



IN TERMS OF SECTION 11 OF THE ELECTRONIC COMMUNICATIONS AND TRANSACTIONS (ECT) ACT 25 OF 2002 AND THE COMMON LAW OF CONTRACT, THESE TERMS AND CONDITIONS ARE VALID, BINDING AND ENFORCEABLE AGAINST ALL PERSONS THAT ACCESS THE EVALUATE WEBSITE, WEB PAGES OR ANY PART THEREOF.

IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS YOU MAY NOT USE THIS EVALUATE WEBSITE.

REASONABLE USE OF THIS EVALUATE WEBSITE SHALL AUTOMATICALLY BIND THE USER TO THIS AGREEMENT.

### **DEFINITIONS AND INTERPRETATION**

- a) "the Evaluate website" means the Evaluate websites, owned and operated by Evaluate and located at <https://evaluate.co.za> including any page, part or element thereof;
- b) "Evaluate" means Evaluate Assessment Solutions (Proprietary) Limited, registration number 2004/007490/07, including any and/or all of its subsidiaries, owners, shareholders and business units;
- c) "User" means any person who enters or uses the Evaluate website;
- d) References herein to the singular includes the plural and vice versa; and
- e) Hyperlinks herein to legal documents should be deemed part of these terms and conditions in terms of section 11(3) of the ECT Act. The fact that some or all of the hyperlinks may, from time to time, be non-operational, shall not affect the validity and interpretation of these terms and conditions.

### **1. GENERAL**

Evaluate is a technology oriented company focused on operations in sub-Saharan Africa.

### **2. ALLOWED USE AND LICENSE**

2.1 Evaluate licenses the User to view, download, save and print the content of the Evaluate website, provided that such content is used for private, personal, educational and/or noncommercial purposes only or to view, download, save and print this agreement for legal and / or evidential purposes as detailed in section 11(3) of the ECT Act.

2.2 Content from the Evaluate website may not be used or exploited by Users for any commercial and non-private purposes without the prior written consent of Evaluate.

2.3 Users may only access, browse and use the Evaluate website for legitimate personal or commercial purposes and may not use the Evaluate website or any Evaluate services and/or products for:

2.3.1 Harmful purposes;

2.3.2 Illegal purposes;

2.3.3 Disclosing, sharing or publishing material that may be offensive, defamatory, regulated, prohibited, infringing or damaging to any person; and/or

2.3.4 The creation, storage and sending of unsolicited commercial communications.

2.4 The caching of the Evaluate website shall only be allowed if:

2.4.1 The purpose of the caching is to make the onward transmission of the content from the Evaluate website more efficient;

2.4.2 The cached content is not modified in any manner whatsoever;

2.4.3 The cached content is updated at least every 12 (twelve) hours; and

2.4.4 The cached content is removed or updated when so required by Evaluate.

2.5 If any User uses content from the Evaluate website in breach of the provisions detailed herein:

2.5.1 Evaluate reserves the right to claim damages from the User;

2.5.2 Evaluate reserves the right to institute criminal proceedings against the User;

and

2.5.3 Evaluate shall not be liable, in any manner whatsoever, for any damage, loss or liability that resulted from the use of such content by the User or any third party who obtained any content from the User.

2.6 Hyperlinks to the Evaluate website from any other source shall be directed at the home page of the Evaluate website. Links beyond the Evaluate home page may only be used with Evaluate's prior written consent.

2.7 Evaluate shall not be liable, in any manner whatsoever, for any damage, loss or liability that resulted from the use of content, products or services available from the Evaluate website, if such content, products or services was accessed through a hyperlink not directed at the home page of the Evaluate website. Persons that wish to link to pages beyond the home page of the Evaluate website without Evaluate's prior written consent shall do so at their own risk and indemnify Evaluate against any loss, liability or damage that may result from the use of such hyperlinks. Evaluate's non-liability for deep linking is based on the fact that deep links bypass these terms and conditions.

2.8 Users may quote small and reasonable amounts of content available from the Evaluate website and only if such a quote is placed in inverted commas and acknowledged.

2.9 No person may, without the prior written consent of Evaluate, frame the Evaluate website in any manner whatsoever.

2.10 Apart from bona-fide search engine operators and use of the search facility provided on the Evaluate website by Users, no person may use or attempt to use any technology or applications (including web crawlers, robots or web spiders) to search, collect or copy content from the Evaluate website for any purpose whatsoever, without the prior written consent of Evaluate.

2.11 E-mail addresses, names, telephone numbers and fax numbers published on the Evaluate website may not be incorporated into any database used for electronic marketing or

similar purposes. No permission is given or should be implied that information on the Evaluate website may be used to communicate unsolicited communications to Evaluate and all rights detailed in 45 of the ECT Act are reserved.

2.12 All licenses and/or permissions granted in terms of this clause 2 are provided on a nonexclusive and non-transferable basis and may be terminated or cancelled by Evaluate at any time without prior notice or reasons.

### **3. INTELLECTUAL PROPERTY RIGHTS**

3.1 All intellectual property on the Evaluate website, including but not limited to content, trademarks (or any confusingly similar trademarks), logos, pictures, video, downloads, domain names, patents, design elements, software, source code, meta tags, databases, text, graphics, icons and hyperlinks are the property of or licensed to Evaluate and as such, are protected from infringement by domestic and international legislation and treaties.

Subject to the rights licensed to the User in clause 2, all other rights to intellectual property on the Evaluate website are expressly reserved.

3.2 No person may use logos, icons or trade marks from the Evaluate website as hyperlinks or other purposes without Evaluate 's prior written consent.

### **4. SOFTWARE AND EQUIPMENT**

It is the responsibility of the User to acquire and maintain, at his/her own expense, the necessary computer hardware, software, communication lines and Internet access accounts required to access the Internet and the Evaluate website and/or download content from the Evaluate website.

### **5. DISCLOSURES REQUIRED BY SECTION 43 OF THE ECT ACT**

Refer to the enclosed website link entitled 'ECT Act Requirements

### **6. CHANGES AND AMENDMENTS**

Evaluate reserves the right, in its sole and absolute discretion, to do any of the following, at any time without prior notice or justification:

6.1 change these terms and conditions;

6.2 change the content and/or services available from the Evaluate website;

6.3 discontinue any aspect of the Evaluate website or service(s) available from the Evaluate website; and/or

6.4 change the software and hardware required to access and use the Evaluate website.

7.1 Evaluate shall take all reasonable steps to protect the personal information of Users and for the purpose of this clause, "personal information" shall be defined as detailed in the Promotion of Access to Information Act 2 of 2000 (PAIA). The PAIA may be downloaded from: <http://www.polity.org.za/html/govdocs/legislation/2000/act2.pdf>

7.2 Evaluate may electronically collect, store and use the following personal information of Users:

7.2.1 name and surname;

7.2.2 identity number;

7.2.3 passport number;

7.2.4 Evaluate account number;

7.2.5 area code;

7.2.6 street address;

7.2.7 postal address;

7.2.8 title;

7.2.9 contact numbers;

7.2.10 non-personal browsing habits and click patterns;

7.2.11 e-mail address;

7.2.12 IP address; and/or

7.2.13 User selected username and password.

7.3 Evaluate collects, stores and uses the abovementioned information for the following purposes:

7.3.1 Communicate requested information to the User;

7.3.2 Provide services to the User as requested by the User;

7.3.3 Authenticate the User;

7.3.4 Provide the User with access to restricted pages on this website; and

7.3.5 Compile non-personal statistical information about browsing habits, click-patterns and access to the Evaluate website.

7.4 Information detailed above may be collected either electronically by using cookies or is provided voluntarily by the User. Users may determine cookie use independently through their browser settings. For purposes of this clause, a cookie means a small computer file created by a web browser to save user information for web site.

7.5 Evaluate may collect, maintain, save, compile, share, disclose and sell any information collected from users, subject to the following provisions:

7.5.1 Evaluate shall not disclose personal information from Users unless the User consents thereto;

7.5.2 Evaluate shall disclose personal information without the User's consent only through due legal process; and

7.5.3 Evaluate may compile, use and share any information that does not relate to any specific individual.

7.6 Evaluate owns and retains all rights to non-personal statistical information collected and compiled by the Evaluate website.

## **8 HYPERLINKS TO THIRD PARTY SITES**

8.1 Evaluate may provide hyperlinks to websites not controlled by Evaluate ("target sites") and such hyperlinks do not imply any endorsement, agreement on or support of the content, products and/or services of such target sites.

8.2 Evaluate does not editorially control the content, products and/or services on target sites and shall not be liable, in any manner whatsoever, for the access to, inability to access, use, inability to use or content available on or through target sites.

## **9 SECURITY**

9.1 Evaluate shall take all reasonable steps to secure the content of the Evaluate website and the information provided by and collected from Users from unauthorised access and/or disclosure. However, Evaluate does not make any warranties or representations that content shall be 100% safe or secure.

9.2 Subject to the provisions of sections 43(5) and 43(6) of the ECT Act and the requirements for a valid electronic invoice issued by the South African Revenue Service from time to time, if applicable, Evaluate is under no legal duty to encrypt any content or communications from and to Users and is also under no legal duty to provide digital authentication of any pages on the Evaluate website.

9.3 Users may not deliver or attempt to deliver, whether on purpose or negligently, any damaging code, such as computer viruses, robots or spy ware, to the Evaluate website or the server and computer network that support the Evaluate website.

9.4 Notwithstanding criminal prosecution, any person who delivers or attempts to deliver any damaging code to the Evaluate website, whether on purpose or negligently, shall, without any limitation, indemnify and hold Evaluate harmless against any and all liabilities, damages, risks and losses that Evaluate and its partners / affiliates may suffer as a result of such delivery, attempt or damaging code.

9.5 Users may not develop, distribute or use any device or programme designed to breach or overcome the security measures of the restricted pages, products and services on the Evaluate website and Evaluate reserves the right to claim damages from any and all persons involved, directly and indirectly, in the development, use and distribution of such devices or programmes.

9.6 Users who commit any of the offences detailed in sections 85 to 88 of the ECT Act shall, notwithstanding criminal prosecution, be liable for all resulting liabilities, losses, destruction or damages suffered and/or incurred by Evaluate and its partners / affiliates due to or related to these illegal actions.

## **10 DISCLAIMER AND LIMITATION OF LIABILITY**

10.1 Subject to the provisions of sections 43(5) and 43(6) of the ECT Act, if applicable, and as far as allowed by law, Evaluate (including its owners, employees, suppliers, Internet service providers, partners, affiliates and agents) shall not be liable for any damage, loss or liability of any nature incurred by whomever and resulting from:

10.1.1 access to the Evaluate website;

10.1.2 access to websites linked to the Evaluate website;

10.1.3 inability to access the Evaluate website;

10.1.4 inability to access websites linked to the Evaluate website;

10.1.5 content available on the Evaluate website;

10.1.6 services available from the Evaluate website;

10.1.7 products available from the Evaluate website;

10.1.8 downloads and use of content from the Evaluate website; and/or

10.1.9 any other reason not directly related to Evaluate's gross negligence.

10.2 Evaluate website is supplied on an "as is" basis and has not been compiled to meet the User's individual requirements. It is the responsibility of the User to satisfy himself or herself, prior to entering into this agreement with the Evaluate, that the content available from and through the Evaluate website meet the User's individual requirements and is compatible with the User's computer hardware and/or software.

10.3 Information, ideas and opinions expressed on the Evaluate website should not be regarded as professional advice or the official opinion of Evaluate and Users are encouraged to consult professional advice before taking any course of action related to the information, ideas or opinions expressed on the Evaluate website.

10.4 Evaluate does not make any warranties or representation that content and services available from the Evaluate website shall in all cases be true, correct or free from any errors. Evaluate shall take all reasonable steps to ensure the quality and accuracy of content available from the Evaluate website.

10.5 Evaluate does not make any warranties or representations that the Evaluate website shall be available at all times. Users acknowledge that the Evaluate website may be unavailable due to updates or other causes beyond the reasonable control of Evaluate, including, but not limited to virus infection, unauthorised access (hacking), power failure or other "acts of God".

## **11 COMMENTS**

Evaluate does not edit or scan comments posted by the User or e-mails from the User to Evaluate or the Evaluate website and shall not be liable for any defamatory, illegal, infringing, hateful, pornographic or harmful postings. Users use the forum service at their own risk and indemnify Evaluate against any liability, loss and/or damage resulting from a User's postings.

## **12 REMOVAL AND CORRECTION OF CONTENT**

Users are encouraged to report untrue, inaccurate, defamatory, illegal, infringing and/or harmful content available from the Evaluate website to Evaluate and Evaluate undertakes to correct and/or remove such content or any part thereof if the person reporting such content provided reasonable grounds to prove the alleged nature of the content.

## **13 INTERCEPTION OF COMMUNICATIONS**

13.1 Subject to the provisions of the Regulation of Interception of Communications (RIC) Act 70 of 2002, the User agrees to Evaluate's right to intercept, block, filter, read, delete, disclose and use all communications (including all "data messages" as defined in the ECT Act) send or posted by the User to the Evaluate website, its staff and employees. The RIC Act may be downloaded from: <http://www.info.gov.za/acts/2002/a70-02/>.

13.2 The User agrees and acknowledges that the consent provided by the User in clause 13.1 satisfies the "writing" requirement as detailed in the ECT Act and the RIC Act.

## **14 ENTIRE AGREEMENT AND SEVERABILITY**

14.1 These terms and conditions constitute the entire agreement between Evaluate and the User and shall take precedent over any disclaimers and/or legal notices attached to any communications and/or postings received by Evaluate from the User.

14.2 Any failure by Evaluate to exercise or enforce any right or provision shall in no way constitute a waiver of such right or provision.

14.3 In the event that any term or condition detailed herein is found unenforceable or invalid for any reason, such term(s) or condition(s) shall be severable from the remaining terms and conditions. The remaining terms and conditions shall remain enforceable and applicable.

## **15 AGREEMENT IN TERMS OF SECTION 21 OF THE ECT ACT**

The User and Evaluate agree that:



15.1 the User shall be bound to these term and conditions and such agreement is concluded in Fourways (South Africa) at the time the User enters the Evaluate website for the first time;

15.2 data messages (as defined in the ECT Act) addressed by the User to Evaluate shall only be deemed to have been received if and when responded to or when receipt is acknowledged. Notwithstanding section 23(1)(b) of the ECT Act, Evaluate shall not be deemed to have received a data message if such data messages are blocked and / or filtered and / or destroyed by Evaluate's content filtering and virus security systems;

15.3 data messages (as defined in the ECT Act) addressed to the User by Evaluate shall be deemed to be received by the User as detailed in section 23(1)(b) of the ECT Act;

15.4 data messages (as defined in the ECT Act) addressed to the User by Evaluate shall be deemed to be sent from the location(s) as detailed in section 23(1)(c) of the ECT Act;

15.5 data messages (as defined in the ECT Act) addressed by the User to Evaluate shall be deemed to have been created and sent by the User from within the geographical boundaries of South Africa; and

15.6 electronic signatures, encryption and/or authentication are not required for valid electronic communications between the User and Evaluate.

## **16 APPLICABLE AND GOVERNING LAW**

The Evaluate website is hosted, controlled and operated from the Republic of South Africa and therefore, subject to clause 5.22, the South African law enforced by the South African courts governs the use or inability to use the Evaluate website, its content, services, products and these terms and conditions.

## **17 LEGAL COSTS**

Evaluate shall not be liable for costs incurred by Users to obtain professional advice relating to these terms and conditions.