

## **TERMS AND CONDITIONS**

### **1. INTRODUCTION**

These are the Website Terms and Conditions of Use relating to the Assegai Award show entries made available by the Direct Marketing Association of South Africa (**'DMASA'**) through the website located at the following URL <https://www.assegaiawards.co.za/> and domain name assegaiawards.co.za ("the Website"), which Website is owned and operated by the DMASA. The DMASA shall hereafter be referred to as **'the Provider'**.

These Terms and Conditions ("the Terms and Conditions") govern your ("the User") use of the Website and Services associated therewith. By accessing and using, and in particular indicating your acceptance of the terms by clicking on the **"I agree to the Terms and Conditions of Use"** button as provided for on the Website, the User agrees to be bound by the Terms and Conditions set out in this document. The content of this Website is proprietary to the DMASA. As such, the User may not access, display, use, download, and/or otherwise copy and/or distribute content obtained on the Website for any purposes other than as provided for in these Terms and Conditions without the prior written consent of the DMASA.

In terms of section 49 of the Consumer Protection Act, 2008 your attention is drawn to clauses 2, 3, 4, 5, 6, 10, 11, and 15 which:

- i) limit in any way the risk or liability of the Provider or any other person;
- ii) constitute an assumption of risk or liability by the User;
- iii) impose an obligation on the User to indemnify the Provider or any other person for any cause; or
- iv) constitute an acknowledgement of any fact by the User.

### **2. Contractual Capacity to Act**

The User warrants that he / she is at least 18 (eighteen) years of age and has the necessary contractual and mental capacity to enter into and be bound by these Terms and Conditions. Where the User acts on behalf of a juristic person, the User agrees to bind himself / herself as surety and co-principal debtor with such juristic person for the due performance of the juristic person's obligations in terms of these

Terms and Conditions. Notwithstanding the foregoing, the User (where he/she acts on behalf of a juristic person) warrants that he / she has the necessary authority and capacity to enter into and bind the juristic person to these Terms and Conditions.

### **3. Electronic Communications**

By using this Website or communicating with the Provider by electronic means, the User consents and acknowledges that any and all agreements, notices, disclosures, or any other communication shall have been adequately addressed to the User upon transmission by e-mail to the e-mail address provided by the User which constitutes proper notice to the User.

### **4. E-Commerce**

The Website <https://assegaiawards.co.za/> offers entries to the Assegai Awards 2022 (“the Services”). The use of any product or service bought from this Website is at the User’s own risk. The User indemnifies and holds the Provider harmless against any loss, injury or damages which may be sustained as a result of using the Products or Services sold on the Website.

### **5. Personal Information**

5.1 The User shall make available and consents to the processing of the following personal information by the Provider:

- i) e-mail address;
- ii) name and surname;
- iii) identity number;
- iv) gender;
- v) year of birth;
- vi) company name;

- vii) company registration number;
- viii) physical address;
- ix) IP address;
- x) telephone number.

("the Personal Information")

5.2 The Personal Information will be processed by the Provider, pursuant to and for the following purposes:

- i) verifying the identity of the User;
- ii) transmitting and receiving necessary correspondence to the User in relation to the Products or Services accessed, used or purchased by the User through, or by means of the Website;
- iii) to transfer the User's Personal Information to third parties with whom the Provider has an agreement.
- iv) facilitating delivery and distribution of the Products or access to the Services to the User;
- v) processing payments in respect of any Products and Services purchased by the User; and
- vi) transmitting marketing material to the User in respect of Products and Services sold by the Provider.

5.3 The User's Personal Information shall be retained in the strictest confidence by the Provider and will not be sold or made known to third parties without the User's prior written consent.

5.4 Should the User need to amend any of its Personal Information, it shall do so by means of written notice sent to the email addresses as per paragraph 16.

5.5 Failure by the User to submit the requisite personal information will render the Provider unable to deliver the Products or Services to the User. Should this arise, the User hereby indemnifies and holds the Provider harmless against any loss or damage which the User may suffer as a result of the Provider's inability to render or deliver the Products or Services.

## **6. Security Safeguards**

6.1 The Provider shall take appropriate, reasonable technical and organisational measures to secure the integrity and confidentiality of personal information in its possession in order to guard against:

- i) loss of, damage to or unauthorised destruction of personal information; and
- ii) unlawful access to or processing of personal information.

6.2 The Provider shall not however be held responsible and the User agrees to indemnify and hold harmless the Provider for any security breaches occurring on the User's electronic device (personal computer or other electronic device used to browse the Website or access the Services offered thereon), which may arise as a result (without limitation) of the lack of adequate virus protection software or spyware that the User may inadvertently have installed on his/her device.

## **7. Quality of goods**

In instances where the Provider offers any products for sale which are purchased by the User, the Provider will supply all products in good order.

## **8. Online Payment – PayGate Payment Gateway**

All online credit card payments are processed by PayGate (Pty) Ltd. PayGate's terms and conditions can be obtained and viewed at [www.paygate.co.za](http://www.paygate.co.za)

## **9. Refund and Return Policy**

Once a product or service has been purchased by a User, no refunds or returns will be permitted or accepted by the Provider.

## **10. Updating of these Terms and Conditions**

The Provider reserves the rights to change, modify, add or remove from portions or the whole of these Terms and Conditions from time to time. Changes to these Terms and Conditions will become effective upon such changes being posted to this Website. It is the User's obligation to periodically check these Terms and Conditions on the Website for changes or updates. The User's continued use of this Website following the posting of changes or updates will be considered notice of the User's acceptance to abide by and be bound by these Terms and Conditions, including such changes or updates.

## **11. Limitation of liability**

11.1 The Website and all content on the Website, including any current or future offer of products or services, are provided on an "as is" basis, and may include inaccuracies or typographical errors. The Provider makes no warranty or representation as to the availability, accuracy or completeness of the content. Neither the Provider, its directors, prescribed officers, employees, agents or assigns, shall be held responsible for any direct or indirect special, consequential or other damage of any kind whatsoever suffered or incurred, related to the use of, or the inability to access or use the content or the Website or any functionality thereof, or of any linked website, even if the Provider is expressly advised thereof.

11.2 Neither the User or any other person shall have any claim against the Provider for any direct, consequential, incidental, indirect or special loss or damages, including, without limitation, business interruption, loss of business information, loss of data or other pecuniary loss, arising from the unavailability of the Services, regardless

of whether such claim is based on breach of contract, delict, breach of implied warranties or otherwise and even if the possibility of such loss or damages could have been foreseen or if the Provider was negligent.

11.3 The User therefore indemnifies and holds the Provider harmless against any loss, injury or damages which may be sustained as a result of:

- i) using the Products or Services, or any other products or services accessed and used by the User through or by means of the Website;
- ii) the User's failure to comply with his/her obligations in terms of these Terms and Conditions; or
- iii) the unavailability of, or interruption of the Services provided to the User by the Provider through, or by means of the Website, as contemplated in clause 11.2 above.

## **12. Casual Surfing**

The User may visit the Website without providing any personal information. The Website servers will in such instances collect the IP address of the User's computer or other electronic device, but not the e-mail address or any other distinguishing information. This information is aggregated to measure the number of visits, average time spent on the Website, pages viewed, etc. The Provider uses this information to determine use of the Website, and to improve content thereon. The Provider assumes no obligation to protect this information, and may copy, distribute or otherwise use such information without limitation.

## **13. Governing Law**

This Website is controlled, operated and administered by the DMASA from its offices within the Republic of South Africa. Access to the Website from territories or countries where the content or purchase of the Products or Services sold on the Website is illegal is prohibited. These Terms and Conditions shall be governed by the laws of the Republic of South Africa, and the User consents to the jurisdiction

of any High Court with jurisdiction for purposes of resolving any dispute in connection with the use of this Website. If any of the provisions of these Terms and Conditions are found by a court of competent jurisdiction to be invalid or unenforceable, that provision shall be enforced to the maximum extent permissible so as to give effect to the intent of these Terms and Conditions, and the remainder of these Terms and Conditions shall continue in full force and effect. These Terms and Conditions constitute the entire agreement between the Provider and the User with regard to the use of the Content and this Website.

#### **14. Country of Domicile**

This Website is governed by the laws of the Republic of South Africa and the DMASA chooses as its *domicilium citandi et executandi* for all purposes under this agreement, whether in respect of court process, notice, or other documents or communication of whatsoever nature, Fernridge Office Park, Block 4, Ground Floor, 5 Hunter Street, Ferndale, Johannesburg, 2193.

#### **15. General Use of the Website and the Services**

- 15.1 The User may not use, reproduce, adapt, distribute, publish or in any other way deal or interfere with the Services without the prior written consent of the Provider.
- 15.2 The User may not establish a hyperlink, frame, metatag, similar reference, whether electronically or otherwise, or any other reference to the Website without the prior written consent of the Provider.
- 15.3 The Provider reserves the right to make any changes or modification, as well as discontinue any aspect of the Website, its content and/or the Products or Services offered by or through the Website at any time and without prior notice to the User. No such change, suspension, modification or discontinuance shall entitle the User to any refund or compensation or give rise to any liability whatsoever.

- 15.4 The User agrees that it will only use the Products and Services in accordance with these Terms and Conditions, including any terms and conditions incorporated herein by reference.
- 15.5 The User may not post content on the Website that is illegal, unlawful, obscene, defamatory, discriminatory, disparaging of others, derogatory, inflammatory, harassing, insulting, offensive or likely to promote and/or incite violence or hatred against others or that contains abusive, offensive or profane language.
- 15.6 If the User chooses or is provided with identification codes, usernames, passwords or any similar form of identification information as part of the Website's security systems, such User must keep this information secret and confidential and not share such information with any third party. The User shall be responsible for all access to the Website with the User's username and password. When the User's username and password has been used in order to gain access to the Website, the Provider shall be entitled to assume that such use and all related communications emanate from the User. The Provider and its affiliates shall not be liable for any loss or damage arising from unauthorised use of the User's Personal Information. The User shall be obliged to immediately, after becoming aware of any other person's unauthorised access to the User's account or profile, log out of the Website to prevent anyone else from gaining unauthorised access to the User's account or profile.
- 15.7 In the event that the User becomes aware of a breach of the confidentiality of the User's Personal Information or the interference with the lawful processing of said User's Personal Information, the User must immediately communicate this to the Provider in writing. The compromised User's account, profile, access and use of the Website will be deactivated as soon as reasonably possible and a new username and password will be issued to the User. The Provider may, in its sole and absolute discretion and for any reason, require the User to change the User's user identity and password at any time.



15.8 The Provider reserves the right to occasionally restrict the User's access and/or use of the Website and/or the Products or Services to carry out repairs, maintenance or to introduce new functionality and/or Products or Services. The Provider does, however, endeavor to keep any disruption in the use of the Website and the Services to a minimum.

15.9 The User agrees not to:

- i) use the Website or the Services to process Personal Information of third parties;
- ii) violate the privacy of any person in order to, or attempt to, gain unauthorised access to the Website or the Services, including, but without limitation through hacking, password mining or any other means; or
- iii) use the Website or the Services to engage in any illegal or unlawful activity.

15.10 Should the User engage in any of the aforementioned activities, or breach any of the provisions of these Terms and Conditions, the Provider shall be entitled, without prejudice to any other rights they may have and without prior notice to the User:

- i) to suspend the User's access to the Website and/or the Services; and/or
- ii) to terminate this agreement and recover all costs incurred by the Provider, including, but without limitation, legal costs on an attorney and own client scale.

**16. Compliance with section 43 of the Electronic Communications and Transactions Act, 2002**

In compliance with section 43 of the Electronic Communications and Transactions Act, 2002, the Provider draws your attention to the following information:

- i) Full name and legal status –

**The Direct Marketing Association of South Africa NPC**

(NPC Registration Number: 2005/040417/08)

Non-profit Company

- ii) Physical address and telephone number-  
**DMASA:** Fernridge Office Park, Block 4, Ground Floor, 5 Hunter Street, Ferndale, Johannesburg, 2193.
  
- iii) Web site address and e-mail address –  
**Website:** <https://www.assegaiawards.co.za/>  
**Primary website:** <https://dmasa.org/>  
**Email address:** [ethan@dmasa.org](mailto:ethan@dmasa.org)
  
- iv) The registration number, the names of its office bearers and its place of registration –  
  
**DMASA:**  
Registration Number: 2005/040417/08  
CEO: Mr. David Dickens
  
- v) The physical address where the Provider will receive legal service of documents –  
  
**DMASA**  
Fernridge Office Park, Block 4, Ground Floor, 5 Hunter Street, Ferndale, Johannesburg, 2193
  
- vi) A sufficient description of the main characteristics of the goods or services offered by the DMASA –

**DMASA**

The objectives of the DMASA are to protect, promote and advance the interest of its members and prospective members and to promote education and training in the field of direct marketing.

- vii) the full price of the goods or services -

**Pricing is as stated on the website and is subject to change at any time. All prices include VAT.**

- viii) The manner of payment –

**Secure online payments are processed through the Paygate payment gateway. The DMASA may accept cash, EFT and card payments (including credit and debit card payments, whether it be via Visa or Mastercard). The transaction currency is South African Rand (ZAR).**

- ix) Any terms of agreement, including any guarantees, that will apply to the transaction and how those terms may be accessed, stored and reproduced electronically by consumers -

**None**

- x) The time within which the services will be rendered -

**Upon payment of the purchase price, and submission of the necessary information, the entry relating to the User's purchase will become activated within 24 (twenty-four) hours of such submission.**

- xi) The manner and period within which the User can access and maintain a full record of the transaction –

**Users will be required to contact the Provider directly to access any transaction documentation. Transaction histories are available for a period of 5 (five) years. Such requests for access may be made to the email address designated for the Provider in this clause.**

- xii) The return, exchange and refund policy of the Provider –

**No refunds, exchanges or returns will be permitted by the Provider in respect of the Services under any circumstances other than those provided for in these terms and conditions.**

- xiii) The security procedures and privacy policy in respect of payment, payment information and personal information

**All card transactions will be acquired for the DMASA via PayGate (Pty) Ltd who are the approved payment gateway for all South African Acquiring Banks. PayGate uses the strictest form of encryption, namely Secure Socket Layer 3 (SSL) and no Card details are stored on the website or are accessible by the Provider. PayGate's security certificate, security policy and legal terms and conditions are found at [www.paygate.co.za](http://www.paygate.co.za)**