

Defy SPIVS Programme Website / Application Terms of Use

Cognition –	Cognition Holdings Limited, the administrator of the Defy SPIVS Programme
Defy SPIVS –	the Defy SPIVS Programme administered by Cognition Holdings Limited on behalf of Defy Technologies South Africa (Pty) Ltd
The Portal –	the website (www.defyspivs.co.za) and the mobile application (available on Google Play and Apple Store)

1. Terms And Conditions Of Use For The Defy SPIVS Portal

- 1.1. This document sets out the Terms pertaining to the access and use of the information and functions provided on the Portal.
- 1.2. Should you access the Portal and you disagree with any of the Terms, you must refrain from accessing and using the Portal.
- 1.3. Cognition reserves the right, in its sole discretion, to amend and/or replace any of, or the whole of, the Terms. Such amendments shall supersede and replace any previous Terms and shall be made available on the Portal. Each time you access the Portal and use the services, you will be deemed to have consented, by such access and/or use, to the Terms, as amended and/or replaced by Cognition from time to time. If you are not satisfied with the amended Terms, you should not use the Portal.
- 1.4. If there is anything in these Terms that you do not understand then please contact us as soon as possible. Our contact details are set out in clause 8 below. Calls to us are charged at national rates and may be monitored for training, security and quality assurance purposes.
- 1.5. As a user You are responsible for any tax liability that may arise as a result of your participation in the Defy SPIVS.

2. Content Of The Portal

- 2.1. Cognition reserves the right to make improvements, to change or to discontinue, without notice, any aspect or feature of the Portal and any information or content on the Portal.
- 2.2. Cognition will, from time to time, and when instructed to do so by Defy, update the range of Defy products on which incentives are payable as well as the value of incentives that are payable on particular Defy products.

- 2.3. Cognition may include information provided by Defy on the Portal. Cognition has no control over this information and makes no representations or warranties of any nature as to its accuracy, appropriateness or correctness. You agree that such information is provided “as is” and that Cognition shall not be liable for any losses or damages that may arise from your reliance on it, howsoever these may arise.
- 2.4. Cognition makes no representations or warranties, whether express or implied, as to the accuracy, completeness or reliability of any information, data and/or content on the Portal, including without limitation:
 - 2.4.1. Cognition does not warrant that the Portal or information or downloads shall be error-free or that they shall meet any particular criteria of performance or quality. Cognition expressly disclaims all implied warranties, including without limitation, warranties of merchantability, fitness for a particular purpose, non-infringement, compatibility, security and accuracy;
 - 2.4.2. Whilst Cognition has taken reasonable measures to ensure the integrity of the Portal and the contents of the Portal, no warranty, whether express or implied, is given that any files, downloads or applications available via the Portal are free of viruses, or any other data or code which has the ability to corrupt, damage or affect the operation of your system; and
 - 2.4.3. Cognition disclaims any responsibility for the verification of any information published on the Portal. Such information is published in the format in which Cognition receives it and statements from external parties are accepted as fact.

3. Usage Restrictions

You hereby agree that you will not:

- 3.1. 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 Portal for any reason and in any manner, unless it is consistent with the intent and purpose of these Terms;
- 3.2. decompile, disassemble or reverse engineer any portion of the Portal;
- 3.3. write and/or develop any derivative of the Portal or any other software program based on the Portal;

- 3.4. modify or enhance the Portal. If you effect any modifications or enhancements to the Portal in breach of this clause, such modifications and enhancements shall be the property of Cognition;
- 3.5. without Cognition's prior written consent, provide, disclose, divulge or make available to or permit the use of or give access to the Portal to anyone else;
- 3.6. remove any identification, trademark, copyright or other notices from the Portal;
- 3.7. post or transmit, by means of reviews, comments, suggestions, ideas, questions or other information through the Portal, 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
- 3.8. notwithstanding anything contained to the contrary in these Terms, use the Portal for any purpose other than personal and information purposes.

4. Security

- 4.1. In order to ensure the security and reliable operation of the services to all users of the Portal, Cognition 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.
- 4.2. You may not utilise the Portal in any manner which may compromise the security of Cognition's networks or tamper with the Portal in any manner whatsoever, which shall include without limitation, gaining or attempting to gain unauthorised access to the Portal, or delivering or attempting to deliver any unauthorised, damaging or malicious code to the Portal, all of which is expressly prohibited. Any person or entity which does so, or attempts to do so, shall be held criminally liable. Further, should Cognition suffer any damage or loss, civil damages shall be claimed by Cognition against the user.
- 4.3. Any user who commits any of the offences detailed in Chapter 13 of the Electronic Communications and Transactions Act 25 of 2002 ("ECTA") (specifically sections 85 to 88 (inclusive)) shall, notwithstanding criminal prosecution, be liable for all resulting liability, loss or damages suffered and/or incurred by Cognition and its affiliates, agents and/or partners.

5. Intellectual Property Rights

- 5.1. For the purpose of this clause, the following words shall have the following meanings ascribed to them:
 - 5.1.1. “Intellectual property rights” means all and any of the rights in and to intellectual property of any nature whatsoever owned and/or controlled directly or under licence by Cognition, now or in the future, including without limitation, Cognition’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.
- 5.2. 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 Portal (“proprietary material”), are the property of, or are licensed to, Cognition and as such are protected from infringement by local and international legislation and treaties.
- 5.3. By submitting reviews, comments and/or any other content (other than your personal information) to Cognition for posting on the Portal, you automatically grant Cognition and its affiliates a non-exclusive, royalty-free, perpetual, irrevocable right and licence to use, reproduce, publish, translate, sub-license, 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.
- 5.4. All rights not expressly granted are reserved and no right, title or interest in any proprietary material or information contained in the Portal is granted to you.
- 5.5. Except with Cognition’s express written permission, no proprietary material from the Portal may be copied or retransmitted.
- 5.6. Irrespective of the existence of copyright, you acknowledge that Cognition is the proprietor of all material on the Portal (except where a third party is indicated as the proprietor), whether it constitutes confidential information or not, and that you have no right, title or interest in any such material.
- 5.7. Cognition authorises you only to view, copy, temporarily download to a local drive and to print the content of the Portal, 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.

6. Risk, Limitation Of Liability And Indemnity

- 6.1. Your use of the Portal and the information contained on the Portal is entirely at your own risk and you assume full responsibility and risk of loss resulting from the use thereof.
- 6.2. The transmission of information via the internet, including without limitation e-mail, is susceptible to monitoring and interception. You bear all risk of transmitting information in this manner. Under no circumstances shall Cognition be liable for any loss, harm or damage suffered by the user as a result thereof. Cognition reserves the right to request independent verification of any information transmitted via e-mail and you consent to such verification should Cognition deem it necessary.
- 6.3. To the extent permissible by law:
 - 6.3.1. Neither Cognition, its affiliates, shareholders, agents, consultants or employees shall be liable for any damages whatsoever, including without limitation any direct, indirect, special, incidental, consequential or punitive damages, howsoever arising (whether in an action arising out of contract, statute, delict or otherwise) related to the use of, or the inability to access or use the content of the Portal or any functionality of the Portal, or the information contained on the Portal even if Cognition knows or should reasonably have known or is expressly advised thereof.
 - 6.3.2. The liability of Cognition for faulty execution of the Portal as well as all damages suffered by you, whether direct or indirect, as a result of the malfunctioning of the Portal shall be limited to Cognition rectifying the malfunction, within a reasonable time and free of charge, provided that Cognition is notified immediately of the damage or faulty execution of the Portal. This liability shall fall away and be expressly excluded if you attempt to correct or allow third parties to correct or attempt to correct the Portal without the prior written approval of Cognition. However, in no event shall Cognition be liable to you for loss of profits or for special, incidental, consequential or punitive losses or damages arising out of or in connection with the Portal or its use or the delivery, installation, servicing, performance or use of it in combination with other computer software.
 - 6.3.3. You hereby unconditionally and irrevocably indemnify Cognition and agree to hold Cognition free from all loss, damages, claims and/or costs, of whatsoever nature suffered or incurred by Cognition or instituted against Cognition as a direct or indirect result of:

- 6.3.3.1. your use of the Portal;
 - 6.3.3.2. Software, programs and support services supplied by, obtained by or modified by you or any third party without the consent or knowledge of Cognition;
 - 6.3.3.3. Your failure to comply with any of the Terms or any other requirements which Cognition may impose from time to time;
 - 6.3.3.4. The actions or requirements of any telecommunications authority or a supplier of telecommunications services or software; or
 - 6.3.3.5. Any unavailability of, or interruption in, the service which is beyond the control of Cognition.
- 6.3.4. Cognition makes no warranty or representation as to the availability, accuracy or completeness of the content of the Portal. You expressly waive and renounce all your rights of whatever nature that you may have against Cognition for any LOSS suffered by you, as a result of information supplied by Cognition being incorrect, incomplete or inaccurate.

7. Breach Or Cancellation By Cognition

Cognition is entitled 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 you the use of the Portal and the 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 Cognition's right to claim damages, should you:

- 7.1. breach any of these Terms;
- 7.2. in the sole discretion of Cognition, use the Portal in an unauthorised manner; or
- 7.3. infringe any statute, regulation, ordinance or law.

8. Our Contact Details Are As Follows:

- 8.1. Full name: Cognition Holdings Limited who administer the Defy SPIVS Programme on behalf of Defy Technologies South Africa (Pty) Ltd
- 8.2. Registration number: 1997/010640/06
- 8.3. Physical address: Cognition House, 84 Bram Fischer Drive, Randburg, 2194
- 8.4. Telephone number: 0861 333 993

- 8.5. Website address: www.defyspivs.co.za
- 8.6. E-mail address: support@defyspivs.co.za

The services provided to you through the Portal are provided by us on behalf of Defy Technologies South Africa (Pty) Ltd.

9. Compliance With Laws

You will comply with all applicable laws, statutes, ordinances and regulations pertaining to your use of and access to the Portal.

10. Notices

Except as explicitly stated otherwise, any notices shall be given by email to support@defyspivs.co.za (in the case of Cognition) or to the e-mail address you have provided when registering as a participant of the Defy SPIVS.

11. General Clauses

- 11.1. These Terms shall be governed in all respects by the laws of the Republic of South Africa as such laws are applied to agreements entered into and to be performed within South Africa.
- 11.2. The Portal is controlled, operated and administered by Cognition from its offices within the Republic of South Africa. Cognition makes no representation that the content of the Portal is appropriate or available for use outside of South Africa. Access to the Portal from territories or countries where the content of the Portal is illegal is prohibited. Users may not use the Portal in violation of South African export laws and regulations. If you access the Portal from locations outside of South Africa, you are responsible for compliance with all local laws.
- 11.3. Cognition does not guarantee continuous, uninterrupted or secure access to our services, as operation of the Portal may be interfered with as a result of a number of factors which are outside of our control.
- 11.4. 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.
- 11.5. Cognition'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.

- 11.6. You will not be entitled to cede your rights or assign your rights or delegate your obligations in terms of these Terms to any third party without the prior written consent of Cognition.
- 11.7. 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.
- 11.8. The head notes to the paragraphs to these Terms are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 11.9. Words importing the singular shall include the plural and vice versa, and words importing the masculine gender shall include females and words importing persons shall include partnerships and corporate and unincorporated entities.
- 11.10. These Terms set forth the entire understanding and agreement between Cognition and you with respect to the subject matter hereof.