

Parties

This Spotica Online Subscription Agreement ("**Agreement**") is between the entity you represent, or, if you do not designate an entity in connection with a Subscription purchase or renewal, you individually (the "**User**"), and Spotica Ltd, a New Zealand registered company with registered number 7386437 (the "**Supplier**").

If you are an individual accepting these terms on behalf of an entity, you represent that you have the legal authority to enter into this Agreement on that entity's behalf. If you specify an entity, or you use an email address provided by an entity you are affiliated with in connection with a Subscription purchase or renewal, that entity will be treated as the owner of the Subscription for purposes of this Agreement.

If you use an email address provided by an organization you are affiliated with to order the Online Service individually, you represent that you have authority to use that organization's domain to sign up for a Subscription in your capacity as a member of that organization.

Subscription Agreement

1. The Term

This Agreement is effective from the date a confirmation of Subscription is accepted by The User or the date on which the Subscription is renewed and will continue until terminated in accordance with clause 12.1 (the "**Term**").

2. Grant of License to Access and Use Service

The Supplier hereby grants to all of the Authorized End Users of The User, a non-exclusive, non-sublicensable, non-assignable, royalty-free license to access and use the Spotica online service (the "**Service**") solely for The User's internal business operations to access or exchange data via the service solely for the purpose of User's internal evaluation of the Service and not for general commercial use. User shall not use the Service for the processing of any mission critical live or production data.

3. Support Services

The Supplier will provide The User with electronic support during The Supplier's normal business hours in order to help The User correct problems with the Software.

4. Data Protection

4.1 Data Privacy. The Supplier may collect, use and process The User's data only in accordance with the privacy policy as published on The Suppliers website.

4.2 User Data. The User is solely responsible for the content of all User Data. The User will secure and maintain all rights in User Data necessary for the Supplier to provide the Service without violating the rights of any third party or otherwise obligating The Supplier to The User or to any third party. The Supplier does not and will not assume any obligations with respect to User Data or to the User's use of the Product other than as expressly set forth in this Agreement or as required by applicable law.

1.1 Authentication Credentials. The User is responsible for maintaining the confidentiality of any non-public authentication credentials associated with its use of the Service.

5. Ordering.

By ordering or renewing a Subscription, The User agrees to the Subscription Fee Details for that Subscription. Unless otherwise specified in those Subscription Fee Details, Service is offered on an "as available" basis.

6. Fees.

The User shall pay The Supplier a monthly subscription fee (the "**Subscription Fee**") according to the Subscription Fee Details for The User's Subscription.

7. Subscription Fee Details.

Subscription fees, generally can be categorized as one of the following two:

1.2 Pay-As-You-Go. The User pays based on actual usage in the preceding month with no upfront commitment. Payment is on a periodic basis in arrears. For Pay-as-you-go, your Subscription will renew automatically

Subscription fees, generally can be categorized as one of the following two:

- 1.2 **Pay-As-You-Go.** The User pays based on actual usage in the preceding month with no upfront commitment. Payment is on a periodic basis in arrears. For Pay-as-you-go, your Subscription will renew automatically for additional one-month terms until you terminate the Subscription. The Service is billed at the standard Pay-As-You-Go rates, except as otherwise specified herein.

The User will be notified through email at least 30 days in advance of any changes to the Pay-As-You-Go rates. New services may be added periodically to the Service. The Supplier will notify The User in advance of these new services and any fees that might be charged for using them. However, The User would only be charged if The User elect to use the new services.

Any taxes which may result from receiving services at no charge are the sole responsibility of the recipient.

- 1.3 **Promo Code.** The User will receive the Services for a defined term at a discounted rate (e.g. Beta testing). For Promo Code, renewal may not be permitted.

- 1.4 **Currency.** The Service is available to customers located in one of the following countries/regions and will be billed in the currency noted:

All Countries, excluding South Africa : New Zealand Dollar

South Africa : South African Rand

8. Payment Options

Only credit cards will be accepted, unless previously approved for invoice. Please note that The Supplier do not accept prepaid and virtual credit cards.

9. Taxes.

Prices are exclusive of any taxes unless otherwise specified on the invoice as tax inclusive. The User must pay any applicable value added, goods and services, sales, gross receipts, or other transaction taxes, fees, charges or surcharges, or any regulatory cost recovery surcharges or similar amounts that are owed under this Agreement and which The Supplier is permitted to collect from The User under applicable law. The User will be responsible for any applicable stamp taxes and for all other taxes that The User is legally obligated to pay including any taxes that arise on the distribution or provision of The Service to its Affiliates. The Supplier will be responsible for all taxes based on its net income, gross receipts taxes imposed in lieu of taxes on income or profits, or taxes on our property ownership.

If any taxes are required to be withheld on payments The User make to The Supplier, The User may deduct such taxes from the amount owed to The Supplier and pay them to the appropriate taxing authority; provided, however, that The User promptly secure and deliver an official receipt for those withholdings and other documents The Supplier reasonably requests to claim a foreign tax credit or refund. The User must ensure that any taxes withheld are minimized to the extent possible under applicable law.

10. The User Restrictions.

The user accepts that the Service, its structure, contents, services and the computer programs used in connection with it are protected by intellectual and industrial property rights owned by The Supplier or third parties.

- 1.5 **Acceptable use.** You may use The Service only in accordance with this agreement. You may not reverse engineer, decompile, disassemble, or work around technical limitations in The Service, except to the extent applicable law permits it despite these limitations. You may not disable, tamper with, or otherwise attempt to circumvent any billing mechanism that meters your use of The Services. You may not rent, lease, lend, resell, transfer, or host the Service, or any portion thereof, to or for third parties except as expressly permitted in this agreement or The Service Terms.

- 1.6 **the User will not,** for any software associated with the Service, unless authorized in writing by The Supplier or by the owners of the respective rights, or unless it is legally permitted:

- a) distribute, license, loan, or sell the software or other content that is contained or displayed in it;
- b) modify, alter, or create any derivative works of the software;
- c) reverse engineer, decompile, decode, decrypt, disassemble, or derive any source code from the software;
- d) remove, alter, or obscure any copyright, trademark, or other proprietary rights notice on or in the software;
- e) upload, post, reproduce or distribute any information, software, or other material protected by copyright, privacy rights, or any other intellectual property right without first obtaining the permission of the owner of such rights.

11. Termination

- 1.7 **Subscription termination.** The User may terminate a Subscription at any time during its Term; however, The User must pay and is liable for all amounts due and owing before the termination is effective.

- 1.8 **Termination for Failure to Pay.** The Supplier may terminate this Agreement with immediate effect on written notice to The User if The User fails to pay the monthly Subscription Fee on due date.

12. Effect of Termination

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- 1.9 **Pay Outstanding Amounts.** The User shall immediately pay to The Supplier all amounts outstanding as of the date of, and any amounts outstanding as a result of, termination.
- 1.10 **Discontinuance of Use.** The User shall cease all use of the Service upon the effective date of the termination.
- 1.11 **Recovery of Data.** The User will have 30 days from the date of termination to retrieve any of data that The User wishes to keep.

13. Suspension

- 1.12 **Suspension.** The Supplier may suspend The User's use of the Service if:
- it is reasonably needed to prevent unauthorized access to User Data;
 - The User fails to respond to a claim of alleged infringement within a reasonable time;
 - The User does not pay amounts due under this Agreement;
 - The User does not abide by the Acceptable Use Policy as published on The Suppliers website or violate other terms of this Agreement; or
- If one or more of these conditions occurs, then:
- For all other Subscriptions, a suspension will apply to the minimum necessary part of the Service and will be in effect only while the condition or need exists.

The Supplier will give written notice before it suspends, except where The Supplier reasonably believes the need exists to suspend immediately. If the User does not fully address the reasons for the suspension within 60 days after suspension, The Supplier may terminate The User's Subscription and delete The Users' User Data without any retention period.

The Supplier may also terminate The User's Subscription if The User's use of the Service is suspended more than twice in any 12-month period.

14. Warranties.

- 1.13 THE SUPPLIER PROVIDE NO WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE IN TRADE.

- 1.14 These disclaimers will apply except to the extent applicable law does not permit them.

15. Dispute Management.

1.15 Claims.

- The Supplier will defend The User against any claims made by an unaffiliated third party that The Service infringes that third party's patent, copyright or trademark or makes unlawful use of its trade secret.
- The User will defend The Supplier against any claims made by an unaffiliated third party that any user data, user solution, or user services, directly or indirectly, in using The Service infringes the third party's patent, copyright, or trademark or makes unlawful use of its trade secret; or arises from violation of the Acceptable Use Policy.

1.16 Limitations. The Supplier's obligations with regards to claims will not apply to a claim or award based on:

- any user solution, user data or services or materials The User provides or makes available as part of using The Service;**
- The User's use of The Service after The Supplier notifies The User to stop due to a third-party claim;**
- Promo Codes offering The Service free of charge.**

- 1.17 **Remedies.** If The Supplier reasonably believes that a claim might impact The User's use of The Service, The Supplier may terminate The User's rights to use The Service and then refund any advance payments for unused Subscription rights.

1.18 Obligations. Each party must notify the other promptly of a claim under this Section. The party seeking protection must:

- give the other sole control over the defence and settlement of the claim; and**
- give reasonable help in defending the claim. The party providing the protection will**
 - reimburse the other for reasonable out-of-pocket expenses that it incurs in giving that help and**
 - pay the amount of any resulting adverse final judgment or settlement. The parties' respective rights to defence and payment of judgments, or settlement the other consents, to under this Section are in lieu of any common law or statutory indemnification rights or analogous rights, and each party waives such common law or statutory rights.**

16. Limitation on Liability

- 1.19 **Mutual Limit on Liability.** Neither party will be liable for breach-of-contract damages suffered by the other party that are remote or speculative, or that could not have reasonably been foreseen on entry into this agreement. Neither party will be liable for loss of revenue or indirect, special, incidental, delict, tort (including negligence), consequential, punitive, or exemplary damages, or damages for lost profits, expenses, business interruption, or business information, even if they are caused by the negligence of the other party.

party that are remote or speculative, or that could not have reasonably been foreseen on entry into this agreement. Neither party will be liable for loss of revenue or indirect, special, incidental, delict, tort (including negligence), consequential, punitive, or exemplary damages, or damages for lost profits, revenues, business interruption, or loss of business information, even if the party knew they were possible or reasonably foreseeable. The aggregate liability of each party for all claims under this Agreement is limited to direct damages only.

- 1.20 **Maximum Liability.** Neither party's liability under this Agreement will exceed the amount of the fees paid by The User under this Agreement during the 12 months preceding the date upon which the related claim arose. For Services provided free of charge, Spotica's liability is limited to direct damages up to \$3,000.00 NSD.
- 1.21 **Exceptions to limitations.** The limits of liability in this Section apply to the fullest extent permitted by applicable law, but do not apply to violation of the other's intellectual property rights.

17. General Provisions

- 1.22 **Entire Agreement.** This Agreement represents the entire understanding between the parties with respect to its subject matter and supersedes any previous communication or agreements that may exist.
- 1.23 **Assignment.** The User may not assign this Agreement or any of their rights or obligations under this Agreement without The Supplier's written consent.
- 1.24 **Consent to partner fees.** When The User places an order, the user may be given the opportunity to identify a partner of service associated with its Subscriptions. By identifying a partner of service, directly or by authorizing a third party to do so, the User consents to The Supplier paying fees to the partner of service. The fees are for pre-sales support and may also include post-sales support. The Suppliers' prices for Service are the same whether or not The User identifies a partner of service.

18. Notices

- 1.25 **Method of Notice.** The parties shall give all notices and communications between the parties in writing by:
- a) personal delivery,
 - b) a nationally-recognized, next-day courier service,
 - c) first-class registered or certified mail, postage prepaid[, to the address that a party has notified to be that party's address for the purposes of this section.
- 1.26 **Receipt of Notice. A notice given under this Agreement will be effective on**
- a) the other party's receipt of it, or
 - b) if mailed, the earlier of the other party's receipt of it and the seventh business day after mailing it.

19. Governing Law.

This Agreement shall be governed, construed, and enforced in accordance with the laws of New Zealand without regard to its conflict of laws rules.

20. Severability.

If any part of this Agreement is declared unenforceable or invalid, the remainder will continue to be valid and enforceable.

21. Waiver.

The failure or neglect by a party to enforce any of its rights under this Agreement will not be deemed to be a waiver of that party's rights.

22. Force Majeure.

A party shall not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is

- a) beyond the reasonable control of a party,
- b) materially affects the performance of any of its obligations under this Agreement, and
- c) could not reasonably have been provided against, but
- d) will not be excused for failure or delay resulting from only general economic conditions or other general market effects.