

TERMS OF SERVICE

AssessCAT (Pty) Ltd - 2018 / 437027 / 07

Assess Chartered Accountant Trainees (AssessCAT) is a web-based assessment system designed for SAICA training offices. These terms of service are intended to explain our obligations as a service provider and your obligations as a client. Please read them carefully.

These terms are binding on any use of the Software and apply to you from the time that AssessCAT provides you with access to the Software.

AssessCAT reserves the right to change these terms at any time, effective upon uploading the updated terms on our website. AssessCAT will make reasonable efforts to communicate these changes to you via email or notification via the website.

The AssessCAT Software will evolve and change over time. Accordingly, these terms of service will also be updated and changed as and when required.

These terms were last updated on 31 October 2019.

1. Definitions

"**Administrator**" means the person(s) nominated by the Client that acts on behalf of the Client to fulfil the administrative duties of the Client.

"**Agreement**" means these Terms of Service.

"**Client**" means the entity, which will typically be a SAICA training office, that is registered to use the Software.

"**Software**" means the software available (as may be changed or updated from time to time) via our website.

"**Subscription**" means the monthly fee (excluding taxes and duties) payable by the client.

"**User**" means any person or entity that use the software with authorisation from the Client.

"**You**" means the Client, and where the context permits, any User that the Administrator have given access to the Software. "Your" has a corresponding meaning.

2. Use of service

AssessCAT grants you the right to access and use the Software. This right is non-exclusive and non-transferable and governed by these Terms. You acknowledge and agree that:

1. the Administrator determines the Users' and the level of user role access every user has;
2. the Client is responsible for all Users' use of the Software;

3. Clients' obligations

3.1. Payments

The client or the billing contact whose details are provided by the client will be issued with monthly invoices in advance. AssessCAT will continue to charge the client monthly for the Subscription until this Agreement is terminated in writing by the client or us. The client must pay all amounts specified in any invoice by the due date for payment. The client is responsible for payment of all taxes and duties that may be applicable.

3.2. Access conditions

You must ensure that all usernames and passwords required to access the Software are kept secure and confidential. You will immediately notify AssessCAT of any unauthorised use of Your passwords or any other breach of security and AssessCAT will reset Your password and/or take other steps as deemed necessary.

You must take all other actions that AssessCAT reasonably deems necessary to maintain or enhance the security of the Software.

As a condition of these Terms, when accessing and using the Software, You must:

- i. Not attempt to undermine the security or integrity of the Software (including AssessCAT's computing systems or networks).
- ii. Not use, or misuse, the Software in any way which may impair the functionality of the Software, or other systems used to deliver the Software or impair the ability of any other user to use the Software;
- iii. Not attempt to gain unauthorised access to any materials other than those to which You have been given express permission to access;
- iv. Not transmit, or input into the Software, any files that may damage any other person's computing devices or software, content that may be offensive, or material or Data in violation of any law (including Data or other material protected by copyright or trade secrets which You do not have the right to use); and
- v. Not attempt to modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer the Software.

3.3. Indemnity:

You indemnify AssessCAT against all claims, costs, damage and loss arising from Your breach of any of these terms or any obligation You may have to AssessCAT, including (but not limited to) any costs relating to the recovery of any Subscriptions that are due but have not been paid by You.

4. Confidentiality

Unless the relevant party has the prior written consent of the other or unless required to do so by law:

- i. Each party will preserve the confidentiality of all confidential information of the other obtained in connection with these Terms. Neither party will, without the prior written consent of the other, disclose or make any confidential information available to any person, or use the same for its own benefit, other than as contemplated by these Terms.
- ii. Each party's obligations under this clause will survive termination of these Terms.

5. Privacy

AssessCAT maintains a privacy policy that sets out the parties' obligations in respect of personal information. This policy is available on our website and You will be taken to have accepted that policy when You accept these Terms.

6. Intellectual Property

6.1. General

Title to, all Intellectual Property Rights in the Software and any documentation relating to the Software remain the property of AssessCAT.

6.2. Ownership of data

Title to and all Intellectual Property Rights in the data remain Your property. However, Your access to the data is contingent on full payment of the Subscription. You grant AssessCAT licence to use, copy, transmit, store, and back-up Your information and data for the purposes of enabling You to access and use the Software and for any other purpose related to provision of services to You.

7. Acknowledgements

You acknowledge that:

- i. You are authorised to use the Software and to access the information that You access using the Software.
- ii. The provision of, access to, and use of the Software is on an "as is" and "as available" basis and at Your own risk.
- iii. AssessCAT does not warrant that the use of the Software will be uninterrupted or error free. Among other things, the operation and availability of the systems used for accessing the Software, including public telephone services, computer networks and the Internet, can be unpredictable and may from time to time interfere with or prevent access to the Software. AssessCAT is not in any way responsible for any such interference or prevention of Your access or use of the Software.
- iv. It is Your sole responsibility to determine that the Software meets the needs of Your business.

8. No warranties

Every effort is made that the Software will meet the requirements set by SAICA regarding the assessment process. However, AssessCAT gives no warranty about the Software. Without limiting the foregoing, AssessCAT does not warrant that the Software will meet Your requirements or that it will be suitable for Your purposes.

9. Limitation of liability

To the maximum extent permitted by law, AssessCAT excludes all liability and responsibility to You (or any other person) in contract, tort (including negligence), or otherwise, for any loss or damage resulting, directly or indirectly, from the use of, or reliance on, the Software.

If You suffer loss or damage as a result of AssessCAT's negligence or failure to comply with these Terms, and claim by You against AssessCAT arising from AssessCAT's negligence or failure will be limited in respect of any one incident, or series of connected incidents to the Subscriptions paid by You in the previous 6 months.

If You are not satisfied with the Software, Your sole and exclusive remedy is to terminate these Terms in accordance with the termination clause.

10. Termination

10.1. No-fault termination

These Terms will continue for the period covered by the Subscription paid. These Terms will automatically continue for the same period provided You continue to pay the prescribed Subscription when due, unless either party terminates these Terms by giving notice to the other party at least 30 days before the end of the relevant payment period. If You terminate these Terms You shall be liable to pay all relevant Subscription on a pro-rata basis for each day of the then current period up to and including the day of termination of these Terms.

10.2. Breach

If You:

- i. breach any of these Terms (including, without limitation, by non-payment of any Subscription) and do not remedy the breach within 14 days after receiving notice of the breach if the breach is capable of being remedied;
- ii. breach any of these Terms and the breach is not capable of being remedied; or
- iii. the Client or their business goes into liquidation or becomes insolvent, or makes any arrangement with its creditors, or becomes subject to any similar insolvency event in any jurisdiction

AssessCAT may take any or all of the following actions, at its sole discretion:

- i. Terminate these Terms and Your use of the Software;
- ii. Suspend for any definite or indefinite period of time, Your use of the Software;
- iii. Suspend or terminate access to all or any Data;

10.3. Accrued rights

Termination of these Terms is without prejudice to the rights and obligations of the parties accrued up to and including the date of termination.

On termination of this Agreement You will:

- i. remain liable for any accrued charges and amounts which become due for payment before or after termination; and
- ii. immediately cease to use the Software.

11. General

11.1. Entire agreement

These Terms, together with the terms of any other notices or instructions given to You under these terms, supersede and extinguish all prior agreements, representations (whether oral or written), and understandings and constitute the entire agreement between You and AssessCAT relating to the Software and the other matters dealt with in these Terms.

Should any provision of these Terms be found invalid or unenforceable, the remaining Terms shall still apply.

11.2. Waiver

If either party waives any breach of these Terms, this will not constitute a waiver of any other breach. No waiver will be effective unless made in writing.

11.3. Delays

Neither party will be liable for any delay or failure in performance of its obligations under these Terms if the delay or failure is due to any cause outside its reasonable control. This clause does not apply to any obligation to pay money.

Any failure of by AssessCAT to enforce or exercise a right provided in these Terms is not a waiver of that right.

11.4. Notices

Any notice given under these Terms by either party to the other must be in writing by email and will be deemed to have been given on transmission. Notices to AssessCAT must be sent to info@assesscat.com. Notices to You will be sent to the email address or postal address You provided when setting up Your access to the Software.

11.5. Jurisdiction

This Agreement and the relationship between You and AssessCAT shall be governed by the laws of the Republic of South Africa without regard to its conflict of law provisions. You agree to submit to the personal and exclusive jurisdiction of the Western Cape High Court, Cape Town.