

SERVICE LEVEL AGREEMENT

BETWEEN

FLINK SOUTH AFRICA (PROPRIETARY) LIMITED

(Registration Number: 2020 / 878524 / 07)

(Hereinafter referred to as "Flink")

AND

(Full name)

(Registration / Identity number)

(Hereinafter referred to as "the Client")

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PREAMBLE

Whereas, Flink and its Affiliates provide streamlined recruitment Services through a web-based Platform, to companies and employers seeking to fulfil their recruitment-related needs.

And whereas, the Client is desirous of using Flink's Services and hereby appoints Flink to provide such Services.

Now therefore, the Parties wish to record the terms and conditions governing their relationship as set out in this Agreement.

1. DEFINITIONS

In this Agreement, unless inconsistent with or otherwise indicated by the context:

- 1.1. **"Affiliate"** means all other persons or entities which directly or indirectly (whether through one or more intermediaries or otherwise) control, or are controlled by, or are under common control of, Flink or its successors-in-title from time to time;
- 1.2. **"Agreement"** means the terms and conditions contained in this Service Level Agreement, including any schedule or annexure attached hereto and incorporated herein;
- 1.3. **"Applicable Laws"** means all and any statutes and subordinate legislation and common law; regulations; ordinances and by-laws; directives, codes of practice, circulars, guidance notes, judgments, and decisions of any competent authority or any governmental, intergovernmental, or supranational agency, body, department or regulatory, self-regulatory or other authority or organisation; and other similar provisions, from time to time, of which compliance with is mandatory for that Party;
- 1.4. **"Business Day"** means a day which is not a Saturday, Sunday, or a public holiday as gazetted by the government of the Republic of South Africa from time to time;
- 1.5. **"Client"** means the entity, partnership, organisation or person (including a natural or juristic person) which has signed up and registered through the Flink website to make use of the Platform and Services, the details of whom are included on the title page of this Agreement (page 1) and further set out in the Services Package Schedule, and who has thereby appointed Flink to provide such Services;
- 1.6. **"Candidate"** means the natural person who makes use of Flink's services, including the Platform, to secure possible recruitment positions and employers, including the Client;
- 1.7. **"Client's Online Profile"** means the profile created online and assigned to the Client once the Client has completed the Registration Process which sets out the Client's service package, pricing details, and Client details, the terms of which must be read to be specifically incorporated herein;
- 1.8. **"Confidential Information"** means information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information by a Party, or information which the Receiving Party knows or reasonably ought to have known is of a proprietary or confidential nature which includes but is not limited to: all software and associated material and documentation, including the information contained therein (whether of a commercial, technical, scientific, operational, administrative, financial marketing, business or intellectual property nature or otherwise), source documents, drawings, algorithms, formulae, products, systems, the customer and/or client data of each Party, all information relating to the Parties' past, present and future research and development, the Parties' business activities, know-how as well as the Parties' technical knowledge, trade secrets and Intellectual Property Rights;
- 1.9. **"Copyright"** means all rights of Copyright whether existing now it in the future in and to the Platform;
- 1.10. **"Data Protection Legislation"** means all applicable laws, codes, directives, by-laws, orders, regulations and other requirements of any government including any government agency, body or authority which relates to the processing of personal data and privacy;

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- 1.11. **“Effective Date”** means the date on which this Agreement takes effect, which shall be the earlier of (i) the Client’s use of the Services; (ii) both Parties executing this Agreement by signature, whether electronic or otherwise; or (iii) the Client’s electronic acceptance of the Terms and Conditions upon the Client’s registration;
- 1.12. **“Flink”** means Flink South Africa (Proprietary) Limited, a company registered and incorporated in terms of the Company Laws of South Africa with company registration number 2020/878524/07 and having its registered address at Unit 12 Di Luso Estate, 22 Hennie Bingle Street, Vyfhoek, Potchefstroom, North West, 2531;
- 1.13. **“Intellectual Property Rights”** means all the rights in and to intellectual property, including (without limitation) the rights in and to Trademarks, service marks, trade names, domain names, logos, get-up, patents, provisional patents, inventions (whether patentable or not, and whether registered or not), know-how (including confidential industrial and commercial information and techniques in any form), utility models, registered and unregistered design rights, copyright, semi-conductor topography rights, database rights, and all similar proprietary rights which may subsist in any part of the world, as well as any Confidential Information or processes relating to that subject matter;
- 1.13.1. who ceases to conduct business; or
- 1.13.2. who has a substantially similar event to those specified above which occurs in any other jurisdiction under or in respect of any existing or future law;
- 1.14. **“Party/Parties”** means Flink and the Client, either collectively or individually, as the context may indicate;
- 1.15. **“Once Off Offering”** means the once-off service package selected by the Client, in which case Flink is appointed to provide a once-off service to the Client, as set out on the Client’s Online Profile;
- 1.16. **“Offer”** means a formal notice in writing provided by the Client to a Candidate, for purposes of offering the Candidate a position with the Client (whether on an employment or contractual basis);
- 1.17. **“Personnel”** means any employee, officer, agent, consultant, contractor, or other service providers of a Party;
- 1.18. **“Personal Information”** means information relating to an identifiable, living, natural or juristic person, who uses the Platform defined as a Client herein, and shall bear the further meaning defined in section 1 of the Protection of Personal Information Act 4 of 2013;
- 1.19. **“Placement”** means the written acceptance by a Candidate of an Offer made by the Client under this Agreement. The term **“Placed”** or **“Placing”** shall have corresponding meanings;
- 1.20. **“Platform”** means the web-based computer application software designed, developed and implemented by Flink which is known to the Parties as “the Flink Platform”, including but not limited to future updates, modifications and upgrades thereto and any documentation associated with the Flink software, including without limitation installation and user manuals, whether incorporated in humanly intelligible media or not;
- 1.21. **“Process”** shall have the meaning ascribed to it in terms of section 1 of the Protection of Personal Information Act 4 of 2013;
- 1.22. **“Registration Process”** means the process to be followed by the Client, including completing a registration form, which, once completed and submitted online, allows the Client to sign up and purchase and/or subscribe to the Services as defined more clearly on the Client’s Online Profile, whether such Services are provided on a Once Off or Subscription basis;
- 1.23. **“Subscription Fee”** means the monthly fee due and owing to the Client in terms of the Subscription Offering which provides the Client with unlimited access to the Platform;
- 1.24. **“Subscription Offering”** means the monthly service package selected by the Client, in which case Flink is appointed on a

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subscription basis, to provide monthly Services to the Client, as further set out on the Client's Online Profile;

- 1.25. **"Services"** means the services performed by Flink for and on behalf of the Client, including the access and use of the Platform and related services which seek to streamline the recruitment process, as set out on the Client's Online Profile;
- 1.26. **"Trademark"** means the name "Flink", the name of the Platform, and such other names, logos, drawings and/or devices that are associated with or used in relation to the Platform and the Services, whether or not such Trademark is capable of registration.

2. INTERPRETATION

- 2.1 In the interpretation of this Agreement, unless the context otherwise requires:
- 2.1.1. headings are for reference and convenience only and shall not be taken into account in the interpretation of this Agreement;
- 2.1.2. the singular shall include the plural and vice versa; and
- 2.1.3. references to one gender shall include references to the other genders.
- 2.2. Words and expressions defined in any sub-clause shall, for the purpose of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 2.3. If any period is referred to in this Agreement by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the day shall be next succeeding business day.
- 2.4. References in this Agreement to any statute or statutory provision include a reference to that statute or statutory provision as amended, extended, consolidated, or replaced from time to time (whether before or after the date of this Agreement) and include any order, regulation, instrument, or other subordinate legislation made under

the relevant statute or statutory provision.

- 2.5. The expiration or termination of this Agreement shall not affect those provisions of this Agreement which expressly provide that they will operate after any such expiration or termination or which out of necessity must continue to have effect after such expiration or termination, notwithstanding the fact that the clauses themselves do not expressly provide for this.
- 2.6. The rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the Agreement, shall not apply.
- 2.7. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa as constituted by and through the Constitution of the Republic of South Africa.

3. APPOINTMENT AND SIGNATURE

- 3.1. The Client appoints Flink to provide the Services for the duration of this Agreement.
- 3.2. This Agreement may be signed electronically by Flink and/or the Client. By signing this Agreement electronically (including by ticking an acceptance box during the Registration Process), the signatory of the Client accepts the provisions of this Agreement on behalf of the Client and binds the Client to the provisions of this Agreement.
- 3.3. The Client warrants that the signatory executing this Agreement on the Client's behalf has the necessary authority to bind the Client. The Client further warrants that it has complied with the requirements set out in its constitutional documents in order to give effect to this Agreement.

4. COMMENCEMENT AND DURATION

- 4.1. This Agreement shall commence on the Effective Date and shall continue for the following term:
- 4.1.1. In the event that the Client selects and purchases a Once Off Offering, the Client shall purchase access to the Platform until such time that the Client completes its Once Off

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Placement (“the Once Off Term”). For purposes of this Agreement, the search shall be deemed to have been completed once a Candidate accepts a formal Offer from the Client. Should the Client purchase more than one Placement, the Once Off Term shall terminate on the Placement of the last Candidate purchased by the Client.

- 4.1.2. In the event that the Client selects and purchases a Subscription Offering, the Client shall purchase unlimited access to the Platform for a duration of 12 (twelve) months (“the Subscription Term”). The Subscription Term shall automatically renew for an additional 12 (twelve) months at a time unless the Client provides written notice to Flink at least 30 (thirty) days before the expiry of a Subscription Term that it does not wish to renew this Agreement or if this Agreement is terminated as contemplated in this Agreement.

5. CLIENT’S ONLINE PROFILE

- 5.1. During the Registration Process, the Client will select a service package, including a Once Off Offering or a Subscription Offering.
- 5.2. The service and payment terms selected by the Client during the Registration Process, and purchased each time thereafter, as the case may be, together with the duration of the Services and Client details, shall be accessible on the Client’s Online Profile and housed on the Platform, the terms of which shall be read as if specifically incorporated into this Agreement.

6. ONCE OFF OFFERING

- 6.1. In the event that the Client selects a Once Off Offering during the Registration Process, and any time thereafter, as the case may be, the Client shall purchase access to the Platform for purposes of Placing a Candidate or a number of Candidates with the Client, the number of which shall be dependent on the number of Candidate inputs selected and purchased as set out in the Client’s Online Profile.

- 6.2. Once selected, the Client shall have full access to the Platform for purposes of Placing a Candidate(s) as selected and purchased.
- 6.3. The Client’s access to the Platform shall cease immediately once a Candidate accepts a formal Offer from the Client. Should the Client purchase more than one Placement, the Client’s access to the Platform shall terminate on the Placement of the last Candidate purchased by the Client.
- 6.4. The Client shall only have access to the Platform and the Services once it has made payment as set out on the Client’s Online Profile.
- 6.5. The Client shall be entitled to upgrade the Services to a monthly Subscription Offering by written request to Flink.
- 6.6. Should the Client have selected a Once Off Offering, the Client shall be entitled to terminate this Agreement prior to finding a Placement. No refund shall be paid to the Client in the event that the Client terminates the Agreement in terms of this clause 6.6.

7. SUBSCRIPTION OFFERING

- 7.1. In the event that the Client selects and purchases a Subscription Offering during the Registration Process, or anytime thereafter, as the case may be, the Client shall purchase unlimited access to the Platform for the duration of the Subscription Term for purposes of Placing an unlimited number of Candidates to the Client.
- 7.2. The Client may only make Placements for itself. The Subscription and/or access to the Platform is not transferrable to a third party.
- 7.3. The Client shall pay a recurring monthly Subscription Fee for the duration of the Subscription Term.
- 7.4. The Client may terminate the Subscription Offering on 30 (thirty) days’ written notice to Flink. However, the Client shall be liable for the Subscription Fees of the remainder of the most current Term, inclusive of the unexpired months.

8. FEES AND PAYMENT

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- 8.1. The Client shall be liable for the fees and costs set out in clauses 6 and 7 respectively, Client's Online Offering.
- 8.2. All amounts contemplated in this Agreement and reflected in on the Client's Online Profile are deemed to be exclusive of VAT unless otherwise stated by Flink. The Client shall be liable for all applicable taxes, government charges and foreign exchange fees.
- 8.3. All amounts paid by the Client are non-refundable.
- 8.4. The Client acknowledges and agrees that payment shall be made automatically through an electronic payment mechanism. In the event of non-payment, access to the Platform shall be suspended until such payment is received by Flink. The Client acknowledges and agrees that notwithstanding its suspension for access, payment shall remain due and payable to Flink for the duration of the suspension.
- 8.5. Flink may charge interest for any overdue amounts, calculated at the prime rate of interest plus 2% (two percent), applicable at the time of non-payment. The amounts overdue by the Client shall be calculated by reference to data recorded or logged by Flink and not by reference to any data recorded or logged by the Client.
- 8.6. All fees are subject to an annual increase of CPI plus 2% (two percent), calculated as the average CPI for the last 12 (twelve) months directly preceding the anniversary date of this Agreement and using STATS SA as the benchmark, or calculated at a fixed escalation rate of 6% (six percent) per annum, whichever rate is higher at the anniversary date of this Agreement.
- 8.7. Monthly fees, where applicable, shall be pro-rated as of and from the date on which the Services are provided to the Client.

9. SERVICES

- 9.1. Flink shall provide the Services as set out in the Client's Online Profile.
- 9.2. The Client shall be entitled to amend or vary the Services as set out in the Client's Online

Profile from time to time, subject to additional payment terms determined by Flink from time to time.

- 9.3. A Group company shall not be entitled to assign its rights and obligations in this Agreement to any subsidiary or affiliate company. Each subsidiary and/or affiliate in the Group must Register separately on the Platform in order to access the Platform.

10. THE CLIENT'S GENERAL OBLIGATIONS

The Client shall:

- 10.1. At all times comply with the data protection requirements as may be applicable to the Services in terms of the Applicable Laws, including the Data Protection Legislation.
- 10.2. At all times act and conduct itself in such a manner that portrays to third parties that it is not an agent or labour broker of the Client and that it acts independently in the usage of the Services.
- 10.3. At all times ensure that prior to providing Flink with any Personal Information, it shall have obtained all consents that may be required in terms of the relevant Data Protection Legislation and any other Applicable Laws to submit, request and/or receive such Personal Information, as the case may be.
- 10.4. At all times advise Flink immediately of any infringement of Flink's copyright, Intellectual Property or Trademark.
- 10.5. Take all such steps as may be necessary to ensure and protect the confidentiality of Flink's Intellectual Property and all components thereof.
- 10.6. Pay Flink in accordance with the fees and/or charges set out in the Service Package Schedule and relevant invoice, for accessing and usage of the Services.
- 10.7. Pay an additional fee and/or charge for any additional service(s) selected and/or used by the Client.
- 10.8. Not allow any other person to use its pin, code, password, or access details selected by

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the Client during the Registration Process, or as changed by the Client from time to time.

- 10.9. Provide all relevant information as and when required by Flink in order to give effect to the Services. The Client shall not unreasonably withhold any information required by Flink to perform its duties in terms of this Agreement.
- 10.10. Inform Flink in writing immediately of any dissatisfaction with the Services, by using the contact details which are set out in the Support Schedule annexed hereto.
- 10.11. Give Flink written notice of an alleged defect with the functionality of the Platform immediately once any alleged defect/s comes to the attention of the Client, by contacting Flink using the contact details which are set out in the Support Schedule annexed hereto.
- 10.12. Use and operate the Platform in a proper and professional manner and in accordance with the instructions provided by Flink from time to time, and not cause any damage and/or duplicate, copy or develop a platform similar in nature to the Platform and/or Services provided by Flink in this Agreement.

11. FLINK'S RIGHTS AND OBLIGATIONS

Flink shall:

- 11.1. Render and deliver the Services with the necessary knowledge, skill and expertise required of Flink for the term of this Agreement.
- 11.2. Ensure that the Services are up to date and upgraded from time to time.
- 11.3. Provide support as set out in the Support Schedule annexed hereto, the terms of which shall be incorporated into this Agreement. The Support Schedule may be subject to change from time to time, without notice to the Client.
- 11.4. Be entitled to terminate or suspend access to the Services if Flink reasonably believes that the Services are being used contrary to the ethical or moral standards of Flink or with which Flink as a brand does not wish to be associated with, or which may cause

damage to Flink's, or Flink's brand reputation by association.

- 11.5. Comply with all applicable laws pertaining to its obligations under this Agreement.

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1. The Client acknowledges that the Services and the Platform constitute Flink's original work and that copyright and any other Intellectual Property Rights including, Trademarks, patents, know-how and the like therein is vested in Flink exclusively.
- 12.2. The Client agrees that neither it nor its present or future employees or agents shall, during this Agreement or at any time thereafter sell, let publish, adapt or attempt to adapt, copy or duplicate or reproduce or attempt to do so, otherwise infringe on Flink's Intellectual Property Rights.
- 12.3. Any modification, development or upgrade of the Platform or other Intellectual Property Rights vested in Flink, whether undertaken in conjunction with or by suggestion of the Client, shall vest solely in Flink notwithstanding the Client's involvement therein.
- 12.4. Notwithstanding anything to the contrary contained in this Agreement, Flink shall continue to own the Intellectual Property, and nothing contained in this Agreement shall be deemed to transfer ownership of any Intellectual Property or Intellectual Property Rights belonging to Flink to the Client.
- 12.5. The Client agrees, when discharging its obligations herein, to identify Flink's Intellectual Property Rights as being the invention, innovation, development and proprietary property of Flink. The Client agrees not to remove any copyright notice, Trademark or proprietary legends or identification from the Platform or Flink's other Intellectual Property Rights or any documentation relating thereto.
- 12.6. The Client undertakes to take all reasonable steps necessary to ensure that its Personnel comply with the provisions of this clause.

13. TRADEMARKS

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- enforcing this Agreement or obtaining professional advice or conducting its business.
- 13.1. The Client recognises that Flink is the owner of the Trademark and of the goodwill attached to the business of Flink and agrees that the Trademark shall remain vested in Flink both during the term of this Agreement and thereafter. Nothing in this Agreement shall give the Client any rights in the Trademark and the Client agrees never to challenge the validity or ownership of the Trademark or that the use thereof by the Client is on behalf of Flink.
- 14. CONFIDENTIAL INFORMATION**
- 14.1. For the purposes of this Agreement, it shall be necessary for the Parties to exchange and obtain certain information. The Party receiving the information ("Receiving Party") must treat and hold as confidential all information which it may receive from the Party disclosing the information ("Disclosing Party").
- 14.2. Neither Party shall, during the existence of this Agreement or at any time after this Agreement is terminated, use, divulge, disclose, exploit, permit the use of or in any other manner whatsoever use the other Party's Confidential Information or disclose the existence or contents of this Agreement other than as provided or contemplated in this Agreement; provided that the Receiving Party may disclose the Disclosing Party's Confidential Information and the existence and contents of this Agreement –
- 14.2.1. to the extent required by Applicable Laws or the valid order of a court of competent jurisdiction or the request of any governmental or other regulatory authority or agency, in which event the Receiving Party shall notify the Disclosing Party as promptly as possible (and if possible, prior to making any disclosure) and shall use its commercially reasonable endeavours to seek confidential treatment of such Confidential Information;
- 14.2.2. to, and permit the use thereof by, the employees, its representatives and professional advisors to the extent strictly necessary for the purpose of implementing or
- 14.3. The undertaking and obligations contained in this clause 14 do not apply to information which: (i) is publicly available at the date of disclosure or thereafter becomes publicly available from sources other than the Parties; (ii) is already in possession of the Receiving Party prior to its receipt by or disclosure to such Receiving Party; (iii) is required by law or any regulatory authority to be disclosed; or (iv) after being disclosed to the Receiving Party is disclosed by any other person to the Receiving Party otherwise than in breach of any obligation of confidentiality.
- 14.4. No Party shall make any statement orally or in writing, publicly or privately, or do any act or otherwise conduct itself in such a manner as will or may in the reasonable opinion of Flink, disparage Flink.
- 14.5. The Disclosing Party may, at any time, request the Receiving Party to return or destroy any material containing, pertaining to or relating to the Confidential Information disclosed pursuant to the terms of this Agreement and may, in addition, request the Receiving Party to furnish a written statement to that effect, including that, upon such return or destruction, the Receiving Party has not retained in its possession, or under its control, either directly or indirectly, any such material.
- 14.6. The Receiving Party agrees that they shall protect the Confidential Information disclosed pursuant to the provisions of this Agreement using the same standard of care that they apply to their own proprietary, secret or Confidential Information and that the Confidential Information shall be stored and handled in such a way as to prevent any unauthorised disclosure thereof.
- 15. DATA PROTECTION**
- 15.1. Without prejudice to the general obligations under this Agreement, each of the Parties shall in the provision or use of the Services (as appropriate) comply with all the applicable Data Protection Legislation.
- 15.2. Each Party further warrants that it shall

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implement appropriate technical and organisational measures to ensure a level of data security relating to the Personal Information of the other Party appropriate to the risk presented by the Processing.

- 15.3. The Client instructs Flink to, and agrees that Flink may, Process the Client's data for the purposes set out in this Agreement.
- 15.4. Notwithstanding the generality of clause 15.3 above, the Client agrees and consents to Flink disclosing to Candidates that the Client is registered as Flink's Client and has access to the Platform for purposes of Flink providing its Services to the Client.
- 15.5. In the event that the Client is given access to a Candidate's Personal Information, it shall under no circumstances Process such information for purpose other than as set out in this Agreement.

16. WAIVERS

The Client acknowledges that Flink is not liable under the following circumstances and specifically waives any claim that may arise against Flink in terms thereof:

- 16.1. If an issue is experienced with the Platform which is unrelated to the purpose of this Agreement and falls outside the scope of the Services as contemplated by this Agreement;
- 16.2. If the Client withholds its co-operation and assistance in determining the cause of any problem or if the Client fails to provide the information requested by Flink to perform its obligations in terms of this Agreement;
- 16.3. If a problem relates to services and/or systems not supported by and/or supplied by Flink in terms of this Agreement;
- 16.4. Flink determines in its sole discretion that the problem or alleged service failure has occurred as a result of any acts or omissions of the Client or any member of staff of the Client. If such determination is disputed, the aforesaid may be referred to dispute resolution as contemplated in the dispute resolution clause of this Agreement;
- 16.5. If the problem or service failure underlying a

request for service relates to scheduled maintenance;

- 16.6. The use by the Client of the Platform other than for those usages as specified by Flink and/or as defined in this Agreement;
- 16.7. Refusal by the Client to upgrade any facilities as instructed by Flink in its sole discretion; and
- 16.8. The use of Flink's Platform by the Client in breach of this Agreement.

17. WARRANTIES

- 17.1. Each Party hereto warrants that –
- 17.1.1. it has the authority necessary to enter into this Agreement and to do all things necessary to procure the fulfilment of its obligations in terms of this Agreement; and
- 17.1.2. it will maintain locally and internationally, all licenses, certificates, authorisations, consents and permits to ensure that it functions as a lawful business entity and that its involvement with the Services in terms of this Agreement is lawful and compliant with all national, rules and regulations and other requirements from time to time.
- 17.2. Where the context requires, the Parties warrant and undertake to and in favour of the other Party that it shall at all times comply with Applicable Law relating to the performance of the Services and it shall not engage in any conduct or behavior that would be regarded as being anti-competitive, corrupt, deceptive, misleading, unethical or unlawful in terms of Applicable Law; and it shall not do anything that may prejudice or be adverse to the operations, business, and reputation of the other.
- 17.3. The Client warrants that:
- 17.3.1. It will at all times for the duration of this Agreement comply with the terms and conditions set forth in this Agreement.
- 17.3.2. It is fully authorised to request and
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receive the Services.

- 17.3.3. It has adequate systems and/or procedures to ensure that all information supplied to it by Flink is kept confidential and secure, and is protected against unlawful intrusion, wrongful alternation, unauthorised disclosure or access by any unauthorised third parties, including online access.
- 17.4. Flink warrants that it has the knowledge and skill to perform the Services set out in this Agreement.
- 17.5. The Client acknowledges its understanding and acceptance that it is not commercially possible to produce computer software products that are error free, and the Client accepts unconditionally that Flink does not warrant that the Services or Platform are error free or that the performance of the Platform will be uninterrupted.
- 17.6. Flink does not warrant or represent that the functions contained in the Platform will meet the Client's requirements or that the results obtained from the Platform will meet or fulfil the Client's requirements or that the Platform will operate in all environments or that the Platform will appear precisely as described in any literature or documentation supplied by Flink.
- 17.7. To the extent that any of the above exclusions or restrictions are specifically prohibited by any statute or applicable law that the Client is subject to, such exclusion or restriction shall not apply to the Client in the circumstances expressly provided for in such statute or applicable law and to the extent of such prohibition.
- 18.3. Under no circumstances shall Flink be liable to the Client (or any party claiming through or on behalf of Client) in respect of any other form of loss or damages of whatsoever kind, whether based on contract, tort or delict (including strict liability), statute, the breach of any warranty, other legal or equitable grounds or otherwise, including but without being limited to, indirect, special, incidental, exemplary or consequential damages or loss, loss of anticipated profits, loss of business opportunity, loss of business data/information or loss of contracts by either the Client or any third party arising from the use of the Services or any other provision of this Agreement.
- 18.4. Flink shall not be held liable for any fault that occurs or is discovered in the hardware or other software used by the Client nor does Flink warrant the integrity of any third-party data or electronic information, including but not limited to converted data.
- 18.5. Without limiting the generality of the foregoing, Flink shall not be liable for any delay, failure, breakdown or damage caused by software, programs and support services supplied by or obtained by the Client without the consent or knowledge of Flink; or software or programs modified by the Client, or any third party not authorized to do so in terms of the Agreement; or the actions or requirements of any telecommunications authority or a supplier of telecommunications services or software.
- 18.6. To the extent that any of the above exclusions or limitations are specifically prohibited by any statute or Applicable Laws that the Client is subject to, such exclusion or limitation shall not apply to the Client in the circumstances expressly provided for in such statute or Applicable Laws and to the extent of such prohibition.

18. LIMITATION OF LIABILITY

To the maximum extent permitted by law:

- 18.1. Flink shall only be liable to the Client for direct damages or loss which is shown to be caused by Flink's willful misconduct or fraudulent behaviour, whether arising in contract, tort, delict, by statute or otherwise.
- 18.2. Flink's liability for claims relating to the Services and/or Platform and all damages or

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19. INDEMNITIES

19.1. The Client hereby indemnifies, holds harmless and undertakes to defend Flink and its officers, employees and agents (“Indemnified Parties”) from all and any damages, loss and liability whatsoever claimed against the Indemnified Parties (including all associated costs, attorneys’ fees and costs on an indemnity basis, damages and losses and all and any consequential losses incurred by the Indemnified Parties), arising from or connected with:

19.1.1. The use by the Client and/or its Personnel of any materials, templates, tools or methodology made available to it by Flink in terms of this Agreement.

19.1.2. The Client’s failure to comply with the provisions of this Agreement, and/or all Applicable Laws.

19.1.3. The negligence, recklessness, fraudulent behaviour or wilful misconduct of the Client in the performance of its obligations under this Agreement.

19.1.4. any unauthorised disclosure of a Candidate’s details, including the Candidate’s Personal Information, by Client or by third party, or any of its employees or agents.

20. BREACH

20.1. A Party shall be in default (“the Defaulting Party”), if such a Party –

20.1.1. Fails to pay any amount by the due date; or

20.1.2. Breaches any other provision of this Agreement and fails to remedy the breach with 10 (ten) days of written notice to do so by the other Party (“the Aggrieved Party”).

20.2. If the Defaulting Party fails to remedy the breach within the time period stipulated in the written notice, the Aggrieved Party shall be entitled, in addition to all other remedies at law, to:

20.2.1. Cancel the Agreement and claim damages from the Defaulting Party, or

20.2.2. Uphold the Agreement, in which event the full balance owing, and all other obligations owed, by the Defaulting Party shall, at the option of the Aggrieved Party, become immediately due, payable and enforceable.

20.3. If the Client defaults in terms of this Agreement, and such default is of a continuing nature, or if the Client is in breach of any provision of this Agreement and has been given written notice to remedy the breach, Flink may suspend performance of Flink’s obligations during the default or breach, which may include suspending the Client’s access and use of the Services and the Platform without prejudice of its further rights in terms of this Agreement.

20.4. In the event of a breach of any term set out in this Agreement, either Party shall be entitled to claim all legal costs on an attorney/client scale, including counsel on brief and collection commission.

21. TERMINATION

21.1. In addition to any termination of the Services as set out in this Agreement, Flink may terminate this Agreement, at any time and at Flink’s sole discretion, by giving not less than 1 (one) month’s written notice to the Client. In addition, Flink may immediately suspend the operation and access of the Platform to the Company, in whole or in part, at any time and at Flink’s sole discretion, by giving written notice to the Client.

21.2. Flink, when giving notice under clause 21.1 shall, in the written notice, specify the extent of the termination or suspension, and the effective date of such termination or suspension.

21.3. Flink, upon service of a notice contemplated under clause 21.1 shall disable the Client’s login details, its access to the Platform and shall suspend the Client’s Services provided by Flink in terms of this Agreement, to the extent specified, and on the date specified in

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the notice.

- 21.4. In the event of the termination or suspension, in whole or in part, of this Agreement by Flink under this clause 21, the Client shall pay Flink for Services already rendered up to and including the date of termination or suspension specified in the notice.
- 21.5. Termination of the Agreement under this clause 21 shall be without prejudice to any rights that may have accrued to either of the Parties, in respect of the Services provided for in this Agreement before the date of termination, specified in the notice.

22. CESSION AND ASSIGNMENT

- 22.1. The Client shall not be entitled to cede, assign, delegate or otherwise transfer its rights or obligations in this Agreement, without the prior written consent of Flink.
- 22.2. Flink shall be entitled to cede, assign, delegate or otherwise transfer its rights or obligations set out in this Agreement.

23. DISPUTE RESOLUTION

- 23.1. Where any dispute arises, a Party must give a notice detailing the nature of the dispute ("Dispute Notice") to the other Party. Within 30 (thirty) calendar days of the Dispute Notice or any other period agreed in writing between the Parties, the senior executives of the Parties must confer and attempt to resolve the dispute amicably.
- 23.2. If and when the aforesaid process fails, the Parties agree that the matter will be referred to arbitration as set out hereinbelow.
- 23.3. Any dispute, controversy, or claim between any of the Parties howsoever arising out of or in connection with the Agreement or the Clause or the breach, termination or validity of the Agreement or the Clause either during the currency or after the completion, expiration, termination or cancellation thereof and irrespective of whether the dispute is of a contractual, delictual or any other nature shall unless precluded by law, be determined by final and binding arbitration before a single arbitrator who shall be a Fellow of the Association of Arbitrators (Southern Africa) NPC (the AOA),

appointed as such by the Association on Platform by any of the Parties hereto.

- 23.4. The arbitral referral, the appointment of the arbitrator, the conduct of the arbitral proceedings, the law applicable to the arbitration, and, without limitation, all things relating to or arising from any of the aforesaid shall be governed by such edition of the Standard Procedure Rules for the Conduct of Arbitrations of the Association current at the time of appointment of the arbitrator.
- 23.5. The Parties hereto expressly agrees that the arbitration proceedings in respect of any dispute referred to arbitration as stated herein above will be private and confidential. No Party to this Agreement may make public any information in respect of any dispute referred to arbitration.
- 23.6. The arbitration will take place in Pretoria, Gauteng Province.
- 23.7. Nothing herein contained shall be deemed to prevent or prohibit a Party to the arbitration from applying to the appropriate court for interim or urgent relief or for judgment in relation to a liquidated claim.
- 23.8. Notwithstanding the existence of a dispute concerning this Agreement, both Parties must continue to perform their obligations under this Agreement, unless otherwise agreed between the Parties.
- 23.9. The Parties agree that the written demand by a Party to the dispute in terms of clause 23.2 that the dispute or difference be submitted to arbitration is to be deemed as a legal process for the purpose of interrupting extinctive prescription in terms of the Prescription Act, 68 of 1969.

24. DOMICILIA CITANDI ET EXECUTANDI

- 24.1. The Client choose as its *domicilium citandi et executandi* for all purposes under this Agreement, whether in respect of court processes, notices or other documents or communication of whatsoever nature (including the exercise of any option) the addresses set out in the Client's Online Profile. If the address is not clearly set out on the Client's Online Profile, the Client's registered address shall be its chosen

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domicilium.

- 24.2. Flink chooses as its *domicilium citandi et executandi* for all purposes under this Agreement, whether in respect of court processes, notices or other documents or communication of whatsoever nature (including the exercise of any option) the following physical address: **Unit 12 Di Luso Estate, 22 Hennie Bingle Street, Vyfoek, Potchefstroom, North West, 2531**; and the following email addresses: telisha@flink-app.com and rene@flink-app.com.
- 24.3. Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing.
- 24.4. Either Party may give notice to the other Party to change the physical address chosen as its *domicilium citandi et executandi* to another physical address in South Africa, provided that such change shall become effective on the 7th (seventh) day from the deemed receipt of the notice by the other Party.
- 24.5. Any notice sent by electronic mail to the electronic mail stipulated in the *domicilium citandi et executandi*, shall be deemed to have been received on the date of dispatch (unless the contrary is proved). Any notice sent by prepaid registered post in a correctly addressed envelope sent to the address stipulated in the *domicilium citandi et executandi*, shall be deemed to have been received on the 7th (seventh) Business Day after posting, unless the contrary is proved.
- 24.6. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered to the address chosen as the *domicilium citandi et executandi*.

25. FORCE MAJEURE

- 25.1. "Force Majeure" shall mean an event which directly renders performance of a Party's personal performance under this Agreement relatively and objectively impossible at no fault of said Party.

- 25.2. Save for payment obligations set out in this Agreement, neither Party will be liable to the other Party for any delay or non-performance of its obligations under this Agreement to the extent it arises from a Force Majeure Event, subject to the affected Party:

25.2.1. Promptly notifying the other Party in writing of the cause of the delay or non-performance, the details of the Force Majeure Event and the likely duration of the delay or non-performance; and

25.2.2. Using its commercially reasonable efforts to limit the effect of the delay or non-performance on the other Party.

- 25.3. The Client shall use commercially reasonable efforts to perform its obligations notwithstanding any Force Majeure Event.

- 25.4. If the Client invokes this clause for delayed or non-performance, and performance is not resumed within 30 (thirty) days after the commencement of the Force Majeure Event, Flink may elect to terminate this Agreement, in whole or in part, immediately by giving written notice to the Client and claiming the damages from the Client.

26. GENERAL

- 26.1. These terms, govern the whole relationship between the Parties and are to be read in conjunction with each other as if specifically incorporated.
- 26.2. No indulgence, leniency or extension of time provided by Flink to the Client shall in any way prejudice Flink or preclude it from exercising any of its rights under this Agreement or otherwise in the future.
- 26.3. If any part or provision of this Agreement, is held to be unlawful, void or unenforceable, that provision shall be struck out and the remainder of this Agreement, as the case may be, shall remain in effect.
- 26.4. The interpretation and enforcement of this Agreement shall at all times be governed by South African law, and the Parties hereto hereby consent and submit to the jurisdiction of the High Court of South Africa,

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Gauteng Division, Pretoria in all matters arising from or concerning this Agreement, save insofar as it relates to mediation and/or arbitration.

- 26.5. No delay or indulgence by either Party enforcing its rights in this Agreement shall be a waiver of such rights.
- 26.6. This Agreement shall constitute the whole Agreement between the Parties. Any additions or alterations to these terms, shall be reduced to writing and signed by both Parties.

26.7. It is hereby declared and acknowledged by the Parties that the relationship between them established by this Agreement is that of independent contractors and that nothing herein shall constitute them as partners, joint venturers, franchisor and franchisee or agents one for the other. No Party shall have any authority to bind the other legally.

26.8. This Agreement may be executed in separate counterparts, none of which need to contain the signature of all the Parties, each of which shall be deemed to be an original and all of which taken together constitutes one document.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorised representatives as of the Effective Date:

Flink

Director who warrants that he/she has the authority and capacity to enter into this Agreement
Signature

Date: _____

Place: _____

Print name of signatory

The Client

Director who warrants that he/she has the authority and capacity to enter into this Agreement
Signature

Date: _____

Place: _____

Print name of signatory

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SUPPORT SCHEDULE

1. DOWNTIME AND MAINTENANCE

1.1. Scheduled Downtime

- 1.1.1. Flink may suspend access to the Services in order to carry our scheduled maintenance.
- 1.1.2. Scheduled downtime for maintenance will occur on Business Days, outside of business hours.
- 1.1.3. The maximum duration for Scheduled Downtime maintenance will be 2 (two) hours per week.
- 1.1.4. The maximum frequency of Scheduled Downtime maintenance will be once weekly.
- 1.1.5. Flink shall give at least 48 (forty-eight) hours written notice of scheduled maintenance, including the details of the expected Scheduled Downtime.

1.2. Unscheduled Downtime

- 1.2.1. Flink shall address only critical issues outside of scheduled maintenance times with minimal impact to the Client, this means where possible deploying only the parts of the systems that are absolutely necessary as opposed to a full deployment to minimize impact to the Client.
- 1.2.2. Flink shall communicate, with reasons, any Unscheduled Downtime with as much advance notice as can be afforded.
- 1.2.3. The Client shall be immediately informed by email if downtime needs to occur outside scheduled maintenance times. Communication will include the reasons for the unscheduled downtime.

1.3. Updates affecting features used by the Client

- 1.3.1. Flink will notify the Client by email whenever an update makes a notable change to the features and/or Services used by the Client.

2. SUPPORT

2.1. System Support

- 2.1.1. Support through Flink's help desk is available on Business Days during office hours from 09:00 – 17:00 (CAT). Outside of office hours, contact can be made with the emergency contact number set out in the Client's Profile.

2.2. Priorities and Feedback Solution Details

- 2.2.1. The table below outlines the priorities as well as the feedback and solution details.
- 2.2.2. The table below will only take effect if Flink and the Client agree on the severity. This does not apply to change requests.
- 2.2.3. After hours support may only be made by a senior representative of the Client, after internal Client escalation processes have been exhausted.
- 2.2.4. Flink shall determine, acting reasonably, into which severity category an issued raised through the support services falls.

Severity	Incident Description	Feedback	Solution
1	Critical service impact. Users are completely unable to use offered services.	Within 4 (four) hours, during office hours. <i>Will be discretionary as a non-essential system after hours support.</i>	As soon as possible during and after office hours.
2	Major service impact. Users are only partly able to use the offered services, or the quality of the service is compromised.	Within 8 (eight) hours, during office hours.	As soon as possible during office hours.
3	Moderate to no service impact. Minimal or no service impact, the parties should decide on how relevant issues should be resolved.	Within 12 (twelve) hours, during office hours. <i>Low impact items can take up to 24 hours for the Supplier to respond.</i>	To be planned following consultations.

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