



General Terms and Conditions

Section 1. Introduction

Spotzer Media Inc. (“Spotzer”) sells licenses (“Licenses”) to use pre-produced commercials from the Spotzer library (“Commercials”) and also provides media (“Media”) planning and buying services on an agency basis. Spotzer also provides other services incidental to licensing Commercials and planning and buying Media, such as services relating to the personalization of Commercials based on instructions from clients.

These general terms and conditions (“General Terms and Conditions”) apply to all transactions between you and Spotzer relating to Licenses or Spotzer services (“Services.”) This Agreement incorporates by reference Spotzer’s [Website Terms of Use](#) , [Privacy Statement](#), and [Commercial Guidelines](#). This Agreement also incorporates by reference Spotzer’s Schedule of Regions, a copy of which you can request by sending an email to info@spotzer.com.

Please read this Agreement carefully and print a copy for your records. If you have any questions about the General Terms and Conditions, you can send your questions by email to info@spotzer.com.

Section 2. License and Services Agreements

From time to time, Spotzer shall prepare a proposal setting forth specific fees and other material terms relating to particular Licenses and/or Services (“Proposal.”) Delivery to you of a Proposal shall constitute an offer by Spotzer to sell you the License and/or provide you the Services specified in the Proposal, subject to the terms and conditions of the Proposal and these General Terms and Conditions.

Upon acceptance by you of any Proposal, you and Spotzer shall become parties to a binding License and Services Agreement (“Agreement.”) The Proposal and these General Terms and Conditions shall together constitute the Agreement. You can accept a Proposal by executing and delivering to us a printed copy or by indicating your acceptance to us electronically by either clicking on the designated button on our website or by simply sending us an email that references the Proposal and indicates your acceptance.

Prior to written acceptance by you, Spotzer reserves the right to withdraw any Proposal at any time, with or without notice to you.

Section 3. License to Use Commercials

The License. Upon payment of the License fees specified in a Proposal, Spotzer shall license you to use a specific Commercial in a geographic territory (“Region”) and for a period of time (“Period”). The fees, Region and Period shall be defined in the Proposal. Your Proposal shall also define the level of exclusivity applicable to your License (see “Exclusivity Rights” below). Your License shall only entitle you to use the Commercial for commercial advertising purposes and shall not entitle to you to any other uses of any sort, such as entertainment or education. Your License shall entitle you to use the Commercial only in connection with Media you purchase through Spotzer unless the Proposal explicitly permits otherwise. Accordingly, you are not permitted to transfer, assign or sublicense the Commercial or to use derivatives of the Commercial in



Media not purchased through Spotzer or to use the Commercial or its derivatives in any other way unless explicitly permitted by the terms of your Proposal. Notwithstanding your License to use the Commercial, Spotzer shall remain the owner of the Commercial. You shall have no right to possess a copy of the Commercial unless explicitly agreed in your Proposal.

Extending or Upgrading Licenses. The terms of your License to use a Commercial may be amended at any time upon acceptance by you of a new Proposal setting forth revised terms. You will also be required to pay any additional fees specified in such new Proposal before such amended License shall take effect. You should contact us for further information about the costs and availability of extending your License to cover greater geographic territory or a longer period of time. You may also be able to purchase a higher or lesser degree of exclusivity than originally specified.

Personalization. Spotzer shall personalize Commercials based on content, such as logos, pictures, videos, slogans, music or voice art, and contact information provided by you (collectively, “Your Content”). You shall give Spotzer a worldwide, perpetual, royalty-free, and sub-licensable license to use Your Content for purposes of providing you a personalized version of the Commercial (a “Personalized Commercial”) as well as for Spotzer’s marketing and promotional purposes. Your Personalized Commercial shall be subject to the same terms applicable to the Commercial from the Spotzer library. Such Personalized Commercial shall also remain entirely owned by Spotzer with your right to use such Personalized Commercial limited to the same extent as your right to use the Commercial from the Spotzer library. You shall remain the owner of Your Content, subject to Spotzer’s limited right to use Your Content as described herein. You shall have no right to possess a copy of the Personalized Commercial unless your Proposal explicitly provides for such a right. Personalized versions of your Commercial may include a mark identifying it as having been created by Spotzer. The fee charged for your License generally includes the personalization of the Commercial. To the extent you request personalization services beyond the normal degree of such services, Spotzer reserves the right to charge you additional fees for such additional personalization services.

Self-produced Commercial. If a Proposal provides for you to submit to Spotzer your own commercial to be used in conjunction with Spotzer’s personalization services, Media planning or buying services or other Services, then your commercial shall be treated as Your Content. Thus, Spotzer shall have a worldwide, perpetual, royalty-free license to use and to sub-license your commercial for purposes of providing Services to you as well as for purposes of promoting or marketing Spotzer’s business. You will have to contact Spotzer to verify if your self-produced commercial meets the requirements of Spotzer and the Media outlets (“Media Outlets”) offering the Media included in your Proposal. You shall remain the owner of your commercial, subject to Spotzer’s limited rights to use your commercial. These General Terms and Conditions apply to any submissions by you of your own commercial. You shall be fully responsible for, and shall indemnify and hold harmless Spotzer against, any claims and liabilities in connection with commercials that you submit. Any Proposal providing for you to submit your own commercial will set forth any additional fees required in connection with such submission.

Intellectual Property Rights. As between you and Spotzer, except for Your Content, all copyright and other intellectual property rights contained or displayed through Commercials (including Personalized Commercials) and other material developed or provided by Spotzer, including, without limitation, templates, images, scripts, story lines, sound tracks, tag lines, and “look and feel” are and will remain Spotzer’s sole and exclusive property. No intellectual property rights in the



Commercials or Personalized Commercials will be transferred to you, other than the limited License to use and display your Personalized Commercial pursuant to the terms of your Proposal. Except for any of Your Content, Spotzer shall own exclusive rights in any and all derivative works created from Commercials.

Delivery of Commercials to Media Outlets. In the event that Spotzer explicitly agrees to permit you to use the Commercial with Media not purchased through Spotzer, then Spotzer shall have the right to receive from you a report showing the Media on which the Commercial is used. Such report shall be due within 30 days after the start of any campaign. In addition, Spotzer shall have the right to receive from each Media Outlet a report showing the geo-targeting tools and methods employed by the Media Outlet in connection with the use of the Commercial. Such report shall be due within 60 days of the end date of any campaign. You hereby authorize Spotzer to receive such Media Outlet reports and you further agree to take any and all further actions as may be requested by Spotzer or a Media Outlet in connection with securing for Spotzer the right to receive such reports. Spotzer reserves the right to refuse to deliver your Commercial to any Media Outlet that refuses to provide such reports.

Section 4. Exclusivity Rights

As part of your Proposal, you may be granted certain exclusivity rights with respect to your use of a Commercial. Exclusivity rights shall be subject to the terms set forth in this Agreement and will fall within one of the following 3 categories:

- (1) Exclusive. If your Proposal specifies that your rights to use a Commercial will be “Exclusive,” you will be entitled to exclusive use of the Commercial and its “Core Elements” (as defined below) within the Region and the Period specified in your Proposal, subject to the qualifications and limitations set forth below. The “Core Elements” of a Commercial shall be any unique slogan, and independently copyrightable elements (such as the video, animation, and music), that are contained in the Commercial and that Spotzer in its sole discretion deems to be material to creating the unique look and feel and message of the Commercial.
- (2) Qualified Exclusive. If your Proposal specifies that your rights to use a Commercial will be “Qualified Exclusive,” then, subject to the qualifications and limitations set forth below: (a) you will be entitled to exclusive use of the Commercial, within the Region and during the Period specified in your Proposal, and (b) Spotzer agrees that Spotzer will not grant to others the right to use your Commercial’s Core Elements in any other of Spotzer’s clients’ commercial advertising within the Region and during the Period specified in your Proposal. However, other than as set forth above in this paragraph, your rights to use the Core Elements of the Commercial shall be non-exclusive. A third party (such as a photographer, composer, illustrator, etc.) may retain rights in the Core Elements of the Commercial and will have the right to use, and to grant others the right to use, one or more of the Commercial’s Core Elements anywhere and at any time, including in the Region and during the Period specified in your Proposal, and in any manner whatsoever, including in a commercial for another Spotzer client.
- (3) Non-Exclusive. If the Proposal specifies that your rights to use a Commercial will be “Non-Exclusive” or if the Proposal fails to identify your rights in the Commercial as “Exclusive” or “Qualified Exclusive,” you will have only a non-exclusive right to use the



Commercial and the Commercial's Core Elements, and Spotzer, its affiliates and/or a third party unaffiliated with Spotzer shall have the right to use, and to grant others the right to use, the Commercial and the Commercial's Core Elements at any time and in any manner whatsoever, without restriction.

Except as explicitly stated above or in your Proposal, Spotzer will be under no restriction with respect to granting to others the right to use and display any Commercial (including personalized versions) or any of the Core Elements at any time and in any geographic territory.

General Qualifications and Limitations

All exclusivity rights granted by Spotzer shall be subject to the following limitations and qualifications.

- (1) Exclusivity rights in any Commercial or Core Elements shall be limited to the use of such material for purposes of commercial advertising. Thus, no exclusivity rights provided to you shall in any way limit or prohibit Spotzer from using or licensing any Commercials or Core Elements for purposes other than commercial advertising, such as entertainment or education.
- (2) Regardless of the degree of your exclusivity, you agree that your exclusivity rights shall not prohibit, and Spotzer shall not be in breach of this Agreement or your Proposal if, an Internet user in any location within the Region specified in your Proposal, via so-called "pull technology," requests and/or pulls a commercial from the Internet that is the same or similar to the Commercial licensed to you or to the Core Elements of the Commercial licensed to you, and, as such, is able to view such same or substantially similar commercial or material in the Region specified in your Proposal. However, where exclusivity rights are granted, Spotzer shall not grant to others with a principal place of business within the Region specified in your Proposal the right to use the Commercial (and its Core Elements) licensed to you in any advertising within the Region and during the Period specified in your Proposal.
- (3) Spotzer reserves the right without notice to you, to reduce the geographic scope of your exclusivity rights in the event Spotzer determines that such reduction is unlikely to cause loss of a substantial portion of the value you could reasonably expect from the License. By way of example, and not by way of limitation, Spotzer might limit the geographic scope of your rights in a case where the reach of one or more Media Outlets in a region overlap or are somehow inconsistent with the reach of other media outlets in a neighboring region of the same or a different country. In this instance, Spotzer may limit your exclusivity rights so that Spotzer may offer multi-Media advertising campaigns to clients in neighboring regions, without violating any party's rights, even though the same Commercial or Core Elements may appear for different clients in the same Region and during the same Period because of the overlap or inconsistent media reach described above. You understand that this example is only a sample (which may not be representative of the situation that you may experience) of a type of situation in which Spotzer may limit your exclusivity rights pursuant to this paragraph, and Spotzer shall have absolute discretion to exercise its rights under this paragraph



and to make all determinations regarding the likelihood and substantiality of any loss of expected value.

- (4) You agree that you shall have no recourse against Spotzer, and you hereby waive any breach or alleged breach by Spotzer of your exclusivity rights set forth in this Agreement and your Proposal, in the event of either (i) a breach of your exclusivity rights that occurs despite Sponsor's commercially reasonable efforts to comply with your exclusivity rights, or (ii) a breach that individually or in the aggregate does not amount to a loss of a substantial part of the value you could reasonably expect from the License. By way of example, and not by way of limitation, if one or more Media Outlets in a country or region use, for purposes of determining the geographic target of the Media in that country or region, tools, techniques or technologies, that turn out to be inaccurate, but that are generally accepted in the relevant advertising community as a commercially reasonable means to accomplish the intended purpose, you shall have no recourse against, and you hereby waive any claim for breach of your exclusivity rights by, Spotzer, notwithstanding any actual overlap or inconsistencies among Media reach in neighboring regions and the geographic scope of your exclusivity rights. You understand that this example is only a sample (which may not be representative of the situation that you may experience) of a type of situation in which Spotzer may limit your exclusivity rights pursuant to this paragraph, and Spotzer shall have absolute discretion to exercise its rights under this paragraph and to make all determinations regarding the exertion of efforts by Spotzer and the likelihood and substantiality of any loss of expected value.
- (5) Finally, regardless of the degree of your exclusivity, Spotzer shall have the right to grant all of its clients the right to use any Commercials created for such clients on such client's websites, even if such website can be viewed in a Region or during a Period for which you have been granted exclusivity, and such grant by Spotzer of the right to use, and the use by its clients of, the Commercial(s) on the client's Website shall not be deemed to be a breach of your exclusivity rights or of this Agreement. Spotzer will generally grant to its clients the right to use a Commercial on such client's Website unless such client notifies Spotzer, prior to Spotzer's grant of such right, that such client intends to substantially market or promote its Website in regions beyond the Region covered by such client's License.

Section 5. Purchase of Media

Media Plans. From time to time a Proposal will include a media plan (the "Media Plan") setting forth specific Media inventory ("Inventory") and Media buying services ("Buying Services") for your consideration. If you have requested Spotzer to assist you in developing a Media Plan, by completing Spotzer's online Media planning questionnaire or otherwise, the Media Plan will reflect Spotzer's good faith effort to provide you with a Media Plan that matches your unique objectives, circumstances and budget. Spotzer makes no representations or warranties regarding the sufficiency or appropriateness of any Media Plans. In other cases, Spotzer will reflect in a Media Plan submitted to you specific Inventory of Buying Services you have explicitly requested Spotzer to procure on your behalf. All Media Plans will include pricing and other special terms applicable to the purchase by you of the Inventory and Buying Services described in the Media



Plan. Each Media Plan is an integral part of the Proposal in which it is included. By accepting a Proposal, you automatically become legally obligated to purchase and pay for the Inventory and Buying Services specified in the Media Plan included in the Proposal.

Media Buying. Upon your acceptance of a Proposal containing a Media Plan, Spotzer will attempt to acquire the Inventory specified in the Media Plan on your behalf and to provide the specified Buying Services. Spotzer does not guarantee that the Inventory corresponding to any or all of the Media Plan will be available at the costs or on the schedules reflected in the Media Plan or at all. Spotzer will attempt to acquire Inventory that is closest to the agreed Inventory as set forth in the Media Plan. So long as Spotzer has acted in good faith in purchasing Media on your behalf, you will be responsible for paying for any and all Inventory purchased on your behalf whether or not such Inventory meet any or all of the specifications set forth in your Media Plan. Spotzer shall not owe you any refund because the Inventory Spotzer purchased on your behalf fails to meet any or all of the specifications set forth in your Media Plan unless Spotzer has acted in bad faith.

Agency Transactions. Spotzer will act as an agent in purchasing Inventory for you. You authorize Spotzer to act on your behalf for the purpose of purchasing Inventory and to represent itself to Media Outlets, when appropriate in Spotzer's sole discretion, as your agent of record for the purpose of purchasing Inventory in conjunction with the Services.

Media Outlets. Spotzer will attempt to prevent any loss to you as a result of the failure of any Media Outlets, suppliers or others to fulfill their commitments. However, Spotzer will not be liable for any such failure or any destruction or unauthorized use of Your Content. Your purchase of Inventory will be subject to the Media Outlet terms, rules and policies under which the Inventory is purchased, which include (i) the right of the Media Outlet to reject, pre-empt, change, or substitute Inventory or programming, (ii) deadlines for submissions of material, (iii) cancellations, (iv) compliance with the Media Outlet's policies regarding approval of advertising content, (v) alternative performance (for instance, through make-goods), refunds and other remedies, (vi) limitations and exclusions of your remedies, and (vii) indemnification for liabilities arising out of publication or distribution of your Personalized Commercial and Your Content.

Payments. Unless Spotzer otherwise agrees in writing, you will pay all of the prices charged to you by Spotzer for the Inventory and Buying Services you have agreed to buy before Spotzer will purchase any Inventory on your behalf or provide any Buying Services. Refunds and cancellations of your orders will be subject to the Media Outlet rules and policies and to Spotzer's cancellation policy as set forth below. For advertising campaigns that span multiple months, Spotzer may in its sole discretion charge on a monthly cycle in advance for Inventory scheduled to run during the following month. Spotzer may store and use your payment information, including credit card information, for processing payments.

Cancellations. Once Spotzer places an order to purchase Inventory on your behalf, the order cannot be changed or cancelled except as the terms and conditions of the Media Outlet allow. In the event that Spotzer receives from you a request to cancel or change all or part of a Media Plan, Spotzer will attempt to cancel or change the scheduled Inventory upon payment by you of an administrative fee. The administrative fee will depend on the effort required by Spotzer to cancel or change your Media Plan as well as other factors such as whether or not Spotzer has already created a Personalized Commercial for you. Spotzer makes no guarantees that it will secure any cancellations or changes and under no circumstances shall it be responsible for any failure to se-



cure cancellations or changes requested by you. In any event, whether or not Spotzer secures a cancellation or change, Spotzer will not refund to you any amounts paid for Inventory or Buying Services but rather Spotzer shall credit your account for the amounts unspent or refunded by Media Outlets as a result of your cancellations or changes. You will be entitled to spend any such credits on other Services within one year of the date of the credit.

Displaying the Commercial. Media Outlets have stringent requirements with respect to the types and content of commercials they accept. The Personalized Commercial Spotzer will prepare for you may not be accepted by certain Media Outlets. Spotzer will attempt to limit the risk of rejection by adhering to Spotzer's [Commercial Guidelines](#) and to all Media Outlet rules and policies that are known to it. Spotzer is not liable if your Personalized Commercial is rejected by a Media Outlet, even when it adheres to Spotzer's Commercial Guidelines. In case of rejection, Spotzer will have the authority to secure Inventory at another Media Outlet that provides the reach closest to the rejected Inventory. In any event, you will have to pay for the Inventory ultimately purchased by Spotzer on your behalf whether or not such Inventory matches the Inventory specified in your Media Plan.

Media Information. Spotzer may share with you confidential and proprietary Media information owned by Spotzer and/or its suppliers. You are authorized to use the Media information for your own personal use in connection with the formulation and evaluation of your Media Plan and for purposes of measuring and analyzing the results of your campaigns. You may not convey any Media information provided by Spotzer to any third party, or copy, publish, or distribute the Media information in any manner.

Section 6. Other Services

From time to time a Proposal will specify other Services you may require in conjunction with licensing a Commercial or buying Media. Other services might relate to work-for-hire creative projects such as securing video or photographs of your product or locations or to customizing a Commercial to a greater degree than offered through Spotzer's normal personalization services. Any Proposal specifying any such other Services will also specify the pricing and other terms for such services. By accepting the Proposal, you automatically become legally obligated to purchase and pay for such other Services specified in the Proposal.

Section 7. Statements; Reporting

Spotzer will from time to time provide you through its website or otherwise with statements showing the status of your Licenses and reports relating to the Inventory, Buying Services and other Services you have purchased. The statements will reflect outstanding orders as well as your historical activities with Spotzer. Reporting on the fulfillment of Inventory purchases will be based on logs and other reporting provided by the Media Outlets concerned. Reports from Media Outlets may be inaccurate or delayed. Spotzer will not be responsible for such inaccuracies or delays. You acknowledge and agree that such Media Outlet logs and reporting will be considered presumptively accurate in the absence of demonstrable error.

Section 8. Representations and Warranties

You represent and warrant that: (i) you are not a Media Outlet, or an employee, agent or affiliate of a Media Outlet, (ii) you are purchasing the Licenses and/or Services, including the Inventory,



for your own use and not for resale, (iii) you have full rights to broadcast and distribute Your Content submitted or to be submitted by you to Spotzer, (iv) you are authorized and licensed to use the names and pictures of any persons or objects depicted in Your Content, (v) you are authorized and licensed to use any testimonials contained in Your Content, (vi) you are the owner of any trademarks, service marks, copyrighted material and other proprietary rights embodied or displayed in Your Content, (vii) you have documentary substantiation for all the claims made in Your Content and the Personalized Commercial, (viii) Your Content and the Personalized Commercial is truthful and not misrepresentative or misleading, (ix) you have the right to broadcast and distribute the Personalized Commercial you have selected, as personalized with Your Content, and the broadcasting and distribution of such Commercial will not violate any law, rule, or regulation of any national or local government agency or self-regulatory organization or association or any other provision of applicable law, (x) Your Content and your use of the Personalized Commercial will not plagiarize, be libelous, defamatory, harmful, threatening, abusive, harassing, vulgar, hateful, racially, ethnically or otherwise objectionable, (xi) Your Content and your use of the Personalized Commercial will not invade the rights of privacy of any third party or otherwise infringe upon or violate the rights or property interests of any third party, (xii) Your Content shall not contain any computer viruses, booby traps, time bombs, or other programming that interferes with the normal functioning of Spotzer's website, Spotzer's data or the Services, (xiii) you will not use any part of the Commercial or the Personalized Commercial except as permitted hereby or by Spotzer explicitly and you will not (and will not assist any third party to) create any ad or other marketing materials similar to, based upon, or inspired by any Commercial.

Section 9. Taxes

All charges for Licenses and/or Services are exclusive of all sales, use, excise, value-added, personal property, occupational and similar taxes now in force or enacted in the future. You shall be required to pay all such taxes and charges in full. You agree to pay or reimburse Spotzer for any taxes that are levied on the transactions under this Agreement other than taxes on Spotzer's net income. Any such payments or reimbursements will be payable by charge to the payment account that you have selected for payment of the amounts due Spotzer. Upon your request, Spotzer agrees to provide you with reasonable documentation to support invoiced amounts applied to taxes.

Section 10. Payment

You agree to pay for the Licenses and/or Services for which you contract not later than 30 days after the acceptance by you of the relevant Proposal. Payment may be by any means authorized by Spotzer, including by credit card, direct transfer, PayPal or check. You are responsible for the timely payment of all amounts due Spotzer. If you use a credit card, you will provide a valid credit card. Spotzer may charge your credit card for any License or Services purchased and all amounts due in connection therewith. Unless explicitly stated in a Proposal, Spotzer shall not provide any Services or purchase any Inventory on your behalf, and your License to use a Commercial shall not become effective, until you have paid the costs due for such Services or license.

Section 11. Late Payment

You shall pay a late charge on the amount unpaid for each day from the due date until paid in full at a rate equal to the lower of 1.5 % per month or the maximum permitted by law. Late charges shall be payable upon demand. The imposition or payment of a late charge shall not be deemed to



extend the due date of any payment. Spotzer may recover its attorneys' and other professional fees and costs to collect unpaid amounts.

Section 12. Disclaimer

SPOTZER AND ITS RELATED COMPANIES, SUBSIDIARIES AND AFFILIATES AND THEIR RESPECTIVE OFFICERS, AGENTS, PARTNERS, DIRECTORS, SHAREHOLDERS, LICENSORS, LICENSEES, EMPLOYEES, DISTRIBUTORS, CONTENT PROVIDERS, SUPPLIERS AND AGENTS DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, RELATING TO THE COMMERCIALS, THE PERSONALIZED COMMERCIAL, AND THE SERVICES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF PROPRIETARY RIGHTS, COURSE OF DEALING OR COURSE OF PERFORMANCE. SPOTZER DISCLAIMS ANY WARRANTIES THAT THE LICENSES AND/OR SERVICES, INCLUDING, WITHOUT LIMITATION, THE USE OF COMMERCIALS, THE MEDIA BUYING SERVICES OR OTHER SERVICES WILL MEET YOUR REQUIREMENTS, WILL BE ON TIME, OR WILL BE ERROR-FREE. SPOTZER DISCLAIMS ANY WARRANTIES THAT ERRORS WILL BE CORRECTED. SPOTZER DISCLAIMS ANY WARRANTIES AS TO STORAGE OF YOUR CONTENT AND SHALL NOT BE RESPONSIBLE FOR THE LOSS OF YOUR CONTENT SUBMITTED TO SPOTZER. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES. THEREFORE, SOME OR ALL OF THE LIMITATIONS ABOVE MAY NOT APPLY TO YOU TO THE EXTENT THEY ARE PROHIBITED OR SUPERSEDED BY NATIONAL OR LOCAL GOVERNMENTAL PROVISIONS.

Section 13. Limited Liability

IN NO EVENT WILL SPOTZER AND ITS RELATED COMPANIES, SUBSIDIARIES AND AFFILIATES AND THEIR RESPECTIVE OFFICERS, AGENTS, PARTNERS, DIRECTORS, SHAREHOLDERS, LICENSORS, LICENSEES, EMPLOYEES, DISTRIBUTORS, CONTENT PROVIDERS, SUPPLIERS AND AGENTS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES INCLUDING, WITHOUT LIMITATION, LOST PROFIT DAMAGES ARISING FROM YOUR USE OF COMMERCIALS OR THE SERVICES, EVEN IF SPOTZER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE LIABILITY OF SPOTZER OR ANY OF ITS RELATED COMPANIES, SUBSIDIARIES AND AFFILIATES AND THEIR RESPECTIVE OFFICERS, AGENTS, PARTNERS, DIRECTORS, SHAREHOLDERS, LICENSORS, LICENSEES, EMPLOYEES, DISTRIBUTORS, CONTENT PROVIDERS, SUPPLIERS AND AGENTS TO YOU FOR ANY OTHER TYPES OF DAMAGES WILL AT ALL TIMES BE LIMITED TO THE AMOUNT PAID BY YOU TO SPOTZER FOR THE LICENSES OR SERVICES THAT ARE THE BASIS FOR SUCH LIABILITY.

Section 14. Failure of Suppliers and Force Majeure

SPOTZER SHALL NOT BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY LOSSES THAT RESULT FROM THE FAILURE OF MEDIA OUTLETS AND OTHER SUPPLIERS. FURTHER, SPOTZER SHALL NOT BE LIABLE FOR ANY FAILURE OR DELAY IN THE PERFORMANCE OF ITS OBLIGATIONS HEREUNDER ON ACCOUNT OF EVENTS BE-



YOND ITS REASONABLE CONTROL, WHICH MAY INCLUDE, WITHOUT LIMITATION, FIRES, FLOOD, STORM, EXPLOSIONS, ACTS OF GOD, WAR, TERRORISM, GOVERNMENTAL ACTION, MATERIAL SHORTAGES AND EXTRAORDINARY INTERNET CONGESTION.

Section 15. Indemnity

You are solely responsible for (i) the accuracy, non-deceptiveness, completeness, propriety and substantiation of the Personalized Commercial and other advertising used by you to advertise your business, (ii) Your Content, and (iii) any information, disclosures or requirements that are imposed by you as a result of your business activities by any governmental, regulatory or oversight agency, body, tribunal or proceeding. You agree to review and approve all materials prepared by Spotzer or submitted by you to confirm that descriptions and representations, direct or implied, with respect to your business, products, services, industry and competitors are accurate and supportable and that such descriptions and representations are in compliance with all legal and regulatory requirements, directives and guidelines.

You agree to indemnify and hold harmless Spotzer and its related companies, subsidiaries, affiliates and their respective officers, agents, partners, directors, shareholders, licensors, licensees, suppliers, content providers, employees and agents from and against any loss, damages, liabilities, claims, demands, suits, expenses, including reasonable attorneys' fees, which any such party may incur arising out of or relating to: (i) Your Content or your modification, display and use of a Commercial, including, without limitation, claims of infringement or misappropriation, (ii) claims that your products or services are defective, injurious or harmful (including, without limitation, any claim for bodily injury or death,) (iii) claims that the manufacture, sale, distribution or use of any of your products or services violates the rights of any third parties or that the advertising, publicity or promotion of your products or services violates or encourages or induces the violation of the rights of any third parties, and (iv) claims predicated on a breach of this Agreement by you.

Section 16. Amendments

Spotzer may amend these General Terms and Conditions at any time unilaterally by posting amended General Terms and Conditions on its website. Such amended General Terms and Conditions shall apply to all Agreements arising out of Proposal accepted subsequent to such posting. You are responsible for reviewing the General Terms and Conditions that relates to each Proposal you accept.

Except as provided in the preceding paragraph, Agreements between you and Spotzer can only be amended by a writing executed by both parties. Amendments may be executed by electronic signatures or email communications as well as by the physical execution and delivery of printed documents.

Section 17. Termination

Notwithstanding any other provision of these General Terms and Conditions, upon notice to you, Spotzer may immediately terminate any Agreement with you or any part thereof, including your Exclusivity Rights with respect to a Commercial or the License to use a Commercial, without cause and without liability. In such event, Spotzer will refund to you any amounts you have paid



for (i) Licenses that are not expired, Inventory that has not been and will not be aired, and (iii) for Media Buying Services or other Services that have not been and will not be performed. Sections 10, 11, 14, 15, 16, 17, 20 and 21 shall survive any termination of any Agreement between you and Spotzer.

Section 18. Miscellaneous

These General Terms and Conditions (including the portions incorporated by reference) express the entire agreement between the parties, and all previous or contemporaneous agreements and understandings related to the subject matter hereof are merged herein and superseded hereby. You may not assign your rights or obligations granted under these General Terms and Conditions without the prior written consent of Spotzer. Any attempted assignment or transfer without such prior written consent from Spotzer shall be null and void. These General Terms and Conditions will be interpreted and construed in accordance with the laws of the Netherlands, without regard to conflict of law principles. You agree that compensatory damages are an adequate and complete remedy for a breach of these General Terms and Conditions by Spotzer and you shall not in any event seek or be entitled to receive an injunction or any other form of equitable relief as a remedy for any such breach. Nothing herein, however, shall restrict Spotzer's right to seek injunctive relief. Any waiver of the provisions of these General Terms and Conditions must be in writing to be effective. If any term, condition or provision of these General Terms and Conditions is found to be invalid, unlawful or unenforceable to any extent, the parties shall endeavor in good faith to agree to such amendments that will preserve as far as possible the intentions expressed herein. If the parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions which will continue to be valid and enforceable to the fullest extent permitted by law.

Section 19. Notice

Any notice under these General Terms and Conditions shall be deemed served if delivered in the following manner:

If to Spotzer, by registered mail to the following address:

Spotzer Media Inc..
Legal Department
1349 Powell Street
Emeryville, CA 94608

If to you, by email to the address you provided when you've opened your Spotzer account through our website or otherwise, at an email address that you later provided when you updated your Spotzer account information, or by regular mail or commercial courier at an address you have provided to Spotzer.