



## General Terms and Conditions

### Section 1. Introduction

Spotzer Media Group BV (“Spotzer”) provides digital advertising products, services and solutions (the “Spotzer Services”) for small and local businesses. These general terms and conditions (“General Terms and Conditions”) apply to all Spotzer Services and to all websites, videos, advertising materials and other content created or supported as a result of or through the Spotzer Services (collectively, “Materials.”) These General Terms and Conditions incorporate by reference Spotzer’s [Website Terms of Use and Privacy Policy](#).

### Section 2. Proposals; Agreements

From time to time Spotzer shall propose orally or in writing specific fees and other material terms relating to particular Spotzer Services (a “Proposal.”) Each Proposal shall incorporate by reference these General Terms and Conditions. Acceptance by you of a Proposal, orally or in writing, shall give rise to a binding agreement (an “Agreement”) by you to purchase and pay for, and for Spotzer to provide, the Spotzer Services specified in the Proposal. The Proposal and these General Terms and Conditions shall constitute the Agreement and shall govern the relationship between you and Spotzer. Unless stated otherwise in a Proposal, the term of the Agreement shall commence on the date of acceptance and shall continue until the Agreement is terminated by you or Spotzer in accordance with Section 5 below.

### Section 3. Responsibilities and Service Level Agreements

Spotzer is responsible for collecting and clearing all rights and permits which are required for audio (including music,) video, text, images, software and any other content protected by intellectual property law that is provided by Spotzer and used in the Spotzer Services including the Materials (“Spotzer Content.”) Spotzer does not control, actively monitor or review the information and materials provided by you in connection with the fulfillment of the Spotzer Services or uploaded, posted, transmitted or made available on or through the Spotzer Services or in the Materials (collectively, “Client Content,”) and Spotzer shall not be responsible for any Client Content and does not guarantee the accuracy, integrity or quality of Client Content.

Unless a Proposal provides otherwise, Spotzer’s obligation to commence with fulfillment of the Spotzer Services you have purchased (“Your Services”) shall be subject to payment by you of any upfront or initial period fees specified in your Proposal (“Upfront or Initial Fees.”)

Within 2 business days after receipt of applicable Upfront or Initial Fees (or the date of acceptance if no Upfront or Initial Fees apply,) Spotzer shall contact you by email or text message to commence fulfillment of Your Services. After the initial contact, Spotzer shall call you at least three times (each time leaving a message if the call is not answered) and shall send at least one additional email or text message, all within 10 business days of the initial contact, in order to gather your Client Content and other inputs regarding Your Services.



Where you fail to respond to Spotzer's repeated contact efforts or otherwise fail to deliver the Client Content required for Your Services, then at the expiration of the applicable 10 business day period, Spotzer shall have no further responsibility to contact you for the purpose of gathering Client Content and Your Services (or the portion that depends on such Client Content) shall be suspended without further notice required, until such time as you shall contact Spotzer or provide the required Client Content. You shall not be entitled to any refund or credit as a result of any such suspension or the resulting delay in the fulfillment of Your Services.

You shall generally be requested to approve any Materials created or prepared for you through the Spotzer Services before such Materials shall be publicly released or otherwise utilized in advertising activities conducted on your behalf. Spotzer shall request your approval by email which shall specify the period of time during which you must request changes or reject the Material. In the event you do not contact Spotzer within the specified period, Spotzer shall be entitled to assume you approve the Materials.

In the event Material is not approved, then Spotzer shall take reasonable efforts to improve or correct the Material to the extent the quality of the Material is sub-standard or the Material is deficient in some respect for which Spotzer is at fault ("Defects.") Spotzer shall not be responsible for the performance or presentation of you or your representatives in any Material or for mistakes or quality problems attributable to any Client Content. Unless the Agreement provides otherwise, website and mobile website products, and similar "destination" products such as customized Facebook pages, are provided with up to two rounds of discretionary revisions without additional charges, so long as the revision requests are reasonable under the circumstances and in the context of your initial inputs and prior revision requests. Video products are provided with one round of discretionary revisions limited to reasonable edits to text overlays and end cards. Discretionary revisions are always available, before or after approval, at additional charges.

Spotzer Services are supported by account managers during normal business hours. To the extent Your Services include on-going support for edits and updates to any Materials, then you shall be entitled to the same degree of service and support that apply to the initial development of your Materials for the amount of hours per period specified in your Agreement.

If Spotzer receives a reasonable claim from you based on a Defect, Spotzer shall, subject to the limitations set forth below, pay such claim. However, Spotzer shall not be liable for such Defect if you do not file a written complaint (e-mail is accepted) with Spotzer within 30 business days from the delivery of the defective Material.

Where Spotzer is responsible for hosting and/or streaming, Spotzer targets 99.95% uptime for hosted Materials and targets streaming response times that meet or exceed industry norms within the global video hosting industry. Unlimited streaming commitments cover reasonable and "fair use" streaming of videos to your websites, third party sites including directories, and social media properties, but exclude streaming to support paid advertising campaigns unless explicitly stated otherwise in your



Agreement. Notwithstanding the targets described herein, Spotzer does not guaranty uptime or streaming response times and shall not be held responsible for server outages or for any sort of software, hardware or internet connection failure.

Once you have scheduled a video or photo shoot, you may incur additional charges for rescheduling within 48 hours of your appointment.

You are responsible for ensuring that all advertising (including Materials) created and published through Your Services complies with national and local laws and regulations, standards and practices of media outlets on which they depend, Internet standards and laws, and other applicable guidelines for advertising (collectively, “Advertising Guidelines.”)

#### **Section 4. Payments**

Once you accept a Proposal, orally or in writing, you are responsible for payment in full of the fees set forth therein. All payments due hereunder are in the currency indicated in the Proposal and are exclusive of any sales, use or similar applicable taxes, which shall be your sole responsibility.

You may pay all amounts payable hereunder, including Upfront or Initial Fees, recurring monthly fees (“Monthly Fees”) and other one-time fees (“One Time Fees”) by credit card, electronic debit from your bank account, wire transfer or any other payment method acceptable to Spotzer.

If you authorize Spotzer, orally or in writing, to charge your credit card or cause payment to be made through electronic debit from your bank account, in respect of Upfront or Initial Fees, Monthly Fees or One Time Fees, then Spotzer shall be entitled to rely on such authorization and process such payments on or up to 5 business days before each applicable due date. For the purpose of effectuating the forgoing, you authorize Spotzer to store your credit card and bank account information to the full extent permitted by applicable laws.

You understand and acknowledge that, in addition to being in breach of contract, you may be subject to having Your Services paused or terminated if timely payment is not made.

#### **Section 5. Termination**

You may terminate an Agreement (and thus cancel Spotzer Services) with respect to all or any part of Your Services at any time and for any reason upon 90 days advance written notice. You may also terminate an Agreement immediately with respect to all or any part of Your Services if Spotzer is in material breach of the Agreement and such breach is not cured within 30 days of notice to Spotzer of said breach.

Spotzer may terminate an Agreement with respect to all or any part of Your Services if you are in material breach of the Agreement and such breach is not cured within 30 days of notice to you of said breach. In addition, Spotzer may terminate an Agreement for any reason after the first anniversary of the acceptance date or at any time with respect to any Spotzer Services that Spotzer in its absolute discretion decides to discontinue; provided, however, that in either case Spotzer provides 60 days prior written notice of termination.



You shall remain liable for any amounts due to Spotzer as of the effective date of termination. You shall not be entitled to any refund or credit as a result of any termination.

To be effective, termination notices must be sent to Spotzer by email to [cancellations@spotzer.com](mailto:cancellations@spotzer.com) and indicate the number of the confirmation that Spotzer sent you following your acceptance of the Proposal (“Confirmation”) as well as the Spotzer account number specified in said Confirmation. In the event you are terminating some but not all of the Spotzer Services described in said Confirmation, then you also need to specify the products, services or solutions you want to cancel.

Spotzer shall use its best efforts to terminate, remove or takedown any cancelled products, services or solutions as soon as possible. Websites and other Materials hosted by Spotzer shall be removed promptly and without giving rise to any additional charges. In respect of online profiles and Materials uploaded or posted to third party sites, Spotzer shall have no obligation to track down or eliminate prior postings or take down Materials. With respect to advertising campaigns underway or pending, Spotzer shall use reasonable efforts to terminate the campaigns as soon as possible, subject to the terms and conditions imposed by third party media vendors.

Sections 4, 5, 6, 8 and 11 hereof shall survive any termination of this Agreement.

## **Section 6. Rights and Ownership**

Unless otherwise agreed in an Agreement, you will own any Materials produced through the Spotzer Services, subject to the limitations set forth below.

To the extent any Materials contain Spotzer Content (including, without limitation, copy, images (including logos, photos or video,) or any other content or material from Spotzer’s libraries, then you shall have only a royalty-free, non-exclusive, perpetual, worldwide, sub-licensable and transferrable license to use said Spotzer Content for commercial advertising purposes. Ownership of all Spotzer Content shall remain at all times with Spotzer. You shall have the right to use derivatives of any Materials that include Spotzer Content only in connection with advertising activities related to you (including your affiliates and related companies.) You shall have no other rights to use (or sublicense or transfer) derivatives that include Spotzer Material. Subject to the payment of applicable delivery fees, you shall have the right to receive a physical copy of your Materials provided you have paid or pre-pay all applicable Upfront and Initial Fees and Monthly Fees for at least one year (unless indicated otherwise in an Agreement.)

You shall remain the owner of any Client Content including, without limitation, data, logos, pictures, videos, slogans, art, and other materials provided by or produced for you in connection with creating Materials or uploaded/added by you directly or indirectly to the Materials or through the Spotzer Services. By participating in the creation of Materials through the Spotzer Services, including transmitting, uploading, posting or submitting any Client Content to Spotzer or through the Spotzer Services, you irrevocably grant Spotzer a worldwide, royalty free, non-exclusive perpetual, worldwide license to use, display, perform, distribute, modify, reproduce and publish your Client Content in any form anywhere. In addition, you authorize Spotzer to create derivatives of your Client Content and Materials and on your behalf to post online, expose to search engines and syndicate to directories and other websites and services, whether under control or affiliated with



Spotzer or not, said Client Content, Materials and derivatives, in all cases to such extent as Spotzer deems advisable in its absolute discretion in order to deliver the Spotzer Services.

Spotzer reserves the right, in its sole discretion, to refuse or remove any Client Content available on or through the Spotzer Services. Without limiting the foregoing, Spotzer shall have the right to remove any Client Content that violates these General Terms and Conditions or is otherwise objectionable in Spotzer's sole opinion.

Where an Agreement specifies that Spotzer Content shall be provided with “Exclusivity Rights,” then Spotzer agrees not to grant concurrent rights to any Core Element (as defined below) of said Spotzer Content to any other person or entity based in your Region (as defined below.) “Core Elements” means any unique slogan, and independently copyrightable elements (such as the photographs and video images) that are deemed by Spotzer in its reasonable discretion to be material to creating the unique look and feel of your Materials. Notwithstanding the above, a third party (such as a photographer, composer, illustrator, etc.) may retain rights in one or more Core Elements and will have the right to use, and to grant others the right to use, one or more of the Core Elements anywhere and at any time, including in the Region. “Region” refers to provincial areas or other areas demarcated by postal codes as Spotzer shall reasonably define in order to divide a market into areas within which local businesses would typically expect the majority of their competitors to be based.

### **Section 7. Third Party Media**

Where a Proposal references third party media and or services related to third party media, Spotzer will use its best efforts to acquire the media on your behalf and provide the services as specified in the Proposal. Spotzer does not guarantee that the media will be available on the terms and conditions contemplated by Spotzer in making the Proposal or at all. So long as Spotzer has acted in good faith in purchasing media on your behalf or otherwise providing the services specified in the Proposal, you will not be entitled to any refund because the media purchased or accessed on your behalf fails to meet any or all of the specifications set forth in the Proposal provided that Spotzer has acted reasonably in providing comparable or replacement media or services. Spotzer will act as an agent in purchasing and using third party media for you and you authorize Spotzer to so act on your behalf and to represent itself to media outlets, when appropriate in Spotzer’s sole discretion, as your agent of record for the purpose of carrying out the Spotzer Services. Any use or purchase of third party media will be subject to the media outlet’s terms, rules and policies, all of which are completely out of the control of Spotzer and are subject to change at any time. The act of registering and uploading of information and content to certain third party media may require your active confirmation of proper registration and/or your authorization of Spotzer to act as your agent. Where an Agreement specifies the purchase of third party media, a set-up and administration fee may be assessed provided it is stated in your Proposal. In some cases Spotzer will not provide you with the login details of accounts with third party media outlets as Spotzer will manage these accounts on your behalf as part of the Spotzer Services. Spotzer reserves the right to benefit from any commissions, concessions or rebates provided by third party media outlets to agencies provided such arrangements are commercially



reasonable and in accord with industry norms with respect to media agencies serving small and local businesses.

#### **Section 8. Late Charges and Debtor Policy**

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 2.5 % 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 extend the due date of any payment. Spotzer may recover its attorneys' and other professional fees and costs to collect unpaid amounts.

Without prejudice to any other remedies Spotzer may have, if at any time you are in breach of any obligation (including those relating to payment,) Spotzer may suspend or terminate the supply of the Spotzer Services and any of our other obligations under the Agreement. Spotzer will not be liable to you for any loss or damage you suffer because it exercised our rights under this clause. In connection with suspending or terminating the supply of Spotzer Services, your Client Content, Materials, account history or other valuable information may be removed, damaged, lost or destroyed and Spotzer shall have no responsibility to restore or recover the same.

#### **Section 9. Representations and Warranties.**

You represent and warrant that: (i) you have full rights to use, broadcast and distribute your Client Content and documentary substantiation for all the claims made therein, (ii) your Client Content is truthful and not misrepresentative or misleading and does not plagiarize, libel, defame or harm any party, (iii) your use of the Spotzer Services and the Materials created thereby 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, and the same shall not violate any applicable Advertising Guidelines, and (v) you will not use the Spotzer Services or Materials created thereby or any part thereof except as permitted hereby.

#### **Section 10. Disclaimer And Limited Liability.**

THE SPOTZER SERVICES ARE PROVIDED ON AN "AS IS," "AS AVAILABLE" AND "BEST EFFORTS" BASIS. SPOTZER AND ITS AFFILIATES AND THEIR RESPECTIVE OFFICERS, AGENTS, PARTNERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AND SUPPLIERS DISCLAIM ALL WARRANTIES OF ANY KIND, RELATING TO THE SPOTZER SERVICES AND THE MATERIALS CREATED THEREBY. IN NO EVENT WILL SPOTZER AND ITS AFFILIATES AND THEIR RESPECTIVE OFFICERS, AGENTS, PARTNERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AND SUPPLIERS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES. DAMAGES WILL AT ALL TIMES BE LIMITED TO THE AMOUNT PAID BY YOU FOR THE SPOTZER SERVICES THAT ARE THE BASIS FOR SUCH LIABILITY.



SPOTZER SHALL NOT BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY LOSSES THAT RESULT FROM THE FAILURE OF MEDIA OUTLETS, COMPUTER HARDWARE OR SOFTWARE, TELECOMMUNICATIONS NETWORKS OR OTHER SUPPLIERS. FURTHER, SPOTZER SHALL NOT BE LIABLE FOR ANY FAILURE OR DELAY IN THE PERFORMANCE OF ITS OBLIGATIONS HEREUNDER ON ACCOUNT OF EVENTS BEYOND 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 11. Indemnity.**

You agree to indemnify and hold harmless Spotzer and its affiliates and their respective officers, agents, partners, directors, shareholders, suppliers, and employees 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 Client Content or your modification, display and use of any Material created through the Spotzer Services (ii) claims that your products or services are defective, injurious or harmful or violate the rights of any third parties and (iii) claims predicated on a breach of your Agreement (including these General Terms and Conditions) by you.

#### **Section 12. Miscellaneous.**

Agreements (including these General Terms and Conditions) will be interpreted and construed in accordance with the laws of the country in which your business is based without regard to conflict of law principles.

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 entered into subsequent to such posting and to all renewal periods under valid Agreements. You are responsible for reviewing the General Terms and Conditions that relate to each Agreement you enter into and all renewal periods thereunder.

Except as provided in the preceding paragraphs, Agreements between you and Spotzer can only be amended by the mutual agreement, made orally or in writing, by both parties.