



## **WEBSITE TERMS AND CONDITIONS OF USE AGREEMENT**

**between**

**SMARTCALL TECHNOLOGY SOLUTIONS (PTY) LIMITED**

**and**

**YOU**

(The visitor to or user of the Smartcall Technology Solutions website located at <http://www.smartcalltech.co.za> )

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## 1. The Parties

- 1.1 Smartcall Technology Solutions (Pty) Limited (Smartcall) is a privately held company incorporated in and subject to the laws of South Africa.
- 1.1.1 Registration number: 2000/006777/07.
- 1.1.2 Physical address: 15 Eastwood Road, Dunkeld, 2024, Johannesburg.
- 1.1.3 Postal address: P. O. Box 412041, Craighall, Johannesburg, 2124.
- 1.1.4 Phone: +27 (0)11 507 4779 (switchboard).
- 1.1.5 Phone: +27 (0)11 507 4630 (customer care).
- 1.1.6 Facsimilie: +27 (0) 86 650 1083.
- 1.1.7 Email address: [info@smartcalltech.co.za](mailto:info@smartcalltech.co.za)
- 1.1.8 VAT Registration number: 4780246692.
- 1.2 You, the visitor to or user of the Smartcall Website located at <http://www.smartcalltech.co.za>.

## 2. Introduction

- 2.1 Smartcall, a Wireless Application Service Provider and Aggregator, is a member of the Wireless Application Service Providers Association of South Africa (WASPA: <http://www.waspa.org.za>) and the Direct Marketing Association of South Africa (DMASA: <http://www.dmasa.org>). Smartcall subscribes to the Codes of Conduct of both the WASPA (<http://www.waspa.org.za/code/codeconduct.shtml>) and the DMASA ([http://www.dmasa.org/dmasa/dma\\_load.php?str=1/10/17](http://www.dmasa.org/dmasa/dma_load.php?str=1/10/17)).
- 2.2 This Website Terms and Conditions of Use Agreement derives legal force and effect from section 11 of the Electronic Communications and Transactions Act, 25 of 2002.
- 2.3 This Agreement serves to comply with legislation that affords visitors to and users of the Smartcall Website rights and to inform them of their obligations when visiting or using the Smartcall Website.

2.4 If a visitor to or user of the Smartcall Website does not agree with these Website Terms and Conditions of Use, they should leave the Smartcall Website. Continued use constitutes agreement.

### 3. Interpretation

3.1 The headings to the clauses of this Agreement are for reference purposes only.

3.2 Unless the context requires otherwise, the words and expressions will be interpreted as set out below and related expressions will be interpreted with corresponding meanings:

3.2.1 "AFSA" means the Arbitration Foundation of Southern Africa;

3.2.2 "Acceptance Date" means the date on which You visit and / or use the Smartcall Website and / or any other Smartcall website that links to this Smartcall Website and agree to these Terms and Conditions of Use either by browsing or by clicking "I agree";

3.2.3 "Agreement" means this Website Terms and Conditions of Use Agreement;

3.2.4 "CPA" means the Consumer Protection Act, 68 of 2008; (<https://www.gov.za/documents/consumer-protection-act>);

3.2.5 "Do Not Contact" or "DNC Registry" means the Registry contemplated in section 11 of CPA and section 4 of the CPA Regulations, Vol. 550 No 34180;

3.2.6 "Domain Name" means an identification label that defines administrative autonomy, authority or control on the Internet and includes host names that identify internet protocol resources such as websites and WAP sites;

3.2.7 "ECT" means the Electronic Communications and Transactions Act 25, of 2002;

3.2.8 "ECT Required Information" means the information required to be made available in terms of section 43 of ECT;

3.2.9 "Electronic Transaction" means business, of either a commercial or non-commercial nature, and includes the provision of information, specifically, the Information made available on the Smartcall Website;

- 3.2.10 “Goods” means the things defined in CPA and includes information written or encoded on any medium, such as a website or WAP site and / or a licence to use such information;
- 3.2.11 “Information” means facts or details about something or somebody, and includes the facts and details on Smartcall and the Legal Notices published on the Website;
- 3.2.12 “Intellectual Property” means the rights in and to copyright in any work in terms of the Copyright Act, 98 of 1978 and includes without limitation the right to reproduce that work, the rights in respect of a trade mark conferred by the Trade Marks Act, 194 of 1993, the rights in respect of a design conferred by the Design Act 195 of 1993, the rights conferred by the Patents Act, 57 of 1978, including any applications for the any of these and any names, licenses, know-how, trade secrets and data associated with the these and, rights to domain names;
- 3.2.13 “Legal Notices” means this Agreement together with any other notices published on the Smartcall Website from time to time including, but not limited to the Smartcall Privacy Notice, Consumer Protection Rights Notice and Email Legal Notice;
- 3.2.14 “Parties” means Smartcall Technology Solutions and You and “Party” means either one of these as the context requires;
- 3.2.15 “RICA” means the Regulation of Interception of Communications and Provision of Communication-related Information Act, 70 of 2002;
- 3.2.16 “Record” means information required to be retained in compliance with South African law, Smartcall business or, information that may be required as evidence;
- 3.2.17 “Services” means the things defined in CPA and includes the provision of, access to, or right of access to information, entertainment or similar intangible things;
- 3.2.18 “Smartcall” means the Party mentioned in clause 1.1 above and any company owned or controlled by Smartcall Technology Solutions;

- 3.2.19 "Smartcall Business Affiliate" means any natural or juristic person that is connected with Smartcall and which includes but is not limited to an association, partnership or other commercial relationship that exists or may exist between Smartcall and third parties but excludes Smartcall ownership or control;
- 3.2.20 "Smartcall Business Names" means but are not limited to, brand and trade names, logos and pay-off lines and includes but are not limited to "Track Me", "Trada" and "Hotbet";
- 3.2.21 "Smartcall Marks" means any trade marks, service marks, logos, domain names or other marks of Smartcall, whether registered or not;
- 3.2.22 "Smartcall Service Offering" includes but is not limited to mean subscription Services, customised solutions, wireless application protocol sites, integration, self-maintainable portals, bulk short message Services, interactive marketing campaigns, international coverage and airtime top-up;
- 3.2.23 "Smartcall Website" means the website owned and operated by Smartcall Technology Solutions located at <http://www.smartcalltech.co.za>;
- 3.2.24 "Uncontrollable Event" means fire, flood, earthquake, acts of nature or of God, riots, civil disorder, rebellions or revolutions in any country or any other cause beyond the control of Smartcall including the disruption, suspension or termination of Services provided by a third party to Smartcall that may result in the Smartcall Website not being available;
- 3.2.25 "You" means the party mentioned in 1.2 above;
- 3.2.26 "WAP Site" means a collection of web pages containing information, images, videos other digital assets accessed through a web browser using the Wireless Application Protocol as an open international standard to provide WAP browser or WAP Site functionality for small mobile devices through software applications;
- 3.2.27 "Website" means a collection of web pages containing information, images, videos other digital assets accessed through a web browser and displayed on a monitor or mobile device hosted on a web server and accessible via the Internet and will, in this Agreement, include WAP Sites;

- 3.2.28 "Web Browser" means a software application used to retrieve, present and traverse information resources on the World Wide Web;
- 3.2.29 "Writing" means a written document that excludes, either wholly or partly, any part of a data message as defined in ECT; and
- 3.2.30 "Signed" means a signature executed by hand with a pen and without any electronic process or intervention.
- 3.3 Any reference in this Agreement to:
- 3.3.1 A "clause" will, subject to any contradiction, be interpreted to mean a clause in this Agreement;
- 3.3.2 A "law" will be interpreted to include the common law, statute law, the 1996 Constitution of South Africa, decrees, judgements, treaties, regulations, directives, by-laws, orders or any other legislative measure; and
- 3.3.3 A "person" will be interpreted to include a natural or juristic person.
- 3.4 Unless inconsistent with the context, an expression which denotes:
- 3.4.1 Any one gender includes the other genders; and
- 3.4.2 The singular includes the plural and *vice versa*.
- 3.5 Any reference to an enactment in this Agreement is to that enactment as at the Acceptance Date and as amended or re-enacted from time to time.
- 3.6 The rule of construction that, in the event of ambiguity, the contract shall be interpreted against the Party responsible for the drafting or preparation of the Agreement, shall not apply.

#### **4. Applicability**

- 4.1 This Smartcall Website is made available for information purposes only.
- 4.2 No Smartcall Service Offering is provided on this Website. No invitations are extended to do business with Smartcall and no offers or acceptance will take place with respect to any aspect of the Website.
- 4.3 Each Smartcall Service Offering is made available via a dedicated service-specific

Website and each is subject to its own service-specific terms and conditions of use.

- 4.4 Where links are provided on this Smartcall Website to Websites offering Smartcall Service Offerings, this Agreement will be incorporated by reference into the service-specific terms and conditions of use of the other Smartcall Websites and will apply as fully as if published on those Websites.
- 4.5 Where links are provided on other Smartcall Service Offering Websites to this Smartcall Website, this Agreement will be incorporated by reference into the service-specific terms and conditions of use of the other Smartcall Service Offering Websites and will apply as fully as if published on such Sites.
- 4.6 Smartcall grants You a limited licence to use this Smartcall Website subject to the terms of this Agreement.

## **5. Commencement, Availability and Termination**

- 5.1 This Agreement will commence on the Acceptance Date and continue indefinitely until amended or terminated by Smartcall.
- 5.2 Smartcall reserves the right to amend this Agreement as and when necessary and entirely at Smartcall's discretion. Each time an amendment is made to this Agreement Smartcall will place a prominent Notice on the Website bringing the amendment to your attention.
- 5.3 Each amended version of this Agreement, current at the time You visit or use the Website, will be the applicable version of the Agreement between Smartcall and You and will govern the Electronic Transaction which took place at that time.
- 5.4 Smartcall reserves the right to change or to discontinue any aspect or feature of this Smartcall Website at any time including, but not limited to content, availability and access requirements.
- 5.5 Smartcall will take all reasonable steps to ensure that You have access to all archived versions of this Agreement.

## **6. Intellectual Property**

- 6.1 The Smartcall Website comprises Intellectual Property including, Domain Name, copyright, trade mark, design and patent, protected under South African law and international treaties. Unless otherwise indicated Smartcall reserves all rights in and



to the Intellectual Property owned by or licensed to Smartcall.

- 6.2 You may make a temporary copy of part or all of the Website on Your computer or mobile device for the purpose of viewing it. You may print limited hard copy versions for personal use provided that any copyright, trade mark or other intellectual property notices are not removed and the material is appropriately attributed to Smartcall. Subject to the limited license granted to You by Smartcall, You may not in any form or by any means, without the prior written consent of Smartcall:
- 6.2.1 Commercially exploit reproduce, distribute, display, transmit, publish or broadcast any Smartcall Website content;
  - 6.2.2 Claim ownership of all or any part of the Smartcall Website content;
  - 6.2.3 Modify or repost the Smartcall Website content;
  - 6.2.4 Create a link to the Smartcall Website from another website; or
  - 6.2.5 Copy, incorporate, store, frame or embed all or any part of the Smartcall Website content on another Website or retrieval system.
- 6.3 Smartcall Business Names and Marks referenced on the Smartcall Website are the registered or unregistered Intellectual Property of Smartcall. Any unauthorised use of these assets is strictly forbidden.
- 6.4 Third party Intellectual Property assets, including but not limited to patents, names, goods and services referenced on the Smartcall Website are the Intellectual Property of the respective third parties. Any unauthorised use of these assets is strictly forbidden.

## **7. Information and Record Retention**

- 7.1 Smartcall is committed to complying with legal, business and evidential requirements for information and record retention.
- 7.2 Smartcall will use reasonable endeavours to ensure the security, including the confidentiality, integrity and availability of any information that You provide to Smartcall through the “Contact Us” or email functionality associated with this Smartcall Website. It is nevertheless Your responsibility to keep records and backups of Your information.

7.3 Any personal information you provide will be processed in line with the Smartcall Privacy Notice published on the Smartcall Website as a Legal Notice.

## **8. Acceptable Use of the Website and Email Functionality**

8.1 The Website includes functionality that enables You to contact Smartcall by email and for Smartcall to respond by email.

8.2 You hereby agree to generally acceptable website and email etiquette. In this regard you will be deemed to have read the Smartcall Email Legal Notice and other Legal Notices published on the Smartcall Website and incorporated into this Agreement by reference.

8.3 Smartcall is committed to complying with legislation and ensuring the availability of its Website and related email functionality to the public at large. The acceptable use provisions of this Agreement seek to support these objectives. As such, You agree not to use the Website and related email functionality in a way that:

8.3.1 Is unlawful, incites criminal acts, is harmful or interferes with the confidentiality, integrity and availability of Smartcall's systems and networks;

8.3.2 Interferes with the use or enjoyment of other persons access to or use of the Smartcall Website and related email functionality;

8.3.3 Infringes Intellectual Property rights;

8.3.4 Results in the publication of threatening or offensive material that is disrespectful of the rights of others;

8.3.5 Results in unsolicited communications;

8.3.6 Is a security risk; or

8.3.7 A violation of privacy.

8.4 You remain personally liable for the consequences of any contravention of these provisions and / or failure to comply with law.

8.5 Should You become aware of any unacceptable use of the Website or related email functionality, please contact [info@smartcalltech.co.za](mailto:info@smartcalltech.co.za).

## **9. Monitoring, Interception and Access to Information**

- 9.1 To comply with law and in line with international standards and best practice relating to the use of information technology in its business, Smartcall monitors and intercepts live communications such email and website activity in compliance with RICA.
- 9.2 Subject to the provisions of ECT, South African and international privacy principles, Smartcall will where necessary and if required by law, access static information created, received, communicated and stored by Smartcall as part of its business.
- 9.3 Subject to the provisions of RICA and ECT, You agree to monitoring, interception and access to information relating to the use of the Smartcall Website and related email functionality.

## **10. Governing Law**

- 10.1 This Agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa.

## **11. Communication**

- 11.1 You agree that Smartcall may from time to time send you communications regarding, but not limited to the Smartcall Service Offerings, which include both Goods and Services as defined in CPA.
- 11.2 You will always have the choice to:
- 11.2.1 Inform us in writing that you do not wish to continue receiving communications;  
or
- 11.2.2 Block any communications by registering on the DNC Registry as contemplated in CPA.

## **12. Complaints**

- 12.1 YOU AGREE TO SUBMIT ALL COMPLAINTS RELATING TO THIS AGREEMENT TO SMARTCALL FIRST, IN ORDER TO AFFORD US AN OPPORTUNITY TO RESOLVE THE COMPLAINT BEFORE YOU PROCEED TO ANY RELEVANT AUTHORITY.
- 12.2 In this regard, please direct all complaints to [info@smartcalltech.co.za](mailto:info@smartcalltech.co.za).

### **13. Alternative Dispute Resolution**

- 13.1 SUBJECT TO CLAUSE 12 ABOVE, AND WITHOUT RESTRICTION ON ANY OF YOUR RIGHTS TO APPROACH A COMPETENT COURT OR FORUM OF YOUR CHOICE, RELATING TO A DISPUTE ARISING FROM THIS AGREEMENT, YOU AGREE TO CONFIDENTIAL ARBITRATION PRIOR TO PROCEEDING TO COURT OR OTHER FORUM.
- 13.2 YOU AGREE THAT ANY DISPUTE ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT SHALL BE FINALLY RESOLVED IN ACCORDANCE WITH THE RULES OF THE AFSA BY AN ARBITRATOR OR ARBITRATORS APPOINTED BY THE FOUNDATION AND THAT SUCH PROCEEDINGS SHALL BE HELD IN JOHANNESBURG IN ENGLISH.
- 13.3 YOU EXPRESSLY ACKNOWLEDGE THAT THE ARBITRATION PROCEEDING AGREED TO IN 13.2 ABOVE PREVENT YOU FROM ENTERING INTO A CLASS ACTION LAWSUIT AGAINST SMARTCALL IN RELATION TO ANY DISPUTE ARISING FROM THIS AGREEMENT.
- 13.4 Nothing herein shall preclude either Party from approaching a court of competent jurisdiction for an interdict or for relief on an urgent basis.

### **14. Enforceability**

- 14.1 This Agreement constitutes the entire agreement between Smartcall and You in regard to the subject matter thereof and no addition to, variation, modification or consensual cancellation of this Agreement shall be of any force or effect unless recorded in a Written document and Signed by or on behalf of the duly authorised representatives of the Parties.
- 14.2 Any data message as defined in ECT, or a copy, printout or extract of such a message Signed by an authorised Smartcall officer will be absolute proof of the contents of the copy, printout or extract of such a message.
- 14.3 No failure or delay on the part of any Party in exercising any right in terms of this Agreement shall operate as a waiver nor, shall any single or partial exercise of any right prevent any other or further exercise thereof, or the exercise of any other right.
- 14.4 Should any clause or term of this Agreement be invalid, unenforceable or illegal, the remaining terms and provisions of the Agreement shall be deemed to be severable

therefrom and shall continue in full force and effect unless such invalidity, unenforceability or illegality goes to the root of this Agreement.

**15. Limitation of Liability**

15.1 TO THE FULLEST EXTENT PERMITTED IN LAW, YOU UNDERSTAND, ACKNOWLEDGE AND AGREE THAT USE OF THIS WEBSITE IS AT YOUR SOLE DISCRETION AND RISK. SMARTCALL SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT OR CONSEQUENTIAL DAMAGES SUFFERED BY YOU, WHETHER ARISING FROM A VISIT TO OR USE OF THE WEBSITE, THIS AGREEMENT OR OTHERWISE.

**16. Links to external Third Party Websites**

16.1 Smartcall may provide links from the Smartcall Website to external third party websites. Any such link is provided for Your use and convenience and does not constitute an endorsement, recommendation or certification by Smartcall of the external link. Likewise, the presence of links should not in any way be construed as a suggestion that the external link has a relationship with Smartcall. Smartcall is not responsible for the content or practices of any such website accessed from the Smartcall Website through these external links.

**17. No Warranty**

17.1 THIS WEBSITE HAS NOT BEEN CUSTOMISED FOR ANY SPECIFIC INDUSTRY OR INDIVIDUAL NEED AND IS PROVIDED TO THE PUBLIC AS A WHOLE WITH THE RESULT THAT THE INFORMATION IS PROVIDED WITHOUT WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF RELIABILITY, FITNESS FOR PURPOSE, TIMELINESS, ACCURACY, COMPLETENESS OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. SMARTCALL TECHNOLOGY SOLUTIONS WILL ENDEAVOUR TO TAKE ALL REASONABLE CARE TO ENSURE THE ACCURACY OF INFORMATION AND THE AVAILABILITY OF THE WEBSITE, BUT MAKES NO REPRESENTATIONS, WARRANTIES OR GUARANTEES. AS SUCH, THE WEBSITE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS.

**18. Indemnity**

18.1 TO THE FULLEST EXTENT PERMISSIBLE IN LAW, YOU HEREBY UNCONDITIONALLY AND UNRESERVEDLY INDEMNIFY AND HOLD

SMARTCALL TECHNOLOGY SOLUTIONS, ITS PUBLIC OFFICERS, DIRECTORS, EMPLOYEES, CONSULTANTS, AGENTS, LICENSORS AND SERVICE PROVIDERS, HARMLESS AGAINST ALL LOSS, DAMAGES, CLAIMS, LIABILITY AND / OR COSTS, OF WHATSOEVER NATURE, HOWSOEVER AND WHENSOEVER ARISING, AS A RESULT OF AND WITHOUT LIMITATION, THE FOLLOWING:

- 18.1.1 VISITING OR USING THE WEBSITE;
- 18.1.2 DOWNLOADING DATA, TEXT, IMAGES;
- 18.1.3 RELIANCE ON THE WEBSITE CONTENT;
- 18.1.4 LINKS TO OTHER SMARTCALL OR THIRD PARTY WEBSITES;
- 18.1.5 HARDWARE, SOFTWARE, SYSTEM OR NETWORK MALFUNCTION; OR
- 18.1.6 ANY OTHER CAUSE WHATSOEVER ARISING FROM OR RELATING TO VISITING OR USING THE SMARTCALL WEBSITE.

**19. Skill, Diligence and Care**

- 19.1 Smartcall will exercise reasonable skill, diligence and care as may reasonably be expected from a similar website provider.

**20. ECT Required Information**

<b>Smartcall Technology Solutions (Pty) Limited</b>	
Name	Smartcall Technology Solutions (Pty) Limited
Legal status	Privately held company
Physical address and the address for receipt of legal service of documents	15 Eastwood Road Dunkeld 2024 Johannesburg
Postal address	PO Box 412041

	Craighall 2124
Phone numbers	+27 (0)11 507 4779 (switchboard) +27 (0)11 507 4630 (customer care)
Facsimile number	+27 (0)86 650 1083
Website address	<a href="http://www.smartcalltech.co.za">http://www.smartcalltech.co.za</a>
Email address	info@smartcalltech.co.za
Company registration number	2000/006777/07
VAT registration number	4780246692
Place of registration	South Africa
Directors and office bearers	Schmidt, Sasha Eve and Two-K Administration
Membership of self-regulatory / accreditation bodies	<a href="http://www.waspa.org.za">http://www.waspa.org.za</a> <a href="http://www.dmasa.org">http://www.dmasa.org</a>
Codes of conduct subscribed to	Wireless Application Service Providers Association Direct Marketing Association of South Africa
URL to code of conduct	<a href="http://www.waspa.org.za/code/index.shtml">http://www.waspa.org.za/code/index.shtml</a> <a href="http://www.dmasa.org/dmasa/dma_load.php?str=1/10/17">http://www.dmasa.org/dmasa/dma_load.php?str=1/10/17</a>
Full price of goods and services	<u>NA</u> (information website only)
Manner of payment	NA
Terms of agreement and URL to access terms	<a href="http://www.smartcalltech.co.za">http://www.smartcalltech.co.za</a>
Times for dispatch of goods and performance of services	<u>NA</u>
Manner and period to access transaction records	<u>NA</u>
Return and refund policy	NA
Alternative dispute resolution code subscribed to	<a href="http://www.waspa.org.za">http://www.waspa.org.za</a>
Access to alternative dispute	<a href="http://www.waspa.org.za/code/waspa_coc_11.0.pdf">http://www.waspa.org.za/code/waspa_coc_11.0.pdf</a>

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resolution code	
Security procedures and privacy policy	<a href="http://www.smartcalltech.co.za">http://www.smartcalltech.co.za</a>
Minimum duration of agreements	NA
Cooling-off rights	NA