

## POINT OF SALE AS A SERVICE

### SUBSCRIPTION AND PROFESSIONAL SERVICES AGREEMENT

THIS POINT OF SALE AS A SERVICE SUBSCRIPTION AND PROFESSIONAL SERVICES AGREEMENT (the “**Agreement**”) is entered into as of \_\_\_\_\_ (the “**Effective Date**”), by and between SpotOn Transact, LLC, a limited liability corporation (“**SpotOn**”), located at 100 California Street, 9th floor, San Francisco, CA 94111, and \_\_\_\_\_, a \_\_\_\_\_ corporation (“**Operator**”), located at \_\_\_\_\_. SpotOn and Operator may each be referred to herein as a “**party**” or collectively, as the “**parties**.”

### RECITALS

WHEREAS, SpotOn is a provider of a proprietary, cloud-based, point of sale hardware, software and services system, as more fully described herein. This Agreement contains the terms and conditions under which SpotOn will provide to Operator any goods and services, and access to SpotOn’s proprietary point of sale system, Transact and product support teams.

NOW THEREFORE, in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties, intending to be legally bound, agree as follows:

### AGREEMENT

#### 1. **CONTRACT DOCUMENTS; DEFINITIONS**

1.1 General Terms and Conditions. The body of this Agreement and all exhibits, schedules and annexes hereto set forth the terms and conditions pursuant to which the parties may enter into Statements of Work and Purchase Orders (each, as defined herein).

1.2 Statements of Work and Purchase Orders. To the extent Operator wishes, from time to time, to enter into an agreement for SpotOn to perform Development Services (as defined herein) in connection with this Agreement, the parties will execute a Statement of Work under this Agreement in the form annexed hereto as **Exhibit A** (each, an “**SOW**”), and each SOW shall be incorporated herein by this reference and become part of and be governed by this Agreement. To the extent Operator wishes to license and/or purchase any SpotOn products or services from SpotOn under this Agreement (other than the Deliverables (as defined herein) due under a particular SOW), including but not limited to, SpotOn Transact, SpotOn Hardware and Services (other than Development Services which shall be governed by a SOW as set forth herein), the parties will execute a Purchase Order under this Agreement substantially in the form annexed hereto as **Exhibit B** (each, a “**Purchase Order**”), and each Purchase Order shall be incorporated herein by this reference and become part of and be governed by this Agreement.

1.3 Definitions. The following terms shall have the meanings ascribed to them in this Section:

(a) “**Acceptance Criteria**” means the criteria used to determine whether a Deliverable is ready for Acceptance under an SOW. The Acceptance Criteria will include the requirement that the applicable Deliverable: (i) has been completed and delivered/achieved in accordance with the applicable SOW; (ii) meets the specifications under an applicable SOW, which in the case of software Deliverables must be demonstrated by the successful completion of testing by SpotOn (including unit, string, regression, functional, integration, system/performance and stress/volume, as determined by SpotOn to be necessary) and the satisfactory completion of SpotOn’s quality assurance program with respect to the Deliverable; (iii) has been properly and fully documented pursuant to the Agreement and the applicable SOW; and (iv) complies with all testing criteria set forth in the Agreement and the applicable SOW and such other criteria as may be developed and agreed upon by the parties.

(b) “**Acceptance Test Period**” means the time period during which each Deliverable will be subject to Acceptance Testing by Operator as described in the applicable SOW. Unless otherwise specified in the

applicable SOW, the Acceptance Test Period will be thirty (30) calendar days following the date on which the Deliverable is delivered by SpotOn to Operator for the purpose of Acceptance Testing.

(c) “**Acceptance Testing**” means the testing performed by Operator during the Acceptance Test Period to determine whether the Deliverable meets the applicable Acceptance Criteria.

(d) “**Access Credentials**” means the secure method by which SpotOn provides Operator access to the SpotOn Transact and other systems. Access Credentials can include, without limitation: (i) user ID and password, VPN login information, a security token or other means to authenticate Operator’s identity to SpotOn computer systems; or (ii) a dedicated telecommunications network connection or virtual private network connection to SpotOn Transact or other SpotOn systems.

(e) “**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

(f) “**SpotOn Hardware**” means all tangible items of equipment and other hardware provided by SpotOn to Operator in connection with this Agreement, as specified in a Purchase Order.

(g) “**SpotOn Platform**” means the proprietary, cloud-based, point of sale hardware, software and services system developed and owned by SpotOn, including but not limited to, the SpotOn Hardware, the SpotOn Transact, the Ordering System, the SpotOn Web Portal and the Services, as applicable, for (i) the transacting and processing of concession and Merchandise orders from end-user customers and (ii) the provision of back-of-house data, analytics and inventory management and reporting tools.

(h) “**SpotOn Transact**” means, generically or together, the SpotOn Platform (other than SpotOn Hardware or any other hardware and the Services), copies of computer programs and software that SpotOn provides for use in conjunction with SpotOn Hardware or to end users to facilitate their purchase of Merchandise or use of the SpotOn Platform, and any and all related software applications (including mobile applications), Transact and documentation of SpotOn provided hereunder.

(i) “**SpotOn Web Portal**” means the web-based management console and related tools accessible by Operator using an Internet browser and Access Credentials.

(j) “**Deliverable**” means any materials, products and software delivered or required under any SOW.

(k) “**Deposit**” means the Hardware Fees, taxes and shipping and handling fees required to be paid under a Purchase Order prior to SpotOn beginning the procurement process for certain SpotOn Hardware.

(l) “**Development Services**” means the custom software development services or other professional services provided by SpotOn to Operator under any SOW.

(m) “**Error**” means a failure of the SpotOn Transact to perform substantially in accordance with the material technical specification set forth in the applicable written functional description of the SpotOn Transact delivered to Operator by SpotOn with the SpotOn Transact (excluding faults in such documentation).

(n) “**Hardware Fees**” means the fees payable by Operator to SpotOn for the purchase of SpotOn Hardware under any Purchase Order.

(o) “**License Activation Date**” shall mean the date on which SpotOn provides Access Credentials to Operator and makes the SpotOn Platform available for Operator access with respect to a particular Operator location.

(p) “**Location**” means a location or venue operated by Operator for which Services are provided hereunder, all in accordance with the terms of this Agreement and any applicable Purchase Order.

- (q) **“Merchandise”** means a concession or item of merchandise offered for sale or sold by Operator.
- (r) **“Nonconformity”** means, in both its single and plural forms, any failure, error, defect or inadequacy that impairs the functionality and use of a Deliverable, mutually identified by the parties, including any failure (other than trivial failures) to meet any of the Deliverable’s specifications or its Acceptance Criteria.
- (s) **“Operator Data”** means any data used, generated or stored by SpotOn (or its subcontractors) in connection with Operator’s use of the SpotOn Platform, including without limitation, Operator’s end user customers’ transaction data and personally identifiable information.
- (t) **“Ordering System”** means the mobile application and other point-of-sale systems and technology developed by SpotOn for use by Operator’s end users to input and transmit orders for Merchandise via the SpotOn Platform.
- (u) **“POSaaS”** means point of sale as a service.
- (v) **“Reports”** means reports that are available to Operator through the SpotOn Web Portal.
- (w) **“Service Level Agreement”** means the agreement between SpotOn and Operator setting forth the Support Services to be provided by SpotOn hereunder, annexed hereto as **Exhibit C**.
- (x) **“Services”** means, collectively, the Development Services, the Set-up Services, the Subscription Services and the Support Services.
- (y) **“Set-up Services”** means the services provided to Operator by SpotOn described in Section 2.2.
- (z) **“Subscription Services”** means the services provided to Operator by SpotOn described in Section 2.4.
- (aa) **“Support Services”** means the services provided by SpotOn to Operator under any Service Level Agreement.
- (bb) **“Term”** has the meaning set forth in Section 6.1.

## 2. SERVICES

2.1 Development Services. Operator and SpotOn shall execute a SOW for any Development Services Operator wishes SpotOn to provide. Each SOW shall constitute an agreement by and between Operator and SpotOn that, among other things, all of the terms and conditions of this Agreement shall govern the provision of Development Services specified in such SOW.

2.2 Set-Up Services. Subject to the terms and conditions of this Agreement, SpotOn will assist Operator in (a) the procurement and installation of the SpotOn Hardware; (b) the installation and testing of the SpotOn Platform; and (c) the training of Operator’s personnel to use the SpotOn Platform, such Set-Up Services to be provided at a location, cost and dates/times to be expressly specified in a Purchase Order. In connection with the Set-up Services, Operator will provide to SpotOn a list of all Merchandise that Operator sells, including retail purchase prices therefor (**“Merchandise List”**) via the SpotOn Web Portal, as well as provide materials (such as photos) reasonably necessary to customize the Ordering System’s user interface for Operator’s use. Additional onsite support beyond the Set-Up Services is subject to the terms set forth in any applicable Purchase Order or Service Level Agreement.

2.3 Project Management. SpotOn and Operator will each identify a project manager who is sufficiently experienced to provide the information and support necessary to the other party for (a) the performance of the Development Services under any SOW or (b) the Set-Up Services under any Purchase Order. The parties’ respective project managers shall be the primary points of contact for inquiries and requests. Each such project manager shall

provide the other with such information and assistance as may be reasonably requested by the other from time to time for the purpose of the performance of the Development Services or the Set-Up Services, as applicable.

2.4 Subscription Services. During the Term of this Agreement, SpotOn shall provide to Operator the recurring POSaaS services that are specified in a Purchase Order, all on the terms and conditions set forth therein and herein.

2.5 Support Services. During the Term of this Agreement, SpotOn shall provide to Operator the Support Services set forth in the Service Level Agreement. Unless otherwise expressly agreed to by SpotOn in a separate written agreement between the parties, the Support Services do not include any support for, or relating to, any third-party equipment or software.

2.6 Acceptance; Change Requests. Except to the extent expressly provided in a SOW, the parties agree to comply with the Acceptance processes, procedures and requirements contained in **Exhibit D** annexed hereto. Either party may propose changes to the Services scope or performance schedule under any SOW or Purchase Order by providing a request in writing to the other party, it being understood that SpotOn shall be entitled to changes in scope or performance schedule without penalty where changes in scope or delays in performance are caused by Operator or any third party acting on Operator's behalf or in concert therewith. Mutually agreed upon change requests will include any resulting adjustments to the Fees (as defined herein) charged and become part of the relevant SOW or Purchase Order when signed by both parties (each, a "**Change Request**").

### 3. **USE OF THE SPOTON PLATFORM**

3.1 Access to the SpotOn Platform. Subject to the terms and conditions of this Agreement, SpotOn grants to Operator a limited, non-exclusive, non-transferable, non-sub licensable right during the Term to: (a) use the SpotOn Transact, the Ordering System and the SpotOn Hardware to access the SpotOn Platform on a POSaaS basis solely to: (i) receive, process and fulfill Merchandise orders; and (ii) communicate with customers in connection with Merchandise orders, as necessary to process and fulfill Merchandise orders; and (b) use the SpotOn Web Portal to: (i) access, review and download Reports; and (ii) access the SpotOn Platform to perform other administrative functions permitted under this Agreement; in each case, solely in connection with Operator's sales of Merchandise and Operator's internal business operations.

3.2 Submissions to SpotOn Platform. Operator grants SpotOn a limited, non-exclusive, non-transferable, non-sublicensable right during the Term to make, use, modify, improve, reproduce and distribute copies, publicly display and perform all writings, pictorial works, audiovisual works, motion pictures and all other works that Operator submits to the SpotOn Platform for the purpose of performing under this Agreement and enabling Operator's use of the SpotOn Platform to sell Merchandise (the "**Works**"). Operator represents, warrants and guarantees that: (a) the Works are original to Operator or were made on Operator's behalf and Operator owns or possesses sufficient right under all copyrights, patents, trademarks and all other intellectual property rights of all parties relating to the Works necessary to grant this license; and that (b) submitting and using the Works publicly in connection with the SpotOn Platform will (i) cause no injury, (ii) violate no third party's rights of privacy or publicity, or (ii) not constitute a wrongful or illegal act of any kind.

3.3 Payment Transactions. Except as otherwise provided on any applicable Purchase Order, the Operator is solely responsible for processing and collecting any and all payments for Merchandise purchased through the SpotOn Platform, using the Operator's own third-party payment and/or gateway processor(s).

3.4 Updates to Merchandise List. During the Term, Operator will promptly and regularly update the Merchandise List through the SpotOn Web Portal to reflect any changes in Merchandise offerings. Operator shall maintain accurate prices for all Merchandise to reflect the actual retail price for such Merchandise (including any applicable taxes) at Operator's physical concession stands or otherwise.

3.5 Use Restrictions. Except as otherwise expressly provided in this Agreement or to the extent such restrictions are impermissible pursuant to applicable law, Operator will not, and will not permit or authorize third parties to: (i) modify, reproduce, translate, enhance, disassemble, decompile, reverse engineer or create derivative works of any portion of the SpotOn Transact; (ii) make rent, lease or otherwise permit third parties to use any portion of the SpotOn Transact; (iii) remove, obscure or alter any SpotOn trademark, logo or marking from any SpotOn Hardware or within

any SpotOn Transact; (iv) operate any SpotOn Transact end user programs on devices other than SpotOn Hardware; or (v) circumvent or disable any security or other technological features or measures of any portion of the SpotOn Transact.

3.6 Access Credentials. SpotOn may provide Operator with Access Credentials to enable Operator to access the SpotOn Platform and other services. Operator will not provide or disclose its Access Credentials to any third party and will be solely responsible for maintaining the strict confidentiality of its Access Credentials. Operator will use only its Access Credentials and not the Access Credentials of any third party. Operator will notify SpotOn immediately of any use of Operator's Access Credentials by any third party. SpotOn will have no liability for any loss that Operator incurs as a result of third party's use of Operator's Access Credentials, whether with or without Operator's knowledge or consent. Operator will be liable for any losses incurred by SpotOn or its Affiliates due to third-party use of Operator's Access Credentials.

3.7 Exclusivity. During the term of the Agreement, SpotOn shall be Operator's exclusive provider of point of sale systems. Operator shall not seek, solicit, or accept identical or similar services from other providers without the prior written consent of SpotOn.

3.8 Protection Against Unauthorized Use. Operator will use commercially reasonable efforts to prevent any unauthorized use of the SpotOn Platform and immediately notify SpotOn in writing of any unauthorized use that comes to Operator's attention. If there is unauthorized use by anyone who obtained access to the SpotOn Platform directly through Operator, Operator will take all steps reasonably necessary to terminate such unauthorized use. Operator will cooperate and assist with any reasonable actions taken by SpotOn to prevent or terminate any unauthorized use of the SpotOn Platform.

3.9 Business Practices. Operator's use of the SpotOn Platform will comply with all applicable laws and regulations, and Operator will refrain from any unethical conduct or any other conduct that may tend to damage the reputation of SpotOn. Operator will not make or publish any representations, warranties, guarantees or commitments on behalf of SpotOn concerning any matter whatsoever. Operator will ensure that all of Operator's employees who operate the SpotOn Platform are fully trained with respect to its use.

3.10 Transfer Among Locations. Operator may, with the prior written consent of SpotOn which consent may be withheld in its sole discretion, transfer the SpotOn Hardware and use of the SpotOn Platform among one or more of Operator's locations. If SpotOn believes that additional SpotOn Hardware or Services are required to accomplish any transfer, it shall advise Operator of the pricing for the SpotOn Hardware and Services required to complete the requested transfer, and SpotOn may condition the transfer upon Operator's agreement to pay for any such additional SpotOn Hardware or Services. In the event of any such transfer, and whenever an Operator location ceases operations, Operator shall reset the Access Credentials with respect to all affected SpotOn Hardware and Subscription Services, such that the Access Credentials with respect to the old or non-operating location are no longer operable.

3.11 Inspection Access. During the Term of this Agreement, SpotOn representatives shall, upon reasonable notice to Operator, be entitled to access any Operator venue using the SpotOn Platform for general servicing, training and inspection of the SpotOn Platform.

#### 4. **SPOTON HARDWARE**

4.1 SpotOn Hardware Owned by SpotOn. Unless a Purchase Order specifically provides that Operator is purchasing SpotOn Hardware, Operator acknowledges that all SpotOn Hardware remains the property of SpotOn, and that Operator possesses the SpotOn Hardware only as a licensee, subject to the terms of this Agreement, including without limitation, the licensed hardware terms and conditions set forth in **Exhibit E** annexed hereto.

4.2 Operator Purchased SpotOn Hardware; Third Party Warranty. In the event Operator purchases any SpotOn Hardware under this Agreement and any applicable Purchase Order, then upon payment in full of any Hardware Fees in respect thereof, Operator shall own all right, title and interest in and to such SpotOn Hardware. SpotOn itself provides no warranty for SpotOn Hardware that is purchased by Operator under this Agreement and any Purchase Order. SpotOn shall: (a) pass through to Operator any warranty right it receives from a third-party device manufacturer of SpotOn Hardware; and (b) reasonably cooperate with Operator in enforcing such rights, at Operator's expense.

4.3 SpotOn Hardware Maintenance Procedures. Returns of new and unused, or damaged, defective or malfunctioning SpotOn Hardware during the Term shall be governed by the procedures set forth on **Exhibit F** annexed hereto.

## 5. **BRANDING**

5.1 SpotOn Marks. Subject to the terms and conditions of this Agreement, SpotOn grants to Operator a limited, non-exclusive, non-transferable, non-sublicensable right during the Term to use the trademarks, logos and name of SpotOn (“**SpotOn Marks**”) in connection with Operator’s marketing or advertising of its use of SpotOn Platform; provided, that each use of the SpotOn Marks by Operator is approved by SpotOn in writing in advance of any such use, and that Operator will only use the SpotOn Marks in accordance with SpotOn’s trademark use guidelines. Operator acknowledges that it has no interest in the SpotOn Marks other than the license granted under this Agreement and that SpotOn will remain the sole and exclusive owner of all right, title and interest in and to the SpotOn Marks. Any use by Operator of the SpotOn Marks, and all goodwill associated therewith, will inure solely to the benefit of SpotOn.

5.2 Branding. Operator will not conceal or alter SpotOn’s trademark or branding, or its asset tracking information fixed on SpotOn Hardware. Operator will not, absent SpotOn’s express written consent, place its own branding, or that of any third party, on the SpotOn Hardware or on any SpotOn Transact or otherwise in connection with this Agreement, except that Operator may affix to SpotOn Hardware printed material displaying menu or other information of use to its end user customers. During the Term, Operator agrees that: (a) SpotOn may place the SpotOn Marks or its other standard corporate branding on any SpotOn Hardware unit related to SpotOn or the Ordering System; and (b) SpotOn may place the SpotOn Marks or its other standard corporate branding on any white-labeled, custom-developed, or other modified versions of the SpotOn Hardware, Ordering System or the SpotOn Platform.

## 6. **REPORTS**

6.1 Reports. During the Term, Operator will have access to the Reports available on the SpotOn Platform.

6.2 Error Reporting. Operator will document and promptly report to SpotOn all detected Errors in the SpotOn Transact with sufficient detail to permit SpotOn to reproduce the Error. Operator will provide reasonable assistance to SpotOn in recreating and diagnosing each Error. Operator will provide SpotOn with reasonable access to all necessary personnel to answer questions regarding Errors and other problems reported by Operator.

6.3 Error Corrections. SpotOn will use commercially reasonable efforts to correct Errors affecting Operator’s use of the SpotOn Transact with a level of effort commensurate with the severity of the Error, as more fully set forth in the Service Level Agreement.

## 7. **FEES AND PAYMENT TERMS**

7.1 Fees. Operator will pay to SpotOn the fees set forth in each SOW or Purchase Order, as applicable, including without limitation, fees for Development Services, SpotOn Hardware, Set-Up Services and Subscription Services (collectively, the “**Fees**”).

7.2 Hardware Fees. SpotOn may invoice Operator for Hardware Fees set forth in any Purchase Order immediately upon execution of such Purchase Order, or at any time thereafter. SpotOn will not be obligated to order, procure, ship or deliver to Operator any SpotOn Hardware until any Deposit on such invoiced Hardware Fees has been paid in accordance with the terms hereof; and in the event that any such Deposit is not timely paid in full, any schedule, date or deadline for the delivery of such SpotOn Hardware will be automatically extended by one day for each day the Deposit remains unpaid after the due date for the payment of such Deposit.

7.3 Service Fees. SpotOn shall invoice Operator for any Fees due in respect of Services as follows:

(a) Development Services as set forth in the applicable SOW;

(b) Set-Up Services as set forth in the applicable Purchase Order;

(c) Subscription Services from and after the License Activation Date, as set forth herein and in the applicable Purchase Order; and

(d) Support Services as set forth in the applicable Purchase Order or Service Level Agreement.

7.4 Payment Terms. All invoices and payments shall be in United States Dollars. If Operator believes there is an error on any particular invoice, Operator will notify SpotOn of the error in writing within thirty (30) days of the invoice date, or else the invoice shall be deemed correct and payable in full. Operator shall pay all invoices pursuant to 50 ILCS 505, the "Local Government Prompt Payment Act". Invoices containing charges for work subject to the Illinois Prevailing Wage Act (820 ILCS 130/) are required to be accompanied by the applicable Certified Transcript of Payroll form(s) for acceptance. Payment will not be made on invoices submitted later than six-months (180 days) after delivery of goods or services and **any statute of limitations to the contrary is hereby waived.** Payment shall be made by either (a) wire transfer to a bank account designated by SpotOn or (b) delivery to SpotOn of a bank check immediately payable to SpotOn and drawn on a United States bank account with sufficient funds. The parties shall work in good faith to resolve all invoice and billing disputes as soon as reasonably practicable after the dispute arises.

7.5 Late Payments. If Operator fails to make a payment to SpotOn when due, such unpaid amount will accrue interest at a rate equal to 1% of the unpaid balance per calendar month or the highest rate permitted by applicable law, whichever is less, determined and compounded daily from the date such payment is due until the date such payment is paid to SpotOn.

7.6 Taxes. Operator is responsible for and will pay all applicable sales taxes and other governmental charges on the SpotOn Hardware and Installation Services, the Merchandise and the sale thereof, and all transactions and payments made through the SpotOn Platform or made pursuant to this Agreement, except for taxes imposed on the net income, personnel or real property of SpotOn. However, if the Buyer is legally entitled to an exemption from the payment of taxes or other governmental charges, Buyer will promptly provide SpotOn with legally sufficient tax exemption certificates for each taxing jurisdiction for which Buyer claims exemption. Unless otherwise prohibited by law, SpotOn will apply the benefits of a requested tax exemption to charges after the date SpotOn receives and reasonably processes the tax exemption certificates..

7.7 Suspension of Service. Notwithstanding anything to the contrary contained herein, in the event any invoice remains unpaid sixty (60) days after becoming due, SpotOn shall have the right to suspend any and all Services being provided hereunder until such invoice is paid in full.

## 8. **TERM AND TERMINATION**

8.1 Term. This Agreement shall commence on the Effective Date and, unless terminated early pursuant to the terms of this Agreement, continue for a term of three (3) years from the Effective Date (the "**Initial Term**"). This Agreement shall automatically renew at the end of the Initial Term and any Renewal Term (as defined herein) for additional terms of one (1) year (each, a "**Renewal Term**") and together with the Initial Term, the "**Term**") until SpotOn or Operator gives notice to the other party at least six (6) months prior to the expiration of the then current term of its intent not to renew the Agreement (a "**Non-Renewal Notice**") or the Agreement is earlier terminated in accordance with the terms hereof. Each Purchase Order regarding the deployment of the SpotOn Platform at an Operator location shall have an Initial Term of three (3) years from the License Activation Date for the location under such Purchase Order (a "**PO Initial Term**"). Each Purchase Order shall automatically renew at the end of the PO Initial Term for additional terms of one (1) year (each, a "**PO Renewal Term**"), until SpotOn or Operator gives a Non-Renewal Notice to the other party at least six (6) months prior to the expiration of the then current term for a particular Purchase Order or the Purchase Order is earlier terminated in accordance with the terms hereof. Notwithstanding anything to the contrary contained herein, this Agreement shall survive expiration or early termination as to any Operator location that continues to use the SpotOn Platform under any Purchase Order until such Purchase Order expires or is terminated in accordance with the terms hereof.

8.2 Notice of Breach. If either party breaches this Agreement, then the non-breaching party may give the breaching party written notice of the breach (including a statement of the facts relating to the breach, the provisions of this Agreement that are in breach and the action required to cure the breach) and of the non-breaching party's right to terminate the Agreement pursuant to Section 8.3 if the breach is not cured within thirty (30) days after the breaching party's receipt of such notice (or such later date as may be specified in such notice).

8.3 Termination for Breach. If the breaching party fails to cure a breach specified in any notice given under Section 8.2 within thirty (30) days after receipt of notice (or such later date as may be specified in such notice) then the non-breaching party may immediately terminate this Agreement by giving the breaching party written notice of termination. If Operator fails to timely pay any Fees due to SpotOn under this Agreement, SpotOn may, without limitation to any of its other rights or remedies, suspend Operator's access to the SpotOn Platform and the performance of any Services until it receives all undisputed amounts due.

8.4 Termination for Bankruptcy. Either party may terminate this Agreement immediately upon written notice to the other party if the other party: (a) is liquidated, dissolved or adjudged to be in a state of bankruptcy or receivership; (b) is insolvent, unable to pay its debts as they become due, makes an assignment to or for the benefit of its creditors or takes advantage of any law for the benefit of debtors; or (c) ceases to conduct business for any reason on an ongoing basis leaving no successor in interest.

8.5 Effect of Termination. Upon the expiration or termination of this Agreement or any Purchase Order as to one or more Operator venues, Operator shall work with SpotOn to return the SpotOn Hardware and SpotOn Transact from any such venue in good repair, condition and working order, ordinary wear and tear excepted.

8.6 Post-Termination Obligations. If this Agreement expires or is terminated for any reason, the following obligations will survive such expiration or termination: (a) any and all liabilities accrued prior to the effective date of the expiration or termination; and (b) Sections 3.5, 5, 8.6, 9, 10, 11, 12, 13, 15 and 16. It is also understood that this Agreement shall survive expiration or early termination as to any Operator location that continues to use the SpotOn Platform under any Purchase Order until such Purchase Order expires or is terminated in accordance with the terms hereof.

## 9. **INTELLECTUAL PROPERTY; OPERATOR DATA**

9.1 Ownership of the SpotOn Platform; Rights Reserved. Except as expressly set forth in this Agreement, neither party assigns any right, title, or interest in, or grants any licenses under, any patent, copyright, trade secret, trademark, or other intellectual property right of such party, whether by implication, estoppel, or otherwise. SpotOn or its licensors own and shall retain all proprietary rights, including all patent, copyright, trade secret, trademark, and other intellectual property rights, in and to the SpotOn Platform. Except as expressly granted in Section 3.1 or except with respect to any SpotOn Hardware purchased and owned by Operator, Operator will not have any rights to the SpotOn Platform, including without limitation, any other non-express or implied right to make, use, sell, offer for sale, reproduce, or distribute copies, modify, improve or prepare derivative works, or publicly perform or display the SpotOn Platform or any part thereof.

9.2 Ownership of Deliverables under any SOW. Except as otherwise specifically set forth in a SOW, all Deliverables specified in any SOW, or arising out of work performed by SpotOn under any SOW, and any inventions, ideas or original works of authorship in whole or in part conceived or made by SpotOn which arise from or result from the work performed by SpotOn for Operator under any SOW shall be owned exclusively by SpotOn, whether or not fixed in a tangible medium of expression.

9.3 Matters Related to Operator Data.

(a) As between SpotOn and Operator, Operator is and shall remain the sole and exclusive owner of all right, title and interest in and to the Operator Data. Operator hereby authorizes SpotOn to access, use and display Operator Data solely for the purpose of enabling and using the SpotOn Platform under the terms of this Agreement for the benefit of Operator and for no other purpose of SpotOn or of any other third party; provided, however, that SpotOn may use anonymized and de-identified, aggregated Operator Data for

purposes of improving the SpotOn Platform. SpotOn agrees that it shall not, nor shall it permit or assist any other party to, disassemble, decompile or reverse engineer all or any part of the Operator Data.

(b) The parties acknowledge and agree that with regard to the processing of personal information regulated under the California Consumer Privacy Act, Cal. Civ. Code § 1798.100 et seq. (“CCPA”), solely between the parties hereto and with respect to this Agreement, Operator is a “business” and SpotOn is a “service provider,” as such terms are defined in the CCPA. SpotOn is prohibited from retaining, using or disclosing the personal information contained in any Operator Data that it processes on behalf of Operator for any purpose other than for the specific purpose of performing the services specified in this Agreement, or as otherwise permitted by law. SpotOn is prohibited from “selling” the personal information that is contained in any Operator Data that it processes on behalf of Operator, as that term is defined in the CCPA. SpotOn shall implement and maintain reasonable security procedures and practices to protect the Operator Data that it processes on behalf of Operator.

(c) SpotOn shall cooperate in good faith with Operator as to any reasonable requests made by Operator to ensure compliance with the CCPA and make available to Operator all information necessary to demonstrate SpotOn’s implementation of the requirements set forth in this Agreement, including inspections conducted by the Operator or an auditor designated by Operator.

(d) For the duration of this Agreement, Operator agrees that it shall maintain and comply with Operator’s privacy policy that conforms to all relevant privacy laws and regulations, including the CCPA, and that such privacy policy will include appropriate disclosures regarding the sharing of personal information with service providers, including SpotOn.

(e) SpotOn certifies that it understands all of its obligations under this Section 9.3 and will comply with them.

9.4 Feedback. Operator grants to SpotOn a royalty-free, fully paid-up, nonexclusive, perpetual, irrevocable, worldwide, transferable, sublicensable license to use, copy, modify or distribute, including by incorporating into the SpotOn Platform, any suggestions, enhancement requests, recommendations or other feedback provided by Operator to SpotOn.

## 10. **WARRANTIES AND DISCLAIMER**

10.1 Mutual Warranties. Each party hereto represents and warrants to the other that: (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such party in accordance with its terms; (b) no authorization or approval from any third party is required in connection with such party’s execution, delivery or performance of this Agreement; (c) the execution, delivery and performance of this Agreement does not violate the laws of any jurisdiction or the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound; and (d) it will comply with all applicable laws in connection with this Agreement.

10.2 SpotOn Warranty. SpotOn represents and warrants that: (a) it shall perform the Services in a professional, diligent, workmanlike manner in accordance with this Agreement; and (b) the SpotOn Transact will conform in all material respects to the documentation for the SpotOn Transact to the extent Operator uses the SpotOn Transact for its intended purposes and in accordance with the documentation which SpotOn provides; provided, however, that SpotOn’s sole obligation and Operator’s sole remedy for a breach of the warranty in subsection (b) is that SpotOn will, upon notice of nonconformance, make commercially reasonable efforts to remedy such nonconformance as further set forth in the Service Level Agreement. SpotOn advises Operator not to install or operate any computer programs or applications on SpotOn Hardware other than that which is provided by SpotOn for use on the specific SpotOn Hardware device at any given time. INSTALLING OR USING ANY OTHER COMPUTER PROGRAMS OR APPLICATIONS ON OR WITH THE SPOTON PLATFORM VOIDS ALL SPOTON WARRANTIES. Operator may replace SpotOn Hardware with devices approved by SpotOn in its reasonable discretion as compatible with SpotOn Transact; provided, however, that SpotOn makes no warranty as to the proper functioning of any such devices that replace SpotOn Hardware.

10.3 Disclaimer. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN THIS SECTION 10.3, SPOTON MAKES NO ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. SPOTON EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, TITLE AND NON-INFRINGEMENT. SPOTON DOES NOT WARRANT THAT THE SPOTON PLATFORM IS OR WILL BE ERROR-FREE OR THAT OPERATION OF THE SPOTON PLATFORM WILL BE SECURE OR UNINTERRUPTED. SPOTON EXERCISES NO CONTROL OVER AND EXPRESSLY DISCLAIMS ANY LIABILITY ARISING OUT OF OR BASED UPON OPERATOR'S USE OF THE SPOTON PLATFORM UNLESS SUCH USE IS IN COMPLIANCE WITH SPOTON DIRECTION, GUIDANCE OR RECOMMENDATION.

## 11. INDEMNIFICATION

11.1 SpotOn shall indemnify, hold harmless, and defend Operator, its Affiliates and their respective officers, directors, agents, representatives, employees, subcontractors, customers, users of SpotOn's goods and services from any and all claims (including, without limitation, claims by vendees of Operator), liabilities, damages and expenses (including reasonable attorneys' fees) arising from or related to (i) the gross negligence or willful misconduct of SpotOn, its affiliates and their respective employees, contractors, subcontractors, vendors and agents (the "**SpotOn Parties**"), (ii) violation of any law or regulation or (iii) alleged infringement of any patent, copyright or trademark or violation of any other intellectual property right of a third party. This indemnity shall apply without regard to whether the claim, damage, liability or expense is based on breach of contract, breach of warranty, negligence, strict liability or other tort. This indemnity shall survive delivery and acceptance of goods or services.

11.2 Nothing contained herein shall be construed as prohibiting the Operator, its officials, directors, officers, agents and employees, from defending through the selection and use of their own agents, attorneys and experts, any claims, suits, demands, proceedings and actions brought against them. Pursuant to Illinois law, the attorney representing the Operator, under this paragraph or paragraph 10(a), must be the State's Attorney, in accordance with the applicable law. The Operator's participation in its defense shall not remove SpotOn's duty to indemnify, defend, and hold the Buyer harmless, as set forth above.

11.3 Any indemnity as provided in this AGREEMENT shall not be limited by reason of the enumeration of any insurance coverage herein provided. SpotOn's indemnification of Operator shall survive the termination, or expiration, of this AGREEMENT.

11.4 The Operator does not waive, by these indemnity requirements, any defenses or protections under the Local Government and Governmental Employees Tort Liability Act (745 ILCS 10/1, et seq.) or otherwise available to it, or the SpotOn, under the law.

11.5 To the extent permitted by law, Operator shall indemnify, hold harmless, and defend SpotOn, its affiliates and their respective officers, directors, agents, representatives, employees, subcontractors and customers from any and all claims (including, without limitation, claims by vendees of SpotOn), liabilities, damages and expenses (including reasonable attorneys' fees) arising from or related to (i) the gross negligence or willful misconduct of Operator, its affiliates and their respective employees, contractors, subcontractors, vendors and agents (the "**Operator Parties**"), (ii) violation of any law or regulation or (iii) alleged infringement of any patent, copyright or trademark or violation of any other intellectual property right of a third party. This indemnity shall apply without regard to whether the claim, damage, liability or expense is based on breach of contract, breach of warranty, negligence, strict liability or other tort. This indemnity shall survive delivery and acceptance of goods or services. The foregoing indemnity obligations are subject to Illinois laws, and will not apply if Illinois laws do not permit Buyer to indemnify SpotOn in the foregoing situations.

## 12. LIMITATIONS OF LIABILITY

12.1 Disclaimer of Indirect Damages. EXCEPT FOR BREACHES OF SECTION 15 (CONFIDENTIALITY) AND PAYMENTS TO THIRD PARTIES MADE PURSUANT TO SECTIONS 11 AND 12 (INDEMNIFICATION), NEITHER PARTY WILL UNDER ANY CIRCUMSTANCES BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, LOST PROFITS OR LOSS OF BUSINESS, EVEN IF A PARTY IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.

12.2 Cap on Liability. EXCEPT FOR A PARTY'S INDEMNIFICATION AND DEFENSE OBLIGATIONS UNDER SECTIONS 11 AND 12 OF THIS AGREEMENT, UNDER NO CIRCUMSTANCES WILL EITHER PARTY'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING, BUT NOT LIMITED TO, WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EXCEED FIVE TIMES (5X) THE TOTAL FEES PAID BY BUYER TO SPOTON FOR THE SPECIFIC SPOTON HARDWARE UPON WHICH THE FIRST EVENT GIVING RISE TO LIABILITY WAS BASED ("LIABILITY EVENT") DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE LIABILITY EVENT DATE.

12.3 Independent Allocations of Risk. EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES OR EXCLUSION OF DAMAGES IS INTENDED TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY SPOTON UNDER THIS AGREEMENT AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT. ALL SUCH LIMITATIONS, DISCLAIMERS AND EXCLUSIONS (INCLUDING THIS SECTION 13.3) WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

### 13. **INSURANCE**

13.1 Coverage Requirements. SpotOn shall maintain, at its sole cost, and shall require any subcontractors it may engage, to maintain at all times while transacting business with Buyer and for two (2) years following acceptance of goods and services hereunder, the insurance coverage set forth below: (a) Workers' Compensation Insurance as required by laws and regulations applicable to and covering any subcontractor's employees performing in connection with SpotOn's obligations hereunder at any Buyer location, and all employees of SpotOn engaged in SpotOn's performance of its obligations hereunder; (b) Employers' Liability Insurance protecting SpotOn against common law liability in the absence of statutory liability, for employee bodily injury arising out of the master-servant relationship with a limit of not less than \$1,000,000; and (c) Commercial General Liability Insurance including coverages for premises/operations, products/completed operations, bodily injury, property damage, independent contractors and coverage for insured contracts specifically in support of the contractual obligations of SpotOn including, without limitation, any indemnity obligations hereunder, with limits of liability of not less than \$2,000,000 per occurrence and \$2,000,000 in the annual aggregate. At the request of Buyer, SpotOn shall provide a certificate of insurance evidencing such insurance coverage set forth above.

Waiver of subrogation shall be given to the Operator on these policies. By requiring and providing coverage pursuant to the limits set forth herein, neither party represents that such coverage and limits will necessarily be adequate with respect to any particular claim or claims

### 14. **CONFIDENTIALITY**

14.1 Definition. "**Confidential Information**" means any trade secrets, data or other information of a party relating to its performance under this Agreement, whether of a technical, business or other nature, including Operator Data and any information relating to a party's Transact, software, products, services, designs, methodologies, business plans, finances, marketing plans, customers, prospects or other affairs, that is disclosed to the receiving party during the Term and that such receiving party knows or has reason to know is confidential, proprietary or trade secret information of the disclosing party; except that Confidential Information does not include any information that: (a) was known to the receiving party prior to receiving the same from the disclosing Party in connection with this

Agreement; (b) is independently developed by the receiving Party without use of or reference to the Confidential Information of the disclosing Party; (c) is acquired by the receiving Party from another source without restriction as to use or disclosure; or (d) is or becomes publicly known through no fault or action of the receiving party.

14.2 Restricted Use and Nondisclosure. During and after the Term, each receiving party will (a) use the disclosing party's Confidential Information solely to perform receiving party's obligations and exercise receiving party's rights under this Agreement; (b) not disclose the other party's Confidential Information to a third party unless such third party must access the Confidential Information to perform in accordance with this Agreement and such third party has executed a written agreement that contains terms that are substantially similar to the terms contained in this Section 13; and (c) maintain the secrecy of, and protect from unauthorized use and disclosure, the other party's Confidential Information to the same extent (but using no less than a reasonable degree of care) that receiving party protects its own Confidential Information of a similar nature.

14.3 Required Disclosure. If receiving party is required by law or judicial process to disclose Confidential Information, such receiving party must give prompt written notice to disclosing party of such requirement before such disclosure and, upon disclosing party's request, provide reasonable assistance to the disclosing party in obtaining a protective order.

14.4 Return of Materials. Upon the termination or expiration of this Agreement, each receiving party will, upon disclosing party's request, deliver to the disclosing party or destroy all of disclosing party's Confidential Information that such receiving party may have in its possession or control.

## 15. GENERAL

15.1 Governing Law. This Agreement will be interpreted, construed and enforced in all respects in accordance with the laws of the State of Illinois, without regard to its conflict of laws principles.

15.2 Dispute Resolution. Any dispute between the parties arising out of or in connection with this Agreement or any breach thereof shall be settled by arbitration in DuPage County, Illinois, by a single arbitrator chosen and acting in accordance with the rules of Judicial & Mediation Services, Inc. ("JAMS"). Discovery will be permitted in accordance with the Federal Rules of Civil Procedure. The award rendered by the arbitrator shall be final and binding on the parties, and judgment thereon may be entered in any court of competent jurisdiction. Notwithstanding the foregoing, either party may seek equitable or injunctive relief in any court of competent jurisdiction to stop or prevent any threatened or actual violation of Section 14 (Confidentiality) or any misappropriation of trade secrets, infringement of intellectual property or any dangerous condition that threatens or has caused bodily injury. Each party hereby waives its right to trial by jury and each party waives its right to participate in any class action or multi-plaintiff action against the other.

15.3 Relationship. SpotOn is an independent contractor (and not an agent or representative of Operator) in the performance of this Agreement. This Agreement does not, and will not be interpreted or construed to, create or evidence any association, joint venture, partnership or franchise between the parties; impose any partnership or franchise obligation or liability on either party; or prohibit or restrict SpotOn from performing any services for any third party or providing any products to any third party.

15.4 Assignability. Neither party shall assign any part of this Agreement or delegate any of the obligations set forth herein without the prior written consent of the other party, and any attempt to assign this Agreement in whole or in part without the other party's prior written consent is void; except that either party may assign this Agreement in its entirety without such prior written consent to any parent entity, subsidiary entity or Affiliate of such party, or to such party's successor in interest in connection with a merger, acquisition, reorganization or change of control of such party, or the sale of substantially all of such party's assets to which this Agreement pertains.

15.5 Subcontractors. SpotOn may utilize one or more subcontractors or other third parties to perform its duties under this Agreement; provided that SpotOn shall remain responsible for all of its obligations under this Agreement.

15.6 References; Case Study; Press Release. Operator agrees: (a) to make one or more representatives reasonably available for reference inquiries from potential SpotOn customers, partners and investors; (b) to permit SpotOn to

create and publish a case study describing in general terms the nature of Operator's use of the SpotOn Platform; and/or (c) that SpotOn may issue and publish a press release containing a quotation from a representative of Operator announcing that Operator and SpotOn have entered into this Agreement within ninety (90) days of the Effective Date.

15.7 Notices. Any notice required or expressly permitted to be given under this Agreement will be made in writing and will be deemed given: (a) four (4) days after being sent by certified United States mail; or (b) two (2) days after being sent by a reputable overnight courier such as Federal Express, in either case with delivery confirmation and all postage and delivery fees prepaid, to the appropriate party at the address set forth on the signature page of this Agreement, or to such other address as either party may provide from time to time by notice to the other party in accordance with this section.

15.8 Force Majeure. SpotOn will not be liable for, or be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any natural disaster, fire, earthquake, flood, weather condition, epidemic, acts of war or terror, civil disorder or disturbance, explosion, sabotage, technology attacks, governmental action or prohibition, failure of power, transportation or communication systems, or any other cause or condition beyond SpotOn's reasonable control, so long as SpotOn uses all commercially reasonable efforts to avoid or remove such causes of non-performance.

15.9 Government Rights. All software components of the SpotOn Transact are commercial computer software. Government technical data and software rights related to such software include only those rights customarily provided to commercial licensees. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not granted under this Agreement, it must negotiate with SpotOn to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

15.10 Waiver. No waiver of any default by either party shall act as a waiver of a subsequent or different default.

15.11 Severability. If any provision of this Agreement is found to be illegal, unenforceable or invalid, the remaining portions of this Agreement will remain in full force and effect, and the parties agree to replace such illegal, unenforceable or invalid provision with a legal, enforceable and valid provision that effects the original intent of the parties with respect to such provision.

15.12 Commencing Legal Action. Any action arising out of this Agreement (including any action for breach of this Agreement or any arbitration or petition for equitable relief) must be commenced within the statutory limitations period from the date that the right, claim or cause of action first accrued.

15.13 Interpretation. The parties have had an equal opportunity to participate in the drafting of this Agreement and the attached exhibits. No ambiguity will be construed against any party based upon a claim that that party drafted the ambiguous language. The headings appearing at the beginning of several sections contained in this Agreement have been inserted for identification and reference purposes only and will not be used to construe or interpret this Agreement. Whenever required by context, a singular number will include the plural, the plural number will include the singular, and the gender of any pronoun will include all genders. Any reference to any agreement, document or instrument will mean such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof. Whenever the words "include," "includes" or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation." Whenever the words "hereunder," "hereof," "hereto" and words of similar import are used in this Agreement, they will be deemed references to this Agreement as a whole and not to any particular article, section or other provision hereof. The word "or" is used in the inclusive sense of "and/or." The terms "or," "any" and "either" are not exclusive.

15.14 Amendment. This Agreement may be amended or modified only by a written agreement signed by an authorized agent of the party against whom enforcement is sought.

15.15 **Supremacy.** The terms of this Agreement prevail if there is any conflict between any term in this Agreement and any term in a SOW or a Purchase Order, except to the extent the term in the SOW or Purchase Order, as applicable, specifically references the term in this Agreement and amends it in accordance with Section 15.14.

15.16 **Entire Agreement.** This Agreement, including all SOW's, Purchase Orders, schedules and exhibits expressly referred to by or incorporated by reference into this Agreement, is the final and complete expression of the agreement between these parties regarding the SpotOn Platform. This Agreement supersedes, and the terms of this Agreement govern, all previous oral and written communications regarding these matters, all of which are merged into this Agreement, except that this Agreement does not supersede any prior nondisclosure or comparable agreement between the parties executed prior to this Agreement being executed.

15.17 **Counterparts.** This Agreement and any signed agreement or instrument entered into in connection with this Agreement, and any amendments hereto or thereto, may be executed in two or more counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered will be an original, but all of which together will constitute one and the same instrument. Any such counterpart, to the extent delivered by means of a fax machine or by .pdf, .tif, .gif, .jpeg or similar attachment to electronic mail (any such delivery, an "**Electronic Delivery**") will be treated in all manner and respects as an original executed counterpart and will be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

Exhibit A: Statement of Work

Exhibit B: Purchase Order

Exhibit C: Service Level Agreement

Exhibit D: Acceptance Procedures

Exhibit E: SpotOn Transact License Terms

Exhibit F: SpotOn Hardware Returns

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives as of the Effective Date.

**"Operator"**

\_\_\_\_\_  
Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Address for Notice: \_\_\_\_\_

**"SpotOn"**

**SPOTON TRANSACT, LLC**

DocuSigned by:  
**Signature on File**  
\_\_\_\_\_  
8667CE5288D7444...  
Signature: **Jack Chalfant**  
Name: \_\_\_\_\_  
Title: **controller**  
Date: **03/15/2023**

Address for Notice: 100 California Street, 9th floor  
San Francisco, CA 94111

**EXHIBIT A**  
**STATEMENT OF WORK**

**EXHIBIT B**  
**PURCHASE ORDER**



**SpotOn Enterprise Solution**  
**DuPage County Campus Cafeterias RFP - Full POS**


Created for:  
DuPage County  
DuPage County Campus Cafeterias  
Donna Weidman  
[donna.weidman@dupageco.org](mailto:donna.weidman@dupageco.org)

Created by your SpotOn Enterprise Team:  
Antonio Vasquez  
Strategic Account Manager  
[antonio.vasquez@spoton.com](mailto:antonio.vasquez@spoton.com)  
716.238.0318

SpotOn Transact, LLC  
100 California Street  
San Francisco, CA 94104  
877.559.4225

Version 3-Jan-23

Customer:
DuPage County
Location:
DuPage County Campus Cafeterias
Date:
3/14/2023




Quote #
5-011318

POS Solution Workbook

Solution Set		Description		Service Plan = 3-year	
SpotOn Enterprise Activate POS		SpotOn Enterprise Point of Sale Hardware Configuration Total		\$15,800.00	
SpotOn Enterprise KDS		SpotOn Enterprise Kitchen Display System Hardware Configuration Total		\$1,988.82	
POS Accessories		Optional Components		\$147.85	
Item Number	Item Name	Item Description	Hardware Subtotal:		
7000-101	POS Staging (remote)	Equipment Staging & Configuration	\$20.00	5	\$100.00
7000-103	Remote Services	Remote Configuration & Training	\$995.00	2	\$1,990.00
7000-104	On Site Specialist	On-Site System Configuration, Testing & Training	\$1,050.00	2	\$2,100.00
7000-105	On Site Specialist	Equipment Placement & Installation	\$1,050.00	1	\$1,050.00
7000-106	On Site Specialist	Event Live Support	\$1,050.00	2	\$2,100.00
7000-109	Remote Specialist	Post Live Support & Follow Up	\$995.00	1	\$995.00
Item Number	Item Name	Item Description	Installation Subtotal:		
9000-100	Connect Back Office Platform	Connect Back Office (CC Gateway, Analytics & API reporting access)	\$3,595.50	1	\$3,595.50
9000-101	Activate Client POS	Activate - POS Client License	\$995.00	4	\$3,980.00
9000-104	Activate KDS	Activate - KDS Client License	\$315.00	1	\$315.00
Item Number	Item Name	Item Description	Annual License Subtotal:		
9000-902	Integrate - Stored Value	Integrate - Stored Value - Givex	\$3,595.50	1	\$3,595.50
			Annual Services Subtotal:		\$3,595.50
			Subtotal		\$37,757.67
			Customer Incentive Discount - Hardware		-\$ 15,784.27
			Estimated Taxes*		TBD
			Shipping and Handling		\$269.05
			Estimated Expenses		\$2,500.00
			Total Year 1		\$24,742.45
			Year 2+		\$11,486.00

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Estimated expenses are estimates only. Customer shall be liable for all actual and documented expenses incurred by SpotOn in performing the services required under this purchase order.




SpotOn Configuration

Summary Roll Up Page

Part #	Product	Description	Unit Price	Qty	Extended
Android POS Kits					
1000-602	Platinum POS V4 - 15" & 10" Printer Stand	POS Setup V4 - 15" Cashier & 10" CFD w/ expansion board & MSR, Printer Stand	\$1,895.00	4	\$7,580.00
iOS & Android KDS Kits					
2000-207	V2 5th GEN 12.9" IOS KDS Kit Countertop	V2 12.9" IOS KDS Kit Countertop, includes stand (iPad & Adaptor Req'd)	\$435.00	1	\$435.00
Apple Products					
100-112	iPad Pro Large 6th GEN	iPad Pro 6th GEN 12.9" - 128GB, WiFi Only, Space Gray	\$1,058.82	1	\$1,058.82
Readers & Scanners					
900-750	Mettler Toledo USB Scale	Mettler Toledo USB Checkout Scale (Ariva-S)	\$995.00	4	\$3,980.00
Cash Drawers					
700-104	RJ11 Standard Cash Drawer (16" x 16")	RJ11 - Standard Cash Drawer - 5 Bill x 5 till drawer (Dimensions 16x16"), includes cable	\$115.00	4	\$460.00
Printers					
800-304	3" Ethernet Web Printer	3" Ethernet Web Printer	\$495.00	1	\$495.00
800-401G	3" USB Thermal Receipt Printer	3" Countertop Thermal Printer (USB), includes USB Cable	\$325.00	4	\$1,300.00
EMV Devices					
900-204	ENS Tailwind Flex Pole 4.6" Universal Stand	ENS Tailwind Flex Pole 4.6" Universal Stand for Lane 3000, 5000, 7000, and 8000	\$55.00	4	\$220.00
900-141	Ingenico Lane 3000 (SpotOn)	Ingenico Lane 3000 w/o Camera (SpotOn)	\$565.00	4	\$2,260.00
TOTAL					
Summary Total:					\$17,788.82
Optional Components					
900-525	Patch Cable - 5'	Ethernet Patch Cable 5'	\$1.85	1	\$1.85
900-905	Patch Cable - 10'	Ethernet Patch Cable 10'	\$2.75	4	\$11.00
900-509G	V2 Apple Ethernet Kit for iPad Pro USB-C	V2 Apple Ethernet Kit for iPad Pro USB-C (Includes adapter and cable)	\$135.00	1	\$135.00
Optional Component Total:					\$147.85

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SpotOn

SpotOn Enterprise - Fixed POS Configuration

SpotOn Worksheet

SUGGESTED USE CASES: Permanent POS installation at concession, portable, merchandise stands.

Part #	Product	Description	Unit Price	Qty	Extended
Android POS Kits					
1000-602	Platinum POS V4 - 15" & 10" Printer Stand	POS Setup V4 - 15" Cashier & 10" CFD w/ expansion board & MSR, Printer Stand	\$1,895.00	4	\$7,580.00
Readers & Scanners					
900-750	Mettler Toledo USB Scale	Mettler Toledo USB Checkout Scale (Ariva-S)	\$995.00	4	\$3,980.00
Cash Drawers					
700-104	RJ11 Standard Cash Drawer (16" x 16")	RJ11 - Standard Cash Drawer - 5 Bill x 5 till drawer (Dimensions 16x16"), includes cable	\$115.00	4	\$460.00
Printers					
800-401G	3" USB Thermal Receipt Printer	3" Countertop Thermal Printer (USB), includes USB Cable	\$325.00	4	\$1,300.00
EMV Devices					
900-204	ENS Tailwind Flex Pole 4.6" Universal Stand	ENS Tailwind Flex Pole 4.6" Universal Stand for Lane 3000, 5000, 7000, and 8000	\$55.00	4	\$220.00
900-141	Ingenico Lane 3000 (SpotOn)	Ingenico Lane 3000 w/o Camera (SpotOn)	\$565.00	4	\$2,260.00
Summary Total:					\$15,800.00
Optional Components					
900-905	Patch Cable - 10'	Ethernet Patch Cable 10'	\$2.75	4	\$11.00
Optional Component Total:					\$11.00



SpotOn Worksheet

SpotOn Enterprise - Order Device Configuration

SUGGESTED USE CASES: kitchens, pantries and service bars

Part #	Product	Description	Unit Price	Qty	Extended
KDS Kits					
2000-207	V2 5th GEN 12.9" IOS KDS Kit Countertop	V2 12.9" IOS KDS Kit Countertop, includes stand (iPad & Adaptor Req'd)	\$435.00	1	\$435.00
Apple Products					
100-112	iPad Pro Large 6th GEN	iPad Pro 6th GEN 12.9" - 128GB, WiFi Only, Space Gray	\$1,058.82	1	\$1,058.82
Printers					
800-304	3" Ethernet Web Printer	3" Ethernet Web Printer	\$495.00	1	\$495.00
TOTAL					
				Summary Total:	\$1,988.82

	Optional Components				
900-525	Patch Cable - 5'	Ethernet Patch Cable 5'	\$1.85	1	\$1.85
900-509G	V2 Apple Ethernet Kit for iPad Pro USB-C	V2 Apple Ethernet Kit for iPad Pro USB-C (Includes adapter and cable)	\$135.00	1	\$135.00
				Optional Component Total:	\$136.85

DuPage County  
DuPage County Campus Cafeterias  
Donna Weidman  
donna.weidman@dupageco.org  
3/14/2023



SpotOn Transact, LLC  
100 California Street  
San Francisco, CA 94104

Statement of Work

3 Cafeteria's for DuPage County Campus - 4 POS total 1 KDS  
Requirement for gift cards  
Option to renew year 4 with no increase

Requirement to process gift cards would run through a Givex integration with SpotOn. Additional fees are applicable from Givex and it would be the responsibility of DuPage County to own the relationship directly with Givex should they want to utilize gift cards at the campus locations

Service Type	Description of Services	Resources	Days	Total	Rate	Extended
POS Staging	Staging and Configuration, DB Load, Testing and QA			5	\$ 20.00	\$ 100.00
						\$ 8,335.00

The parties hereby agree to the terms of this purchase order, subject to the terms and conditions of the Subscription Agreement, which is incorporated herein in its entirety by this reference (together with this purchase order, the "Agreement"). Upon full execution by the parties below, this purchase order will become effective and shall be deemed a "Purchase Order" under the Agreement, effective as of the date hereof. Capitalized terms used but not defined herein shall have the meanings given to them in the Agreement.

DuPage County

SpotOn Transact, LLC  
Jack Chalfant

Print Name

Print Name  
Controller

Title

Title  
Signature on File

Signature

Signature  
03/15/2023

Date

Date

Term of Agreement (Years) 3 Years from venue/location License Activation Date

Target Live Date

5/1/2023

Gateway Only Fees (Per Trans)

\$0.050

Freedom Pay

PO Number (if applicable)

PAYMENT TERMS	
CONTRACT TOTAL	\$ 24,742.45
DEPOSIT AMOUNT	\$ -
BALANCE DUE	\$ 24,742.45

\* Customer is responsible for paying applicable taxes

☐ Tax Exempt

(If checked, send exemption certificate to [appetize.accounting@spoton.com](mailto:appetize.accounting@spoton.com))

Payment remittance information:

SpotOn Transact, LLC  
ATTN: Accounts Receivable  
P.O. Box 102885  
Pasadena, CA 91189-2885

For ACH:  
JPMorgan Chase  
Routing #: 322271627  
Account#: 535966003

BILL TO:	
Account	The County of DuPage
Address	421 N. County Farm Road
City, State, Zip	Wheaton, IL 60187-3978
ATTN	DuPage County, Finance - Procurement 3-400
Email	<a href="mailto:donna.weidman@dupageco.org">donna.weidman@dupageco.org</a>
Phone No.	630-407-6181

SHIP TO:	
Site Name	The County of DuPage
Address	421 N. County Farm Road
City, State, Zip	Wheaton, IL 60187-3978
ATTN	DuPage County, Finance - Procurement 3-400
Email	<a href="mailto:donna.weidman@dupageco.org">donna.weidman@dupageco.org</a>
Phone No.	630-407-6181

ACCOUNTING CONTACT INFORMATION	
Site Name	The County of DuPage
Email	<a href="mailto:donna.weidman@dupageco.org">donna.weidman@dupageco.org</a>
Phone	630-407-6181

PROJECT STAKEHOLDER INFORMATION	
Contact	DuPage County, Finance - Procurement 3-400
Email	<a href="mailto:donna.weidman@dupageco.org">donna.weidman@dupageco.org</a>
Phone	630-407-6181

Complete Venue Information if different from Ship To address

Venue Location	
Venue Name	
Contact Name	
Address	
City, State, Zip	

Version 3-Jan-23

As more fully set forth in the Agreement

\* Implementation availability subject to minimum 75-day advance notice \* Hardware only shipped after receipt of required deposit(s) and requires 10-15 business days to ship \*  
\* Purchase Order does not include any applicable taxes, which are the responsibility of customer \* First year recurring SaaS subscription fees due prior to License Activation Date; fees billed annually thereafter \*  
\* If no "term" is specified above, the "term" is set forth in the Agreement \* At the conclusion of the initial term, this Purchase Order automatically renews as set forth in the Agreement \*

## EXHIBIT C

### SERVICE LEVEL AGREEMENT

#### 1. Overview

This exhibit represents a Service Level Agreement (“SLA”) between SpotOn Transact, LLC (“**SpotOn**”) and the customer receiving Services from SpotOn (“**Operator**”) pursuant to a Point of Sale as a Service Subscription and Professional Services Agreement (the “**Agreement**”) for the provisioning of Support Services required to sustain the SpotOn Platform. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Agreement.

#### 2. Service Agreement

##### 2.1. Service Scope. The following Support Services are covered by this SLA:

- Support by telephone, email and online chat.
- Remote assistance, using Remote Desktop when applicable.
- Planned or Emergency Onsite assistance (for which extra costs will apply).

##### 2.2. SpotOn Responsibilities. The following service parameters are the responsibility of SpotOn during the term of this SLA:

- Providing responses for support-related incidents.
- Meeting required response times.
- Providing reasonable notification to Operator for scheduled maintenance.

##### 2.3. Operator Responsibilities. SpotOn’s provision of Support Services under this SLA is conditioned upon Operator:

- Paying any applicable fees and costs for support as set forth in the SLA or the Agreement.
- Making Operator’s representative(s) reasonably available to SpotOn personnel resolving a service request.
- Providing sufficient detail that SpotOn personnel can reproduce and identify any reported issues, including but not limited to, Errors.
- Promptly implementing all version updates, upgrades and workarounds provided.
- Archiving or backing up all data to mitigate against any data losses that may occur.
- Upon request from SpotOn, upgrading its systems at Operator’s own cost to SpotOn’s then-current supported versions of system components, so that SpotOn may provide the then-current version updates, upgrades and workarounds.
- Using SpotOn Transact only for its intended purpose of selling Merchandise in accordance with SpotOn documentation, and not installing any computer programs or software on any SpotOn Hardware except for that provided by SpotOn for use on that SpotOn Hardware.

#### 3. Support Management. The following sections provide relevant details on support availability, monitoring of in-scope services and related components.

##### 3.1. Support Availability. Coverage parameters specific to the Support Services covered in this SLA are as follows:

- Support via telephone at 877-559-4225: 24 hours per day Monday – Sunday
- Support via email at support@spoton.com: 24 hours per day Monday – Sunday
- Support via online chat at connect.spoton.com: 24 hours per day Monday – Sunday
- Onsite assistance: within 24 hours of Operator’s request at a cost of \$1,050 per day (minimum 2 days), plus the reasonable expenses for related travel and lodging of SpotOn personnel providing such Support Services, and subject to the reasonable availability of SpotOn personnel.

3.2. Support Levels. SpotOn Operator Service Representatives will be available 24 hours per day, 7 days a week. SpotOn will respond to Support Service incidents and/or requests submitted by the Operator within the following time frames:

- *Level 1* (not impeding payment acceptance functionality): SpotOn will respond within 24 hours of receiving the request.
- *Level 2* (impeding payment acceptance functionality): SpotOn will respond within six hours by providing a resolution or a workaround, or by escalating to SpotOn development personnel for advanced technical support.
- *Level 3* (onsite assistance): Operator may request onsite assistance of an SpotOn representative within 24 hours, in which case the Operator will pay SpotOn \$1,050 per day (minimum 2 days) for this Support Service, plus the reasonable expenses for related travel and lodging of such SpotOn representative. Onsite support is subject to the reasonable availability of SpotOn personnel.

4. Software Updates. All software updates and other modifications to the SpotOn Transact provided by SpotOn to Operator will be subject to the terms and conditions of the agreement that is provided with the software update or modification, and Operator shall be bound thereby when Operator first activates the software; or, if no agreement is provided with the software update or modification, the software update or modification will be subject to the terms of the Agreement.

5. Limitations on Support Services. The following provisions limit the responsibilities of SpotOn to provide Support Services under this SLA.

5.1. Outdated Software Versions. SpotOn will provide Support Services with respect to the version of the SpotOn Transact that was originally provided to Operator for a period of twelve (12) months following the date of receipt. Thereafter, SpotOn will provide Support Services with respect to the then-current version of the SpotOn Transact. SpotOn may, at its sole discretion, provide Support Services for outdated versions of the SpotOn Transact; provided, however, it is anticipated that outdated versions of the supported software may lack features, corrections or bugfixes that are available in the then-current version.

5.2. Exclusions. Unless otherwise expressly agreed to in writing by SpotOn, SpotOn is not obligated to provide Support Services related to: (i) Operator's failure to implement all version updates, corrections and workarounds provided by or on behalf of SpotOn; (ii) modification of or additions to the SpotOn Transact by any party other than SpotOn; (iii) interconnection of the SpotOn Transact with third party software or hardware not furnished by SpotOn or not specified in the documentation as approved for use with the SpotOn Transact; (iv) use of the SpotOn Transact in a manner for which it was not designed or beyond the scope of the license set forth in the Agreement; (v) Operator or a third party's negligence; or (vi) any breach by Operator of the Agreement.

**EXHIBIT D****STATEMENT OF WORK ACCEPTANCE PROCEDURES**

1. Acceptance Testing. Each Deliverable will be subject to Acceptance Testing by Operator as described herein or in the applicable SOW. Operator will have the Acceptance Test Period to perform Acceptance Testing if: (a) a Deliverable meets its Acceptance Criteria; or (b) there are no such Acceptance Criteria but the Deliverable does not contain a Nonconformity, then Operator will provide SpotOn a notice of acceptance.
2. Acceptance. A Deliverable or performance of a Deliverable will be deemed to be accepted only upon the earlier of: (a) receipt by SpotOn of a notice of acceptance from Operator; or (b) the expiration of the Acceptance Test Period for such Deliverable in which case the Deliverable shall be deemed accepted (such acceptance, the “**Acceptance**”). Notwithstanding anything to the contrary in the Agreement, Acceptance of a Deliverable or performance of a Deliverable will only occur in accordance with the terms of this Exhibit.
3. Failure to Satisfy Acceptance Criteria. If a Deliverable fails to meet the relevant Acceptance Criteria or contains a Nonconformity, Operator will deliver SpotOn written notification (the “**Notice of Nonconformity**”) of such fact, describing such Nonconformity with particularity. As soon as reasonably practicable after receiving the Notice of Nonconformity, SpotOn will correct the Nonconformity (and any other problems of which it has knowledge) and redeliver the Deliverable to Operator in conformance with the Acceptance Criteria.
4. SpotOn Correction/Re-performance. Upon completion of such corrections and SpotOn’s redelivery of a Deliverable, the Acceptance Test Period will be reset unless Operator otherwise agrees in writing. Operator will have such reset Acceptance Test Period to retest the Deliverable or take other action to determine whether the previously reported Nonconformity has been corrected and if the Deliverable or performance of the Deliverable meets the relevant Acceptance Criteria or demonstrates other Nonconformities. This process will be repeated as necessary until all Nonconformities are corrected and the Deliverable meets its Acceptance Criteria as otherwise provided in this Exhibit.

## EXHIBIT E

## SPOTON HARDWARE LICENSE TERMS

1. Ownership of SpotOn Hardware. SpotOn shall own and retain title to the SpotOn Hardware. As such, during the Term, Operator will keep all SpotOn Hardware in its possession and will not permit others to possess or use it, and will not sell, collateralize or encumber any such SpotOn Hardware in any way. The SpotOn Hardware is the personal property of SpotOn and shall not be regarded as a fixture or otherwise part of the real estate on which it may be located or affixed.
2. Maintenance and Care. Operator shall use reasonable care in its custody and use of SpotOn Hardware, and shall be responsible for all loss or damage, ordinary wear and tear excepted. Without limiting the generality of the foregoing, Operator shall be responsible to keep SpotOn Hardware updated with all software and system upgrades provided by SpotOn and shall keep all SpotOn Hardware free from excess temperature exposure, drops or physical impact, water damage and damage of any other kind that causes the SpotOn Hardware to malfunction. In the event of any damage or loss to SpotOn Hardware, Operator shall be responsible to pay SpotOn the replacement cost of such SpotOn Hardware.
3. Hardware Refresh. During the Term (whether the PO Initial Term or any PO Renewal Term) but beginning once the SpotOn Hardware has been installed and is being used for Merchandise Orders at a particular Operator location, SpotOn shall update and replace each item of SpotOn Hardware and equipment otherwise made available or used with the SpotOn Platform to ensure that Operator is using the latest generally available version of such item, by replacing the SpotOn Hardware at such location (the “**Hardware Refresh**”), between 36 and 38 months into the Initial Term, and again at the beginning of any PO Renewal Term. The cost of the labor to complete any Hardware Refresh shall be as set forth in the applicable Purchase Order. If SpotOn provides the installation services for the Hardware Refresh, then SpotOn shall pack and ship (at its sole cost and expense) all replaced items due to be returned from the Hardware Refresh. However, if the Operator provides the installation services for the Hardware Refresh, then Operator shall pack and ship (at its own cost and expense) all replaced items from the Hardware Refresh for return to SpotOn or its agent. Operator will, at all times, use reasonable care in returning SpotOn Hardware, using any packing boxes or materials that SpotOn provides, and will return to SpotOn within thirty (30) days of any the Hardware Refresh all such replaced SpotOn Hardware (excluding such SpotOn Hardware, if any, as Operator may instead elect to purchase from SpotOn) in good working order as outlined in Section 2 of this **Exhibit F** (Maintenance and Care).
4. Return. Upon expiration or termination of this Agreement (whether in full or only as to a particular location), Operator will (a) return to SpotOn all SpotOn Hardware in Operator’s possession located at such location(s) which is the property of SpotOn, all as soon as reasonably practicable but in no event later than fifteen (15) days after the expiration or termination of this Agreement; and (b) pay SpotOn for any damage to the SpotOn Hardware, normal wear and tear excepted. The cost of return shipping shall be borne by Operator unless otherwise agreed between the parties.
5. Repossession. If, following the expiration or earlier termination of this Agreement, Operator fails to promptly return to SpotOn any and all SpotOn Hardware as contemplated herein, SpotOn may: (a) demand that Operator return the SpotOn Hardware to SpotOn; (b) take possession of the SpotOn Hardware, wherever it may be located, with reasonable notice, but without any court order or other process of law, and any such taking of possession will not constitute a breach of this Agreement; and (c) pursue any other remedy available at law or in equity, including seeking damages, specific performance or an injunction.
6. Cumulative Remedies. Each of the remedies against Operator as it relates to the return of SpotOn Hardware is cumulative, and not exclusive, and in addition to any other remedy referred to herein or otherwise available to SpotOn in law or in equity. Any repossession or subsequent sale or lease by SpotOn of the SpotOn Hardware will not bar an action for a deficiency based on the provisions of this Agreement and Operator will remain liable for any such deficiency after any disposition of the SpotOn Hardware by SpotOn, provided that no exercise of SpotOn’s remedies shall allow SpotOn to bring action against Operator to recover any amounts in excess of the total of: (i) SpotOn Hardware fees due, late charges, indemnification payments or other amounts due; (ii) the residual value of the SpotOn Hardware; and (iii) any of SpotOn’s reasonable expenses with respect to collection under this Agreement. The bringing

of an action or the entry of judgment against Operator will not bar SpotOn's right to repossess any or all items of the SpotOn Hardware.

**EXHIBIT F****SPOTON HARDWARE MAINTENANCE PROCEDURES**

1. Returns of New SpotOn Hardware. SpotOn may, in its sole and absolute discretion, accept returns of new-in-box SpotOn Hardware within fourteen (14) days of Operator's receipt thereof. SpotOn Hardware that has been customized or configured specifically for Operator may not be returned. Operator shall be liable for the cost of any return shipping of SpotOn Hardware together with a restocking fee equal to fifteen percent (15%) of the price of such SpotOn Hardware.
2. Returns of Damaged, Defective or Malfunctioning SpotOn Hardware Owned by SpotOn. In case of any SpotOn-owned SpotOn Hardware that is damaged, defective, or malfunctioning, Operator shall notify SpotOn of any such damage, defect, or malfunction as soon as reasonably practicable after discovery. SpotOn will work with Operator to troubleshoot the issue to identify the cause of the defect or malfunction. In the event the issue cannot be resolved remotely, SpotOn will process a replacement as follows:
  - (a.) a materially equivalent replacement unit will be shipped to Operator via standard overnight shipping. Provided that SpotOn completes its troubleshooting review prior to 3:30 p.m. (Pacific Time), Monday through Friday, the replacement unit will be shipped the same day of the request; otherwise, the replacement unit will be shipped on the next business day following the request.
  - (b.) The replacement unit will be shipped with a pre-paid, return shipping label for use by Operator.
  - (c.) Operative shall re-pack the damaged, defective, or malfunctioning unit in the shipping container and packing material used to send the replacement unit and promptly return the faulty unit to SpotOn.
  - (d.) Returned SpotOn Hardware will be inspected and, if the damage, defect, or malfunction is found to be Operator-caused, repair/replacement and shipping costs will be billed to Operator, the responsibility for which in such circumstances, Operator hereby acknowledges.
3. Replacement of SpotOn Hardware Owned by Operator. SpotOn will assist Operator in the replacement of any damaged, defective, malfunctioning, or obsolete SpotOn Hardware that is owned by Operator at SpotOn's then current pricing for such SpotOn Hardware, with such replacement cost and all shipping to be paid by Operator and Set-up Services (if such Set-up Services are requested) to be paid by Operator at SpotOn's then current Set-up Services rates.

## **SPOTON HARDWARE PURCHASE AND INSTALLATION SERVICES**

### **GENERAL TERMS AND CONDITIONS**

1. ACCEPTANCE: THIS PURCHASE ORDER IS LIMITED TO THE TERMS AND CONDITIONS SPECIFIED ON THE FACE OF THIS PURCHASE ORDER AND THIS DOCUMENT AND ANY ATTACHMENTS REFERENCED THEREIN FOR THE PURCHASE OF SPOTON HARDWARE AND SERVICES REQUIRED TO INSTALL THE SPOTON HARDWARE AT BUYER'S VENUE. SPOTON DOES NOT AGREE TO ANY PROPOSED ADDITION, ALTERATION OR DELETION BY BUYER UNLESS AGREED TO IN WRITING BY THE PARTIES. ANY OTHER STATEMENT OR WRITING OF BUYER SHALL NOT ALTER, ADD TO OR OTHERWISE AFFECT THESE TERMS AND CONDITIONS. THIS PURCHASE ORDER IS SUBJECT TO THE TERMS AND CONDITIONS OF ANY APPLICABLE WRITTEN AGREEMENT BETWEEN THE PARTIES, IF ANY. IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS OF THIS PURCHASE ORDER AND THE TERMS OF ANY SUCH WRITTEN AGREEMENT, THE TERMS OF THE WRITTEN AGREEMENT BETWEEN THE PARTIES SHALL GOVERN AND CONTROL.

2. PACKING AND SHIPPING: All packing, shipping and insurance charges for SpotOn Hardware purchased hereunder shall be as set forth on this Purchase Order.

3. SHIPMENT OR DELIVERY: Shipment or delivery of SpotOn Hardware purchased hereunder shall be in accordance with the schedule set forth on this Purchase Order and in exact quantities ordered.

4. INSPECTION: All items of SpotOn Hardware are subject to final inspection and acceptance by Buyer at the destination notwithstanding any prior payment or inspection at the source. Acceptance of any items of SpotOn Hardware by Buyer shall not be deemed to alter the obligations of SpotOn or the rights of Buyer under this Purchaser Order.

5. REJECTION; RETURNS: Buyer shall notify SpotOn if any items delivered hereunder are rejected for being non-conforming, and at Buyer's election and SpotOn's risk and expense, such items may be returned to SpotOn. SpotOn shall issue Buyer a credit for all costs and expenses with respect to such rejected items or replace or correct rejected items, at Buyer's election. SpotOn may, in its sole and absolute discretion, accept returns of new-in-box, conforming SpotOn Hardware within fourteen (14) days of Operator's receipt thereof. SpotOn Hardware that has been customized or configured specifically for Operator may not be returned. Operator shall liable for the cost of any return shipping of any conforming SpotOn Hardware together with a restocking fee equal to fifteen percent (15%) of the price of such SpotOn Hardware.

6. WARRANTY: SpotOn provides no warranty on SpotOn Hardware. Any warranty on SpotOn Hardware is provided by the device manufacturer itself. SpotOn will use commercially reasonable efforts to assist Buyer in making claims under those third-party warranties. Buyer is solely responsible for registering each SpotOn Hardware device with the manufacturer to receive any the benefit of any such third-party warranties.

7. INSTALLATION SERVICES: Subject to these terms and the accompanying Purchase Order, SpotOn will assist Buyer in the installation of the SpotOn Hardware and training of Buyer's (or its agent's)

personnel on use of the SpotOn Hardware and the SpotOn SaaS technology at a cost to be set forth on the accompanying Purchase Order ("**Set-up Services**"). Buyer will cooperate with SpotOn to assist in the installation of the SpotOn Hardware and training of Buyer's (or its agent's) personnel on use of the SpotOn Hardware and the SpotOn SaaS technology, at the times and dates arranged in advance with SpotOn. Additional onsite support is subject to further charge under the terms of another Purchase Order.

8. CHANGES: Buyer may make changes to any SpotOn Hardware to be purchased or Installation Services to be performed, but no change shall be effective unless Buyer issues a written change order which is accepted by SpotOn. Changes which increase or decrease pricing shall be revised as mutually agreed in writing.

#### 9. INVOICES/PAYMENT:

(a) Buyer will pay to SpotOn the amounts set forth on the Purchase Orders for the SpotOn Hardware ("**Hardware Fees**"). SpotOn may invoice Buyer for Hardware Fees set forth on any Purchase Order immediately upon execution of such Purchase Order, or at any time thereafter. Original invoices must be presented for payment in accordance with instructions contained on the Purchase Order including reference to Purchase Order number and submitted to the correct address for processing. The County shall pay all invoices pursuant to 50 ILCS 505, "Local Government Prompt Payment Act". Invoices containing charges for work subject to the Illinois Prevailing Wage Act (820 ILCS 130/) are required to be accompanied by the applicable Certified Transcript of Payroll form(s) for acceptance. Payment will not be made on invoices submitted later than six-months (180 days) after delivery of goods and **any statute of limitations to the contrary is hereby waived.**

(b) SpotOn will not be obligated to order, obtain, ship or provide to Buyer any SpotOn Hardware until any applicable deposits or other required payments on such invoiced Hardware Fees have been paid; and in the event that such deposits or required payments are not received in full by SpotOn in accordance with subparagraph (a) above, any schedule, date or deadline for delivery of such SpotOn Hardware will be automatically extended by (and any failure by SpotOn to make such SpotOn Hardware available on such schedule, date or deadline will be excused to the extent such failure does not exceed) one day for each day the Deposit or required payments remain unpaid after the deadline for payment.

(c) Buyer will pay to SpotOn the fees for Installation Services set forth in each Purchase Order. SpotOn may invoice Buyer on a monthly basis for any and all Hardware Fees not invoiced under Subsection (a) above and Installation Services fees. Payment for Installation Services shall be made in accordance with subsection (a) above.

Buyer is responsible for and will pay all sales taxes and other governmental charges on the SpotOn Hardware and Installation Services, if any, except for government taxes imposed on the net income, personnel, or real property of SpotOn. However, if the Buyer is legally entitled to an exemption from the payment of taxes or other governmental charges, Buyer will promptly provide SpotOn with legally sufficient tax exemption certificates for each taxing jurisdiction for which Buyer claims exemption. Unless otherwise prohibited by law, SpotOn will apply the benefits of a requested tax exemption to charges after the date SpotOn receives and reasonably processes the tax exemption certificates.

#### 10. INDEMNITY:

(a) SpotOn shall indemnify, hold harmless, and defend Buyer, its Affiliates and their respective officers, directors, agents, representatives, employees, subcontractors, customers, users of SpotOn's goods and services from any and all claims (including, without limitation, claims by vendees of Buyer), liabilities, damages and expenses (including reasonable attorneys' fees) arising from or related to (i) the gross negligence or willful misconduct of SpotOn, its affiliates and their respective employees, contractors,

subcontractors, vendors and agents (the “**SpotOn Parties**”), (ii) violation of any law or regulation or (iii) alleged infringement of any patent, copyright or trademark or violation of any other intellectual property right of a third party. This indemnity shall apply without regard to whether the claim, damage, liability or expense is based on breach of contract, breach of warranty, negligence, strict liability or other tort. This indemnity shall survive delivery and acceptance of goods or services.

- (b) Nothing contained herein shall be construed as prohibiting the Buyer, its officials, directors, officers, agents and employees, from defending through the selection and use of their own agents, attorneys and experts, any claims, suits, demands, proceedings and actions brought against them. Pursuant to Illinois law, the attorney representing the Buyer, under this paragraph or paragraph 10(a), must be the State’s Attorney, in accordance with the applicable law. The Buyer’s participation in its defense shall not remove SpotOn’s duty to indemnify, defend, and hold the Buyer harmless, as set forth above.
- (c) Any indemnity as provided in this AGREEMENT shall not be limited by reason of the enumeration of any insurance coverage herein provided. SpotOn’s indemnification of Buyer shall survive the termination, or expiration, of this AGREEMENT.
- (d) The Buyer does not waive, by these indemnity requirements, any defenses or protections under the Local Government and Governmental Employees Tort Liability Act (745 ILCS 10/1, et seq.) or otherwise available to it, or the SpotOn, under the law

(e) Buyer shall indemnify, hold harmless, and defend SpotOn, its affiliates and their respective officers, directors, agents, representatives, employees, subcontractors and customers from any and all claims (including, without limitation, claims by vendees of SpotOn), liabilities, damages and expenses (including reasonable attorneys’ fees) arising from or related to (i) the gross negligence or willful misconduct of Buyer, its affiliates and their respective employees, contractors, subcontractors, vendors and agents (the “**Buyer Parties**”), (ii) violation of any law or regulation or (iii) alleged infringement of any patent, copyright or trademark or violation of any other intellectual property right of a third party. This indemnity shall apply without regard to whether the claim, damage, liability or expense is based on breach of contract, breach of warranty, negligence, strict liability or other tort. This indemnity shall survive delivery and acceptance of goods or services. The foregoing indemnity obligations are subject to Illinois laws, and will not apply if Illinois laws do not permit Buyer to indemnify SpotOn in the foregoing situations.

11. **INSURANCE:** SpotOn shall maintain, at its sole cost, and shall require any subcontractors it may engage, to maintain at all times while transacting business with Buyer and for two (2) years following acceptance of goods and services hereunder, the insurance coverage set forth below: (a) Workers’ Compensation Insurance as required by laws and regulations applicable to and covering any subcontractor’s employees performing in connection with SpotOn’s obligations hereunder at any Buyer location, and all employees of SpotOn engaged in SpotOn’s performance of its obligations hereunder; (b) Employers’ Liability Insurance protecting SpotOn against common law liability in the absence of statutory liability, for employee bodily injury arising out of the master-servant relationship with a limit of not less than \$1,000,000; and (c) Commercial General Liability Insurance including coverages for premises/operations, products/completed operations, bodily injury, property damage, independent contractors and coverage for insured contracts specifically in support of the contractual obligations of SpotOn including, without limitation, any indemnity obligations hereunder, with limits of liability of not less than \$2,000,000 per occurrence and \$2,000,000 in the annual aggregate. At the request of Buyer, SpotOn shall provide a certificate of insurance evidencing such insurance coverage set forth above.

12. **TITLE AND RISK OF LOSS:** SpotOn warrants title to all goods sold and bears the risk of loss or

damages to the items purchased under this Purchase Order until they are delivered DDP (Incoterms 2000) Buyer's premises ("**Delivery**"). Subject to the timely payment in full of the Hardware Fees by Buyer, title, and risk of loss to the SpotOn Hardware will pass to Buyer immediately upon Delivery. All freight, insurance and other shipping expenses will be reimbursed to SpotOn by Buyer.

13. COMPLIANCE: SpotOn warrants that all SpotOn Hardware and Installation Services supplied under this Purchase Order shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances at the time of delivery or performance.

14. TERMINATION: SpotOn may terminate all or any portion of this Purchase Order at any time by giving notice to Buyer. Buyer may terminate all or any portion of this Purchase Order at any time by giving notice to SpotOn. In the event of termination without cause by Buyer, Buyer's liability shall be the cost of any direct or indirect losses incurred by SpotOn for SpotOn Hardware that has already been purchased or Installation Services that have already been performed in reliance upon this Purchase Order. Additionally, either party may, by notice to the other party, terminate in whole or in part this Purchase Order in the event of suspension of such party's business, the insolvency of such party, the institution of bankruptcy, reorganization, or liquidation proceedings by or against such party, the appointment of a trustee or receiver for such party's property or business, or any assignments by such party for the benefit of creditors. The rights and remedies of SpotOn and Buyer provided in this Termination clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Purchase Order.

15. PRICING: Pricing for the SpotOn Hardware shall be as set forth on this Purchase Order. The price quoted by SpotOn includes the price of any goods or services obtained from any subcontractor or supplier to SpotOn, unless otherwise agreed in advance by Buyer. SpotOn shall incorporate these terms and conditions on any order approved by Buyer and procured from third parties pertaining to this Purchase Order. SpotOn shall remain fully responsible for all work performed by such third parties and shall indemnify and hold Buyer harmless for any payment required to be made to any such parties.

16. WAIVER: No waiver of any default by either party shall act as a waiver of a subsequent or different default.

#### 17. LIMITATION OF LIABILITY:

(a) EXCEPT FOR PAYMENTS TO THIRD PARTIES MADE PURSUANT TO SECTION 10 (INDEMNIFICATION), NEITHER PARTY WILL UNDER ANY CIRCUMSTANCES BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, LOST PROFITS OR LOSS OF BUSINESS, EVEN IF A PARTY IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.

(b) EXCEPT FOR SPOTON'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 10 OF THIS AGREEMENT, UNDER NO CIRCUMSTANCES WILL SPOTON'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EXCEED FIVE TIMES (5X) THE TOTAL FEES PAID BY BUYER TO SPOTON FOR THE SPECIFIC SPOTON HARDWARE UPON WHICH THE FIRST EVENT GIVING RISE TO LIABILITY WAS BASED ("LIABILITY EVENT") DURING THE TWELVE (12) MONTHS PRECEDING THE LIABILITY EVENT DATE.

(c) EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY,

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DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS INTENDED TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY SPOTON UNDER THIS AGREEMENT AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT. ALL SUCH LIMITATIONS, DISCLAIMERS, AND EXCLUSIONS (INCLUDING THIS

SECTION 9) WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

18. FORCE MAJEURE. SpotOn will not be liable for, or be considered to be in breach of or default under this Purchase Order, on account of, any delay or failure to perform as required by this Agreement as a result of any natural disaster, fire, earthquake, flood, weather condition, epidemic, acts of war or terror, civil disorder or disturbance, explosion, sabotage, technology attacks, governmental action or prohibition, failure of power, transportation or communication systems, or any other cause or condition beyond SpotOn's reasonable control, so long as SpotOn uses all commercially reasonable efforts to avoid or remove such causes of non-performance.

19. MISCELLANEOUS: Section headings are for convenience only and shall have no legal or interpretive effect. This purchase order shall be governed by and construed under the laws of the State of California, without regard to its conflicts-of-law rules. In the event any dispute arises under this Purchase Order that exceeds \$50,000 and which cannot be resolved by informal negotiation, the parties agree to participate in mediation as a condition precedent to pursuing litigation. The mediation shall be conducted by a licensed, qualified mediator in Los Angeles, CA. Nothing herein shall be construed as creating an exclusive relationship between Buyer and SpotOn regarding the goods or services. Any notices required hereunder shall be given in writing to the addresses set out in the purchase order and shall be deemed effective on the same day any such written notice is personally served, or on the third (3rd) day after such notice is deposited in the United States mail or with a nationally recognized overnight delivery service.

**DuPage County**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**SpotOn Transact**

Jack Chalfant

Name: \_\_\_\_\_

Title: Controller

Signature: \_\_\_\_\_

03/09/2023

Date: \_\_\_\_\_