

## WEBSITE TERMS OF USE



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## TERMS OF USE

### 1. AGREEMENT TO BE BOUND

- 1.1 Access to and use of our Websites, mobile applications, emails and other electronic sites which give a User access to certain of our services and our associated domains (the "Website"), and the data, content, products and services made available on or via the Website, is subject to the following terms and conditions.
- 1.2 By accessing the Website and/or using any services which are accessed using the Website, you agree to be bound by these Terms.
- 1.3 If you agree to these Terms as an individual, you must be at least 18 years old and otherwise of legal age to form a binding contract.
- 1.4 If you are acting on behalf of an institution, business, organization, agency or other entity ("Organization"), you will be responsible for ensuring that: (i) you have authority to bind that Organization to these Terms, and your agreement to these Terms will be treated as the agreement of the Organization, and (ii) any individual or entity to whom you provide access to the Website and/or any services is made aware of and complies with these Terms. In that case, "you" and "your" in these Terms shall refer to the Organization you represent.
- 1.5 By using this Website in any way, you shall be deemed to have accepted all the Terms unconditionally.
- 1.6 You must not use this Website if you do not agree to the Terms.

## 2. ABOUT US

- 2.1 The Website is operated by **Tshiamiso Trust**, Registratiton number IT 001752/2019(G), and registered office at 3 Anerley Road, Parktown, Johannesburg 2193
- 2.2 You may contact us at the following e-mail address: [info@tshiamisotrusted.com](mailto:info@tshiamisotrusted.com)

## 3. DEFINITIONS AND INTERPRETATION

- 3.1 In this Agreement unless it appears to the contrary, the singular shall include the plural and visa versa, any reference to any gender shall also includes the opposite gender and any reference to a natural person, shall include legal person and visa versa; and the words set out below shall bear their corresponding meanings:
- 3.1.1 **“Content”** means including but not limited to any data, text, figures, images, illustrations, resource or other content or information, software, code, scripts, graphics, and interactive features, writing, submissions, audio and/or video, PDF's in whole or in part housed or contained, displayed, provided or otherwise made available on or through the Website;
- 3.1.2 **"Submissions"** mean including but not limited to notes, images, creative materials, ideas, suggestions concepts, communication including any data, questions, comments and other information submitted to Tshiamiso Trust and housed on the Website whether transmitted by electronic mail or otherwise;
- 3.1.3 **“TSHIAMISO TRUST, our, us or we”** means Tshiamiso Trust, **registration number IT 001752/2019(G)**, located at 3 Anerley Road, Parktown, Johannesburg 2193
- 3.1.4 **“User, you and your”** means any person who enters, uses or accesses the Website;
- 3.1.5 **“Website”** means the Tshiamiso Trust website, mobile apps, any portals, systems or servers which provide access to Tshiamiso Trust services electronically and/or the Tshiamiso Trust email and includes any part or element thereof.

## 4. PROPRIETARY RIGHTS

- 4.1 All intellectual property on the Website, including but not limited to content, trademarks, domain names, patents, design elements, software, databases, text, graphics, icons and hyperlinks are the property of or licensed to Tshiamiso Trust and as such, are protected from infringement by domestic and international legislation and treaties. In particular, the User acknowledges Tshiamiso Trust's proprietary rights in and to such Intellectual property, and that importantly the Website and its Content are protected by copyright as collective works and/or compilations pursuant to copyright laws.

- 4.2 Subject to the rights licensed to the User under this Agreement all other rights to intellectual property on the Website are expressly reserved.
- 4.3 Tshiamiso Trust and all related Tshiamiso Trust marks are registered trademarks and Users agree not to use these trademarks, including using them as an element of a domain name or sub domain name, notwithstanding the fact that such domain name use or registration may be allowed in terms of trademark and/or constitutional law. Where any User is found using the name Tshiamiso Trust in a domain name or sub domain name, such User on demand will immediately cease to use such domain name and transfer it to Tshiamiso Trust at the cost of the User.
- 4.4 Nothing in this Agreement shall operate to transfer any proprietary rights in and to the intellectual property rights referred to under clause 4.1 above or give rise to any implied rights in respect of such intellectual property in favour of any User and or third party.
- 4.5 Nothing in this Agreement shall operate to transfer any proprietary rights in and to any part of the Website including the Content or give rise to any implied rights, in favour of any User and or third party.
- 4.6 As a User of the Website, you are granted a non-exclusive, non-transferable, revocable, limited license to access and use the Website and Content and in particular the intellectual property rights, provided that such access and use is strictly in accordance with these Terms.
- 4.7 Where a User accesses Content from the Website, the User expressly acknowledges that nothing in these terms transfers or grants to the User any proprietary rights to use that Content other than the rights set out under this Agreement and in particular as set out under this clause 4.
- 4.8 All terms and conditions relevant to the Content are included also for the benefit of, and may be enforced by, the respective content providers without prejudice to any other rights or remedies they may have by law or otherwise.
- 4.9 As a User of the Website you agree not to remove, suppress or modify in any way the proprietary markings, including any trademark or copyright notice, used in relation to any Content or other part of the Website (including on any output generated through its use).

## **5. ACCEPTABLE USE**

- 5.1 The Website consists of Content which is derived entirely or in part from content sourced by Tshiamiso Trust and/or provided to Tshiamiso Trust and from other sources.
- 5.2 The Website is provided only for the User's own non-commercial, internal and personal use, and at all times subject to these Terms.
- 5.3 The Content on this Website is not for commercial exploitation.
- 5.4 The User shall not or assist, encourage or permit any individual or entity to do any of the following in respect of any part of the Website or the Content:

- copy, save to the extent necessary for viewing the Content in your browser or where specifically made available for download, for that purpose;
- distribute, give or allow access to or otherwise make available to any other individual or entity, or frame, mirror, overlay, or employ other technologies used to enclose, display or similar;
- modify, translate, adapt or create derivative works;
- sell, rent, lease, license, loan, commercialize or use for the benefit of any other person nor in connection with any direct or indirect revenue-generating activities (including generating internet traffic for websites containing advertising) or that result in developments that are used for such activities. For the avoidance of doubt, uses in connection with work that is carried out on the request, or at the direction or expense, of a person will be considered as being for the benefit of that person;
- send altered, deceptive or false source-identifying information, including “spoofing” or “phishing”, run any form of auto-responder or “spam” or use in connection with any unsolicited communication, advertising or similar;
- use in connection with any search functionality, or to otherwise power any products / apps / tools / systems, accessed by or on behalf of any other person;
- attempt to bypass any measure intended to prevent or restrict non-authorized use, make use of any means of access not made available for that purpose (including via accounts, computer systems or networks connected to the Website) or probe, scan, or test for vulnerabilities;
- decipher, decompile, disassemble, reverse engineer or otherwise attempt to derive any source code or underlying ideas or algorithms except to the extent reserved by applicable laws and having given Tshiamiso Trust prior notice;
- use any manual or automated means, including robots, scripts, or spiders to access, monitor, crawl, scrape, spider or mine, except those expressly authorized by us in advance in writing;
- may not use any network monitoring or discovery software to determine the site architecture or extract information;
- may not use this Website to transmit any false, misleading, fraudulent or illegal communications;
- may not frame the Website, in any manner whatsoever, without the prior written consent of the provider;
- may quote small and reasonable amounts of content available from the Website only if such quote is placed in inverted commas and acknowledged;
- may not copy, modify, reproduce, republish, distribute, display, or transmit for commercial, non-profit or public purposes all or any portion of this Website, except to the extent permitted above and or expressly provided for below.

5.5 The User is strictly prohibited from creating works that are based on the Content found on the Website. The prohibition applies regardless of whether the Content is sold, negotiated or given away and/or further alienated in any manner whatsoever.

- 5.6 The User, with the inclusion of but not the limitation of, may not reproduce, duplicate, publish, modify, copy, download, upload in any manner, post, broadcast or transmit, reverse engineer or disenable, display, or distribute or in any way exploit any of the Content, except in so far that the User may download or print one copy of the Content on any single computer for the User's personal, non-commercial use only. Provided that all propriety notices and restrictions attached onto the Content are kept intact, unless expressly permitted by the Website, or unless prior written consent from Tshiamiso Trust has been obtained.
- 5.7 Users are required to register and receive confirmatory e-mail messages in order to gain access to certain content or services on the Website.
- 5.8 Users shall not take any action that imposes or may impose (as determined by Tshiamiso Trust in its sole discretion) an unreasonable or disproportionately large load on Tshiamiso Trust's (or its third party providers') infrastructure nor interfere or attempt to interfere with the normal and proper working of the Website or any activities conducted on the Website.
- 5.9 Without limiting that discretion, Tshiamiso Trust may determine unreasonable usage by comparing a User's activity for any given period against the average for all equivalent users of the relevant part of the Website.
- 5.10 Tshiamiso Trust shall not be liable, in any manner whatsoever, for any damage, loss or liability that resulted from the use of the Website or the use of any Content by the User or by any third party who obtained any Content from the User.
- 5.11 Persons that wish to link to Content of the Website shall do so at their own risk, and on the condition that any such hyperlinks to the Website from any other source shall be directed at the home page of the Website. Tshiamiso Trust shall not be liable, in any manner whatsoever, for any damage, loss or liability that results from the use of Content from the Website, especially if such content was accessed through a hyperlink that is not directed at the home page of the Website.
- 5.12 The Website may contain links to other websites ("Third-Party Websites") owned or operated by parties other than Tshiamiso Trust. Such links are provided for your reference only. Tshiamiso Trust does not monitor or control outside Third-Party Websites and is not responsible for their content and you access them solely at your own risk.
- 5.13 Tshiamiso Trust's inclusion of links to a Third-Party Website does not imply any endorsement of the material on the Website or, unless expressly disclosed otherwise, any sponsorship, affiliation or association with its owner, operator or sponsor, nor does Tshiamiso Trust's inclusion of the links imply that Tshiamiso Trust is authorized to use any trade name, trademark, logo, legal or official seal, or copyrighted symbol that may be reflected in the linked Third-Party Website.
- 5.14 Tshiamiso Trust may terminate this license at any time where the User fails to comply with or follow the above Terms.

## **6. ACCURACY OF CONTENT AND NO LEGAL ADVICE**

- 6.1 Content is not intended to and does not constitute legal advice.
- 6.2 The accuracy, completeness, adequacy or currency of the Website or the Content is not warranted or guaranteed and your use of the Website and Content or materials linked from this Website is at your / the User's own risk.

## **7. SOFTWARE AND EQUIPMENT**

It is the responsibility of the User to acquire and maintain, at his / her own expense, the computer hardware, software, lines and account to access the Website.

## **8. DISCLAIMER**

- 8.1 The information on this Website is intended to provide general information about a particular subject or subjects and is not an exhaustive treatment of such subject(s).
- 8.2 It is the sole responsibility of the User to satisfy itself prior to accessing the Website that the Website will meet the User's individual requirements and be compatible with the User's hardware and/or software.
- 8.3 Information, ideas and opinions expressed on this Website should not be regarded as professional advice or the official opinion of Tshiamiso Trust.
- 8.4 Users are encouraged to consult professional advice before taking any course of action related to information, ideas or opinions expressed on this Website.



- 8.5 Tshiamiso Trust makes no representations or warranties, implied or otherwise, that, among others, the Content and technology available from this Website are free from errors or omissions, that the service will be 100% uninterrupted and error -free or will meet any particular criteria of performance or quality.
- 8.6 This Website is provided 'as is'.
- 8.7 Tshiamiso Trust expressly disclaims all implied warranties, including, without limitation, warranties of merchantability, title, fitness for a particular purpose, non-infringement, compatibility, security, and accuracy in relation to the Website or its Content.
- 8.8 Tshiamiso Trust makes no express or implied representations or infringement, compatibility, security, and accuracy in relation to the Website or its Content.
- 8.9 Tshiamiso Trust makes no express or implied representations or warranties regarding the Content of the Website and that the Website has been compiled or supplied to meet the User's individual requirements.
- 8.10 Users are encouraged to report any possible errors, malfunctions or offensive material by using the feedback link.
- 8.11 The use of this Website and its Content is at the User's own risk.
- 8.12 Tshiamiso Trust, its Trustees and employees will not be liable for any special, indirect, incidental, consequential or punitive damages or any other damages whatsoever, whether in an action of contract, statute, tort (including, without limitation, negligence), or otherwise, relating to the use of this Website or its Content. If any of the foregoing is not fully enforceable for any reason, the remainder shall nonetheless continue to apply.
- 8.13 Subject to sections 43(5) and 43(6) of the Electronic Communications and Transactions Act, 2002 (Act 25 of 2002), Tshiamiso Trust shall not be liable for any damage, loss or liability of whatsoever nature arising from the use or inability to use this Website or Content provided from and through this Website.

- 8.14 Certain links in the Website lead to resources maintained by third parties over whom Tshiamiso Trust has no control. Tshiamiso Trust makes no representations or warranties as to the accuracy of, or any other aspect relating to those resources.
- 8.15 The provisions of Part 2 of Chapter III of the Electronic Communications and Transactions, Act, 2002 (Act 25 of 2002), is hereby excluded from applying to any electronic communications and data messages that a User sends through this site. Any communications or data message that a User sends to Tshiamiso Trust using the Website will be regarded as having been received by Tshiamiso Trust when receipt is acknowledged in writing by Tshiamiso Trust. If the User does not receive a response within a reasonable period of time, the User should follow it up with the site manager. Tshiamiso Trust shall not be liable for any failure to respond.
- 8.16 If a User requires any information from Tshiamiso Trust regarding services or the Content of the Website please make use of the feedback link provided.

## **9. SECURITY**

- 9.1 Tshiamiso Trust has in place reasonable commercial standards of technology and operational security to protect all information provided by Users from loss, misuse, alteration or destruction.
- 9.2 All reasonable steps will be taken to secure User information.
- 9.3 Authorised employees, who are responsible for the maintenance of any sensitive data submitted, are required to maintain the confidentiality of such data.
- 9.4 It is expressly prohibited for any person, business or entity to gain or attempt to gain unauthorised access to any page on this Website, or to deliver or attempt to deliver any unauthorised, damaging or malicious code to this Website.
- 9.5 If a person including any User delivers or attempts to deliver any unauthorised, damaging or malicious code to this Website or attempts to gain unauthorised access to any page on this Website, a criminal charge will be laid against that person and, where applicable losses, and damages incurred as a result thereof will be claimed.
- 9.6 It is expressly prohibited for any person, including any User, business, entity or website to frame any page on this Website, including the home page, in any way whatsoever, without prior written approval of Tshiamiso Trust.
- 9.7 Tshiamiso Trust may provide links to other websites only as a convenience. The inclusion of any link does not imply that Tshiamiso Trust endorses such sites.

## **10. REGISTRATION - ACCOUNT OR PROFILE**

- 10.1 Whilst Users may browse the Website without creating an account or profile, certain areas of the Website can only be used if the User has created a profile or has opened an account.

- 10.2 In order to open an account or create a profile, depending on the type of services which the User wants to access, such User has to complete a registration form and select a password and user name (“User ID”).
- 10.3 Users in this regard may not: (i) select or use as a User ID a name of another person with the intent to impersonate that person; (ii) use as a User ID a name subject to any rights of a person other than you without appropriate authorization; or (iii) use as a User ID a name that is otherwise offensive, vulgar or obscene and Tshiamiso Trust reserves the right to refuse registration of, or cancel a User ID in its sole discretion.
- 10.4 Users are solely responsible for activity that occurs on their account or profile and shall be responsible for maintaining the confidentiality of any password.
- 10.5 Users may not: (i) impersonate or try to impersonate another person; (ii) disclose their password to anyone else; (iii) allow anyone else to use their account or profile; or (iv) use anyone else’s account or profile.
- 10.6 Users must immediately notify Tshiamiso Trust in writing of any unauthorized use of their account, or profile or of other account related security breaches which they are or become aware of.
- 10.7 When registering for an account or profile, the User represents that all information provided is accurate and truthful and that the User will maintain the accuracy and truthfulness of such information by any feature Tshiamiso Trust makes available for that purpose or otherwise by notifying Tshiamiso Trust.
- 10.8 If a User is accessing and/or otherwise using a particular service on the Website pursuant to a separate contract which has been concluded with Tshiamiso Trust, such use of that service will be subject to that contract, provided to the extent there where there is any conflict, the terms of the contract shall prevail.
- 10.9 Usage restrictions and other additional terms and conditions (“Additional Terms”) may apply to certain parts of the Website and shall form part of these Terms. The User shall comply with all Additional Terms referenced on any part of the Website it uses, posts to, affixes to or otherwise that the User is given notice of, and to the extent there is any conflict between the Additional Terms and other parts of these Terms, the Additional Terms shall prevail in respect of the relevant part of the Website.

## **11. TERMINATION**

- 12.1 Tshiamiso Trust may terminate your access to all or any part of the Website at any time, with or without cause, with or without notice, effective immediately, which may result in the forfeiture and destruction of all information associated with your account or profile, including User Submissions.
- 12.2 Upon termination, all rights granted under this Agreement shall terminate and you shall immediately stop using the Website and/or Content.
- 12.3 If you wish to terminate your account or profile, you may do so by following instructions available on the relevant part of the Website. All provisions of these Terms which by their nature should survive termination shall survive termination, including ownership provisions, warranty disclaimers, indemnities and limitations of liability.

## **12. WARRANTY DISCLAIMER**

The service is provided “as is” and “as available” and is without warranty, condition or guarantee of any kind, express or implied, including any warranty of title, non-infringement, merchantability and fitness for a particular purpose, and any warranties implied by any course of performance or usage of trade, all of which are expressly disclaimed. Without limiting the foregoing, Tshiamiso Trust, and its Trustees, employees, agents, suppliers, partners, integrators and content providers do not warrant that: (a) the website will be secure or available uninterrupted at any particular time or location; (b) any defects or errors will be corrected; (c) any content available at or through the website is free of viruses or other harmful components; or (d) the results of using the website will meet your requirements. Your use of the website is solely at your own risk. The foregoing provisions shall apply to the maximum extent permitted by applicable law.

### **13. INDEMNIFICATION**

- 14.1 Users shall defend, indemnify, and hold harmless Tshiamiso Trust and its affiliates, and their respective officers, Trustees, employees or agents, on demand from all losses, liabilities, claims, and expenses, including reasonable attorneys' fees, that arise from or relate to any act by a User or any third party using a User's account. which amounts to:
- the use or misuse of, or access to, the Website, and the Content,
  - the violation, infringement or non-compliance of these Terms,
  - the violation of any Proprietary Rights or other right of any individual or entity.
- 14.2 Tshiamiso Trust reserves the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by a User, in which event the User will assist and cooperate with Tshiamiso Trust in asserting any available defenses.

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

In no event shall Tshiamiso Trust, its affiliates, suppliers, partners, licensors, integrators or content providers, or their respective officers, trustees, employees, or agents be liable with respect to the website, content or the subject matter of this agreement under contract, tort, strict liability, negligence, or any other legal or equitable theory (i) for any amount in excess of the greater of one hundred rands (R100) (in the aggregate) or the fees paid by you for the service during the 12-month period preceding the claim; (ii) for any indirect, incidental, punitive, or consequential damages of any kind whatsoever; (iii) for any loss of profits, revenue, business or savings, depletion of goodwill and/or similar losses nor for data loss or cost of procurement of substitute goods or services; (iv) for any bugs, viruses, trojan horses, or the like (regardless of the source of origination); or (v) for any matter arising from your breach or negligence, or beyond Tshiamiso Trust's reasonable control. The foregoing provisions shall apply to the maximum extent permitted by applicable law.

## 15. PRIVACY

- 16.1 A User may visit this Website without providing any personal information.
- 16.2 However, certain areas of the Website may call for a User to provide personal information, which use by Tshiamiso Trust is described under its **Privacy notice** and which the User agrees will be provided in accordance therewith which can be accessed by clicking here.

## 16. COOKIES

- 17.1 Tshiamiso Trust uses cookies on its Website, which are used in order to ensure that the Website is well managed, to facilitate improvement of the Website and to ensure that the Website is serving as a useful and effective information source.
- 17.2 To find out more about these Cookies and how to adjust them, please read the Tshiamiso Trust Cookies Notice which can be accessed by clicking here <https://www.tshiamisotrust.com/legal/>

## 17. LEGAL TERMS

- 18.1 Any failure by Tshiamiso Trust to exercise or enforce any right or provision of these Terms shall in no way constitute a waiver of such right or provision.
- 18.2 If any Term is not fully enforceable or valid for any reason, such term(s) shall be severable from the remaining Terms and the remaining Terms shall not be affected by such unenforceability or invalidity and shall remain enforceable and applicable
- 18.3 The Website is hosted, controlled and operated from the Republic of South Africa and therefore the South African law enforced by the South African courts governs the use or inability to use the Website, its content, services and these terms and conditions.
- 18.4 A printed version of these Terms and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to these Terms to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.
- 18.5 Tshiamiso Trust shall not be liable for any failure to perform its obligations hereunder where such failure results from any cause beyond Tshiamiso Trust's reasonable control, including mechanical, electronic or communications failure or degradation (including "line-noise" interference).
- 18.6 The Terms are personal to the User, and are not assignable, transferable or sublicensable by the User except with Tshiamiso Trust's prior written consent.
- 18.7 Tshiamiso Trust may assign, transfer or delegate any of its rights and obligations hereunder without consent.

- 18.8 Any reference to “includes” and “including” shall mean including without limitation and general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words.
- 18.9 No agency, partnership, joint venture, or employment relationship is created as a result of these Terms and neither party has any authority of any kind to bind the other in any respect.
- 18.10 All notices under these Terms will be in writing and will be deemed to have been duly given when received, if personally delivered or sent by certified or registered mail, return receipt requested; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; or the business day after it is sent, if sent for next day delivery by recognized overnight delivery service.

## **18. INTERCEPTION OF COMMUNICATIONS AND INVESTIGATIONS**

- 19.1 Subject to the provisions of the Regulation of Interception of Communications Act 70 of 2002, (RICA) the User agrees to Tshiamiso Trust’s right to intercept, block, filter, read, delete, disclose and use all communications sent or posted by the User to the Website and/or where applicable its staff and employees.
- 19.2 The User agrees and acknowledges that the consent provided by the User in clause 19.1 satisfies the “writing” requirement.
- 19.3 Tshiamiso Trust reserves the right to investigate complaints, suspicions or reported violations of these Terms and to take any action it deems appropriate including but not limited to reporting any suspected unlawful activity to the applicable authorities, regulators or third parties and disclosing and information necessary to appropriate such persons or entities.

## **19. CHANGES AND AMENDMENTS**

Tshiamiso Trust expressly reserves the right, in its sole and absolute discretion, to do any of the following, at any time without prior notice:

- change these terms and conditions;
- change the content and/or services available from the Website;
- discontinue any aspect of the Website or service(s) available from the Website; and/or
- change the software and hardware required to access and use the Website.

END

**REVISION SHEET**

REVISION NUMBER	SUBJECT OF REVISION	PAGE NUMBER	EFFECTIVE DATE

**ENDORSEMENT**

NAME	DESIGNATION	DATE	SIGNATURE & PERSONNEL NUMBER

**RECORDS**

DESCRIPTION	RESP	LOCATION	FILE NAME / INDEX	RETENTION TIME (MINIMUM)