

1. INTRODUCTION

Welcome to www.brainspark.co.za. By accessing or using our website, you agree to be bound by these terms and conditions ("Terms"). If you do not agree with any part of these Terms, you must not use our website. Please read these terms and conditions carefully before using our website.

2. TERMS AND CONDITIONS OF USE

1. This document sets out the Terms of **BrainSpark** relating to the access and use of the information, products, services, and functions provided on www.brainspark.co.za.
2. These Terms are binding and enforceable against all persons that access the website or any part thereof. **BrainSpark** relies on the provisions of section 11 of the Electronic Communications and Transactions Act, 25 of 2002 (ECT Act) in this regard.
3. Should you, as a person that accesses the website, disagree with any of the Terms, you must refrain from accessing, using, downloading, copying, and/or distributing content obtained from this website as further use will automatically bind you to these Terms.
4. **BrainSpark** reserves the right, in its sole discretion, to amend and/or replace any of, or the whole of the Terms.
5. Such amendments shall supersede and replace any previous Terms and shall be made available on the website. Each time a user accesses the website and/or uses the services, the user shall be deemed to have consented, by such access and/or use, to the Terms, as amended and/or replaced by **BrainSpark** from time to time. If you are not satisfied with the amended Terms, you should refrain from using the website.
6. If there is anything in these Terms that you do not understand then please contact us as soon as possible.

3. DEFINITIONS

Confidential Information	All trade secrets, intellectual property rights, and other information BrainSpark or third parties protect against unrestricted disclosure to others, which is either labelled Confidential and access through a restricted or non-public area of the website or pursuant to software downloads, or reasonably identifiable as confidential based on the type of information and the manner of its disclosure.
Intellectual property	Patents of any time, design rights, utility models and other similar invention rights, copyrights, trademarks, service marks, trade secret or confidentiality rights, and any other intangible property rights including applications for any of the foregoing in any country, arising under statutory or common law or by contract and whether perfected, now existing or hereafter filed, issued, or acquired.
Website	The website of BrainSpark located at www.brainspark.co.za and includes any page, part or element thereof.
User	Any person who access and/or uses the website, notwithstanding the fact that such a person only visits the home page of the website. References herein to the singular includes the plural and <i>vice versa</i> .

Notwithstanding the fact that hyperlinks in these Terms to copyright notices and legislation should be deemed part of these Terms in terms of section 11 of the ECT Act, the fact that some or all of the hyperlinks may be non-operational, shall not play a determination of the validity and interpretation of these Terms.

4. GOVERNING LAW

1. These Terms are governed by and construed in accordance with the laws of South Africa, without regard to its conflict of law principles. You agree to submit to the exclusive jurisdiction of the courts located in South Africa to resolve any dispute arising out of or relating to these Terms or your use of our website.

1.1. Electronic Communications and Transactions Act, 25 of 2002

1.2. Regulation of Interception of Communication and provision of Communication-Related Information Act, 70 of 2002

5. ELIGIBILITY

1. Anybody meeting the relevant requirements is eligible to use the website.
2. However, if the user is a minor in the jurisdiction in which they reside (generally under the age of 18) must have the permission of, and be directly supervised by, their parent or guardian to use the website and specifically to register for courses where payment is required. If you are a minor, you must have your parent/guardian read and agree to these Terms prior to you using the website.

6. CHANGES TO TERMS

1. **BrainSpark** reserves the right to modify these Terms at any time.
2. Any changes will be effective immediately upon posting on our website.
3. Your continued use of the website after the posting of any changes constitutes your acceptance of such changes.

7. USE OF WEBSITE

1. **BrainSpark** licenses the user to view, download, and print the content of the website, provided that such contents are used for private, personal, educational, and/or non-commercial purposes only.
2. Content from the website shall not be used or exploited by users for any commercial and non-private purposes without **BrainSpark's** prior written consent.
3. Users may not access, browse, and use the Website for illegal purposes
4. The caching of the website shall only be allowed if:
 - 4.1. the purpose of the caching is to make the onward transmission of the content from the website more efficient
 - 4.2. the cached content is not modified in any manner whatsoever
 - 4.3. the cached content is updated at least every twelve (12) hours; and
 - 4.4. the cached content is removed or updated when required by **BrainSpark**.
5. If any user uses content from the website in breach of the provisions detailed herein **BrainSpark**:
 - 5.1. reserves the right to claim damages from the user
 - 5.2. reserves the right to institute criminal proceedings against the user; and
 - 5.3. 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.
6. Hyperlinks to the website from any other source shall be directed to the relevant pages.

7. BrainSpark shall not be liable in any manner whatsoever for any damage, loss, or liability that resulted from the use of content from the website, if such content was access through a hyperlink not directed at the home page of the website. Persons that wish to link to content through a hyperlink not directed at the home page of the website shall do so at their own risk and indemnify BrainSpark against any loss, liability, or damage that may result from the use of content from the website, if such content was access through a hyperlink not directed at the home page of the website. **BrainSpark's** non-liability for deep linking is because deep links bypass these terms and conditions. Users understand that content available on the website is proprietary to BrainSpark and other third parties and warrant that they may quote small and reasonable amounts of content available from the website only if such quote is placed in inverted commas and acknowledged.
8. No person may incorporate the website's content into their own website (a practice known as framing), in any manner whatsoever, without **BrainSpark's** prior written consent.
9. Apart from bona fide search engine operators and use of the search facility provided on the website by users, no person may use or attempt to use any technology or application (including web crawlers or web spiders) to search, collect or copy content from the website for any purposes, without BrainSpark's prior written consent. E-mail addresses, names, telephone numbers and/or any other contact information published on the 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 website may be used to communicate unsolicited communications to BrainSpark and all rights detailed in section 45 of the ECT Act are reserved.
10. All licences and/or permissions granted in terms of this clause are provided on a non-exclusive and non-transferable basis and may be terminated or cancelled by **BrainSpark** at any time without prior notice or giving reasons for such a decision.

8. USAGE RESTRICTIONS

The user hereby agrees that, where applicable, it shall not itself, nor through a third party:

1. distribute, copy, share, or supply any course or training material for which the user paid and enrolled for.
2. copy (other than for backup, archival, or disaster recovery purposes), reproduce, translate, adapt, vary, modify, lease, licence, sub-licence, encumber, or in any other way deal with any part of the website for any reason and in any manner, unless it is consistent with the intent and purpose of these terms;
3. decompile, disassemble, or reverse engineer any portion of the website;
4. write and/or develop any derivative of the website or any other software program based on the website;
5. modify or enhance the website, in the event of a user effecting any modifications or enhancements to the website in breach of this clause, such modifications and enhancements shall be the property of **BrainSpark**;
6. without **BrainSpark's** prior written consent, provide, disclose, divulge, or make available to or permit the use of or give access to the website or other related content by persons other than the user;
7. remove any identification, trademark, copyright, or any other notices from the website or related content;
8. post or transmit, by means of reviews, comments, suggestions, ideas, questions, or other information through the website, any content which is unlawful, harmful, threatening, abusive, harassing, defamatory, vulgar, obscene, sexually explicit, profane, or hateful, or racially, ethnically, or otherwise objectionable content of any kind; and/or;

9. notwithstanding anything contained to the contrary to these terms, use the website for any purpose other than personal, non-commercial and information purposes.

9. USER REQUIREMENTS

1. Browser:
 - 1.1. To access the full functionality of this website, users must use a supported web browser with SSL security, such as Edge or Chrome.
 - 1.2. Users should ensure that they always use the latest version of these browsers.
 - 1.3. Using older or unsupported browsers may result in limited features or inability to access certain content.
2. Site Design and Fonts:
 - 2.1. The website uses a responsive design that will adjust according to the resolution of the user's device.

10. INTELLECTUAL PROPERTY RIGHTS

1. For this clause, the following words shall have the following meanings ascribed to them:

Intellectual property rights	All and any of the rights in and to intellectual property of any nature whatsoever owned and/or controlled directly or under licence by BrainSpark , now or in the future, including without limitation, BrainSpark's rights, title and interest in and to all technology, source code/s, trade secrets, logos, systems, methods, trademarks, trade names, styles, insignia, designs, patents and copyright, and all similar proprietary rights which may subsist in any part of the world, whether registered or not.
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2. All copyright and other intellectual property rights in all content, trademarks, software, data, material, including logos, databases, text, graphics, icons, hyperlinks, confidential information, designs, agreements, and multimedia works, published on or via the website (proprietary material) are the property of or are licenced to **BrainSpark**, and as such are protected from infringement by local and international legislation and treaties.
3. By submitting reviews, comments, and/or any other content (***other than your personal information***) to **BrainSpark** for posting on the website, you automatically grant **BrainSpark** and its affiliates a non-exclusive, royalty-free, perpetual, irrevocable right and licence to use, reproduce, publish, translate, sub-licence, copy, and distribute such content in whole or in part worldwide, and to incorporate it in other works in any form, media, or technology now known or hereinafter developed, for the full term of any copyright that may exist in such content. Subject to this licence, you retain any and all rights that may exist in such content. You represent and warrant to **BrainSpark** that you have the right, title and authority to grant such licence to **BrainSpark**.
4. Personal information will be handled in accordance with the legal requirements as set out on the Protection of Personal Information Act, 4 of 2013.
5. All rights not expressly granted are reserved and no right, title or interest in any proprietary material or information contained in this website is granted to you.
6. Except with **BrainSpark's** express, written permission, no proprietary material from this website may be copied or retransmitted.
7. Irrespective of the existence of copyright, the user acknowledges that **BrainSpark** is the proprietor of all material on the website (except where a third party is indicated as the proprietor) whether it constitutes confidential information or not, and that the user has no right, title or interest in any such material.

8. **BrainSpark** authorises you only to view, copy, temporarily download to a local drive and to print the content of this website, or any part thereof, provided that such content is used for personal purposes and for information purposes only, and such content is used for non-commercial purposes.

11. SOFTWARE AND EQUIPMENT

1. It is the responsibility of the user to acquire and maintain, at his/her expense, the necessary computer hardware, software, communication lines, and/or accounts required to access the internet and the website and/or download content from the website.
2. The user has a further responsibility to ensure that the computer being used is updated (software, operating system, virus protection programmes, etc.).

12. DISCLOSURES REQUIRED BY SECTION 43 OF THE ECT ACT

1. Access to the services, content, software, and downloads available from the website may be classified as 'electronic transactions' as defined in terms of the ECT Act and therefore users have the right to the following information and **BrainSpark** has the duty to disclose the following information:
 - 1.1. Full name and legal status of the website owner, i.e. BrainSpark (Pty) Ltd.
 - 1.2. Company registration number: 2025/874808/07
 - 1.3. Postal address: 6 Stil Street, Potchefstroom, 2531
 - 1.4. Physical address for receipt of legal service: 6 Stil Street, Potchefstroom, 2531
 - 1.5. Telephone number: 076 946 7716
 - 1.6. Directors: Hein Pretorius
Nic van der Walt
 - 1.7. Main business: BrainSparks provides scientifically designed brain and personality test.
 - 1.8. **BrainSpark** website address: www.brainspark.co.za
 - 1.9. Office e-mail address: info@brainspark.co.za
 - 1.10. Membership of self-regulatory or accreditation bodies: available upon request
 - 1.11. BrainSpark's code of conduct is currently unavailable on the website;
 - 1.12. The PAIA manual, published in terms of section 50 of the Promotion of Access to Information Act, 2 of 2000 of the owner of the website may be downloaded from this website.
 - 1.13. **BrainSpark** management: see www.brainspark.co.za
 - 1.14. The costs associated with the purchase of courses are indicated on the website.
 - 1.15. The manner of payment for courses is indicated on the website.
 - 1.16. Alternative dispute resolution: subject to urgent and/or interim relief, all disputes regarding:
 - 1.16.1. access to this website;
 - 1.16.2. the inability to access this website
 - 1.16.3. the services and content available from this website; or
 - 1.16.4. these terms and conditions,shall be referred to arbitration in terms of the expedited rules of the Arbitration Foundation of South Africa and such arbitration proceedings shall be conducted in terms of the South African law in Johannesburg in English. The arbitration ruling shall be final and the unsuccessful party shall pay the costs of the successful party on a

scale as between attorney and own client. The expedited rules of the Arbitration Foundation of South Africa may be downloaded from www.arbitration.co.za.

- 1.17. Cooling off period: in terms of the operation of section 42(2)(d) of the ECT Act, the cooling off provisions of the ECT Act do not apply to this website;
- 1.18. Users may lodge complaints concerning the website with **BrainSpark**.

13. CHANGES AND AMENDMENTS

1. **BrainSpark** reserves the right, in its sole and absolute discretion, to do any of the following at any time without prior notice or justification:
 - 1.1. change these terms;
 - 1.2. change the content and/or services available from the website;
 - 1.3. discontinue any aspect or feature of the website and any information or content on the website or service/s available from the website and/or;
 - 1.4. change the software and hardware required to access and use the website.
2. Users are encouraged to report untrue, inaccurate, defamatory, illegal, infringing and/or harmful content available from the website to **BrainSpark** and **BrainSpark** undertakes to correct and/or remove such content or any part thereof if the person reporting such content provides reasonable grounds to prove the alleged nature of the content.
3. **BrainSpark** may, in its sole discretion:
 - 3.1. remove any content from the website; or
 - 3.2. request users to remove content from the website, if such content is untruthful, misleading, inappropriate, offensive or unsuitable for any reason whatsoever. **BrainSpark** may filter all content, advertisements, or materials published on the website and make no commitment to edit and/or update such content on the website.
4. **BrainSpark** does not assume any responsibility or liability for any errors or omission of whatsoever nature or however it may arise in relation to this clause.

14. PRIVACY POLICY

1. Your use of our website is also governed by our Privacy Policy, which is incorporated into these Terms by reference.
2. Please review our Privacy Policy to understand our practices regarding the collection, use, and disclosure of your personal information.

15. HYPERLINKS TO THIRD-PARTY SITES

1. **BrainSpark** may provide links to third party websites on the website. These links are provided to the user for convenience purposes only and **BrainSpark** does not endorse, nor does the inclusion of any link imply **BrainSpark's** endorsement of such websites, their owners, licenses, or administrators of such websites' content or security practices and operations.
2. While **BrainSpark** tries to provide links only to reputable website or online partners, **BrainSpark** cannot accept responsibility or liability for the information provided on other websites.
3. **BrainSpark** does not editorially control the content on such target sites. Users agree that **BrainSpark** shall not be held liable, directly or indirectly, in any way for the content, the use or inability to use or access any linked website or any link/s contained in a linked website, nor for any loss or damage of any sort incurred as a result of any dealings with, or as the result of the presence of such third party linked websites on the website. Any dealings that users may have with any linked websites, including advertisers, found on the website, are solely between the user and the third-party website.

4. **BrainSpark** does not warrant or guarantee that the links to third-party website are free from virus or other malicious software and you undertake to click on any such link at your own risk.

16. SECURITY

1. To ensure the security and reliable operations of the services to all **BrainSpark's** users, **BrainSpark** hereby reserves the right to take whatever action it may deem necessary to preserve the security, integrity, and reliability of its network and back-office applications. However, **BrainSpark** does not make any warranties or representations that content shall be 100% safe and secure.
2. **BrainSpark** will subscribe to the latest trends in encrypting any content or communications from and to the website.
3. Users may not deliver or attempt to deliver, whether on purpose or negligently, any damaging code, such as computer viruses, to the website or the server and computer network that supports the website. Any person or entity which does so or attempts to do so shall be held criminally liable. Further, should **BrainSpark** suffer damages or loss, civil damages shall be claimed by **BrainSpark** against the user.
4. Notwithstanding criminal prosecution, any person who delivers any damaging code to the website, whether on purpose or negligently, shall, without any limitation, indemnify and hold **BrainSpark** harmless against all liability, damages, and losses **BrainSpark** and its partners/affiliates may suffer as a result of such damaging code.
5. Users may not develop, distribute or use any device to breach or overcome the security measures of the website and **BrainSpark** reserves the right to claim damages from all persons concerned with a security failure or breach.

17. INTERCEPTION OF COMMUNICATIONS

1. Subject to the provisions of the Regulation of Interception of Communication and provision of Communication-Related Information Act, 70 of 2002 (the RIC Act), the user agrees to **BrainSpark's** right to intercept, block, filter, read, delete, disclose and use all communications sent or posted by the user to the website and/or its employees.
2. The user agrees and acknowledges that the consent provided by the user as indicated in (1) above satisfies the 'writing' requirement as detailed in the ECT Act and the RIC Act.

18. AGREEMENT IN TERMS OF SECTION 21 OF THE ECT ACT

The user and **BrainSpark** agree that:

1. the user shall be bound to these terms and conditions, and such agreement is concluded in South Africa at the time that the user enters the website for the first time;
2. data messages (as defined in the ECT Act) addressed by the user to **BrainSpark** shall only be deemed to have been received when responded to;
3. data messages (as defined in the ECT Act) addressed to the user by **BrainSpark** shall be deemed to be received by the user as detailed in section 23(b) of the ECT Act;
4. data messages (as defined in the ECT Act) addressed by the user to **BrainSpark** shall be deemed to have been created and sent by the user from within the geographical boundaries of South Africa.
5. electronic signatures, encryption and/or authentication is not required for valid electronic communications between the user and **BrainSpark**; and
6. the user agrees and warrants that data messages that are sent to **BrainSpark** from a computer, IP address or mobile device normally used by or owned by the user, was sent and/or authorised by the user personally.

19. CONFIDENTIALITY

1. By subscribing as a user, you agree that you shall hold in the strictest confidence and not disclose to any third-party information acquired in connection with any aspect of the products and/or services offered by BrainSpark. You shall notify BrainSpark should you discover any loss or unauthorised disclosure of the information.
2. You agree not to reproduce any confidential information not which you are provided access through the website in any form except as authorised at the time of the disclosure. Any reproduction of confidential information shall remain the property of BrainSpark or the third party that has prepared such information.
3. Any information or material sent to BrainSpark will be deemed not to be confidential, unless otherwise agreed in writing by the user and BrainSpark. You agree not to provide BrainSpark or other users with any confidential information that you or the owner of the confidential information do not intend to become public information. Any content that you upload to the Website without clearly labelling it as confidential shall be deemed not to be confidential or proprietary and you expressly agree that you waive any trade secrets or other confidentiality rights with respect to such content.

20. BREACH OR CANCELLATION BY BRAINSPARK

1. **BrainSpark** is without notice, in addition to any other remedy available to it at law or under these Terms, including obtaining an interdict, to cancel these Terms, limit or deny such user use of the website and services, or to claim specific performance of any obligation whether or not the due date for performance has arrived, in either event without prejudice to **BrainSpark's** right to claim damages, should any user:
 - 1.1. breach any of these Terms;
 - 1.2. in the sole discretion of **BrainSpark**, use the website in an unauthorised manner; or
 - 1.3. infringe any statute, regulation, ordinance or law.
2. Breach of these Terms entitles **BrainSpark** to take legal action without prior notice to the user and the user agrees to reimburse the costs associated with such legal action to BrainSpark on an attorney and own client scale.

21. NOTICES

1. Except as explicitly stated otherwise, any notice shall be given by e-mail to info@brainspark.co.za (in the case of **BrainSpark**) or to the e-mail address you have provided to BrainSpark (in your case), or such other address that has been specified. Notice shall be deemed given forty-eight (48) hours after an e-mail is sent, unless the sending party is notified that the e-mail address is invalid. Alternatively, **BrainSpark** may give you notice by way of any accepted manner, to the address which you have provided to **BrainSpark**. In such case, notice shall be deemed given seven (7) days after the date of mailing. You acknowledge that all agreements, notices or other communication required to be given in terms of the law or these Terms may be given via electronic means and that such communications shall be 'in writing'. Notwithstanding anything to the contrary, a written notice or communication received by a party shall be an adequate written notice or communication to it, notwithstanding that it was not sent to or delivered at its chosen address/es for that purpose.

22. GENERAL CLAUSES

1. The website is hosted, controlled and operated from the Republic of South Africa and therefore South Africa law enforced by the South African courts govern the use or inability to use the website, its content, services, and these Terms.
2. This website is controlled, operated and administered by Entrutech CC within the Republic of South Africa, BrainSpark makes no representation that the content of the website is inappropriate or available for use outside of South Africa. Access to the website from territories or countries where the content of the website is illegal is prohibited. Users may not use this website in violation of South African export laws or regulations. If the user accessed this website from locations outside of South Africa that user is responsible for compliance with all local laws.
3. **BrainSpark** does not guarantee continuous, uninterrupted, or secure access to our service, as operation of our website may be interfered with because of a number of factors which are outside of our control.
4. If any provision of these Terms is held to be illegal, invalid, or unenforceable for any reason, such provision shall be struck out from these Terms, and the remaining provisions shall be enforced to the full extent of the law.
5. **BrainSpark's** failure to act with respect to a breach by you or others does not constitute a waiver of our right to act with respect to subsequent or similar breaches.
6. You shall not be entitled to cede your rights or assign your rights or delegate your obligation in terms of these Terms to any third party without **BrainSpark's** prior written consent.
7. No party shall be bound by any express or implied term, representation, warranty, promise, or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.
8. Headings to the paragraphs to these Terms shall be used in the interpretation of any of the provisions to which they relate.
9. Words importing the singular shall include the plural and vice versa, and word importing the masculine gender shall include the other genders and words importing persons shall include partnerships and corporate and unincorporated entities.
10. These Terms set forth the entire understanding and agreement between BrainSpark and you with respect to the subject matter hereof.

23. LIMITATION OF LIABILITY

1. To the fullest extent permitted by law, www.brainspark.co.za and its affiliates, officers, directors, employees, and agents shall not be liable for any indirect, incidental, special, consequential, or punitive damages arising out of a user's use of or inability to use our website or any content therein.
2. **BrainSpark** shall not be liable for costs incurred by users to obtain professional advice relating to these Terms and Conditions.

24. INDEMNIFICATION

1. You agree to indemnify, defend, and hold harmless www.brainspark.co.za, its affiliates, officers, directors, employees, and agents from and against any claims, liabilities, damages, losses, and expenses, including reasonable attorneys' fees, arising out of or in any way connected with your use of our website or your violation of these Terms.