such funds are settled to Client; (b) may be transferred among more than one pooled depository account held for the benefit of Client (or SpotOn's clients generally) at Member Bank or other financial institutions before such funds are settled to Client; and (c) will be settled to Client's Account using the payment method selected by SpotOn and Member Bank in their sole discretion, including but not limited to the availability of Faster Funding. Notwithstanding the foregoing, SpotOn makes no guarantees, warranties, assurances, or promises regarding the timing of the settlement of funds to

Client's Account, including with respect to Faster Funding. Settlement of funds due to Client will be deposited by Member Bank or third party provider in the Account. In the event that SpotOn and Client mutually agree for SpotOn to receive and disburse settlement funds on behalf of Client or SpotOn is otherwise deemed to be involved in the settlement flow, Client agrees that it has irrevocably authorized SpotOn as its limited-purpose, non-fiduciary agent for purposes of receiving and disbursing funds on its behalf, including funds from Client's customers (including Cardholders) or a financial source on behalf of a Client customer. Subject to the terms of this Agreement, any such payments received by SpotOn will be deemed payment to the Client. In such event, Client will not seek recourse against the customer or the customer's financial source in the event SpotOn does not settle their funds to Client in accordance with these Processing Terms; Client's recourse for such event is solely against SpotOn. Client will not withhold any goods or services from the Cardholder for SpotOn's failure to settle the Cardholder's funds to Client. Client agrees that SpotOn may direct Member Bank to hold or redirect all funds in the settlement account or otherwise held for the benefit of Client if SpotOn reasonably determines that there are inconsistent instructions regarding settlement or claims on the funds within the settlement account (including, without limitation, any claim by a judgment creditor of Client or of claims of a third party, levy or other legal process, or proceeding in bankruptcy). In its sole discretion, SpotOn may elect to interplead any or all funds, freeze or hold funds, prevent withdrawals or transfers, or otherwise act to prevent or reduce loss or risk to SpotOn, and, in addition to any other remedy SpotOn may have, Client will reimburse SpotOn for any costs associated with the same. With respect to any Faster Funding payment method that is carried out through push to card or OCT ("Push to Card"), Client acknowledges and agrees that settlement may only be made through Push to Card if: (a) SpotOn, in its sole discretion, elects to utilize Push to Card as the Faster Funding payment method for Client; (b) Client provides qualifying debit card information to SpotOn as SpotOn may require from time to time; and (c) Client's Card issuing bank participates in a Push to Card program.

SpotOn will have no obligation to discover or correct, or have any liability resulting from, inaccuracies in the Card account information provided to SpotOn by Client, and SpotOn makes no representations, warranties, or guarantees of any kind with respect to Push to Card, including that Client will receive Push to Card settlement in an expedited or the most expeditious possible time-frame for any particular transaction or for its transactions in the aggregate. Client acknowledges that certain financial institutions may delay the posting of credits from Push to Card transactions which may delay the availability of funds to Client. Push to Card may only be used for disbursements made to accounts within the United States.

40. Third Party Materials. Client acknowledges that the Processing Services or other offerings provided by SpotOn may utilize or include certain materials, components, or tools supplied by third parties ("Third Party Materials"). Third Party Materials are proprietary and are owned and controlled by their respective owners. Client's use of Third Party Materials may be subject to and governed by the applicable third party's terms of use or service agreements, and Client agrees to abide by such terms or agreements with respect to such Third-Party Materials.

41. Direct Processor Agreements. Certain Card Networks may require that Client also enter into a direct contractual relationship with Processor and/or Member Bank if Client is categorized within certain MCC codes designated by the Card Networks and Client's card transaction volume exceeds certain thresholds established by the Card Networks or other such criteria set forth in the Operating Regulations. Where this direct contractual relationship is required by the Operating Regulations, by agreeing to these Processing Terms, Client agrees to be automatically bound to the terms and conditions of the Direct Merchant Services Agreement attached as Exhibit A, effective as of the date Client reaches the thresholds which obligate it to be party to a direct agreement with Member Bank. Member Bank and/or Processor may independently enforce such agreement.

42. Cardholder Fee Programs. If Client elects to impose a surcharge, convenience fee, or similar fee to Cardholders with respect to credit Card transactions, or if Client elects to implement a cash discount program, Client is solely responsible for its compliance with all applicable Operating Regulations and all present and future federal and state laws and regulations relating to such programs (as well as any state or federal laws, guidance or initiatives directed at "junk fees," "drip fees," or fees that are unfair or deceptive) and all related required consumer disclosures. While SpotOn may, in its discretion, assist Client with disclosures and practices relating to such programs, SpotOn's provision or approval of any materials or practices will not be deemed a confirmation that such materials or practices comply with the Operating Regulations or applicable law and will not in any way relieve Client from its responsibility to ensure that all program materials and practices comply with the Operating Regulations and applicable law. Client must provide SpotOn with at least forty-five (45) days prior written notice before implementing any surcharge program.

43. American Express OptBlue Program. In the event Client elects to participate in the American Express OptBlue Program ("Program") to accept American Express Cards, the following terms and conditions will apply. Capitalized terms in this Section that are not otherwise defined in these Processing Terms will have the meaning ascribed to them in the American Express Operating Guide or the American Express OptBlue Program Operating Regulations.

- Client must comply with, and accept American Express Cards in accordance with, the terms of this Agreement and the American Express Merchant Operating Guide, as such terms may be amended from time to time. The American Express Merchant Operating Guide is incorporated by reference into these Processing Terms (available at: https://icm.aexp-static.com/content/dam/gms/en_us/optblue/us-mog.pdf).
- Client expressly authorizes SpotOn to submit transactions to, and instruct settlement from, American Express on behalf of the Client. Client agrees that SpotOn may collect and disclose transaction data, Client data, and other information regarding Client and transactions to American Express, and that American Express may use such information: (i) to perform its responsibilities in connection with the Program; (ii) to promote American Express; (iii) to perform analytics and create reports; and (iv) for any other lawful business purposes, including commercial marketing communications purposes within the parameters of the Program, and important transactional or relationship communications from American Express.

- American Express may use the information about Client obtained in these Processing Terms at the time of setup to screen and/or monitor Client in connection with American Express marketing and administrative purposes.
- Client agrees it may receive messages from American Express, including important information about American Express products, services, and resources available to its business. Client may opt-out of receiving future commercial marketing communications from American Express by checking the box below; however, Client may continue to receive marketing communications while American Express updates its records to reflect this choice. Opting out of commercial marketing messages will not preclude Client from receiving important transactional or relationship messages from American Express. By checking the appropriate box on the Merchant Application, Client may opt out of receiving future commercial marketing communications from American Express.
- Client acknowledges and agrees that it may be converted from the Program to a direct American Express Card acceptance relationship with American Express if and when it becomes a High CV Merchant in accordance with the American Express OptBlue Program Operating Regulations (Section 10.5, "High CV Merchant Conversions"). Client expressly agrees that upon conversion, (i) Client will be bound by American Express' then-current Card Acceptance Agreement; and (ii) American Express will set pricing and other fees payable by Client for Card acceptance.
- American Express may use the information obtained in the Merchant Application at the time of setup to screen, communicate, and/or monitor Client in connection with American Express Card marketing and administrative purposes.
- Client will not assign to any third party any payments due to it under these Processing Terms, and all indebtedness arising from Charges will be for bona fide sales of goods and services (or both) at Client's Establishments and free of liens, claims, and encumbrances other than ordinary sales taxes; provided, however, that Client may sell and assign future transaction receivables to payment facilitator, its affiliated entities and/ or any other cash advance funding source that partners with payment facilitator or its affiliated entities, without consent of American Express.
- Notwithstanding anything in these Processing Terms to the contrary, American Express will have third-party beneficiary rights, but not obligations, to these Processing Terms that will fully provide American Express with the ability to enforce the terms of this Agreement against Client.
- Client may opt out of accepting American Express Cards at any time without directly or indirectly affecting its rights to accept other Card Networks' Cards or payment products.
- Client agrees that SpotOn will have a right to terminate Client's right to accept American Express Cards if Client breaches any of the provisions in this Section or the American Express Merchant Operating Guide. SpotOn will further have the right to immediately terminate Client for cause or fraudulent or other activity, or upon American Express' request.
- Client's refund policies for purchases on American Express Cards must be at least as favorable as its refund policy for purchases on any other Card Networks' Cards, and the refund policy must be disclosed to Cardmembers at the time of purchase and in compliance with Applicable Law. Client may not bill or attempt to collect from any Cardmember for any American Express purchase or payment on the Card unless a Chargeback has been exercised, Client has fully paid for such Charge, and it otherwise has the right to do so.
- Client must: (i) comply with all Applicable Laws, rules and regulations relating to the conduct of Client's business; (ii) comply with the DSR and PCI DSS, each as described in Chapter 15 of the American Express OptBlue Program Operating Regulations, "Data Security"; (iii) report all instances of a Data Incident immediately to the payment facilitator after discovery of the incident; (iv) cease all use of, and remove American Express licensed marks from Client's website and wherever else they are displayed upon termination of these Processing Terms or a Client's participation in the Program.

Client agrees to ensure data quality and that transaction data and customer information is processed promptly, accurately, and completely, and complies with the American Express Technical Specifications. Client is responsible for being aware of and adhering to privacy and data protection laws and provide specific and adequate disclosures to Cardmembers of collection, use, and processing of personal data.

44. Modification of Agreement. Except as otherwise provided in this Agreement, this Agreement, including any addendum or schedule or exhibit of this Agreement, will only be modified or amended by an instrument in writing signed by Merchant and SpotOn. Notwithstanding the foregoing, SpotOn may modify this Agreement upon thirty (30) days prior notice (including notice made electronically) to Merchant in connection with SpotOn's updates and modifications in the general course of business to its form agreement with its sub-merchants and not solely limited to Client's Agreement. Client's continued use of the Processing Services after such thirty (30) day period will constitute Client's acceptance of and agreement to such modifications. Client agrees that SpotOn may amend this Agreement immediately upon notice (including notice made electronically) to Client in accordance with SpotOn's standard operating procedures if such amendment is required by SpotOn's Third Party Provider, Processor, Member Bank, or any Card Network, including without limitation in order to add additional Card Network requirements or Operating Regulations. Any changes, additions, stipulations or deletions, including lining out, by Client, except where indicated by a space to be filled in (e.g., the space for Client's name and address), will not be deemed to be agreed to or binding upon SpotOn unless agreed to in writing in the form of an amendment signed by each party.

45. Binding on Successors; Assignment. This Agreement and all of the provisions of this Agreement will be binding upon and inure to the benefit of the parties and their respective heirs, administrators, successors, transferees and assignees. Neither these Processing Terms nor any interest in these Processing Terms may directly or indirectly be transferred or assigned by Client, in whole or in part (by operation of law or otherwise), without the prior written consent of SpotOn. Client will remain liable for any amounts owed under these Processing Terms after an unauthorized transfer or assignment by Client, even if SpotOn continues to provide Processing Services to such transferee or assignee. SpotOn may assign its rights and obligations under these Processing Terms without Client's consent. These Processing Terms are for the benefit of, and may be enforced only by, SpotOn and Client and their respective successors and permitted transferees and assignees, and is not for the benefit of, and may not be enforced by, any third party. Notwithstanding the foregoing, Processor, Member Bank, and any Card Network may, at any time, directly enforce these Processing Terms and Client's compliance with the Operating Regulations.

46. Notices

(a) **By Client:** All notices, requests, demands and other communications to be delivered by Client under these Processing Terms, unless specified otherwise in these Processing Terms, will be in writing and will be delivered by nationally recognized overnight carrier, registered or certified mail, postage prepaid, to SpotOn at the address listed for SpotOn in the preamble of these Processing Terms, Attention: General Counsel/Legal Department. Client expressly agrees that it will send written notice to SpotOn's General Counsel/Legal Department at least ten (10) business days prior to initiating proceeding against or involving SpotOn.

(b) **By SpotOn:** All notices, requests, demands and other communications to be delivered by SpotOn or Member Bank under these Processing Terms unless specified otherwise in these Processing Terms will be in writing and will be delivered by email, facsimile, statement message, nationally recognized overnight carrier, or registered or certified mail, postage prepaid, to Client at the Client address, fax, or email provided in the Merchant Application, Attention President/Owner; or to such other address or to such other person as Client will have last designated by written notice to SpotOn. Notices, etc., so delivered will be deemed given upon receipt, or, if such notice has been provided by SpotOn by statement message, such notice will be deemed delivered upon Client's ability to access such relevant statement.

47. Remedies. The rights and remedies conferred upon SpotOn and Member Bank in these Processing Terms are not intended to be exclusive of each other or of any other rights and remedies of SpotOn and Member Bank under these Processing Terms, at law, or in equity. Rather, each and every right of SpotOn and Member Bank in these Processing Terms, at law, or in equity will be cumulative and concurrent and in addition to every other available right and remedy. All expenses (including, without limitation, reasonable attorneys' fees) that SpotOn incurs in responding to legal process

from third parties, including but not limited to Card Networks and governmental entities, related to a claim against or investigation of Client will be reimbursed and owed by Client to SpotOn.

48. Personal Guaranty. The individual signers and guarantors of the Continuing Personal Guaranty section of the Merchant Application ("**Guarantors**"), jointly and severally (if there is more than one Guarantor), agree to the terms set forth in that section of the Merchant Application and in this Section 48 ("**Personal Guaranty**") and unconditionally guarantee to SpotOn the full and complete performance of all obligations of Client (to the extent not prohibited by the Operating Regulations) and the full and prompt payment of all amounts due to SpotOn from Client, whether arising under these Processing Terms (as amended from time to time) or otherwise, including without limitation all promises and covenants of Client and all amounts payable under these Processing Terms. This Guaranty means, among other things, that SpotOn can demand performance or payment from any Guarantor if Client fails to perform any obligation or pay any amount Client owes under these Processing Terms. SpotOn will have immediate recourse against Guarantors for the full and immediate payment of any guaranteed amount or any portion thereof which has not been paid by SpotOn to Client. Guarantors agree that their liability under this Guaranty will be absolute and unconditional and will not be limited or canceled in the event: (1) the Processing Terms cannot be enforced against Client for any reason, including, without limitation, the initiation of bankruptcy proceedings; (2) either SpotOn or Member Bank agrees to changes or modifications to the Processing Terms, with or without notice to Guarantors; (3) SpotOn releases any other Guarantor or Client from any obligation under this Guaranty or these Processing Terms, as applicable; (4) any Law affects the rights of either SpotOn or, Client, or Member Bank under these Processing Terms; and/or (5) anything else happens that may affect the rights of SpotOn against Client or any other Guarantor. This is a guaranty of payment and not of collection. Each Guarantor further agrees that: (a) SpotOn may delay enforcing any of its rights under this Guaranty without losing such rights; (b) SpotOn can demand payment from any Guarantor without first seeking payment from Client or any other Guarantor or from any security held by Member Bank or SpotOn; and (c) such Guarantor will pay all court costs, attorneys' fees, and collection costs incurred by SpotOn in connection with the enforcement of these Processing Terms or this Guaranty, whether or not there is a lawsuit, and such additional fees and costs as may be directed by a court. This Guaranty is freely and voluntarily given, and Guarantors recognize that SpotOn would not enter into these Processing Terms without such Guaranty. Guarantors understand and agree that this Guaranty will be subject to the exclusive choice of law and venue requirements as those set forth in these Processing Terms and agree not to bring any action in any venue other than set forth in Section 50 (*Choice of Law; Jurisdiction; Venue*) below. Guarantors waive, to the fullest extent possible under law, the defense of *forum non conveniens*. If any portion of this Guaranty is determined to be invalid, illegal, or unenforceable, such provision will remain enforceable to the fullest extent permitted by law and the validity, legality, and enforceability of the remaining provisions will not in any way be affected or impaired. This Guaranty will survive termination of these Processing Terms. Guarantors also waive any right to a jury trial or class action, and agree to such waiver as set forth in Section 51 (*Arbitration Agreement; Class Action Waiver*).

49. No Waiver. If either party waives in writing an unsatisfied condition, representation, warranty, or obligation under these Processing Terms, in whole or in part, the waiving party will be barred from recovering, and thereafter may not seek to recover, any damages, claims, losses, liabilities or expenses, including, without limitation, legal and other expenses, from the other party in respect of the matter or matters so waived. Except as otherwise specifically provided for in these Processing Terms, the failure of any party to promptly enforce its rights in these Processing Terms will not be construed to be a waiver of such rights unless agreed to in writing. Any rights and remedies specifically provided for in any addendum or schedule or exhibit are in addition to those rights and remedies set forth in these Processing Terms and/or available to SpotOn and Member Bank at law or in equity.

50. Choice of Law; Jurisdiction; Venue. This Agreement will be governed by, and construed and enforced in accordance with, the laws of the State of Delaware without regard to any conflicts of law provisions. Exclusive jurisdiction over any dispute arising out of this Agreement or any action to enforce rights under this Agreement, including any claim for injunctive or other equitable relief or to enforce a binding arbitration award, shall be in the state or federal courts located in Chicago, Illinois. Client hereby irrevocably submits to the service of process, personal jurisdiction, and venue of the state and federal courts located within Chicago, Illinois for the purpose of litigating all such claims or disputes, including for enforcing an arbitration award, arising out of or in any way relating to this Agreement and/or pertaining in any way to the relationship between Client and SpotOn.

Client further agrees it will not allege forum non-conveniens or otherwise seek to bring or move any such action in or to any other location. All other claims arising out of or in connection with this Agreement shall be brought pursuant to Section 51 (*Arbitration Agreement*).

51. Arbitration Agreement; Class Action Waiver. ALL DISPUTES ARISING OUT OF OR RELATED TO THESE PROCESSING TERMS WILL BE GOVERNED BY THE ARBITRATION AGREEMENT SET FORTH IN SECTION 11 OF THE STANDARD TERMS. AS SET FORTH IN THE ARBITRATION AGREEMENT, CLIENT AND SPOTON HEREBY ACKNOWLEDGE AND AGREE THAT THEY EACH WAIVE THE RIGHT TO TRIAL BY JURY IN ANY MATTER UNDER, RELATED TO, OR ARISING OUT OF THESE PROCESSING TERMS, ANY PROCESSING SERVICES, ANY TRANSACTIONS, OR ANY RELATIONSHIPS CONTEMPLATED UNDER THIS AGREEMENT TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. IN ADDITION, CLIENT AND SPOTON ACKNOWLEDGE AND AGREE THAT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, (1) ARBITRATION WILL BE CONDUCTED IN AN INDIVIDUAL CAPACITY ONLY AND NOT AS A CLASS OR OTHER CONSOLIDATED ACTION, INCLUDING BUT NOT LIMITED TO CLASS ACTION LAWSUITS, CLASS-WIDE ARBITRATIONS, PRIVATE ATTORNEY GENERAL ACTIONS, JOINT OR CONSOLIDATED LAWSUIT OR JOINT OR CONSOLIDATED ARBITRATION, AND ANY OTHER PROCEEDING WHERE SOMEONE ACTS IN A REPRESENTATIVE CAPACITY; (2) THE ARBITRATOR MAY AWARD RELIEF ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO RESOLVE THE INDIVIDUAL PARTY'S CLAIM.

52. Severability. If any term or provision of these Processing Terms is held to be invalid or unenforceable, the remainder of these Processing Terms and any other application of such term or provision will not be affected.

53. Facsimile and Electronic Signatures. Client and SpotOn agree that electronic signatures will have the same legal effect as original (i.e., ink) signatures and that an electronic, scanned, facsimile, or duplicate copy of such signatures will be deemed an original and may be used as evidence of execution. If Client enters into these Processing Terms electronically (including through the submission of an online Merchant Application), the following terms and conditions apply: (a) Client understands that the electronic application process in which Client engages uses an electronic signature process that allows Client to sign and agree to legally binding agreements online by using Client's computer mouse to click and enter and agree. Client understands that these signatures are legally binding, and are governed by the Federal Electronic Signatures in Global and National Commerce Act and/or the Uniform Electronic Transactions Act governances (or an amended version thereof) as applicable in Client's state of organization or incorporation. Client agrees to be bound by these governances. (b) The person signing on behalf of Client represents and warrants that what he/she provides online is authorized by Client, on behalf of what he/she is signing. Such individual also agrees that the electronic signatures that he/she provides online will be binding upon him/her and Client, on behalf of which he/she is signing, and will not be construed by a court of law to have any less effect than a standard ink or paper signature. (c) Client acknowledges that: (i) Client is able to print a complete and legible copy of these Processing Terms; (ii) Client was capable of opening, reading, printing, downloading and/or saving these Processing Terms; and (iii) Client had reasonable opportunity to open these Processing Terms, read it, and agree to it by clicking or selecting "Accept", "Submit," "Agree," or other such similar words indicating acceptance of these Processing Terms in connection with the submission of its Merchant Application. (d) If Client does not agree to the terms and conditions of these Processing Terms, Client should not submit the Merchant Application or indicate acceptance of these Processing Terms.

54. Headings and Construction. The headings used in these Processing Terms are inserted for convenience only and will not affect the interpretation of any provision. Client and SpotOn each acknowledge that the limitations and exclusions contained in these Processing Terms have been the subject of active and complete negotiation between the parties and represent the parties' voluntary agreement. The parties agree that the terms and conditions of these Processing Terms will not be construed in favor of or against any party by reason of the extent to which any party or its professional advisors participated in the preparation of this document.

55. Counterparts. These Processing Terms may be executed and delivered in counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

EXHIBIT A

MERCHANT SERVICES AGREEMENT FOR MERCHANTS

This MERCHANT SERVICES AGREEMENT FOR MERCHANTS ("Agreement") is made among WORLDPAY, LLC, having its principal office at 8500 Governors Hill Drive, Symmes Township, OH 45249-1384 and its designated Member Bank (collectively "Acquirer") and the party identified on the merchant application ("Merchant") submitted in connection with the agreement between Merchant and SpotOn Transact, Inc. ("SpotOn"). Acquirer will provide Merchant with certain payment processing services ("Services") in accordance with the terms of this Agreement. In consideration of Merchant's receipt of credit or debit card funded payments, and participation in programs affiliated with Mastercard International Inc. ("Mastercard"), VISA U.S.A. Inc. ("VISA"), Discover ("Discover"), and certain similar entities (collectively, "Card Networks"), Merchant is required to comply with the Operating Regulations (defined below) as they pertain to applicable credit and debit card payments. In addition, if Merchant meets certain requirements under the Operating Regulations or a Card Network or the Operating Regulations otherwise require, Merchant may be required to enter into a direct relationship with an entity that is a member of the Card Networks. By executing this Agreement, Merchant has fulfilled such requirement. However, Acquirer understands that Merchant may have contracted with SpotOn to obtain certain processing services and that SpotOn may have agreed to be responsible to Merchant for all or part of Merchant's obligations contained in this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises contained in this Agreement, the parties agree as follows:

1. Certain Merchant Responsibilities. Merchant agrees to comply, and to cause employees and third parties acting as Merchant's agent ("Agents") to comply, with each Card Network's and other payment network's by-laws, operating regulations and/or all other rules, policies and procedures, including but not limited to the Payment Card Industry Data Security Standard, the VISA Cardholder Information Security Program, the Mastercard Site Data Protection Program, and any other program or requirement that may be published and/or mandated by the Card Networks or payment networks, including with respect to the use of a Card Network's mark(s) (collectively "Operating Regulations"). Such Operating Regulations are incorporated by reference, and will control with respect to any conflict in terms between this Agreement and such Operating Regulation. Merchant acknowledges and agrees that it is not a third-party beneficiary of any Operating Regulation, however, a Card Network may be a third-party beneficiary of this Agreement, and that certain Operating Regulations govern the relationships between various parties such as the Card Networks, Processor, Member Bank, and/or other entities (e.g., partners, etc.), and that any failure by Processor to abide by such Operating Regulation does not provide the basis for a breach of the Agreement claim by Merchant or any other third party. The Card Networks make excerpts of their Operating Regulations available online, including via:

- <https://www.mastercard.us/en-us/business/overview/support/rules.html>;
- <https://usa.visa.com/support/consumer/visa-rules.html>;
- https://www.discoverglobalnetwork.com/content/dam/discover/en_us/dgn/pdfs/MIT-Implementation-Guide.pdf;
- <https://www.americanexpress.com/merchantopguide>.

Merchant also agrees to comply with all applicable state, federal, and local laws, rules, and regulations ("Laws"). Merchant hereby authorizes Acquirer to conduct background checks on Merchant, including but not limited to credit checks and banking and financial history investigations, and share any information required by a Card Network. Without limiting the foregoing, Merchant agrees that it will fully comply with any and all anti-money laundering laws and regulations, including but not limited to the USA PATRIOT Act, the Bank Secrecy Act, the Federal Trade Commission and obligations imposed by the US Treasury's Office of Foreign Assets Control (OFAC), and provide all necessary documentation to Acquirer promptly upon request. For purposes of this section, Agents include, but are not limited to, Merchant's software providers and/or equipment providers.

If appropriately indicated in Merchant's agreement with SpotOn, Merchant may be a limited-acceptance merchant, which means that Merchant has elected to accept only certain Visa and Mastercard card types (i.e., consumer credit, consumer debit, and commercial cards) and Merchant must display appropriate signage to indicate the same. Acquirer has no obligation other than those expressly provided under the Operating Regulations and applicable law as they may relate to limited acceptance. Merchant, and not Acquirer, will be solely responsible for the implementation of its decision for limited acceptance, including but not limited to policing the card type(s) accepted at the point of sale.

Merchant shall only complete sales transactions produced as the direct result of bona fide sale made by Merchant to cardholders and is expressly prohibited from presenting sales transactions which are produced as a result of sales made by any person or entity other than Merchant, or for any purposes related to any fraudulent, unauthorized, illegal or prohibited activity, including but not limited to money-laundering or financing of terrorist activities. All fees associated with each Card Networks' transactions must be separate and distinguishable from fees associated with other Card transactions.

Merchant may set a minimum transaction amount to accept a card that provides access to a credit account, under the following conditions: i) the minimum transaction amount does not differentiate between card issuers; ii) the minimum transaction amount does not differentiate between Mastercard, Visa, or any other acceptance brand; and iii) the minimum transaction amount does not exceed ten dollars (or any higher amount established by the Federal Reserve). Merchant may set a maximum transaction amount to accept a card that provides access to a credit account, under the following conditions: Merchant is a i) department, agency or instrumentality of the U.S. government; ii) corporation owned or controlled by the U.S. government; or iii) Merchant whose primary business is reflected by one of the following MCCs: 8220, 8244, 8249 – Schools, Trade or Vocational; and the maximum transaction amount does not differentiate between Mastercard, Visa, or any other acceptance brand.

2. Merchant Prohibitions. Merchant must not i) require a cardholder to complete a postcard or similar device that includes the cardholder's account number, card expiration date, signature, or any other card account data, including CVV2, in plain view when mailed; ii) add any tax or surcharge to transactions, except in compliance with Operating Regulations and applicable law; iii) request or use an account number for any purpose other than as payment for its goods or services; iv) disburse funds in the form of travelers checks if the sole purpose is to allow the cardholder to make a cash purchase of goods or services from Merchant; v) disburse funds in the form of cash unless Merchant is dispensing funds in the form of travelers checks, TravelMoney cards, or foreign currency (in such case, the transaction amount is limited to the value of the travelers checks, TravelMoney cards, or foreign currency, plus any commission or fee charged by the Merchant), or Merchant is participating in a cash back service; vi) submit any transaction receipt for a transaction that was previously charged back to the Acquirer and subsequently returned to Merchant, irrespective of cardholder approval; vii) accept a Visa consumer credit card or commercial Visa product issued by a U.S. issuer to collect or refinance an existing debt; viii) accept a card to collect or refinance an existing debt that has been deemed uncollectable; or ix) submit a transaction that represents collection of a dishonored check. Merchant further agrees that, under no circumstance, will Merchant store cardholder data in violation of the Laws or the Operating Regulations including but not limited to the storage of track-2 data. Neither Merchant nor its Agent shall retain or store magnetic-stripe data subsequent to the authorization of a sales transaction.

3. Settlement. Upon receipt of Merchant's sales data for card transactions, Acquirer will process Merchant's sales data to facilitate the funds transfer between the various Card Networks and Merchant. After Acquirer receives credit for such sales data, subject to the terms set forth in this Agreement, Acquirer or an affiliate of Acquirer will fund Merchant, either directly to the Merchant-Owned Designated Account or through SpotOn to an account designated by SpotOn ("SpotOn Designated Account"), at Acquirer's discretion, for such card transactions. Merchant agrees that the deposit of funds to the SpotOn Designated Account shall discharge Acquirer or an affiliate of Acquirer of its settlement obligation to Merchant, and that any dispute regarding the receipt or amount of settlement shall be between SpotOn and Merchant. Acquirer or an affiliate of Acquirer will debit the SpotOn Designated Account for funds owed to Acquirer as a result of the Services provided under this Agreement, provided that Acquirer or an affiliate of Acquirer may also debit Merchant's designated

demand deposit account (“Merchant-Owned Designated Account”) upon receipt of such account information from Merchant or SpotOn, or if Acquirer or an affiliate of Acquirer deposits settlement funds into the Merchant-Owned Designated Account. Further, if a cardholder disputes a transaction, if a transaction is charged back for any reason, or if Acquirer or an affiliate of Acquirer reasonably believes a transaction is unauthorized or otherwise unacceptable, the amount of such transaction may be charged back and debited from Merchant or SpotOn.

4. Term and Termination. This Agreement shall be binding upon Merchant upon Merchant’s execution. The term of this Agreement shall begin, and the terms of the Agreement shall be deemed accepted and binding upon Acquirer, on the date Acquirer accepts this Agreement by issuing a merchant identification number, and shall be coterminous with SpotOn’s agreement with Merchant.

Notwithstanding the foregoing, Acquirer may immediately cease providing Services and/or terminate this Agreement without notice if (i) Merchant or SpotOn fails to pay any amount to Acquirer when due, (ii) in Acquirer’s opinion, provision of a service to Merchant or SpotOn may be a violation of the Operating Regulations or any Laws, (iii) Acquirer believes that Merchant has violated or is likely to violate the Operating Regulations or the Laws, (iv) Acquirer determines Merchant poses a financial or regulatory risk to Acquirer, Member Bank, or a Card Network, (v) Acquirer’s agreement with SpotOn terminates, (vi) any Card Network de-registers SpotOn, (vii) Acquirer ceases to be a member of the Card Networks or fails to have the required licenses, or (viii) Acquirer is required to do so by Member Bank or any of the Card Networks.

5. Limits of Liability. Merchant agrees to provide Acquirer, via a communication with SpotOn, with written notice of any alleged breach by Acquirer of this Agreement, which notice will specifically detail such alleged breach, within thirty (30) days of the date on which the alleged breach first occurred. Failure to so provide notice shall be deemed an acceptance by Merchant and a waiver of any and all rights to dispute such breach. EXCEPT FOR THOSE EXPRESS WARRANTIES MADE IN THIS AGREEMENT, ACQUIRER DISCLAIMS ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Merchant’s sole and exclusive remedy for any and all claims against Acquirer arising out of or in any way related to the transactions contemplated in this Agreement shall be termination of this Agreement. In the event that Merchant has any claim arising in connection with the Services, rights, or obligations defined in this Agreement, Merchant shall proceed against SpotOn and not against Acquirer, unless otherwise specifically set forth in the Operating Regulations. In no event shall Acquirer have any liability to Merchant with respect to this Agreement or the Services. Merchant acknowledges Acquirer is only providing this Agreement to assist in SpotOn’s processing relationship with Merchant, that Acquirer is not liable for any action or failure to act by SpotOn, and that Acquirer shall have no liability whatsoever in connection with any products or services provided to Merchant by SpotOn. If SpotOn is unable to provide its services to Merchant in connection with this Agreement and Acquirer elects to provide those services directly, Merchant acknowledges and agrees that the provisions of this Agreement will no longer apply and the terms of Acquirer’s then-current Bank Card Merchant Agreement, which would be provided to Merchant upon request, will govern Acquirer’s relationship with Merchant. If SpotOn subsequently provides its services to Merchant in connection with this Agreement, Acquirer will cease to provide such services after receipt of notice from SpotOn and this Agreement will govern Acquirer’s relationship with Merchant.

6. Miscellaneous. This Agreement is entered into, governed by, and construed pursuant to the laws of the State of Ohio without regard to conflicts of law provisions. This Agreement may not be assigned by Merchant without the prior written consent of Acquirer. This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective successors, transferees, and assignees. This Agreement is for the benefit of, and may be enforced only by, Acquirer and Merchant and is not for the benefit of, and may not be enforced by, any other party. Merchant shall not disclose any Acquirer confidential information to any person or entity (other than to those employees or agents of Merchant who participate directly in the performance of this Agreement and need access to such information, or, only to the extent strictly necessary, in response to a valid subpoena, court order, or Card Network requirement). Acquirer may amend this Agreement upon notice to Merchant in accordance with Acquirer’s standard operating procedure. A Card Network may audit or direct the audit of Merchant at any time, and nothing in this Agreement shall limit a Card Network from limiting or terminating an agreement with Merchant. If any provision of this Agreement is determined to be illegal or invalid, such illegality or invalidity of that provision will not affect any of the remaining provisions and this Agreement will be construed as if such provision is not contained in the Agreement. “Member Bank” as used in this Agreement shall mean a member of VISA, Mastercard and/or Discover, as applicable, that provides sponsorship services in connection with this Agreement. As of the commencement of this Agreement, Member Bank shall be the Member Bank identified in the Merchant Application. Member Bank is a party to this Agreement. Member Bank may be changed, and its rights and obligations assigned to another similarly situated bank by Acquirer at any time without prior notice to Merchant.