

# USER AGREEMENT

General Terms and Conditions for [www.smileykidselspark.co.za](http://www.smileykidselspark.co.za)

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## Definitions

In this User Agreement, the terms below have the following meanings:

1. "Competent Person" means anyone who is legally competent to consent to any action or decision being taken for any matter concerning a child, for example a parent or legal guardian.
2. "Personal Information" or "PI" means information relating to you or any other living person or existing Estantette Opvoedkundige Dienste, including but not limited to:
3. "Processing of Information" means the automated or manual activity of collecting, recording, organising, storing, updating, distributing and removing or deleting personal information.
4. "Site" means collectively our website/s.
5. "We", "us", "our" and "Smiley Kids Elspark." means Estantette Opvoedkundige Dienste.
6. "Website" means the Internet websites with the address [www.smileykidselspark.co.za](http://www.smileykidselspark.co.za) or any website with a URL that is validly registered to Smiley Kids Elspark
7. "You" and "your" means the user of the Site
  - a. Any identifying number, symbol, e-mail address, physical address, telephone number or other particular assignment to the person.
  - b. Correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence.
  - c. Information relating to the education or the medical, financial, criminal or employment history of the person.
  - d. Information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, age, physical or mental health, well-being, disability, religion, belief, culture, language, birth, milestones and development of the person.
  - e. The name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person, provided that such information is not in the public domain in the same or in a different format or held by a public body and publicly accessible.

## Conditions of Access

1. Your access to, and use of, the Site is subject always to the terms and conditions set out in this User Agreement.
2. To avoid any confusion, you agree that these terms and conditions apply to your use of:
  - a. The website.
  - b. Any third party website or mobile application licensed to us.
3. Regardless of the platform, gateway, portal or mode of access you use to install, download or access the Site. Your cell phone provider may, depending on the type of contract you have, charge you for accessing the Site or for any usage of the Site (such as data charges, sms charges). Smiley Kids Elspark cannot be held responsible for these charges

## Your Acceptance and Consent

1. By using the Site, you expressly agree to the terms and conditions of this User Agreement. If you do not agree to all of the terms and conditions, please do not continue to use the Site.
2. You agree that this User Agreement applies to any information accessed via the Site, and to all sections of the Site.

## Changes to this User Agreement

1. We may change the terms and conditions of this User Agreement at any time. We recommend that you familiarise yourself with this User Agreement regularly.
2. The most updated version of this User Agreement will apply each time that you access and use the Site.

## Your Profile

1. If you use the Site, you must keep your access details (including, your username and password) confidential and not allow other people to use it.
2. You also accept full responsibility for all activities that occur under your access details or password and accept responsibility for sharing your username and password.
3. You are only permitted to use one profile. If you use more than one profile, we may revoke all access.
4. Once you've logged onto the Site, certain information, functionalities and other features of the Site will be accessible to you the next time you access the Site, without having to re-enter your password. If you prefer to enter your password every time you access the Site, you can change the setting in the menu option.
5. Smiley Kids Elspark, may refuse to provide products and/or services to you if we are unable to verify any information that you provide to us.
6. You agree that the following actions shall be material breaches of these terms and conditions:
  - a. Signing in as, or pretending to be, another person.
  - b. Transmitting material that violates, or could violate, the intellectual property rights of others or the privacy of others.
  - c. Using interactive services in a way that is intended to harm, or could result in harm, to you or to other users of the Site.
  - d. Gathering information about others without obtaining their prior written consent
7. You also agree that any use of your access details shall be regarded as if you were the person using such information.
8. You may change your password at any time, although Smiley Kids Elspark may determine certain requirements that you will need to meet when choosing a password. These requirements may be changed from time to time and you may be required to update your credentials following such changes.
9. You guarantee that all information provided by you at any time to Smiley Kids Elspark or via the Site, will be true, accurate, current and correct and you undertake to update the information as and when required.
10. You guarantee that you have fully disclosed all facts, and agree that this User Agreement and any transactions related to this User Agreement will be void if you do not meet this requirement.

## Electronic communication and records

1. When you visit the Site or send e-mails to us, you accept that we may communicate with you electronically. All records that you send to us may be stored electronically and with third possible parties, although the strictest levels of confidentiality bind these third parties. These electronic records shall be proof of the records, unless you can prove otherwise.
2. Any electronic communication (for example, an e-mail or SMS) sent to you will be regarded to have been received by you upon being sent by Smiley Kids Elspark.
3. If you are a registered user of the website, you may receive communications from us via e-mail. If you do not want to receive e-mails from Smiley Kids Elspark you may change the way you receive your communication on the website, or you can phone/email us.
4. Smiley Kids Elspark takes all reasonable steps to protect your personal information and maintain confidentiality, including the use of encryption technology. However, we cannot guarantee the security or integrity of any information you transmit to us online and you agree that you do this at your own risk.
5. You agree that all agreements, notices, disclosures and other communications that we provide to you electronically meet any legal requirement that the communications be in writing.

## Copyright

1. All content made available on the Site (for example, text, graphics, logos, button icons, images, audio clips, digital downloads, data compilations, and software) belongs to Smiley Kids Elspark, unless we expressly state that it is not and is protected by South African and international law. In addition, the compilation of all content on the Site is the exclusive property of Smiley Kids Elspark and is protected by South African and international copyright laws.
2. Except if permitted under this or another agreement with Smiley Kids Elspark no portion of the Site may be copied or transmitted via any means available now or in the future.

3. Any unauthorised use, alteration or dissemination of the information or content on the Site is prohibited.
4. You agree that if you breach the terms of this clause, Smiley Kids Elspark will have the right to claim damages from you, which will include the right to claim special, incidental, consequential or indirect damages. Smiley Kids Elspark will also be allowed to claim for loss of profits and loss of business and will also be allowed to recover all legal costs on a scale as between attorney and own client
5. Nothing on the Site should be regarded as granting any license or right to use any trademark without Smiley Kids Elsparks' prior written permission.
6. Smiley Kids Elspark tries to ensure that well-sourced, highly regarded technology protects the information on the Site. However, we cannot be held responsible for any consequences that may result from the unlawful breach of copyright or unlawful dissemination of information by third parties copying information off the Site. If you suspect a breach or where a breach may have taken place and this comes to your knowledge, please contact us as soon as possible so that we can address the problem.

## Disclaimer

1. The Site and all information, content, tools and materials are provided by Smiley Kids Elspark on an "as is" and "and available" basis, unless we inform you in writing.
2. Smiley Kids Elspark does not guarantee the operation of the Site or the information, content, tools or materials on the Site. You agree that you use the Site at your own risk.
3. Smiley Kids Elspark do not guarantee that
  - a. The Site.
  - b. The information, content, tools or materials included on the Site.
  - c. The Smiley Kids Elspark servers, or
  - d. That any electronic communications sent by us are free from viruses or other harmful components.
4. Smiley Kids Elspark will not be liable for any damages of any kind arising from your use of the Site or from any information, content, tools or materials included on or otherwise made available to you through the Site, including for direct, incidental, punitive and/or consequential damages.
5. We are fully committed to providing you with the best possible service. However, we are not responsible for:
  - a. Any interrupted, delayed or failed transmission, storage or delivery of information due to a power failure, equipment or software malfunction, natural disasters, fire, labour unrest, or any other cause beyond the reasonable control of Smiley Kids Elspark
  - b. Any inaccurate, incomplete or inadequate information obtained from the Site supplied by you.
6. Neither will we be responsible for any direct or indirect loss or damages that may arise from:
  - a. Any of the events described in this paragraph or the paragraphs above.
  - b. Your actions or omissions that result in a breach of this User Agreement.
  - c. Any links to other websites from the Site. You also acknowledge that we cannot control the content of or the products offered on those websites.
  - d. A denial of access to the website should we believe or have reason to believe that you are conducting activities that are illegal, abusive, would attack the integrity of the website or put Smiley Kids Elspark in disrepute.
  - e. Your reliance on any of the information, content, tools or materials that you obtain from the Site.
7. It is very important that you acknowledge and understand that the information included on the Site should not to be regarded as either advice or an intermediary service in terms of the School's Act or the Children's Act.
8. To the extent that information may be provided on the Site, it is based on in-depth research, best practice and on current recommendations and guidelines. These obviously change from time to time. The information provided should by no means replace the advice of a legal representative.

## Indemnity

1. While Smiley Kids Elspark makes every effort to ensure that the content and information on the Site is complete, accurate and up to date, we make no guarantee about the suitability of the products and services on the Site or whether they are complete accurate or appropriate.
2. You agree to fully indemnify Smiley Kids Elspark, its directors, employees, and trustees (where applicable) against any claim, loss or damages, which you may incur or suffer as a result of your use of the Site.

3. You agree to fully indemnify Smiley Kids Elspark its directors and employees, the board of trustees of the scheme and the employees of the scheme, from any errors or inaccuracies or incomplete information made available by third parties on the Site and agree that, we will not be liable for any loss or damages, including direct, indirect and consequential loss, that may arise from any disclosure to or by any third parties.
4. You agree that all information, including products and services or any terms or conditions relating to them, on the Site may change Smiley Kids Elspark will notify you of the important changes within a reasonable time.
5. All products and services provided on the Site are subject to confirmation, and any terms or conditions relating to them, at the time of finalising any transactions.
6. You accept that some of the information, content, tools or materials on the Site come from external sources and you agree that Smiley Kids Elspark is not responsible, and will not be held liable, for any information or content, received from these external sources.

## Phishing and spoofing

1. If you receive an unsolicited e-mail that appears to be from Smiley Kids Elspark and that requests you to provide personal information (such as your credit card number, username, or password), or that asks you to verify or confirm your Smiley Kids Elspark information by clicking on a link, it is most likely that the e-mail was sent by a "phisher" or "spoofer."
2. Smiley Kids Elspark will never ask for this type of information in an e-mail, and we strongly recommend that you do not respond to these e-mails and that you do not click on the link. Responding to "phishing" places you and your personal information at risk .Smiley Kids Elspark cannot be responsible for any consequences resulting from your response to any email sent by a "phisher" or a "spoofer".

## Linking to third party websites

1. The Website may contain certain images and links to other third party websites with information, content or material produced by other parties. These linked third party websites are not under the control of Smiley Kids Elspark and we are not responsible for the information, content or material on any linked website, including, any link contained in a linked website, or any changes or updates to a linked website.
2. Smiley Kids Elspark are providing these links to you only as a convenience, and you agree that the inclusion of links does not imply an endorsement by Smiley Kids Elspark of the linked website, their business or security practices, or any association with its operators.
3. From time to time Smiley Kids Elspark may employ the services of third parties to assist with the hosting and management of certain services and aspects of the Site. We apply every effort to ensure that our sub-contractors comply with our Privacy Statement and widely accepted security standards and they will be accountable for any non-compliance.
4. Should you have any queries arising from transactions you conclude with such third parties, you will be required to contact them directly.

## Applicable law

1. By accessing and using the Site, you agree that the laws of the Republic of South Africa will govern this User Agreement, and you consent to the jurisdiction of the South African courts in respect of any dispute which may arise from this User Agreement.

## General Provisions

1. The headings of the clauses in this User Agreement is provided for convenience and ease of reference only, and will not be used to interpret, modify or amplify this User Agreement.
2. If any provision of this User Agreement is held to be illegal, invalid or unenforceable, that illegality, invalidity or unenforceability shall not affect the other provisions of this User Agreement.
3. No failure or delay by Smiley Kids Elspark to exercise any of its rights will be regarded as a waiver of its rights, nor will it affect the validity of any part of this User Agreement.

# Privacy Statement

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This privacy statement is complementary to, and should be read and understood with, the general terms and conditions of the user agreement.

## The General Principles of our Privacy Statement

1. The purpose of this privacy statement is to set out how we collect, use, share and otherwise process your personal information when you use this Site, register or apply online for any Smiley Kids Elspark products or services, or when you contact us electronically.
2. When you engage with us, you trust us with personal information about yourself and your dependents.
3. You have the right to object to the processing of your personal information. It is voluntary to accept these terms and conditions. However, we require your acceptance to enable you to use this site and to provide you with services such as activating and servicing your policy and benefits, where applicable.
4. How we collect your Personal Information:
  - a. Whenever you use the Site, complete an application form, contact Smiley Kids Elspark electronically, or use one of the products, services, facilities, tools or utilities offered by Smiley Kids Elspark on the Site, we will collect your personal information.
  - b. We may have collected your information from other sources. If you share your personal information with any third parties, we will not be responsible for any loss suffered by you, your dependents, your beneficiaries, spouse or employees.
  - c. You understand that when you include your spouse and dependents on this site or on your application, we will process their personal information in line with the terms and conditions of this site and/or for the activation of a policy or benefit and to pursue their legitimate interest. We will furthermore process their information for the purposes set out in this privacy statement.
  - d. If you are giving consent for a person under 18 (a minor) you confirm that you are a Competent Person and that you have authority to give their consent for them.

## Collect, Share and Use of Personal Information

1. You agree that we may process your personal information for all purposes that relate to the Site and the products, services, facilities, tools or utilities offered on the Site as informative and successful as possible, it is necessary for Smiley Kids Elspark to find out exactly what you need and want.
2. Where applicable and to the extent appropriate, you confirm that we may share your personal information within our own group of Early Childhood Development centers for:
  - a. Administration
  - b. The provision of Smiley Kids Elspark services, benefits and infrastructure to help you in your quest for quality early childhood development.
3. You also confirm that we may share and combine all your personal information for any one or more of the following purposes:
  - a. Market, statistical and academic research.
  - b. To effectively scaffold each child's learning and development according to their personal needs.
4. Your privacy is important to us and we will therefore not sell, rent or provide your personal information to unauthorised third parties for their independent use, without your consent.
5. You agree that we may transfer your personal information outside South Africa:
  - a. If you give us an email address or postal address that is hosted outside South Africa.
  - b. If we obtain the relevant permission for prior processing.
  - c. We will ensure that any country, company or person that we pass your personal information to agrees to treat your information with the same level of protection, as we are obliged to.
6. You agree that we may communicate with you electronically.
7. We may process your information using automated means (without human intervention in the decision making process) to make a decision about you or your application for any product or service. You may query the decision made about you.
8. Please let us know if you do not wish to receive any direct telephone marketing from us.



9. Please also let us know if you do not wish to receive any direct electronic marketing from us. We will store your personal information for the purpose to action this request and action it as soon as reasonably possible.

## Location Data

1. Once you have given the Site access to your location, we collect the latitude and longitude of your device/s as well as information relating to your movement. Your location can be determined using the following:
  - a. GPS
  - b. IP address
  - c. Sensor data from your devices.
  - d. Cell phone towers and Bluetooth-enabled devices near your device.
2. If you would no longer like us to collect location data, you may adjust your device settings. This will have an impact on certain features on the Site, such as the ability to locate you in case of emergency.

## Protection of your Personal Information

1. Smiley Kids Elspark values the information that you choose to provide and will take appropriate, reasonable technical and organisational steps to protect your personal information from loss, misuse or unauthorised alteration.
2. The information Smiley Kids Elspark has concerning our Data Subjects is stored in databases that have built-in safeguards to ensure the privacy and confidentiality of that information.
3. When you use the products, services, facilities, tools or utilities provided by Smiley Kids Elspark on the Site, you may be given an access number, username, password and/or personal identification number (PIN). You must always keep your username, access card, and password and/or PIN a secret and ensure that you do not disclose it to anyone.

## Correction of Personal Information

1. You have an obligation to notify us if any of your personal information held by Smiley Kids Elspark changed or is no longer valid to ensure our records are up to date, you can e-mail us or you can phone.
2. You have the right to know what personal information we hold about you. If you wish to receive a copy, please complete a form called an 'Access Request Form' on [www.smileykidselspark.co.za](http://www.smileykidselspark.co.za) and specify the information you would like. We will take all reasonable steps to confirm your identity before providing details of your personal information.
3. Please note that we are entitled to charge a legally allowable fee for this service and will let you know what it is at the time of your request
4. You have the right to ask us to update, correct or delete your personal information. Where we cannot delete your personal information, we will take all steps to make it anonymous and de-identify it. You agree that we may keep your personal information until you ask us to delete or destroy it or the required legal time frame comes due. This is unless the law requires us to keep it or dispose thereof.

## Personal Information Held by or Disclosed by You Or Smiley Kids Elspark To A Third Party

1. Because Smiley Kids Elspark are not responsible for any representations or information or warranties or content on any third party website (including third party websites linked to this website, websites facilitated by us or websites that serve as social networks like Facebook or Twitter), Smiley Kids Elspark does not exercise control over the privacy policies of these third parties and you should refer to the privacy policy of these third parties to see how they protect your privacy.

2. Smiley Kids Elspark may enter into arrangements with its partners and other third party suppliers in order for them to provide services to you. Those arrangements may require us to disclose your personal information to them:
  - a. If a third party asks us for any of your personal information, we will share it with them only if:
    - i You have already given your consent for the disclosure of this information to that third party.
    - ii We have a legal or contractual duty to give the information to that third party.
  - b. You agree that your personal information may be shared with third parties such as academics and researchers, including those outside South Africa. We ensure that the academics and researchers will keep your personal information confidential and all data will be made anonymous to the extent possible and where appropriate. No personal information will be made available to a third party unless that third party has agreed to abide by strict confidentiality protocols that we require. If we publish the results of this research, you will not be identified by name.
  - c. If we want to share your personal information for any other reason, we will do so only with your permission.
3. If we become involved in a proposed or actual merger, acquisition or any form of sale of any assets, we have the right to share your personal information with the third parties in connection with the transaction. In the case of a merger, acquisition or sale, the new entity will have access to your personal information. The terms of the Privacy Statement will continue to apply

## Cookies, E-Mail Tracking Pixels And Online Advertising

1. Smiley Kids Elspark uses cookies. We use the word "cookie" to refer to information that is sent from the Site to your hard drive, where it is saved. In this way, the next time you use the Site, Smiley Kids Elspark will know who you are and that you have visited the Site before. We also collect information about how you use the website, your preferences and past browsing history.
2. Smiley Kids Elspark engages third parties that help us deliver banner advertisements and other online communications. The third parties may collect and use information about Smiley Kids Elspark customers to help us understand the offers, promotions, and types of advertising that are most appealing to our customers. The personal information they collect is aggregated and cannot be linked to a person.
3. Third party vendors, such as Google Marketing Platform, show Smiley Kids Elspark ads on sites on the Internet.
4. Third party vendors, such as Google Marketing Platform, use cookies to serve ads based on a user's prior visits to [www.smileykidselspark.co.za](http://www.smileykidselspark.co.za) website.
5. Users may opt out of Google Marketing Platform's use of cookies and e-mail tracking pixels by visiting the Google advertising opt-out page or by visiting the Network Advertising Initiative opt out page

## Changes to this Privacy Statement

1. Smiley Kids Elspark may amend this privacy statement at any time. We will give you notice of any material changes within a reasonable time, however, we recommend that you familiarise yourself with this privacy statement regularly.
2. The most updated version of this privacy statement will govern the respective rights and obligations between you and Smiley Kids Elspark each time that you access and use the Site.
  - a. Which laws apply to this Privacy Statement
    - i The laws and regulations of the Republic of South Africa govern this privacy statement, and you consent to the jurisdiction of the South African courts in respect of any dispute, which may arise out of or in connection with the formation, interpretation, substance, or application of this privacy statement.

## Use Personal Information Contrary To the Privacy Statement

1. If you believe that we have used your personal information contrary to this Privacy Statement, you must first attempt to resolve any concerns with us. If you are not stratified after this process, you have the right to lodge a complaint with the Information Regulator, under the Protection of Personal Information Act.

2. The contact details are

Postal Address:

The Information Regulator (South Africa)

33 Hoofd Street

Forum III, 3rd Floor Braampark

P.O Box 31533

Braamfontein, Johannesburg, 2017

Telephone Number: +27 (0) 10 023 5207

Fax Number: (011) 403-0668

Complaints email: [complaints.IR@justice.gov.za](mailto:complaints.IR@justice.gov.za)

General enquiries email: [inforeg@justice.gov.za](mailto:inforeg@justice.gov.za)