

# Terms of Service

Spin Technology, Inc.

*Last Updated: April 12, 2022*

Please read these Terms of Service carefully. These Terms of Service (the “**Terms**”) are a legally binding agreement between you (“**You**” or “**Customer**”) and Spin Technology, Inc. (hereinafter “**Company**”, “**We**”, “**Us**”, or “**Our**”) with regard to the Website and Services provided to You by the Company (as further defined below).

BY ACCESSING OR USING OUR WEBSITE OR SERVICES, YOU CONFIRM THAT YOU HAVE READ AND UNDERSTOOD THESE TERMS AND THAT YOU AGREE TO BE BOUND BY THEM. IF YOU DO NOT AGREE TO THE TERMS OR DO NOT WISH TO BECOME A PARTY TO THESE TERMS, YOU SHOULD NOT ACCESS OR USE THE WEBSITE OR SERVICES.

IF YOU ARE ENTERING INTO THESE TERMS ON BEHALF OF (AND FOR USE ON BEHALF OF) A COMPANY, GOVERNMENTAL ENTITY OR OTHER ENTITY (AN “ENTITY”), YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THE TERMS OF THESE TERMS. THE TERM “YOU” REFERENCED HEREIN REFERS TO: (1) THE ENTITY, ITS OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES OR (2) YOU, AS AN INDIVIDUAL, IN CASE YOU ARE NOT A LEGAL ENTITY.

## 1. MAIN DEFINITIONS

“**Documentation**” means any online documentation for the Services, accessible via <https://spin.ai/help/> as well as quotes or invoices You have received from Us in writing with respect to the Services.

“**Effective date**” for these Terms is the earlier of the date of your subscription, the date you first access or use the Services, the date of the first invoice issued or the date your credit card payment for the Services is processed.

“**Our Data**” means any information, data, technology, materials or the software contained in the Services that We make available in connection with the Services, including any Documentation, sample code, software libraries and other related technology and materials.

“**Services**” means all the products, software, and services provided by the Company.

“**Subscription Term**” has the meaning defined in Section 15 of these Terms.

**“User”** means You or an individual employee, contractor, agent or IT service provider authorized to access the Services on Your behalf, and who is using a unique login and password to access and use the Services (**“Access Code”**).

**“Your Data”** means any information, data or other materials that You transmit to the Services or that are transmitted on Your behalf by a third party.

**“Website”** means Company’s website found at [www.spin.ai](http://www.spin.ai) or [spinbackup.com](http://spinbackup.com).

## 2. SERVICES

***Subscribing to Services.*** We use “try then buy” business model. This means that anyone who is looking to subscribe to our Service must go through a free trial of 15 days first. Please refer to Section 5 (Evaluation Services; Trial) for specific terms and conditions regarding trials.

Upon expiration of the trial period, one may subscribe to the chosen Service using one of the following ways:

- 1) by purchasing a Service subscription and then paying with a credit/debit card;
- 2) by signing a Purchase Order prepared by Us (PO), receiving an invoice from Us, and wiring the subscription fee to Our bank account.

***Refund Policy.*** We strive to make sure our clients are satisfied with our Services. Hence, we provide free trials to help clients decide whether they need and like our Services. Therefore, we do not offer any refunds for subscriptions. The only cases when We would consider issuing a prorated refund:

- If You buy a Service subscription and receive an error message that does not allow You to work with the Service and You can prove it by sending us a screenshot and tell us the time when the problem occurred;
- if Our system charged You automatically for the renewal of Your subscription, despite the fact that you have sent us a note within the past 30 days that You did not want to renew Your subscription.

***License.*** When you subscribe to one of our Services, We grant You, a revocable, limited, non-exclusive, non-transferable, worldwide license of the right to access and use the Services and Website solely for Your internal business purposes and solely during the Subscription Term. Such license is restricted to Your and Your Users’ use. Moreover, We grant You a limited, non-exclusive, non-transferable, royalty-free right to use, display, transmit, and distribute Our Data solely in connection with Your permitted use of the Services.

***Certain Restrictions.*** The right granted to you in the present Terms is subject to the following restrictions. You shall not:

- (a) license, sell, rent, lease, transfer, assign, distribute, or otherwise commercially exploit your account, the Services or the Website;
- (b) copy, modify, translate, adapt, merge, make derivative works of, disassemble, decompile, reverse compile or reverse engineer any part of the Website or Services;
- (c) engage in anything unlawful, misleading, or fraudulent or for illegal or unauthorized purpose; and
- (d) violate or encourage others to violate these Terms and policies incorporated herein by reference.

Moreover, you agree not to use the Website and Services to:

- (a) upload or distribute any computer viruses, worms, malicious code, or any software intended to damage or alter a computer system or a mobile device or data;
- (b) collect information or data regarding other users, including email addresses, without their consent (e.g., using harvesting bots, robots, spiders, or scrapers);
- (c) disable, overburden, impair, or otherwise interfere with servers or networks connected to the Website and/or Services (e.g., a denial of service attack);
- (d) attempt to gain unauthorized access to the Website or servers or networks connected to the Website (e.g., through password mining); or
- (e) interfere with another user's use and enjoyment of the Website.

***Modifications & Possible Price Changes.*** Any future release, update, or other addition to any of functionalities of the Website or Services shall be subject to the terms and conditions of these Terms.

We reserve the right, at any time, to modify, suspend, or discontinue the operation of the Website or any part thereof (including any Service) with or without notice. You agree that we will not be liable to you or to any third party for any modification, price change, suspension, or discontinuance of operation of the Website or any Service. We reserve the right to change prices of the Services at any time and for any reason. We will notify you of any such changes via email. The new prices will become effective at the start of the new Subscription Term.

***Ownership of Intellectual Property.*** We and our licensors (if any and where applicable) own all right, title and interest, including all related intellectual property rights, in and to the Website, Services, and Our Data including all enhancements, modifications and derivatives thereof (including any and all patents, copyrights, trade secret rights, trademarks, trade names and other proprietary rights embodied therein or associated therewith). We also retain ownership of all right, title and interest in and to all know-how related to the Services. The Website, Services and Our Data are licensed to you; this means that the Website, Services and Our Data are under no

circumstances sold/transferred to you. Indeed, the present Terms do not convey to you any rights of ownership in or related to the Website, Services and Our Data. Our name, logo, and other names associated with the Website and Services belong to us (or our licensors, if any and where applicable), and no license of the right to use them by implication, estoppel or otherwise is granted to you hereunder. We (and our licensors, if any and where applicable) reserve all rights not granted in these Terms.

### 3. CUSTOMER SUPPORT

We will provide Our support for the Services to You at no additional charge. Our phone number or the support form can be found at <https://spin.ai/support/>.

### 4. FEES AND PAYMENT TERMS

You agree to pay Us for Services provided at the rates specified in your subscription order or according to our updated rates, which can be found on the Website.

***Fees Non-Refundable.*** All fees are non-refundable, except as expressly provided otherwise herein.

***Payment Methods.*** Depending on how you signed up for the Services (either through Spin or through a reseller), payment can be made as invoiced by Us, or via automatic payment by credit card or through a payment provider/reseller.

If You are paying by credit card or through a payment provider/reseller,

- We reserve the right to run an authorization for a sufficient amount;
- You authorize Us to charge you for all Services and any other items listed in your subscription, for the Subscription Term and any renewal term.

***Rate Change.*** We reserve the right to change the rates, applicable charges and usage policies and to introduce new charges, but any such modifications will not apply until the start of your next Subscription Term.

***Due Dates.*** Except as otherwise agreed by Us in writing, fees are due before the start of each Subscription Term. If you are paying via an invoice, payment is due thirty (30) days after receipt of the invoice and shall be made in US Dollars. If You purchased the Services through an authorized reseller, the reseller's payment terms shall prevail.

***Updating Payment Information.*** You are responsible for promptly updating any changes to Your credit card or other payment information.

***Charge-Backs.*** If Your credit card payment is charged back by Your credit card provider, You will continue to owe Us the full fee in accordance with these Terms.

**Usage Limits and Excess Use.** Services are subject to usage limits, including the licensed quantities and the storage volume specified in your subscription. If You exceed a specified usage limit, We reserve the right to provide the Services in a limited way so that they conform to the agreed limit. Except as otherwise provided in your subscription, if You are unable or unwilling to abide by a specified usage limit, You agree to pay for any excess use in accordance with our then current pricing.

**Late Payment Fee.** You understand We may charge You a late fee of one and a half percent (1.5%) per month (or part of a month), or the maximum lawful rate permitted by applicable law, for any amounts not paid on time. Furthermore, We reserve the right to suspend or terminate these Terms and Your access to the Services if You do not fully pay Your invoices as they become due and payable.

## **5. EVALUATION SERVICES; TRIAL**

We may make certain Services or features available to You for evaluation purposes only (“Evaluation Services”). Evaluation Services may be provided as a temporary trial free of charge. If We have agreed to provide you with Evaluation Services, then subject to the terms and conditions of these Terms, We shall grant You a limited, non-exclusive, revocable, non-transferable, personal, non-sublicensable license to install and use any product or software associated with the Evaluation Services, solely for testing and evaluation purposes during the agreed upon test period. All Evaluation Services are performed in Our cloud production environment only. You will not use the Evaluation Services in a production environment or for production purposes. We are not obligated to correct any bugs, defects, or errors while performing the Evaluation Services or otherwise support or maintain the Evaluation Services.

NOTWITHSTANDING ANY WARRANTIES IN THESE TERMS, THE EVALUATION SERVICES ARE PROVIDED “AS IS” WITHOUT ANY WARRANTY OF ANY KIND WHATSOEVER. THE EVALUATION SERVICES ARE NOT INTENDED FOR ANY PRODUCTIVE USE OF ANY KIND, AND WE HAVE NO LIABILITY FOR ANY USE OUTSIDE OF THE TESTING ENVIRONMENT. YOUR USE OF THE EVALUATION SERVICES IS AT YOUR OWN RISK. UPON EXPIRATION OF THE EVALUATION PERIOD, YOUR DATA WILL NO LONGER BE ACCESSIBLE, HOWEVER, WE WILL SAVE YOUR DATA FOR THE PERIOD OF 30 DAYS. ANY DATA ENTERED, UPLOADED OR SUBMITTED TO OUR EVALUATION SERVICES DURING THE EVALUATION PERIOD WILL BE DELETED 30 DAYS AFTER THE EVALUATION PERIOD HAS ENDED UNLESS YOU PURCHASE A SUBSCRIPTION TO THE SAME SERVICES OR UPGRADE BEFORE THE END OF THE 30 DAY PERIOD. WE SHALL NOT BE LIABLE FOR ANY LOSS OF YOUR DATA THAT HAPPENS AFTER THE END OF YOUR EVALUATION PERIOD.

## **6. BETA SERVICES**

From time to time, We may make available (but have no obligation to make available) certain Beta Services to You. “Beta Services” means non-production beta software, including any updates or upgrades, and any related documentation. If your subscription specifies that You will

receive Beta Services, then subject to these Terms, We grant You a limited, non-exclusive, revocable, non-transferable, personal, non-sublicensable license to install and use the Beta Services, solely for testing and evaluation purposes during the test period You and Us agreed to. You will not use the Beta Services in a production environment. Beta Services are Our Confidential Information (as defined in Section 10 of these Terms).

We are not obligated to correct any bugs, defects, or errors in the Beta Services or otherwise support or maintain the Beta Services.

NOTWITHSTANDING ANY WARRANTIES IN THESE TERMS THE BETA SERVICES ARE PROVIDED “AS IS” WITHOUT ANY WARRANTY OF ANY KIND WHATSOEVER. THE BETA SERVICES ARE NOT INTENDED FOR ANY PRODUCTIVE USE OF ANY KIND, AND WE HAVE NO LIABILITY FOR ANY USE OUTSIDE OF THE TESTING ENVIRONMENT. THE BETA SERVICES ARE A PRE-RELEASE VERSION, AND MAY CONTAIN BUGS, ERRORS, OR OTHER PROBLEMS. YOUR USE OF THE BETA SERVICES IS AT YOUR OWN RISK. WE DO NOT GUARANTEE THAT WE WILL MAKE A COMMERCIAL RELEASE OF A VERSION OF THE BETA SERVICES.

## **7. YOUR RESPONSIBILITIES; YOUR DATA**

***Your Account.*** You are responsible for maintaining and updating Your account information to ensure it is accurate and complete. You are responsible for all activities conducted under Your Users’ logins and for Your Users’ compliance with these Terms, and with all applicable laws and regulations. You will be liable for any breach of these Terms by You or any of Your Users. You and Your Users shall at all times comply with Our Acceptable Use Policy. In addition to Our other remedies hereunder, We reserve the right upon notice to You to terminate any User’s right to access our Services or Website if such User has violated any of the restrictions contained in these Terms.

***Your Data.*** You are solely responsible for Your Data, including the accuracy, integrity or quality of Your Data, and the means by which You acquire and use Your Data. You retain ownership of all right, title and interest in and to all Your Data. You are responsible for the security of Your Data when transmitted to and from the Services. Neither You nor Your Users may use the Services to:

- (a) send, upload or otherwise transmit any of Your Data that is unlawful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another’s privacy, hateful, or racially, ethnically or otherwise objectionable;
- (b) upload or otherwise transmit, display or distribute any of Your Data that infringes any trademark, trade secret, copyright or other proprietary or intellectual property rights of any person;
- (c) upload or otherwise transmit any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;

- (d) interfere with or disrupt the Services or networks connected to the Services; or
- (e) violate any applicable law or regulation.

***Right You Grant Us.*** You hereby grant to Us a worldwide, non-exclusive, royalty-free transferable right to process, use, reproduce, transmit, perform, display and store Your Data as necessary to provide the Services to You.

***Data We May Collect.*** You understand and agree that We may collect certain aggregated, anonymized and generic data in connection with these Terms, which data may include, among other things, information such as data about your network, including traffic data, location data, logs and other communication data, devices, internet connection, browser type, internet service provider and operating system. Such information, which is collected passively using various technologies, cannot be used to specifically identify any person. We own the statistical usage data derived from the operation of the Service, including data regarding web applications utilized in connection with the Service, configurations, log data, and the performance results for the Service (“**Usage Data**”). Nothing herein shall be construed as prohibiting Us from utilizing the Usage Data to optimize and improve the Service or otherwise operate Our business; provided that if We provide Usage Data to third parties, such Usage Data shall be anonymized and presented in the aggregate so that it will not disclose the identity of You or any User(s) to any third party.

***User Subscriptions.*** Unless otherwise agreed by Us in writing,

- (a) Services are purchased as User subscriptions and may be accessed by no more than the specified number of Users,
- (b) additional User subscriptions may be purchased during the subscription term, and
- (c) the added User subscriptions shall terminate on the same date as the pre-existing subscriptions.

***User Accounts & Access Codes.*** You acknowledge that You are responsible for the creation of Your User accounts and for managing their Access Codes. User subscriptions are for designated Users and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who no longer require ongoing use of the Services. You are responsible for keeping Your User Access Codes confidential. If You are aware of any disclosure or threatened disclosure of the User Access Codes, You will notify us immediately. We may close the account and/or block access to the corresponding User account, and We will issue You a new Access Code. You may cancel any or all of Your User accounts at any time.

***Technical Means to Access Services.*** You are responsible for procuring and maintaining the technical environment and internet and other connections required to access the Services.

**Compliance.** Spin.AI isn’t providing legal advice, customers act on their own volition, and are responsible for ensuring their own compliance with applicable laws and regulations.

## 8. YOUR FEEDBACK

From time to time You may provide to Us comments, suggested improvements, and other feedback about the use, operation, functionality, and features of the Services (collectively, the “**Feedback**”). You agree that We have the right to use the Feedback at Our sole discretion, including incorporating all or some of the Feedback into our Services, all without notice to, payment to, or consent from You. This right is an unlimited, perpetual, worldwide, non-exclusive, fully transferable, fully sublicensable, and irrevocable right to execute, reproduce, distribute, perform, display, modify, create derivative works of, make, have made, use, import, sell, offer to sell, and otherwise transfer the Feedback and to practice or have practiced any process or method involved in any use thereof.

## 9. MONITORING AND AUDIT

For security reasons, We monitor User IP addresses and We will use reasonable efforts to inform You if a User account is accessed from multiple IP addresses or suspect locations. The Services may include User control software that reports the number of authorized Users and permits Us and/or our resellers to verify usage of the Services. You agree that We may monitor or audit Your use of the Services (which does not involve any access to Your Data or IT systems). You will not seek to block or otherwise interfere with the monitoring or audit, and We may use technical means to overcome any methods used to block or interfere with such monitoring. We reserve the right to put in place additional mechanisms to verify and protect against unauthorized access. Failure to reasonably comply with Our efforts to audit Your compliance with these Terms constitutes a material breach of these Terms.

## 10. CONFIDENTIAL INFORMATION

***What Confidential Information Is.*** During the term of the Terms, each party will regard any information provided to it by the other party and designated in writing as “proprietary” or “confidential” to be confidential (“**Confidential Information**”). Confidential Information also includes information which, to a reasonable person familiar with the disclosing party’s business and the industry in which it operates, is of a confidential or proprietary nature. Your Confidential Information includes Your Data. Our Confidential Information includes the Services and Our Data.

***Confidentiality Obligation.*** The receiving party shall hold in confidence, and will not disclose (or permit or suffer its personnel to disclose) any Confidential Information to any person or entity except to a director, officer, employee, consultant, or advisor (collectively “**Representatives**”) who has a need to know such Confidential Information in the course of the performance of their duties for the receiving party and who is bound by a duty of confidentiality no less protective of the disclosing party’s Confidential Information than these Terms. The receiving party and its Representatives will use such Confidential Information only for the purpose for which it was disclosed and will not use or exploit such Confidential Information for its own benefit or the benefit of another person without the prior written consent of the disclosing party.



***Protecting Confidential Information of Disclosing Party.*** Each party accepts responsibility for the actions of its Representatives and will protect the other party's Confidential Information in the same manner as it protects its own valuable confidential information, but in no event using less than reasonable care. The parties expressly agree that the terms and pricing in these Terms are Confidential Information and You further agree that You will not use the Services for the purposes of conducting comparative analysis, evaluations or product benchmarks with respect to the Services and will not publicly post any analysis or reviews of the Services without Our prior written approval. A receiving party will promptly notify the disclosing party upon becoming aware of a breach or threatened breach hereunder and will cooperate with any reasonable request of the disclosing party in enforcing its rights.

***What Confidential Information Is Not.*** Information will not be deemed Confidential Information hereunder if such information: (i) is known prior to receipt from the disclosing party, without any obligation of confidentiality; (ii) becomes known to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise publicly available, except through a breach of these Terms; or (iv) is independently developed by the receiving party without use of the disclosing party's Confidential Information. The receiving party may disclose Confidential Information pursuant to the requirements of applicable law, legal process or government regulation, provided that it gives the disclosing party a prior written notice to permit the disclosing party to contest such disclosure, and such disclosure is otherwise limited to the required disclosure.

***Remedies.*** Notwithstanding any other provision of these Terms, both parties acknowledge that any use of the disclosing party's Confidential Information in a manner inconsistent with the provisions of these Terms may cause the disclosing party irreparable and immediate damage for which remedies other than injunctive relief may be inadequate. Therefore, both parties agree that, in addition to any other remedy to which the disclosing party may be entitled hereunder, at law or equity, the disclosing party will be entitled to an injunction or injunctions (without the posting of any bond and without proof of actual damages) to restrain such use in addition to other appropriate remedies available under applicable law.

## **11. PRIVACY AND SECURITY**

Your privacy is important to Us and We will abide by Our Privacy Policy, which can be found at <https://spin.ai/privacy-policy> and which is hereby expressly incorporated herein by reference. You agree that You will read and accept and You will ensure that all Your Users read and accept Our Privacy Policy before accessing or using the Services or Website. If You process, upload or provide personal information about a data subject that is not a current User of Our Services, You acknowledge that You have the data subject's consent to do so.

## **12. LIMITED WARRANTY**

We warrant that during the Subscription Term for the applicable Services, the Services will conform, in all material respects, with the Documentation. For any breach of the above warranty, We will, at no additional cost to You, provide remedial services necessary to enable the Services

to conform to the warranty. You will provide Us with a reasonable opportunity to remedy any breach and reasonable assistance in remedying any defects. The remedies set out in this Section are Your sole remedies for breach of this warranty. This warranty will only apply if the Services have been utilized by You in accordance with these Terms.

### **13. DISCLAIMERS**

The Services may not be available from time to time due to: (a) planned system downtime, and (b) Force Majeure circumstances that are outside of Our control, as identified in Section 18 of these Terms. We will give You a notice of any planned system downtime no less than three (3) days in advance.

We reserve the right to modify, update and change Our Documentation from time to time. We may make modifications to the Services or particular components of the Services (including support levels) from time to time, provided that such modifications do not materially degrade any functionality or features of the Services.

WE DO NOT REPRESENT OR WARRANT THAT THE SERVICES OR WEBSITE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT THE SERVICES OR WEBSITE WILL MEET YOUR REQUIREMENTS OR THAT ALL ERRORS IN THE SERVICES OR WEBSITE WILL BE CORRECTED OR THAT THE OVERALL SYSTEM THAT MAKES THE SERVICES AND WEBSITE AVAILABLE (INCLUDING BUT NOT LIMITED TO THE INTERNET, OTHER TRANSMISSION NETWORKS, AND YOUR LOCAL NETWORK AND EQUIPMENT) WILL BE OPERATIONAL, ERROR-FREE OR FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE WARRANTIES STATED HEREIN ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY US. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. YOU ASSUME ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICES AND WEBSITE ARE ACCURATE, RELIABLE OR SUFFICIENT FOR YOUR PURPOSES.

### **14. LIMITATION OF LIABILITY**

IN NO EVENT WILL THE COMPANY, ITS DIRECTORS, OFFICERS, EMPLOYEES AGENTS OR LICENSORS BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF DATA OR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, IN CONNECTION WITH THE PERFORMANCE OF THE SERVICES, WEBSITE OR THE PERFORMANCE OF ANY OTHER OBLIGATIONS UNDER THESE TERMS, EVEN IF THEY ARE AWARE OF THE POSSIBILITY OF THE OCCURRENCE OF SUCH DAMAGES. OUR TOTAL CUMULATIVE LIABILITY TO YOU FOR ANY AND ALL CLAIMS AND DAMAGES UNDER THESE TERMS, WHETHER ARISING BY STATUTE, CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED THE SERVICES FEES PAID BY YOU TO US PURSUANT TO YOUR SUBSCRIPTION WHICH FORM THE SUBJECT OF THE CLAIM DURING THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS DO NOT

APPLY TO DAMAGES ARISING FROM FRAUD OR TO THE EXTENT SUCH LIMITATIONS ARE PROHIBITED BY LAW. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF WARRANTIES OR INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, IN WHICH CASE THE LIABILITY WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW.

## 15. TERM, RENEWAL, TERMINATION & SUSPENSION

***Subscription Term & Automatic Renewal.*** These Terms will begin on the Effective Date as set forth above. Upon the expiration of the original duration of the subscription (“**Subscription Term**”), the subscription shall renew automatically for successive periods equal in length to the Subscription Term, unless either party provides the other with written notice of intent to terminate 60 days prior to the end of then current Subscription Term.

***Suspension of Subscriptions.*** We reserve the right to suspend or limit access to Your subscription to the Services provided to You (or to a particular User) if You breach the terms of these Terms, including non-payment of fees. We shall not be responsible for any liability or damage suffered by You as a result of any suspension or termination in accordance with these Terms.

***Termination for Cause.*** Either party may terminate these Terms (i) immediately in the event of a material breach of these Terms by the other party that is not cured within thirty (30) days of written notice from the other party, or (ii) immediately if the other party ceases doing business or is the subject of a voluntary or involuntary bankruptcy, insolvency or similar proceeding, that is not dismissed within ninety (90) days of filing. Termination of these Terms will terminate all outstanding subscriptions You may have with Us. All rights and obligations of the parties which by their nature are reasonably intended to survive such termination or expiration will survive termination or expiration of these Terms.

If You decide to use the Services for a free trial period and do not purchase a subscription before the end of that period, these Terms will terminate at the end of the free trial period.

***Termination for Convenience.*** You may terminate these Terms for convenience at any time by canceling your subscription. You may do so by contacting our support team or your Account Manager. In the event of such termination for convenience, any prepaid and unused subscription fees shall remain non-refundable or We may invoice You for any unbilled subscription fees for the remainder of Your then-current subscription term at the time of such termination.

Immediately upon any termination or expiration of these Terms, We will no longer provide the applicable Services to You and You will stop using the Services. You will pay Us for all fees that had accrued prior to the termination date, including any fees for the remainder of the applicable subscription term.

***Effects of Termination.*** Upon termination of these Terms, each party will promptly return or destroy all Confidential Information of the other party in its possession. Within thirty (30) days following termination, You may still retrieve Your Data in accordance with established and

reasonable system access procedures. After such period, We will have no further obligation to store and/or make available Your Data, will delete the same and will provide you with a written deletion certificate upon request.

***Survival.*** All terms which by their nature should survive termination of these Terms shall survive such termination.

## **16. INDEMNIFICATION**

We will indemnify, defend and hold You harmless from and against any and all costs, liabilities, losses, and expenses (including, but not limited to, reasonable attorneys' fees) (collectively, "Losses") finally awarded, arising out of or in connection with a claim, suit, action, or proceeding brought by any third party against You alleging that the use of the Services as permitted hereunder infringes any patent, copyright or trademark, or constitutes a misappropriation of a trade secret of a third party. Excluded from the above indemnification obligations are claims to the extent arising from (a) use of the Services in violation of these Terms or applicable law, (b) use of the Services after We notify You to discontinue use because of an infringement claim, (c) any claim relating to any third party products or services, including Third-Party Applications or Your Data, (d) modifications to the Services made by anyone other than Us (where the claim would not have arisen but for such modification), (e) the combination, operation, or use of the Services with software or equipment which was not provided by Us, to the extent that Your liability for such claim would have been avoided in the absence of such combination, operation, or use; or (f) compliance by Us with Your custom requirements or specifications if and to the extent such compliance with Your custom requirements or specifications resulted in the infringement. If the Services are held to infringe, We will, at Our own expense, in Our sole discretion, use commercially reasonable efforts either (a) to procure a license that will protect You against such claim without cost to You; (b) to replace the Services with non-infringing Services without material loss of functionality; or (c) if (a) and (b) are not commercially feasible, terminate the Terms or the applicable subscription and refund to You any prepaid unused fees paid to Us for the infringing Services.

You will indemnify, defend, and hold Us harmless from and against any and all Losses, finally awarded, resulting from a claim, suit, action, or proceeding brought by any third party against Us that arises out of or results from a claim alleging that Your Data, or any use thereof, infringes the intellectual property rights or proprietary rights of others, or has caused harm to a third party, or arising out of Your violation of any applicable law or the provisions of Section 8 of these Terms.

The indemnified party shall (i) promptly notify the indemnifying Party in writing of any claim, suit or proceeding for which indemnity is claimed, provided that failure to so notify will not remove the indemnifying party's obligation except to the extent it is prejudiced thereby, and (ii) allow the indemnifying party to solely control the defense of any claim, suit or proceeding and all negotiations for settlement; provided that the indemnifying party shall not settle any claim without the indemnified party's prior written consent (such consent not to be unreasonably withheld or delayed). The indemnified party shall also provide the indemnifying party with reasonable cooperation and assistance in defending such claim (at the indemnifying party's cost).

## 17. THIRD PARTY PROVIDERS AND SOFTWARE

The Services contain features designed to interoperate with Third-Party Applications. “Third-Party Applications” means a web-based or offline software application that is provided by You or a third party and integrates with one or more of the Services. To use such features, Third-Party providers shall grant you access to Third-Party Applications, and You shall grant Us access to Your account(s) on the Third-Party Applications. If the provider of a Third-Party Application ceases to make the Third-Party Application available for interoperation with the corresponding Service features on reasonable terms, We may cease providing those Service features without entitling You to any refund, credit, or other compensation.

The Services may be performed with or contain software governed by licenses from third parties (“Third Party Software”), including any software component that is subject to any open-source copyright license agreement (“Open Source”). Notwithstanding anything to the contrary in these Terms, all Third Party Software is licensed to You solely under the terms of the corresponding third party license agreements provided or referenced in the Services. We make no representation or warranty concerning Third Party Software and have no obligation or liability with respect to any Third Party Software. If the applicable third party licenses provide for the availability of source code of such Third Party Software and such source code is not already included in the Services’ distribution, please contact Us to obtain such source code.

## 18. GENERAL PROVISIONS.

***Entire Agreement.*** These Terms, the Privacy Policy and terms in your subscription constitute the entire agreement between the parties, and supersede all prior or contemporaneous proposals, understandings, representations, warranties, covenants, and any other communications (whether written or oral) between the parties relating thereto and are binding upon the parties and their permitted successors and assigns. Any inconsistent or conflicting terms and conditions contained in any purchase order issued by You shall be of no force or effect, even if the purchase order is accepted by Us. In the event of any conflict between the terms of these Terms and any terms in the subscription, if any, the subscription terms shall control.

***Contract Changes.*** Company reserves the right to switch customers from the Unlimited Plan to the Custom Storage Plan at any time during their contract. Company will make reasonable efforts to notify You of the changes, and Your continued use of Company after the changes will indicate Your acceptance. If You do not agree to the necessary changes, reach out to our Customer Support.

***Assignment.*** These Terms shall be binding upon and for the benefit of each party and their permitted successors and assigns. Either party may assign these Terms as part of a corporate reorganization, consolidation, merger, or sale of all or substantially all of its assets. Except as expressly stated in these Terms, neither party may otherwise assign its rights or delegate its duties under these Terms either in whole or in part without the prior written consent of the other party, and any attempted assignment or delegation without such consent will be void. We may use independent contractors or subcontractors to assist in the delivery of Services; provided, that

We remain liable for the actions or omissions of the independent contractors or subcontractors and for the payment of their compensation.

**Marketing.** You agree that We may use Your trade names, trademarks or service marks in connection with the performance of the Services, and in Our promotional materials, notices, and advertisements.

**Governing Law.** These Terms shall be governed by and construed in accordance with the laws of the State of California, USA without regard to its conflict of law provisions. With respect to all disputes arising out of or related to these Terms, the parties consent to exclusive jurisdiction and venue in the state and Federal courts located in San Francisco County, California.

**Relationship of the Parties.** Each party is an independent contractor, and nothing in these Terms shall be construed as a partnership or creating the relationships of employer and employee, or principal and agent, for any purpose whatsoever. Neither party shall make any contracts, warranties or representations or assume or create any obligations, express or implied, in the other party's name or on its behalf.

**Force Majeure.** Except for the obligation to make payments, nonperformance of either party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, internet service provider failure, Third-Party Applications failure or any other reason where failure to perform is beyond the reasonable control of the non-performing party.

**Notices.** Company may give notice to its general Service customer base by means of a general notice on the Service portal, and notices specific to you by electronic mail to your e-mail address on record in your User Account or by written communication sent by first class mail or pre-paid post to Your address on record in Your User Account.

If you have a dispute with Company, wish to provide a notice under these Terms, or become subject to insolvency or other similar legal proceedings, you must promptly send written notice to Company at Spin Technology, Inc., **2100 Geng Road Suite 210, Palo Alto, California, USA, 94303; Attn: Legal.**

You consent to receiving electronic communications (including emails at the address in Your Account) and notifications from Us in connection with Your Use of the Services, and with respect to any notice, approval, request, authorization, direction or other communication to be provided to You under these Terms. You are responsible for providing us with Your most current email address, and an email will be deemed received once it has been sent to the email address We have on file.

Except as otherwise specified in these Terms, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (a) personal delivery, (b) the second business day after mailing, (c) the second business day after sending by confirmed facsimile, or (b) the first business day after sending by email.

**No Third Party Beneficiaries.** Nothing contained in these Terms is intended or shall be construed to confer upon any person any rights, benefits or remedies of any kind or character whatsoever, or to create any obligation of a party to any such person.

**Waiver and Severability.** Performance of any obligation required by a party hereunder may be waived only by a written waiver signed by an authorized representative of the other party, which waiver shall be effective only with respect to the specific obligation described therein. The failure of either party to exercise any of its rights under these Terms will not be deemed a waiver or forfeiture of such rights. The invalidity or unenforceability of one or more provisions of these Terms will not affect the validity or enforceability of any of the other provisions hereof, and these Terms will be construed in all respects as if such invalid or unenforceable provision(s) were omitted.

**Export.** You will not export, re-export, use, or divert the Services to or on behalf of (a) any country that is subject to U.S., EU or UN economic sanctions administered by the US Department of the Treasury's Office of Foreign Assets Control ("OFAC"), the European Commission or the UN, including but not limited to Burma, Cuba, Iran, Libya, Sudan, Syria and North Korea; (b) the government of any country sanctioned by any of the above, wherever located; or (c) persons or entities identified as "Specially Designated Nationals" by OFAC or sanctioned pursuant to applicable EU Regulation, or persons or entities that are owned or controlled by such person or entity. You shall not distribute or supply the Services to any person if You have reason to believe that such person intends to export, re-export or otherwise transfer the Services to, or use the Services in or for the benefit of, any such OFAC- or EU sanctioned countries, governments, persons, or entities. You shall not use the Services in connection with the commission of terrorist acts or the design, development, production, or use of nuclear, biological, or chemical weapons; missiles; or unmanned aerial vehicles. You shall not export, re-export, or transfer the Services to any person or entity with knowledge or reason to know that any of the prohibited activities identified in this section are intended by such person or entity. Without limiting the foregoing, You shall not commit any act which would, directly or indirectly, violate, or which may cause Us to violate, any United States, EU or local law, regulation, treaty or agreement relating to the export or re-export of the Services. At Your expense, You shall obtain any government consents, authorizations, or licenses required for You to exercise Your rights and to discharge its obligations under these Terms. You acknowledge that Your Data, once placed on the Services may constitute an export of Your Data by the You to one or more foreign jurisdictions, You shall not cause any such export of data in violation of the laws of the United States and/or such other foreign jurisdictions.

**United States Government Restricted Rights.** This provision applies only if You are the United States Government or a state or local government entity located in the United States (collectively, the "Government"), or if You are accessing or otherwise using the Services on behalf of the Government. Any technical data or Services which are licensed to the Government, its agencies and/or instrumentalities as a result of these Terms are commercial technical data or commercial computer software developed exclusively at private expense as defined in FAR 2.101 or DFARS 252.227-7014 as applicable. For Technical data, use, duplication or disclosure by the Government is subject to restrictions as set forth in DFARS 202.227-7015 and these Terms. For Services and any software contained therein, in accordance with FAR 12-212 or

DFARS 227-7202, as applicable, use duplication or disclosure by the Government is set forth in these Terms. No other rights are granted. Use of the Services and/or any technical data provided with such Services shall be deemed acceptance of this clause by You.