

MERCHANT TERMS AND CONDITIONS

Last Updated: November 9, 2020

The products and services provided by Spin Live, Inc., a Delaware corporation (“Spin”) under these terms and conditions (this “Agreement”) govern the relationship and agreement between Spin and the entity that uses Spin’s marketplace technology platform as a merchant (“Company”) in connection with the promotion and sale of Company’s products (the “Product” or “Products”) on Spin’s marketplace technology platform located on mobile applications and certain websites (the “App”) via live broadcasted and replayed shopping events (the “Shopping Event” or “Shopping Events”). This Agreement shall be effective on the date agreed to by the Merchant (“Effective Date”). This Agreement supersedes any other agreement between Spin and Company with respect to the subject matter herein. Upon Company (i) creating an account on the Merchant Hub or (ii) clicking “I accept” and accessing or using the Spin marketplace technology platform as a merchant, the Agreement shall become legally binding between the parties. The individual of the Company agreeing to this Agreement represents that such individual has the authority to bind the Company to the terms of this Agreement.

PLEASE NOTE THAT YOUR USE OF AND ACCESS TO OUR SPIN SERVICES ARE SUBJECT TO THE FOLLOWING TERMS; IF COMPANY DOES NOT AGREE TO ALL OF THE FOLLOWING, COMPANY MAY NOT USE OR ACCESS THE SPIN SERVICES IN ANY MANNER.

1. Shopping Event Details

During the term of this Agreement and subject to the terms of this Agreement, Spin grants Company the right to market, promote, and sell the Products on the App during Shopping Events. Company will enter, or Spin will enter on Company’s behalf, details of certain of its Products (the “Product Catalog”) on Spin’s merchant hub (the “Merchant Hub”). Company shall not upload, and Spin may remove, any Product on the “[Prohibited Items](#)” list published on Spin’s Help Center. Company will enter the details of each offer for a Shopping Event on the Merchant Hub, which details shall include without limitation the offer date range of the Shopping Event, Products offered from the Product Catalog, and any discounts on Products. Each Shopping Event will be facilitated by a live host (each a “Host”). During the Shopping Event, the live mobile audience will have the opportunity to learn and ask questions about Company and the Products and buy individual Product units. Spin will record and edit each Shopping Event into individual segments based on a single Product and replay, and/or make available on-demand, on the App and via certain social networks and email (posted or sent by Spin, Company, or a Host, as defined herein) such edited segments for 96 hours from the date of the live broadcast of such Shopping Event or for another period entered in the Merchant Hub (each, a “Completed Shopping Event”).

2. Shopper Influencer Network

Spin will make available to Company its network of third party Hosts (each, a “Shopper Influencer Network Host”). Shopping Events may be hosted by (i) a Host procured by Company, and/or (ii) a Shopper Influencer Network Host, which shall earn a sales commission set by Company, provided that such sales commission is at least eight percent (8%) of gross revenue. If Company chooses to use a Shopper Influencer Network Host, Company may request a specific Shopper Influencer Network Host for a Shopping Event or may make a Shopping Event available to all Shopper Influencer Network Hosts on Spin’s approved network of influencers. At Company’s sole discretion, Company may deliver at its expense any sample products to a Shopper Influencer Network Host for use in the Shopping Event.

3. Termination

A party may terminate this Agreement upon seven (7) days' written notice to the other party. Any sales from Shopping Events occurring prior to the termination of this Agreement shall be paid in accordance with Section 5.

4. Orders and Fulfillment

For each Shopping Event, Spin will process and collect payment for Shopping Event Product purchases by buyers of Products ("Buyers") and supply the Buyers' shipping information within one (1) business day following the Shopping Event to Company, which will include Buyers' first and last name, and shipping address (U.S. addresses only). Company shall only use Buyer's name and address for fulfillment of Products. Company will be responsible for all further aspects and costs associated with order fulfillment to Buyers. Company agrees to ship Products to Buyers (via standard ground shipping or faster) and provide Spin with shipment tracking information within two (2) business days of receipt of order information from Spin. Title to Products and any risk of loss never passes to Spin.

5. Fees

Spin will pay Company (each, a "Spin Payment") (a) the gross revenue collected from the Shopping Event sales, less (b) (i) a Spin sales commission of four percent (4%) of gross revenue, (ii) credit card processing fees of 2.9% of gross revenue plus \$0.30 per transaction, (iii) if applicable, any Host sales commissions, (vi) taxes collected by Spin, and (v) any chargebacks or refunds paid to Buyer; provided that Company, in its sole discretion, may deduct any chargeback or refund (less the applicable Spin sales commission, taxes, and Host sales commission) from a subsequent Spin Payment or request payment directly from Company within two (2) business days of receipt of notice of such chargeback or refund. Spin shall pay each Spin Payment to Company on net 10 terms for any Completed Shopping Event in which Spin has collected all payments from Buyers. Spin will pay Company via credit transfer to the bank account provided by Company in the Merchant Hub. Company authorizes Spin's third party service providers to originate credit transfers to Company's designated bank account. Notwithstanding anything to the contrary in this Agreement, Spin may hold any Spin Payment until the aggregate Spin Payments owed to Company exceed \$25. Spin shall collect and remit sales taxes on Company's behalf using marketplace facilitator tax rules as provided by Spin's third party service providers.

6. Returns; Customer Service

Company may set the return policy and warranty for each product in the Merchant Hub; provided, however, unless otherwise specified in a Product's description on the App, Buyers shall have a minimum of seven (7) days from receipt of a Product to return a product for a full refund. Company shall be responsible for refunding Buyer's full order for Products if Buyer's order for Products is cancelled before Company ships the applicable Product, if Company is out of stock of the Product at the time the sale is transmitted to Company by Spin, or if the shipment to Buyer is refused, undeliverable as addressed, or returned to Company without being delivered to Buyer. Spin is responsible for customer service pertaining to the App and payments for Products, and Company is responsible for customer service pertaining to Products (including any warranty) and order fulfillment. Each party shall promptly direct applicable customer service inquiries to the other party. Company shall promptly notify Spin of any Product recall.

7. Merchant Hub

Spin will provide Company commercially reasonable access to the Merchant Hub to (a) manage the Shopping Events and (b) view reports pertaining to the Shopping Events, including sales details by Product and calculation of each Spin Payment. Company is responsible for the accuracy of anything provided to Spin on the Merchant Hub, including without limitation Product information, pricing, and discounts and details of each Shopping Event. Unless approved by Spin, Company shall only have one account on the Merchant Hub; provided that multiple authorized Company users may access such account. Company agrees to take sole responsibility for any activities or actions taken under its Merchant Hub account.

8. Data Ownership

Spin is the data controller and owns all data and information relating to or collected through its App, including, but not limited to, (i) all Personal Information or data uploaded or provided either directly or indirectly to Spin from Buyers in responding to Shopping Events or by purchasing Products (“Buyer Information”); and (ii) all analytics, reports, statistics and information derived from Buyer Information, which Spin may furnish or make available directly or indirectly to Company. “Personal Information” shall mean any information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular individual or household. Subject to the foregoing, Spin grants Company a limited, non-exclusive, royalty free right to use, reproduce, and display certain Buyer Information solely to fulfill Product orders or otherwise fulfill its obligations under this Agreement. Nothing contained herein may be construed to convey any intellectual property rights or other rights in or to the Buyer Information. Company may only retain, use, and/or disclose any Buyer Personal Information to provide order fulfillment services and is strictly prohibited from using Personal Information for any other purpose. Neither party receives monetary or other valuable consideration for sharing Personal Information under the Agreement. Company acknowledges and understands the prohibitions outlined in this section relating to the processing of Personal Information and will comply with them

9. Intellectual Property

(a) Solely for the obligations set forth in this Agreement, Company grants to Spin a non-exclusive, fully paid, royalty free, worldwide license to use and display Company supplied images and videos, trademarks and copyrighted materials, including without limitation anything provided to Spin on the Merchant Hub, and access its shopping cart or any other third party provider indicated on the Merchant Hub.

(b) Solely for the obligations set forth in this Agreement, Spin grants Company a non-exclusive, fully paid, royalty free, worldwide license to use, display, or send Spin supplied recorded versions of the Completed Shopping Events via Company’s social media or email.

(c) Company understands and agrees that Spin (and/or Spin’s licensors as applicable) owns all proprietary rights, including without limitation patent, copyright, trademark, trade secret, Spin’s Confidential Information (as defined below and other proprietary rights (including all derivative works and source code) in and to the Spin website(s), Shopping Event, App, Merchant Hub, services provided by Spin, and information provided by Buyers (“Spin IP”). Company acknowledges that (a) any and all Spin IP is the sole and exclusive property of Spin or its licensors, (b) Company shall not acquire any ownership interest in any of the Spin IP, (c) nothing in this Agreement shall constitute or deem to be a license by Spin to Company or any other person, business, or entity with respect to the Spin IP; and (d) if Company

acquires any rights or interests of any kind in or relating to any Spin IP (including any rights in any patents, trademarks, copyrights, trade secrets, derivative works or improvements relating thereto), by operation of law, or otherwise, these rights are deemed and are hereby irrevocably assigned to Spin or its licensors, as the case may be, without further action by either party.

(d) Company shall not: (a) take any action that may interfere with any of Spin's rights in or to Spin's IP, including Spin's ownership or exercise thereof; (b) challenge any right, title or interest of Spin in or to the Spin IP; (c) make any claim or take any action adverse to Spin's ownership of the Spin IP; (d) register or apply for registrations, anywhere in the world, for any trademark that is similar to Spin's trademarks or that incorporates Spin's trademarks in whole or in confusingly similar part; (e) use any mark, anywhere, that is confusingly similar to Spin's trademarks; (f) engage in any action that tends to disparage, dilute the value of, or reflect negatively on the services provided under this Agreement or any Spin's trademarks; (g) misappropriate any of Spin's trademarks for use as a domain name without prior written consent from Spin; or (h) alter, adapt, copy, modify, create a derivative product or work of, reverse engineer or otherwise attempt to discover any part of the Spin's Confidential Information (as defined below) or Spin IP.

10. Representations and Warranties; Disclaimer

Each party represents and warrants that: (a) it has the right to enter into and fully perform its obligations set forth herein; (b) its performance hereunder shall comply with all applicable rules, laws, regulations, including without limitation, generally accepted advertising standards related to sponsored content; and (c) the Products and the materials or content it supplies or produces pursuant to this Agreement will not materially infringe on the rights of any third party. Company represents and warrants that (a) Company has the right to sell any Product listed in the Merchant Hub on the App and (b) Company has complied and will comply, at Company's expense, all import and export laws, regulations, and ordinances. EXCEPT AS EXPRESSLY STATED HEREIN AND EXCEPT FOR COMPANY'S WARRANTIES ON THE PRODUCTS, THE PARTIES HEREBY DISCLAIM EXPRESS AND IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SPIN PROVIDES EACH SHOPPING EVENT, APP, MERCHANT PORTA, AND SERVICES AS PERFORMED HEREUNDER, ON AN "AS IS" BASIS, WITHOUT ANY GUARANTEE OF CONTINUOUS OR UNINTERRUPTED DISPLAY OR DISTRIBUTION AND WITHOUT ANY WARRANTY REGARDING: (A) THE NUMBER OF PERSONS WHO WILL VIEW THE SHOPPING EVENT OR BUY COMPANY PRODUCT(S); (B) COMPANY AND PRODUCT RELATED CONTENT BROADCAST IN THE SHOPPING EVENT BY SPIN OR HOSTS; (C) ANY BENEFIT COMPANY MIGHT OBTAIN HEREUNDER; AND (D) THE SPEED, ACCESSIBILITY, OPERATION OR FUNCTIONALITY OF ANY ADVERTISING TO BE DISPLAYED.

11. Indemnification

Each party will defend, indemnify and hold the non-breaching party, and their subsidiaries, affiliates, licensees and successors or permitted assigns, and each of their respective directors, officers, employees and agents, harmless from all claims, liabilities and damages arising from such party's breach of any representation, warranty or agreement made hereunder or from any use of the rights granted and/or materials it supplied hereunder, or from any negligent action or omission or willful misconduct of such party in connection with its obligations hereunder. Company will defend, indemnify and hold Spin, and its subsidiaries, affiliates, licensees and successors or permitted assigns, and each of its respective directors, officers, employees and agents, harmless from all claims, liabilities and damages arising from any Products sold on the App, for Product recalls, for any taxes owed by Company for the sale of Products, for any lost or damaged Products shipped to Buyer, for any activities or actions taken under Company's Merchant Hub account by Company users, for false claims, for unfair trade practices,

for product warranty claims, and for failure to apply with applicable law.

12. Limit on Liability

(a) EXCEPT FOR BREACHES OF SECTIONS 9 AND 13, IN NO EVENT WILL EITHER PARTY TO THIS AGREEMENT BE LIABLE TO THE OTHER PARTY TO THIS AGREEMENT FOR ANY LOST PROFITS, OR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR OTHER INDIRECT DAMAGES OF ANY NATURE, FOR ANY REASON, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE AND WHETHER OR NOT ANY PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID AND AMOUNTS ACCRUED BUT NOT YET PAID TO COMPANY UNDER THIS AGREEMENT IN THE TWELVE-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR \$100,000, WHICHEVER IS LESS. NOTWITHSTANDING THE FOREGOING, SPIN SHALL NOT BE LIABLE FOR ANY ACTION TAKEN BY A HOST.

(c) Spin does not have any control over or liability for the quality, safety, legality, descriptions, photos, or other aspect of the Products listed for sale on the App, nor does Spin have any control over or liability for the accuracy, truthfulness, quality, or other aspect of the materials and information associated with Products. Spin is not liable or responsible for defective items. If an item sold on Spin is delivered in a defective condition, a Buyer's sole remedy is with Company.

13. Confidentiality

Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business that Disclosing Party considers confidential and takes reasonable steps to protect (hereinafter referred to as "Confidential Information" of the Disclosing Party). The Receiving Party agrees: (a) to take reasonable precautions to protect such Confidential Information (but in no event shall the Receiving Party use less than reasonable care), and (b) not to use (except as expressly permitted herein) or divulge to any third person any such Confidential Information. The Receiving Party may disclose Confidential Information to its employees or consultants who have a need to know such information to perform the Agreement and are under confidentiality obligations at least as protective as this Section 13. The Disclosing Party agrees that the foregoing will not apply with respect to any information after one (1) year following the disclosure or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Confidential Information of the Disclosing Party or (e) is required by law or court order. "Confidential Information" expressly includes the terms of this Agreement. Notwithstanding the foregoing, the Receiving Party's obligations in Section 13 with respect to any trade secrets of the Disclosing Party shall survive the termination of this Agreement so long as such information remains a trade secret. Upon the request of the Disclosing Party, Receiving Party shall return Disclosing Party's Confidential Information.

14. Amendment

Spin may amend this Agreement by providing written notice to Company (a) at the address provided in

the Merchant Hub or (b) on the Merchant Hub.

15. Miscellaneous

This Agreement and the validity thereof shall be construed, interpreted and enforced pursuant to and in accordance with the substantive law of the State of New York. The failure of either party to this Agreement to insist upon the performance of any of the terms and/or conditions of this Agreement, or the waiver of any breach of any of the terms and/or conditions of this Agreement, shall not be construed as thereafter waiving any such terms and/or conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, franchise, business opportunity, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. Sections 3, 9, 10, 11, 12, and 13 shall survive expiration of this Agreement. Company may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Spin. Spin may assign any of its rights or delegate any of its obligations without the consent of Company. Any purported assignment or delegation in violation of this Section is null and void. Neither party shall be liable to the other party herein for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence, such as acts of God, acts of civil or military authority, government regulations, fire, major environmental disturbances, unusually severe weather conditions, or any other cause beyond the reasonable control of such party; provided, that the party whose performance is affected by any such event gives the other parties written notice thereof within five (5) business days of such event or occurrence.