

Terms and Conditions

The terms and conditions of this Agreement govern your use of the SmartPractice software inclusive of TaxSmart software and the Website thereof, are binding and enforceable against all persons that access the SmartPractice software, TaxSmart software and the Website or any part thereof in terms of section 11(3) of the ECT Act.

If you do not agree to the terms and conditions of this Agreement, you must stop using the SmartPractice software, TaxSmart software and the Website now, as further use will automatically bind you to this Agreement. If at any time, you do not accept this Agreement in full, you are not permitted to use the SmartPractice software, TaxSmart software or the Website or any part thereof.

If you access the SmartPractice software and /or TaxSmart software and / or the Website via a third-party Business Partner, then you will be bound to terms of such third-party Business Partner and to this Agreement. On termination of any contract with such third-party Business Partner, should you continue to use the SmartPractice software and/ or TaxSmart software and / or the Website, then you will be bound to the whole of this Agreement, which is then applicable.

We may at any time amend this Agreement without notice. You are responsible for reviewing this Agreement on each occasion that you revisit the SmartPractice software and the Website and, if you continue to use the SmartPractice software, TaxSmart and the Website after changes are made, you are deemed to have accepted the amended Agreement.

PARTIES

This Agreement is concluded by:

SmartPractice (Pty) Ltd (Registration Number 2015/223633/087) inclusive of the trade name TaxSmart whose registered office is at 5 Progress Street, George, 6530, Western Cape, South Africa (addressed in this document as "SmartPractice", "we" or "us") and you, the person, business entity or sole trader, using the SmartPractice software, TaxSmart or the Website and shall to the extent relevant, include any of your employees or Subscriber Business Partners using the Website, SmartPractice software or TaxSmart software ("you").

Accordingly, you confirm and warrant to SmartPractice that:

- You are authorised to accept this Agreement on behalf of the business entity which you represent;
- This Agreement governs the use by you and / or your business of the SmartPractice software, TaxSmart software and the Website;
- You, and the business entity which you represent together with its employees, will comply with all its terms.

You and SmartPractice agree as follows:

- **1. Definitions**

The following capitalised words shall have the following meanings:

1. "Agreement" means these terms and conditions of use, as published and amended from time to time on the Website;
2. "Affiliate" means, in relation to a legal entity, any person which Controls that entity, is under that entity's Control or is Controlled by the same person who Controls that entity, where "Control" means possessing, directly or indirectly, the ability to direct or cause the direction of the management, policies or operations of an entity, whether through ownership of voting securities, by contract or otherwise, and "Controlled" shall have a corresponding meaning;
3. "Access Fee" means the fees payable by you in accordance with the fee structure which will be explained on the cloud base program ;
4. "Business Partner" means a business, independent of SmartPractice, which is an authorised provider of SmartPractice;
5. "Company Data" means any financial data inputted/uploaded by a Business Partner or Subscriber Business Partner into the SmartPractice software, TaxSmart software and SmartPractice servers
6. "Confidential Information" includes all information exchanged between the parties to this Agreement, whether in writing, electronically or orally, including on the SmartPractice software, TaxSmart software and the Website but does not include information which is, or becomes, publicly available other than through unauthorised disclosure by the other party or is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure or is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from

the disclosing party or is independently developed or received without access to the Subscriber Business Partner

7. "Contractors" means any third parties appointed by SmartPractice to perform our obligations on our behalf in respect of this Agreement;
8. "ECT Act" means the Electronic Communications and Transactions Act, 25 of 2002 (as amended from time to time), a copy of which is accessible on www.polity.org.za;
9. "Subscriber Business Partner" means any individual permitted by you to use the SmartPractice software and/or TaxSmart software and/or the Website;
10. "Intellectual Property" means any content, domain names, patent, trademark, service mark, copyright, moral right, right in a design, know-how, software, database, text, graphics, icons and hyperlinks and any other intellectual or industrial property, anywhere in the world whether or not registered;
11. "Page" means a website page of SmartPractice, TaxSmart or the Website, unless specified otherwise;
12. "Software" means our filing and business software inclusive of SmartPractice and TaxSmart, accessed through the different websites owned by Smartpractice (Pty) Ltd or any affiliate.
13. "RIC Act" means the Regulation of Interception of Communications and Provision of Communication-Related Information Act, 70 of 2002 (as amended from time to time), a copy of which is accessible on <https://www.gov.za/documents/regulation-interception-communications-and-provision-communication-related-information--13>
14. "User Details" means the contact, personal and similar information of the Subscriber Business Partner
15. "Website" means the website pages relating to SmartPractice accessible at <http://www.SmartPractice.co.za> (and such other URLs as may be publicised from time to time), permitting the remote access and use of the software.

In this Agreement, references to a "person" includes an individual, sole trader, partnership, body corporate, an unincorporated association of persons and any other legal entity; technical expressions shall have the relevant meaning commonly attributed to them in the computer software business sector in South Africa; the use of the word "including" and similar expressions will be construed as illustrative and not exhaustive; notwithstanding the fact that hyperlinks in this Agreement to copyright notices and legislation should be deemed part of this Agreement in terms of section 11 of the ECT Act, the fact that some or all of the hyperlinks may be non-operational from time to time shall not play a role in determination of the validity and interpretation of this Agreement.

• **2. Subscription and use of SmartPractice and TaxSmart**

1. the software and the Website are only intended for business use. You warrant that you will only use the software and the Website for business purposes.
2. We may require you to register before we supply any services via this online site. When you register, you agree to provide, true, accurate, up-to-date and complete User Details as required by the relevant registration made available to you via this online site.
3. You can purchase credits to access the complete system and use the TaxSmart software by following the relevant process on the online site.
4. We will not keep a separate record of the contract relating to your specific subscription for the software, so it will not be available from us. We therefore strongly recommend you print a copy of this Agreement. SmartPractice will supply you with a tax invoice, either directly or through appointed Business Partner, transmitted via email. The transmitted electronic document will constitute the original tax invoice. No other tax invoice, credit or debit note will be issued in respect of the specific supply, unless as a copy of the original document.
5. SmartPractice grants you a non-exclusive and non-assignable license to access and use the software strictly via the Website with the user roles according to your subscription type and in accordance with this Agreement.
6. As long as your account is active (see termination), you will be permitted to the agreed number of Subscriber Business Partners, to access and use the relevant subscription for the software. You agree to ensure that those Subscriber Business Partners comply with this Agreement. Those Subscriber Business Partners must only use the relevant subscription for the software as follows for their own (or their employer's) accounting and finance and related purposes:
 - 1. as permitted by and subject to the terms and conditions of this Agreement;
 - 2. in the course of their (or their employer's) own business; and
 - 3. with their own (or their employer's) Company Data only.
7. If a Subscriber Business Partner is not the employee of a subscriber to the software, the subscriber must ensure that such Subscriber Business Partner: a. complies with this Agreement; and b. uses the relevant Company Data in the software in accordance with that subscriber's instructions.

• **3. Obligations**

1. You agree to:
2. ensure that your User Details and other information given in relation to your use of the SmartPractice software, TaxSmart and the Website are, and are maintained to be, true and accurate;
3. use the SmartPractice software and the Website for your own lawful internal business purposes, in accordance with this Agreement and any notice sent by SmartPractice and/or TaxSmart or condition posted on the Website;

4. comply with your contractual obligations to the Business Partner through which you have been granted access to the Website or the software, if applicable;
5. ensure that all account credentials required to access the software and the Website are kept secure and confidential and to immediately notify SmartPractice or TaxSmart of any unauthorised use of your account credentials or any other breach of security. In such instances, it shall be your obligation to immediately request SmartPractice / TaxSmart to reset your password and to maintain security. In any event, it is deemed good practice to regularly reset your password to maintain data security;
6. notify us, if, at any time you become aware of any unauthorised use of the account credentials of your Subscriber Business Partners, or any other security-related matter with the software and the Website, and to co-operate with us to the extent reasonably necessary to rectify the security breach;
7. ensure that the Subscriber Business Partners who access the software on your account comply with the terms of this Agreement;
8. only store the maximum amount of data, if any, as may be prescribed from time to time on the SmartPractice software and/or the TaxSmart software or on the Website. If at any time, you exceed the amount of any specified limit, for so long as you do so, SmartPractice / TaxSmart may charge you at its then - standard rates for additional storage.
9. Except as expressly permitted by another clause of this Agreement or by separate written arrangement with us, you agree not to and agree to ensure that no Subscriber Business Partners:
 1. use or copy (irrespective of the extent of copying) the whole or any part of the graphic user interface of the software or the Website for incorporation into or the development of any software or other product or technology.
10. When accessing and using the software or the Website, you must:
 1. not attempt to undermine the security or integrity of SmartPractice or TaxSmart's computing systems or networks or, where the SmartPractice software or the Website is hosted by a third party, that third party's computing systems and networks;
 2. not use, or misuse the software or the Website in any way which may impair the functionality of the software or Website, or impair the ability of any other user to use the software or Website;
 3. not attempt to gain unauthorised access to any materials other than those to which you have been given express permission to access or to the computer system on which the software or Website is hosted;
 4. 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 User Details or Company 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);
 5. not modify, translate, or create derivative works based on the software or the Website, nor reproduce, reverse assemble, decompile or reverse engineer the software or the Website, whether in whole or in part, or otherwise attempt to derive the source code, underlying ideas, algorithms, file formats, programming of the software or the Website or any files contained in or generated by the software or the Website, nor shall you permit any third party to do so; and not merge or combine the whole or any part of the software or the Website with any other software or documentation without the prior written consent of SmartPractice or TaxSmart.
11. SmartPractice's obligations shall be to provide you with access to the software (which access may not necessarily be uninterrupted), including technical support via email as described on the Website.

- **4. Payment of Charges**

1. Payment shall be made in accordance with the payment conditions described on the relevant online site or via e-mail communicated.

- **5. Confidentiality, Privacy of Company Data and User Information and Interception of Communications**

1. We undertake to take all reasonable steps to protect the personal information of Business Partners.
2. In respect of access to Company Data and User Details:
 1. The Company Data entered, or imported on instruction, by you, remains your property and we will not use nor make available for use any of this information without your permission.
 2. We will never access the details of any Company Data entered and stored by you.

- **6. Intellectual Property Rights**

1. All right, title, ownership, benefit and interest in and to, and all Intellectual Property in the SmartPractice software and the Website, the design and content of the SmartPractice software and the Website and any documentation relating thereto remain the property of SmartPractice. All rights to Intellectual Property in respect of the SmartPractice software and the Website are reserved. The exclusive right to authorise or prohibit the direct or indirect, temporary or permanent reproduction of the Intellectual Property by any means and in any form, in whole or in part, and to make the Intellectual Property available to the public, and to distribute any copyright protected material in the SmartPractice software and the Website shall remain with SmartPractice.
2. You may not use the Intellectual Property and any third-party trademarks that appear on the SmartPractice software or the Website, other than as permitted by express written license from SmartPractice or by law. In particular, you may not use the marks as meta-tags nor may you sponsor them in search engines. All goodwill in your legitimate use of the marks shall accrue to SmartPractice. You are required to notify us immediately if you become aware of any infringement of the Intellectual Property and rights thereto
3. the SmartPractice software and the Website may incorporate technical and other protective measures designed to prevent unauthorised and / or illegal use of the SmartPractice software. You agree to the incorporation of any such measures in the SmartPractice software.
4. If, in our reasonable opinion, the SmartPractice software or the Website are likely to become or do become the subject of a claim of infringement of a third party's intellectual property rights, we may elect to either:
 - 1. obtain the right for you to continue using the SmartPractice software or the Website as permitted under this Agreement; or
 - 2. modify or replace the infringing part of the SmartPractice software or the Website so as to avoid the infringement or alleged infringement, without materially reducing the functionality or performance of the SmartPractice software or the Website
5. In the circumstances per clause 6.4 above you must:
 - 1. promptly notify us of any claim or threatened claim concerning the use of the SmartPractice software or the Website;
 - not independently defend or respond to such claim or threatened claim; and
 - co-operate with us in the defense of any such claim or threatened claim, subject to our payment of your third-party costs incurred in providing such cooperation.
6. Clauses 6.4 and 6.5 state your exclusive remedy in connection with any claim or threatened claim in relation to the Intellectual Property rights of a third party.
7. "SmartPractice", " the SmartPractice software" are registered trademarks and you agree not to use any such trademarks as an element of a domain name or sub-domain name, notwithstanding the fact that such domain name use and registration may be permitted in terms of any law. Upon request, you shall immediately cease to use such domain name and transfer it to SmartPractice at your cost.

- **7. Disclaimers and Liabilities**

1. We will use reasonable endeavors to ensure that the SmartPractice software will give the functionality and levels of service as described on the Website, when used in accordance with it and this Agreement. If you believe our provision of the SmartPractice software or the Website does not conform to this undertaking, you should notify us by email at support@smartpractice.co.za
2. We do not warrant:
 - 1. that the SmartPractice software or the Website will be continuously available, or that your use thereof will be uninterrupted or error or bug free, or that the Website, the SmartPractice software and server will be free from attack;
 - 2. that all the information we provide on the SmartPractice software and the Website is correct and complete, but we nevertheless undertake to use our reasonable endeavors to ensure that all the information we provide on the SmartPractice software and the Website is correct and complete at the time of the last update to the relevant page;
 - 3. that the SmartPractice software or the Website will meet your requirements and, for this purpose, it is specifically recorded that the SmartPractice software is provided "as is" and it is your responsibility to satisfy yourself that it meets your requirements and is compatible with your hardware and software prior to making use thereof;
 - 4. that the SmartPractice software or the Website results of use will be correct, accurate or reliable;
 - 5. that any defects in the SmartPractice software or the Website can or will be corrected.
3. Subject to the provisions of any applicable legislation and save as otherwise provided in this Agreement, SmartPractice (including its directors, employees, affiliates, third-party Contractors, business partners, Internet service providers and agents) shall not be liable for any damage, loss or liability of any nature incurred by whomever and you agree to indemnify us and keep us indemnified against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include, but are not limited to, pure economic loss, loss of income, loss of profits, loss of data, anticipated savings, loss of business, loss or depletion of goodwill, interruption of business and loss similar to all the preceding types of loss), damages, claims, demands, proceedings and judgments which we incur or suffer in any way arising from the following:

- 1. access to the SmartPractice software or the Website;
 - 2. access to websites linked (including hyperlinked) to the Website;
 - 3. inability to access the Website;
 - 4. inability to access websites linked to the Website;
 - 5. services or software available from the Website (including the SmartPractice software);
 - 6. content available on the Website;
 - 7. downloads and use of content on the Website;
 - 8. any failure to perform our obligations in this Agreement due to causes beyond our reasonable control including any interruption to or failure of any website, your computer, associated supporting system not provided by us and used by you, telecommunications services, third-party and / or electricity supply service not provided by us, including the Internet;
 - 9. your breach of any of the terms of this Agreement;
 - 10. use of the SmartPractice software or the Website other than in accordance with this Agreement; or
 - 11. any other reason not directly related to SmartPractice's gross negligence.
4. To the maximum extent permitted by law all undertakings and warranties given by us under this Agreement are exclusive and all other terms, warranties, representations, undertakings and conditions, express or implied, statutory or otherwise are excluded.
5. To the extent, we are liable, our total liability (and that of any Affiliate, Business Partner or third-party Contractor) shall not exceed the amount of charges actually paid by you to use the SmartPractice software or the Website in the year prior to the date the circumstances causing such liability first arose. The limitation of liability in this clause 7 has been calculated to be proportionate to the charges paid by you to use the SmartPractice software and takes into account the fact that it is not within our control how and for what purposes you use the SmartPractice software.

- **8. Termination**

1. We may terminate this Agreement at any time by written notice, effective immediately, if you:
 - 1. materially breach any term of this Agreement and either that breach is incapable of remedy or you have not remedied that breach within 7 (seven) days after receiving written notice requiring you to remedy it;
 - 2. fail to pay when due any charges payable to us or stop paying for use of the SmartPractice software; or
 - 3. are liquidated provisionally or finally, placed under judicial management, commit an act of insolvency or enter into, or attempt to enter into compromise with your creditors.
2. Subject to clause 8.1.3, upon termination of this Agreement however caused, we will stop your ability to access the SmartPractice software, so that you will no longer be able to access and use the SmartPractice software. You acknowledge that you may no longer be able to access your Company Data via the SmartPractice software from this time.
3. If this Agreement is terminated and you notify us at the time of notice of termination that you require further access to your Company Data, we may provide you with access to the SmartPractice software for a period of 5 (five) calendar days in order that you may print out your Company Data, subject to the following:
 1. it is possible that we may have deleted your Company Data, and not be able to provide it to you; and
 2. we may charge you for providing you with access to your Company Data; and
 3. if your account remains in arrears for 90 (ninety) days, we may delete your Company Data.
4. If we terminate this Agreement in accordance with clause 8.1 we may irretrievably delete your Company Data from the effective date of termination.
5. Any termination of this Agreement will not affect any accrued rights or liabilities of either party, nor shall it affect the coming into force, or the continuance in force, of any provision of this Agreement which is expressly or by implication intended to come into force or continue in force on or after termination.

- **9. Notices and Address**

1. Your communication with us must be by email to our email address contained on the Website.
2. Our communication with you shall be via those details provided on registration.
3. All legal notices given under this Agreement shall be in writing to the physical address of such party delivered by hand. Legal notices under this Agreement addressed specifically to either of us will be effective on actual receipt by the intended recipient.
4. As a condition of this Agreement, if you use any communication tools available through the SmartPractice software or the Website, you agree only to use such communication tools for lawful and legitimate purposes in accordance with the acceptable use provisions of this Agreement.

- **10. Acceptable use of the SmartPractice software and the website**

1. It is impossible to provide an exhaustive list of exactly what constitutes acceptable and unacceptable use of the SmartPractice software and the Website. In general, we will not tolerate

any use of the SmartPractice software and the Website which damages or is likely to damage our reputation, the availability or integrity of the SmartPractice software and the Website or which causes us or threatens to cause us to incur any legal, tax or regulatory liability.

2. We therefore require you to treat the Website and the SmartPractice software with respect, and not to use same for any illegal purpose, or in such a way as to infringe or breach other's rights or to cause or threaten to cause us damage.
3. You must not use the Website or any communication tool for posting or disseminating any material unrelated to the use of the SmartPractice software or the Website including: files that may damage any other person's computing devices or software, content that may be offensive to any of our other users, or material in violation of any law (including material that is protected by copyright or trade secrets which you do not have the right to use).
4. When you make any communication on the Website, you represent that you own the content of the communication.
5. We reserve the right to remove any communication posted on the Website, suspend the use of the SmartPractice software and the Website and generally or block your access to any part thereof and / or to suspend or terminate your rights to use same or any part of it if we suspect misuse at any time in our sole discretion. We shall then report any misuse of the SmartPractice software and the Website to the relevant enforcement or other authorities and to our advisers. We further reserve the right to disclose any evidence we have which relates directly or indirectly to misuse.

- **11. Links**

1. Links to the Website are permitted, subject to first obtaining our prior written consent although we reserve the right to withdraw such consent at any time.
2. The Website may include hyperlinks to third party sites. We have no control over and are not responsible for the content, use by you or availability of those third-party websites, for any products or services you buy through those sites or for the treatment of any personal information, you provide to the third party. The products, services and websites of third party providers made available via this website may be owned and operated by independent suppliers. While we may co-brand these products or services with our own, we do not endorse those products or services or warrant the products, services or accuracy or reliability of any information provided to you by such third parties.

- **12. General Terms**

1. You agree that you are bound to the terms and conditions of this Agreement, which is concluded in George, South Africa at the time you enter the Website for the first time or after you have accepted this Agreement as required on the Website.
2. This Agreement constitutes the entire agreement between you and SmartPractice and supersedes all other documentation, information and other communication.
3. Any failure by SmartPractice to exercise or enforce any right or provision of this Agreement shall in no way constitute a waiver of such right or provision.
4. In the event that any term or condition detailed herein is found to be unenforceable or invalid for any reason, such term(s) or condition(s) shall be severable from the remaining terms and conditions of this Agreement. The remaining terms and conditions shall remain enforceable and applicable.
5. We do not recommend or endorse any other entity, including any third parties who make the SmartPractice software available to you - if you wish to engage with such an organisation, you should investigate its experience, skills and qualifications. No third party is appointed or authorised by us as our servant or agent, nor has any authority, either express or implied, to amend this Agreement, or to enter into any contract, provide any representation, warranty or guarantee with or to you on our behalf, or otherwise make commitments for us in any way whatsoever. You agree that we will not be responsible for any act or omission of any third party including any services provided by it in relation to the SmartPractice software, including any administration of it.

- **13. Disclosures required by Section 43 of the ECT Act**

Access to the services, content, software and content downloads available from the Website is classified as "electronic transactions" in terms of the ECT Act and therefore you have the rights detailed in Chapter 7 of the ECT Act and SmartPractice has the duty to disclose the following information:

1. Full name and legal status of website owner: SmartPractice (Pty) Ltd.
2. Street Address: 5 Progress Street, George, 6530, Western Cape, South Africa.
3. Postal address: PO Box 2669, George, 6530, South Africa.
4. Physical address for the receipt of legal notices: 5 Progress Street, George, 6530, Western Cape, South Africa
5. Official email address of the Website: support@SmartPractice.co.za.
6. Manual published in terms of section 51 of the Promotion of Access to Information Act 2 of 2000 may be viewed at: 5 Progress Street, George, 6530, Western Cape, South Africa
7. Alternative Dispute Resolution: Subject to urgent and / or interim relief, all disputes regarding:
 - 1. access to the Website;

- 2. the inability to access the Website;
 - 3. the services and content available from the Website; or
8. this Agreement, 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 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.
9. Cooling off period:
- 1. Under section 42(1)(g) of the ECT Act the cooling-off period set out in section 44 of the Act does not apply to an electronic transaction where audio or video recordings or computer software were unsealed by the consumer.
 - 2. Under section 42(1)(d) of the ECT Act the cooling-off period set out in section 44 of the Act does not apply in respect of services, which began with the consumer's consent before the end of the seven-day period referred to in section 44(1).
 - 3. Under section 42(1)(f) of the ECT Act the cooling-off period set out in section 44 of the Act does not apply where the goods:
 - 1. are made to the consumer's specifications;
 - 2. are clearly personalised;
 - 3. by reason of their nature cannot be returned; or d. are likely to deteriorate or expire rapidly.
 - Users may lodge complaints in respect of the Website via email to info@SmartPractice.co.za.