



Terms of Service

Last updated: 19 December 2019

1. Introduction

1.1 These Terms of Service (Terms) are applicable to and govern the Customer's use of the Services provided by SpinetiX. This is a legal agreement which incorporates SpinetiX's (i) General Conditions see <https://www.spinetiX.com/legal/general-terms-and-conditions-of-sale>, (ii) Privacy Notice see <https://www.spinetiX.com/legal/privacy-notice>, and (iii) the attached Schedule.

1.2 You should read these Terms carefully as they affect your legal rights and govern your relationship with SpinetiX.

1.3 By registering to use the Services, using the Services or clicking 'I Agree' or a similar approval button, you agree to be legally bound by these Terms. Likewise, if we change these Terms or the Services, and you then use the Services or click 'I Agree' or a similar approval button, you agree to be bound by the changed Terms or Services. Your acceptance of these Terms is deemed to occur in Switzerland. SpinetiX will use reasonable efforts to inform you of any important changes to the Terms or the Services through our Website, by email or other means.

1.4 Your use of the Services is at our discretion and we may refuse your application to use, or terminate your right to use, any of the Services for any reason including if you breach any of these Terms.

2. Definitions

In these Terms, the following words shall have the following meanings:

Administrator means the person designated by the Customer as its primary administrative contact for the Services, who has the authority from the Customer to bind the Customer, administer the subscription to the Services and designate additional End-Users pursuant to Clause 3.2;

Affiliate means an entity that, either directly or indirectly, controls, is controlled by, or is under common control with, SpinetiX, and “control” means the ability, directly or indirectly, to direct the affairs of another by means of ownership, contract or otherwise;

Content means all video, audio, images, other visual content, information or materials that Customer uploads, or permits an End-User to upload, in relation to the Services;

Cockpit is a software as a service accessible at <https://cockpit.spinetiX.com/> and developed by SpinetiX for maintenance and operation of Software, SpinetiX Players and 3rd Party Players;

Customer means the person who registers to use the Services or uses the Services. Customer is also referred to as you;

Data means any data (including Personal Data), Content, SpinetiX Player or 3rd Party Player data, and other information about Customer's business, products, or services that is provided by Customer to SpinetiX;

DSOS™ means the operating system created by SpinetiX dedicated to digital signage;

End-User means the Administrator, or an individual person permitted to use the Services, pursuant to Clause 3.2;

General Conditions means SpinetiX's General Terms and Conditions of Sale, see <https://www.spinetiX.com/legal/general-terms-and-conditions-of-sale;>

Order Confirmation means a written confirmation issued by SpinetiX in respect of the Customer's order;

Payment Method means the payment method you use to pay the Price;

Personal Data means personally identifiable Data regarding Customer or its personnel, including name and address, contact information, or other information that identifies a data subject;

Privacy Notice means SpinetiX's privacy notice see <https://www.spinetiX.com/legal/privacy-notice;>

Price means the price of the Service (excluding VAT or other sales taxes);

Services means SpinetiX's 'Cloud Services' including SpinetiX ARYA™, Cockpit and SpinetiX's other services provided through the cloud and software as a service,

including any free version or trial version of the Services, provided through our Websites;

SpinetiX means SpinetiX SA and/or its Affiliates;

SpinetiX ARYA™ is a software as a service accessible at <https://arya.spinetix.cloud> that combines both content management and content distribution for digital signage applications;

SpinetiX Player means a digital signage player manufactured by SpinetiX and powered by DSOS™;

Software means (i) software activated on an authorized desktop personal computer or other platform, (ii) firmware, operating system software and software that is subsequently activated on a SpinetiX Player, or a 3rd Party Player and (iii) Widgets;

Subscription Period means the period for which Services are provided as specified in the Order Confirmation issued by SpinetiX;

3rd Party Player means a digital signage player manufactured by authorized 3rd parties and that is certified by SpinetiX to be compatible with DSOS™;

Website means (i) SpinetiX's website www.spinetix.com in respect of the legal documents referred to in these Terms and also for the purpose of giving notices under these Terms, and (ii) the registration and administrative interfaces for SpinetiX Players, Software and Services provided by SpinetiX for use by Customers and permitted end-End-Users; and

Widgets mean simple software in a script format that may be used to dynamically auto-update live data, including data from third parties, displayed on SpinetiX Players and 3rd Party Players.

3. Registration

3.1 To use the Services, you must (i) register an account via the Website, (ii) specify an Administrator by providing their name and a valid email address, (iii) for paid Services, specify one or more valid Payment Methods, (iv) order the Services, and (v) register in your account each Software license, SpinetiX Player or 3rd Party Player for which you wish to obtain Services.

3.2 Once you register an account, certain Services allow your Administrator to invite additional End-Users (up to specified limits) to use the Services by providing SpinetiX with the End-User's name and email address. You are responsible for such End-Users use of the Services.

3.3 Each End-User will be provided with a unique identifier to access and use the Services. You shall use reasonable efforts to ensure that each unique identifier is only used by the End-User to which it is allocated, and is not shared with other End-Users.

3.4 You shall ensure that End-Users comply with these Terms. You are liable for End-Users' use of the Services and their compliance with these Terms.

3.5 The account information you provide must be complete, up-to-date and accurate. If you fail to provide this, or you provide incomplete, false or misleading information, you and all End-Users are not permitted to use the Services, and we may at any time, and at our sole discretion, terminate your account and/or block your use, and that of End-Users, of the Services without prior notice.

3.6 You are responsible for all activities under your account regardless of whether the activities are authorized or undertaken by you, an End-User, any additional End-Users, your employee or a third party. SpinetiX is not responsible for unauthorized access to your account. You agree to:

- (a) keep your account information and password safe and secure;
- (b) use reasonable efforts to prevent any unauthorized access to, or use of, your account or the Services;
- (c) notify SpinetiX immediately if you become aware of any unauthorized use or access of your account; and
- (d) ensure End-Users comply with the above.

4. Services/Subscriptions

4.1 Following your order for a Service, you will receive an Order Confirmation from SpinetiX which describes the Services you have ordered, your subscription start date, your Payment Methods and billing dates and any applicable limitations.

4.2 Your subscription to the Services begins when the Services are accessible through your account.

4.3 The minimum Subscription Period is one month, and all Subscription Periods are measured in monthly intervals, e.g. a 12-month subscription, or a 24-month subscription, from the date you first subscribed.

4.4 All Services shall automatically renew for periods equal to the initial Subscription Period unless you cancel or modify your subscription before the end of the current Subscription Period. You will be given reasonable advance notice that your

subscription is due for renewal and you will have the option to cancel the renewal of your subscription.

4.5 If you cancel your subscription your right to use the Service will terminate at the end of the then current Subscription Period. You will not be entitled to a refund or credit for any amounts paid for the Subscription Period.

4.6 If you decide to upgrade your Service including activating additional features in Software in a SpinetiX Player or a 3rd Party Player, then your upgraded subscription will begin on the same day in the month of the upgrade as the day of the month in which you first subscribed, and will continue until the end of the current Subscription Period. You must pay the full amount payable for the upgraded Service until the end of the Subscription Period. Your upgraded Service automatically renews in accordance with Clause 4.4.

4.7 Subject to these Terms, you are granted a worldwide, non-exclusive, non-assignable, non-transferable, revocable and limited right to use and access the Services for the Subscription Period as described in the Order Confirmation. This right is non-transferable.

4.8 Certain Services require payment and if you fail to pay the Price when due then your right to use the Services automatically terminates.

5. Use of the Services/Restrictions

5.1 Your use of the Services is subject to applicable law which you must comply with when using the Services. You agree not to permit any End-Users to access the Services in a country where the use of the Services is illegal or prohibited:

(a) under applicable law; or

(b) due to the country being subject to an embargo or sanctions imposed by the USA, the UK, the European Union or Switzerland.

5.2 You agree:

(a) not to misuse the Services;

(b) to access the Services only via the Website;

(c) not to transmit any viruses or any code of a destructive or malicious nature through your use of the Services;

(d) not to permit the Services to be used for unsolicited bulk emails or spam;

(e) not to use the Services for any unlawful, harmful, discriminatory, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive activity;

(f) not to copy or resell the Services, or any portion of the Services, including the HTML or any visual design elements, other than (i) for your own internal business purposes and for any design purpose permitted by the Services, or (ii) where you are an authorized reseller of the Services, where permitted pursuant to a separate agreement in writing with SpinetiX for this purpose;

(g) not to modify, reverse engineer, decompile, disassemble, create derivative works based in whole or any part of, the Software, decipher, or adapt or otherwise tamper with, the Software, unless this restriction is prohibited by applicable law or these activities are permitted by the terms governing use of any open-sourced components; and

(h) not to modify any other website to falsely or misleadingly imply that it is associated with the Services.

5.3 You agree that except for the non-exclusive right given under Clause 4.7, all ownership, licenses, intellectual property rights and other rights and interests in and to the Services shall remain solely with SpinetiX.

5.4 You agree that you will cooperate fully with SpinetiX and applicable third parties in investigations of violations of systems, network security at other sites and take down orders, including:

(a) cooperating with law enforcement authorities in investigating suspected criminal violations; and

(b) in respect of any take down orders of Content from law enforcement authorities or third-party application owners.

5.5 If you improperly or excessively use the Services, or your use of the Services may pose a security risk to our systems or any third party, SpinetiX may limit your throughput, prevent or limit your use of the Services through specific ports or communication channels, or suspend or terminate your use of the Services. SpinetiX reserves the right to apply limits to the Services in terms of bandwidth or storage and may charge additional fees for usage beyond these limits. If we suspend your

use of the Services, you remain liable for all fees and charges you incur during your suspension and you will not be entitled to any credits for the period of suspension.

6. Changes to the Services/Free Trials

6.1 You agree that SpinetiX may, in its sole discretion, modify, limit, or discontinue various Services for any reason. If SpinetiX does so it will use reasonable efforts to notify you.

6.2 We may provide you with free trials or free versions of certain of our Services, however we reserve the right upon reasonable notice to cancel, modify or charge for further use of the Service in question.

7. Termination

7.1 You may terminate your subscription to the Services at any time by your Administrator accessing the administrative interface of the Website for the Services and terminating the Services, or through your Administrator calling SpinetiX's support team and directing them to terminate the Service.

7.2 We may terminate your subscription to the Services if you misuse the Services by giving you at least 14 days' notice. Prior to any such termination we may suspend your use of the Services and we will use reasonable efforts to notify you of such suspension.

7.3 Either party may terminate the subscription for Services:

(a) for cause if the other party is in material breach of these Terms and the material breach remains uncured for a period of 14 days from receipt of notice by the other party; or

(b) if the other party becomes insolvent, or becomes unable to pay its debts when they fall due.

7.4 If we terminate your subscription to the Services without cause or you lawfully terminate it for cause pursuant to Clause 7.3, then you will be entitled to a refund for the remainder of the Subscription Period. You will not be entitled to a refund for the remainder of the Subscription Period if we terminate your subscription for cause pursuant to Clause 7.3.

7.5 Upon termination of the Services:

(a) you must immediately pay all amounts due;

(b) subject to Clause 7.5(c), all your rights under these Terms, your subscriptions and your right to use the Services shall immediately terminate;

(c) you may retrieve and/or remove your Content and other Data from the Services within 30 days following the termination date;

(d) 30 days following the termination of the Services, we reserve the right to remove and/or delete your Content and other Data. SpinetiX will not be liable to you for the removal and/or deletion of your Content in accordance with this Clause; and

(e) we will close your account.

8. Content

8.1 If you, or an End-User, use the Services to create or distribute Content, you are solely responsible to ensure that such Content and its use complies with applicable law, including laws relating to data protection, privacy, obscenity and export laws worldwide.

8.2 We do not review or pre-screen Content and are not responsible for Content published by you or End-Users. However, we reserve the right if we are informed or become aware that Content is, or is alleged to be, objectionable or contrary to these Terms, to determine whether Content is appropriate and in compliance with these Terms, and in such cases, we may pre-screen, move, refuse, modify and/or remove Content at any time, without prior notice and in our sole discretion.

8.3 All Content stored and processed through the Services is the property of the applicable Content owner and may be protected by copyright law and other intellectual property rights. Customer must ensure that it has the right to use the Content for the Services.

8.4 Where Content is provided through a third-party application provider, your use of such application and/or access to Content through it may be subject to additional terms of use of the application provider. You are responsible to ensure that you comply with all such terms of use as applicable. These Terms give you no rights to use third party applications and/or to access Content through them.

9. Support

Support for the Services is described in Schedule 1. SpinetiX may change the support for the Services by giving you not less than 21 days written notice which shall immediately replace or supersede the then current Schedule 1.

10. Security; Use of Your Data and Personal Data; Data Protection

Your rights and obligations are described in Clause 15 of our General Conditions, see <https://www.spinetix.com/legal/general-terms-and-conditions-of-sale>, and our Privacy Notice, see <https://www.spinetix.com/legal/privacy-policy>.

11. Price/Payment Method

11.1 To use a Service, you must pay the Price applicable to that Service.

11.2 We may suspend or terminate your right to use the Services if you do not pay the Price in full and on time.

11.3 You will be charged to your Payment Method on the specific billing date indicated in the Order Confirmation. The length of your billing cycle will depend on the Subscription Period for the Service. In some cases your payment date may change, for example if your Payment Method has not successfully settled or if your subscription began on a day not contained in a given month.

11.4 You authorize SpinetiX to charge any of the Payment Methods associated to your subscription in case your primary Payment Method is declined or no longer available to SpinetiX for payment of your subscription fee. You remain responsible for any uncollected amounts. If a payment is not successfully settled, due to expiration, insufficient funds, or otherwise, and you do not cancel your subscription, we may suspend your access to the Services until we have successfully charged a valid Payment Method. For some Payment Methods, the card issuer may charge you certain fees, such as foreign transaction fees or other fees relating to the processing of your Payment Method. Local tax and bank charges may vary depending on the Payment Method used. You should check with your Payment Method service provider for details.

11.5 You can update your Payment Methods by going to your account on our Website. However, in cases where the only approved Payment Method is bank transfer, you will not be able to update this. We may also update your Payment Methods using information provided by the payment service providers.

11.6 On termination of the Services any amounts outstanding become due and payable immediately.

12. Limitation of Liability

12.1 WE ACCEPT NO LIABILITY FOR ANY DOWNTIME OR UNAVAILABILITY OF THE SERVICES, however we will use reasonable efforts to maximise the availability of the Services within our reasonable control. Availability is dependent on factors beyond our control, including bandwidth, data storage and other limitations including those of our service providers which we use to provide the Services. We will use reasonable efforts to tell you when the Services are not available including for routine and unscheduled maintenance. For any unexpected downtime or for things beyond our reasonable control we will tell you what happened and keep you informed of any important updates.

12.2 Please note that the General Conditions contain limitations and exclusions of liability which apply to these Terms, including those specified in Clauses 7, 8 and 9 of the General Conditions <https://www.spinetiX.com/legal/general-terms-and-conditions-of-sale>.

12.3 Subject to (i) the limitations and exclusions of liability contained in the General Conditions and elsewhere in these Terms, and (ii) your right to a refund pursuant to Clause 7.4, SpinetiX's total aggregate liability in tort (including negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, sales, revenues or savings, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however caused, arising in connection with the performance or contemplated performance of these Terms and any Service shall be limited to the Price paid for the Service which is the subject of the claim during the 3 months immediately preceding the date on which the claim arose.

12.4 If you are unable to access the Services due to the fault of SpinetiX for more than 1 month in aggregate during any calendar year then SpinetiX will extend the current Subscription Period for the period of non-usage up to a maximum of 3 months.

13. General

13.1 SpinetiX may give notices under these Terms via its Website, by email or otherwise in writing.

13.2 Subject to Clause 13.3, these Terms shall be governed by the laws of Switzerland without regard to its conflict of laws provisions. You irrevocably agree to the exclusive jurisdiction of the courts of Lausanne, Switzerland for the adjudication of any disputes arising under these Terms.

13.3 If you are a consumer under consumer protection legislation you may be entitled under applicable law to have adjudicated any consumer protection related disputes in your country of usual residence.

SCHEDULE 1

SUPPORT

SpinetiX Cloud Service	Online documentation	Video Tutorial	Technical support (Best effort)
SpinetiX ARYA™ Discovery plan	n/a	Included in the application	Free chat support included in the application From 8AM to 12PM UTC-1 on business days (Switzerland) English only
SpinetiX ARYA™ Premium plan	n/a	n/a	Free chat support included in the application From 8AM to 12PM UTC-1 on business days (Switzerland) English only
SpinetiX ARYA™ Enterprise plan	n/a	n/a	On demand
Cockpit	Free access to WIKI online documentation: https://support.spin-etix.com	Free tutorials on SpinetiX's YouTube channel	Free email support in English and French support@spinetix.com