

## **Flink SA (Pty) Ltd**

### **Terms and Conditions – Flinkcos**

[Disclaimer]

#### **1. INTRODUCTION**

- 1.1. Flink SA (Pty) Ltd and its affiliates (hereinafter referred to as “Flink”, “we”, “our” or “us”) provides streamlined recruitment Services to Companies seeking to fulfil its recruitment-related needs.
- 1.2. By completing the subscription process, including completing the registration form(s), the Company (hereinafter referred to as “the Company”, “you”, or “your”) accepts these terms and conditions (“Terms and Conditions”) and agrees to be bound by the Terms and Conditions without limitation. By entering into these Terms and Conditions, you further acknowledge that you have read and understand our Privacy Policy and Terms of Use, which must be read as if specifically incorporated herein (the Terms and Conditions, Privacy Policy and Terms of Use are hereinafter collectively referred to as “the Terms”).

#### **2. INTERPRETATION**

- 2.1. In the interpretation of this Agreement, unless the context otherwise requires, headings are for reference and convenience only and shall not be taken into account in the interpretation of this Agreement; the singular shall include the plural and vice versa; and references to one gender shall include references to the other genders.
- 2.2. If any period is referred to in these 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.

- 2.3. The words “include”, “includes”, “including”, “for example”, or “such as” are not used as, and are not to be interpreted as, words of limitation, and when introducing an example do not limit the meaning of the words to which the example relates to that example or examples of a similar kin.
- 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. If figures are referred to in numerals and in words and if there is any conflict between the two, the words shall prevail.
- 2.6. The rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply.
- 2.7. This Agreement shall be governed by and construed and interpreted in accordance with the law of South Africa.
- 2.8. The following expressions bear the meaning assigned to them below and cognate expressions bear corresponding meanings:
- 2.8.1. “**Browser**” means a person who visits our Website, through any means, for the purposes of viewing and browsing, but who has not yet made use of our Services or our Platform, and may or may not have the intention to do so in future.
- 2.8.2. “**Commencement Date**” means the date on which the Terms and Conditions become effective, that being the date on which the Company completes the Registration Form.

- 2.8.3. **“Company”** means an entity, partnership, organisation or person (including a juristic and a natural person) who has registered and subscribed with Flink for the purpose of using the Services to fulfil its recruitment-related needs through the Web-based Platform.
- 2.8.4. **“Company’s Online Profile”** means the profile created online and assigned to the Company once the Company has completed the Registration Process which sets out the Company’s service package, pricing details, and the Company’s details.
- 2.8.5. **“Flink”** means Flink SA (Pty) Ltd and its lawful successors, assigns and affiliates, as the case may be.
- 2.8.6. **“Flinker”** means the person who uses the Services to secure possible recruitment positions with Companies.
- 2.8.7. **“Offer”** means a formal notice in writing provided by the Company to a Flinker, for purposes of offering the Flinker a position with the Company.
- 2.8.8. **“Once Off Offering”** means the once-off Service Package selected by the Company, in which case Flink is appointed to provide a once-off service to the Company as set out in the Company’s Online Profile and further defined in the Service Level Agreement.
- 2.8.9. **“Party”** or **“Parties”** means Flink and the Company, as the context may indicate.
- 2.8.10. **“Personal Information”** shall have the meaning ascribed to it in Chapter 1 of Protection of Personal Information Act 4 of 2013 and Article 4(1) of the General Data Protection Regulation 2016/679 and includes, but is not limited to a name, address, email address, telephone or fax number, fingerprints, criminal history and education

or other personal credentials provided, or which is collected from the Company or other third parties.

- 2.8.11. **“Placement”** means the written acceptance by a Flinker of an Offer made by the Company under these Terms and the Service Level Agreement.
- 2.8.12. **“Platform”** means the web-based computer application software designed, developed and implemented by Flink which is known to the Parties as “the Flink Platform”, through which Flink provides its Services to the Company, 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.
- 2.8.13. **“Registration Form”** means the electronic form, containing a list of fields pertinent to the Terms, to which a Browser is directed to in order to complete. The information completed in the Registration Form shall be the information governing the relationship between Flink and the Company and shall form part of the Service Package provided to the Company.
- 2.8.14. **“Registration Process”** means the process to be followed by the Browser, including completing the Registration Form, which, once completed and submitted online, allows the Browser to sign up as a Company and subscribe to and/or purchase the Services provided by Flink as set out more clearly in the Service Level Agreement.
- 2.8.15. **“Subscription Offering”** means the monthly Service Package selected by the Company, in which case Flink is appointed to provide monthly Services to the Company, as set out on the Company’s Online Platform and further set out in the Service Level Agreement.

- 2.8.16. **“Service Package”** means the service offering selected by the Company in the Registration Process, which may include a Once Off Offering or a Subscription Offering, as the case may be, with the related service and billing options selected by the Company during the Registration Process.
- 2.8.17. **“Services”** means the streamlined recruitment and related services provided by Flink to the Company through the Website and, more specifically, the Platform, which have been selected by the Company during the Registration Process or thereafter, as the case may be, incorporated into the Service Package and set out on the Company’s Online Profile.
- 2.8.18. **“Service Level Agreement”** means the service level agreement executed between Flink and the Company, setting out the terms of Service provided to the Company.
- 2.8.19. **“Terms”** means these Terms and Conditions, read in conjunction with the Privacy Policy and Terms of Use.
- 2.8.20. **“Terms and Conditions”** means these Terms and Conditions.
- 2.8.21. **“Website”** means the website owned by Flink through which the Services are offered, comprising of the Website and the Platform.

### **3. APPOINTMENT**

- 3.1. The Company appoints Flink to provide the Services as set out more fully on the Company’s Online Profile and as contemplated in the Service Level Agreement. In the event that the Company has not specifically executed a Service Level Agreement, the relationship between the Parties shall be regulated by the Terms.

3.2. Flink shall provide the Services to the Company from the Commencement Date and will continue for the following term:

3.2.1. If the Company selects and purchases a Once Off Offering, the Company shall purchase access to the Platform until such time that the Company completes its Once Off Placement (“the Once Off Term”). For purposes of these Terms and Conditions, the search will be deemed to have been completed once a Flinker accepts a formal Offer from the Company. Should the Company purchase more than one Placement, the Once Off Term will terminate on the Placement of the last Candidate purchased by the Company.

3.2.2. If the Company selects and purchases a Subscription Offering, the Company will purchase unlimited access to the Platform for a duration of 12 (twelve) months (“the Subscription Term”). The Subscription Term will automatically renew for an additional 12 (twelve) months at a time unless the Company provides written notice to Flink at least 30 (thirty) days before the expiry of a Subscription Term that it does not wish to renew the Subscription Term.

3.3. The Company shall provide the relevant information as and when required by Flink in order for us to provide the Services to the Company.

3.4. The Company shall not have access to the Platform until such time as Flink has received payment for the Services.

#### **4. ACCEPTANCE OF THESE TERMS AND CONDITIONS**

4.1. The Terms constitute a binding agreement between Flink and the Company in terms of section 11(3) of the Electronic Communications and Transactions Act 25 of 2002. Such agreement shall be construed to have been concluded in Pretoria, South Africa. Notwithstanding this, should the relevant section be

declared to be invalid or amended for any reason, the Company agrees that the Terms constitute a binding agreement between Flink and the Company.

- 4.2. By registering for our Services, you acknowledge that you have read through, understand and agree to be bound by the Terms. By registering for our Services, you further acknowledge that you have read through, understand and agree to be bound by the terms set out in the Service Level Agreement, whether a signature (electronic or otherwise) is reflected on the Service Level Agreement or not.
- 4.3. In the event that Flink has not provided you with a copy of the Service Level Agreement upon Registration, you must request a copy thereof within 5 (five) Business Days of the Registration Process being completed, failing which you will be deemed to have received the Service Level Agreement.
- 4.4. The Terms may change from time to time at Flink's sole discretion and without notice to you. The current version of the Terms applicable at the time you make use of the Services and becomes binding each time you use the Services. You must familiarise yourself with the current Terms each time you use the Services.

## **5. REGISTRATION PROCESS**

- 5.1. In order to access and make use of our Services, the Company must proceed to register using and completing our online Registration Form.
- 5.2. While registering:
  - 5.2.1. You will be requested to provide login details, which you will have the sole responsibility to protect and keep confidential. We will not have access to your login details and shall under no circumstances be held liable for any loss or damage arising from the disclosure, whether accidental, unlawful or otherwise, of your login details.

- 5.2.2. You will be requested to submit Personal Information. By making use of our Services, you consent to us Processing such Personal Information as further set out in and regulated by our Privacy Policy.
- 5.2.3. You will select a Service Package, including a Once Off Offering or a Subscription Offering. The Service Package may be upgraded from time to time by following the process set out in clause 6.5 below.
- 5.3. The service and payment terms selected by the Company during the Registration Process, and purchased each time thereafter, as the case may be, will be accessible on the Company's Online Profile and housed on the Platform.
- 5.4. Once registered, any Browser will no longer be construed as such and will immediately on registration constitute a Company as contemplated by the Terms, and the Services to the Company shall commence, subject to relevant payment terms.

## **6. SERVICES**

- 6.1. The Services rendered by Flink to the Company shall be provided in terms of the Service Package selected by the Company during the Registration Process.
- 6.2. Once Off Offering:
  - 6.2.1. In the event that the Company selects a Once Off Offering during the Registration Process, and any time thereafter, as the case may be, the Company shall purchase access to the Platform for purposes of Placing a Flinker or a number of Flinkers with the Company, the number of which shall be dependent on the number of Flinker inputs selected and purchased as set out in the Company's Online Profile.



6.2.2. Once selected, the Company shall have full access to the Platform for purposes of Placing a Flinker(s) as selected and purchased.

6.2.3. The Company will only have access to the Platform and the Services once it has made payment as set out on the Company's Online Profile. The Company's access to the Platform shall cease immediately once a Flinker accepts a formal Offer from the Company.

6.2.4. The Company will be entitled to upgrade the Services to a monthly Subscription Offering by written request to Flink.

6.3. Subscription Offering:

6.3.1. In the event that the Company selects and purchases a Subscription Offering during the Registration Process, or anytime thereafter, as the case may be, the Company shall purchase unlimited access to the Platform for the duration of the Subscription Term for purposes of Placing an unlimited number of Flinkers to the Company.

6.3.2. The Company may only make Placements for itself. The Subscription and/or access to the Platform is not transferrable to a third party.

6.3.3. The Company must pay a recurring monthly Subscription Fee for the duration of the Subscription Term.

6.3.4. The Company may terminate the Subscription Offering on 30 (thirty) days' written notice to Flink. However, the Company shall be liable for the Subscription Fees of the remainder of the most current Term, inclusive of the unexpired months.

- 6.4. Should the Company fail to make payment in terms as set out by the Service Package, at any time, Flink shall be entitled to refuse to render the Services to the Company. Any indulgence provided by Flink in terms hereof, shall not be construed as a waiver of any of Flink's rights under the Terms.
- 6.5. The Company shall be entitled to upgrade the Service Package from time to time, by notifying Flink in writing, subject to further payment terms.

## **7. SUPPORT SERVICES**

- 7.1. In the event that the Company experiences a difficulty with the Platform, the Company must notify Flink in writing immediately, by logging a support query with Flink, through the Platform.
- 7.2. The response times and further support procedures are set out in the Service Level Agreement.
- 7.3. Once Flink has provided the Company with a working solution, the query will be considered resolved and Flink shall be under no obligation to provide any further solution.

## **8. GENERAL UNDERTAKINGS BY THE COMPANY**

- 8.1. The Company acknowledges and agrees that Flink cannot provide any Services to you unless you provide all the information necessary and in such a format as we may require from time to time. Accordingly, you undertake to provide all necessary and accurate information when requested and within the timeframe set out in the request, *alternatively*, if no such timeframe is provided in the request by Flink, within a reasonable time.
- 8.2. The Company agrees to comply with all applicable laws when using the Services and you may only use the Services for lawful purposes. You will not in your use of the Services cause nuisance, annoyance, inconvenience, or property damage to Flink or a third party.

- 8.3. The Company undertakes to cooperate with any reasonable and lawful request by Flink throughout the recruitment process.
- 8.4. The Company undertakes to communicate promptly with Flink and/or the Flinker, where applicable.
- 8.5. The Company agrees to advise Flink immediately of an infringement to Flink's Intellectual Property Rights, copyright or Trademark.
- 8.6. The Company's login details are for personal and official use only and shall only be disclosed to such person(s) under the Company's control who are required to use the Services (on a need-to-know basis) and shall not be disclosed to a third party.
- 8.7. The Company agrees to inform Flink in writing of an alleged defect to the functionality of the Platform immediately after any such alleged defect/s comes to the Company's attention.
- 8.8. The Company agrees to use and operate the Platform in a proper and professional manner and in accordance with the instructions provided by Flink from time to time.
- 8.9. The Company shall not cause any damage and/or duplicate, copy or develop any software or platform similar in nature to the Platform.

## **9. FEES AND PAYMENT**

- 9.1. The Company shall pay the fees and costs as selected in the Service Package, as set out on the Company's Online Profile.
- 9.2. In the event that the Company selects an Once Off Offering, the Company shall make the payment on purchasing the Offering.

- 9.3. Should the Company select a Subscription Offering, the Company shall make a recurring monthly payment in advance by no later than the 5th (fifth) day of each new month.
- 9.4. All fees and costs set out in an invoice or on the Company's Online Profile shall apply without deduction or set-off and shall be deemed to be exclusive of VAT unless otherwise stated. All amounts paid by the Company to Flink are non-refundable.
- 9.5. The Company will be liable for all applicable taxes, government charges and foreign exchange fees.
- 9.6. Flink reserves the right to apply an escalation rate to the Services in the event that the Terms are renewed.
- 9.7. Interest shall be charged on all overdue amounts, calculated at the prime rate of interest plus 2% (two percent), applicable at the time of non-payment.

## **10. REPRESENTATIONS AND WARRANTIES BY THE COMPANY**

The Company represents and warrants that:

- 10.1. The information provided to us, including Personal Information, is true and accurate. Should the Personal Information change for any reason, you undertake to amend such information, including Personal Information, submitted to us as soon as possible to reflect the most updated information and Personal Information.
- 10.2. The person or representative submitting the Registration Form on behalf of the Company is duly authorised to enter into the Terms and to bind the Company.

- 10.3. It has conducted all internal requirements required to enter into the Terms and bind the Company thereto.
- 10.4. Should the person or representative not be authorised to bind the Company, or should the Company not have conducted the necessary internal requirements as set out above, the Company nevertheless agrees that by using the Services, the Company has ratified any such lack of authority or failure to undertake the necessary internal requirements, whether actual or purported, as the case may be.
- 10.5. The information provided to us does not contain any obscene, defamatory, illegal, discriminatory or confidential content, or any content which infringes on the intellectual property or confidentiality rights of any individual or organisation in any way.
- 10.6. You are not falsely impersonating any other person and you are not violating any applicable law regarding the use of Personal Information or other relevant information.

## **11. CONFIDENTIAL INFORMATION**

- 11.1. For purposes of providing the Services, it will be necessary for the Parties to exchange and obtain certain information. In this regard:
  - 11.1.1. The Company must treat and hold as confidential all information which it may receive from Flink and/or the Flinker.
  - 11.1.2. Flink must treat and hold as confidential all information which it may receive from the Company.

## **12. DATA PROTECTION**

- 12.1. In order for Flink to provide the Services, each Party understands that it shall be required to Process the Personal Information of the Company, Flink and the Flinkers respectively. Each Party shall in the provision or use of the Services (as appropriate) comply with all applicable data protection legislation.
- 12.2. Each Party further warrants that it shall implement appropriate technical and organisational measures to ensure a level of data security relating to the Personal Information of the other Party and of the Flinker to the risk presented by the Processing.
- 12.3. The Company agrees and consents to Flink Processing its Personal Information for purposes of providing the Services. In particular, the Company consents to Flink disclosing to Flinkers that the Company is registered as a client of Flink and has access to the Platform for purposes of Flink providing its Services.

### **13. WARRANTIES BY FLINK**

- 13.1. Flink does not warrant, whether expressed or implied, that:
  - 13.1.1. The Website or Services shall be without defect or free from any virus or other malware;
  - 13.1.2. The Website or Services shall be accessible at all times.
- 13.2. Except for any express warranties in the Terms, the Services are provided “as is”. Flink makes no other warranties, express or implied, of whatsoever nature, including but not limited to warranties of title, fitness for a particular purpose or merchantability. We do not provide any warranties against viruses, malware or spyware that may be installed on your electronic device as a result of you accessing or using the Website or the Services.

- 13.3. Flink does not warrant that the use of the Website or the Services will be uninterrupted or free from any error.
- 13.4. Flink does not warrant that we will review any information, including Personal Information, provided to us for purposes of establishing the accuracy of such information. We further do not warrant that the processing of such information, including Personal Information and data, will not be without loss.
- 13.5. Flink shall not be liable for delays, interruptions, service failures or other issues experienced in and during the use of internet and electronic communications or other systems outside of our reasonable control. While the Company may have statutory rights, the duration of any such statutory warranties, will be limited to the shortest period to the extent permitted by required law.

#### **14. BREACH**

- 14.1. Should either Party (“the Defaulting Party”) commit a material breach of the Terms, and fails to remedy such breach within 7 (seven) Business Days of having been called upon in writing by the other Party (“the Aggrieved Party”) to do so then the Aggrieved Party will be entitled, in its discretion and without prejudice to its rights in this Agreement, or in law to:
  - 14.1.1. To cancel the Terms and without further notice to claim damages from the Defaulting Party, provided that such breach is material (i.e., goes to the root of the Terms); or
  - 14.1.2. Proceed with a claim for specific performance of the Defaulting Party’s obligations, without prejudice to the Aggrieved Party’s right to claim damages.

#### **15. TERMINATION**

- 15.1. Flink reserves the right to terminate the Terms, at any time and at Flink's sole discretion, by providing 30 (thirty) days' written notice to the Company of such termination. Furthermore, Flink may immediately suspend the operation of the Services and access to 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 Company. The notice shall provide the extent of such termination and/or suspension.
- 15.2. Either Party may terminate the Terms as set out in clause 14.1.1 above. In the event that the Company terminates the Terms in terms of clause 14.1.1, such termination may be subject to additional fees and costs as set out in the Service Level Agreement.
- 15.3. In the event of termination of the Terms, the Company's access to the Platform and Services shall immediately terminate.

## **16. LIMITATION OF LIABILITY**

- 16.1. You hereby confirm that your visiting, viewing, accessing and usage of the Website and our Services is voluntary and entirely at your own risk. The Company further confirms that its use of the Platform is voluntary and entirely at its own risk.
- 16.2. The Company hereby acknowledges, understands and agrees that Flink does not warrant that the viewing, accessing or use of the Website will be uninterrupted or free from any error, nor do we warrant that our Website or Services will be free from any virus, malware or spyware. Accordingly, the Company understands and agrees that Flink will not be held liable for any loss arising from the viewing, accessing and use of our Website or Services. The Company is responsible for implementing appropriate procedures and systems to protect itself from such issues.
- 16.3. Notwithstanding anything to the contrary which may be contained in the Terms, Flink shall not be liable for any direct or indirect (including



consequential, punitive and special) loss, damage, loss of income, goodwill, costs and / or expenses of any nature whatsoever, whether in delict, contract or otherwise, which may arise from or in any way connected to the Website or the Services, including but not limited to the access and use thereof and any interruption to the Services which may occur.

- 16.4. The Company hereby indemnifies Flink and holds Flink harmless in respect of any loss, damage, liability, costs and / or expenses of whatsoever nature which Flink may suffer or incur as a consequence of or arising from or attributable to any acts or omissions on the part of the Company, including without limitation any loss, damage, costs and / or expenses of any nature whatsoever suffered or incurred by Flink as a result of any claims brought against Flink, a Flinker, a third party, or yourself by any other third party. The Company's liability under this indemnification shall be in addition to your liability to Flink on account of any breach of contract or in delict.
- 16.5. All implied representations and warranties which may apply to the Company, in relation to the viewing, accessing and usage of the Website or Services, are herewith expressly excluded to the maximum extent permitted by the law.
- 16.6. To the extent that our liability cannot be excluded by law, our maximum liability, whether in contract or delict or otherwise, to the Company will be limited to the minimum amount imposed by such law.
- 16.7. Notwithstanding any provision in the Terms, any claim against Flink must be instated within 6 (six) months of the cause of action arising from such claim, failing which such claim shall by agreement between the Parties prescribe.

## **17. NON-SOLICITATION**

- 17.1. Neither Party shall knowingly, for the duration of the Terms and for a period of 12 (twelve) months after the termination of the Terms, for whatsoever reason, furnish any information or advice to anyone else which results in an employee,

representative and/or agent of the other Party who was involved in the implementation or execution of the Terms to terminate his or her employment with that Party and/or any other contractual relationship, in order to become employed by, or directly or indirectly interested in, any concern which carries on business, directly or indirectly, in competition with any part, aspect or facet of the business conducted by the other Party.

## **18. INTELLECTUAL PROPERTY AND COPYRIGHT**

- 18.1. The Website, including the Platform, the domain name and the content of the Website is the exclusive property of Flink.
- 18.2. Flink shall at all times retain the right, title and interest in the Website, the Platform, the Services, all copyright, patents, trade secrets, trademarks and other intellectual property rights, trade names, logos, slogans, custom graphics, button icons, scripts, videos, text, images, software, code, files, content, agreements, policies, information and other material available on the Website (“intellectual property”).
- 18.3. The Company acknowledges and agrees that the intellectual property is protected by South African and international property and copyright laws.
- 18.4. The Company shall under no circumstances copy, reproduce, replicate, redistribute, download or otherwise transfer the information and intellectual property from the Website or our Services, in any manner or form, including but not limited to electronic or mechanical means, without Flink’s prior written consent.
- 18.5. The Company understands and unequivocally agree that your viewing, access and use of the Website, the Platform and our Services will be limited to the purpose for which it is intended and that the Company will not use our intellectual property for any purpose other than for the use of our Services which are expressly and unequivocally authorised by Flink.

## 19. GENERAL

19.1. The Parties choose as their respective *domicilium citandi et executandi* for the purpose of legal proceedings and for the purpose of giving or sending any notice provided for or necessary for the Terms:

19.1.1. Flink:

Unit 12 Di Luso Estate,  
22 Hennie Bingle Street,  
Vyfhoek,  
Potchefstroom,  
North West,  
2531

19.1.2. Company:

The address and email address provided to us on registration and as set out on the Company's Online Profile.

19.2. All notices shall be in writing and shall be deemed to have been duly given (i) when delivered by hand, courier or other messenger (including registered mail), during normal business hours of the recipient party; or (ii) when sent by e-mail, at the time such email enters the recipient party's mailbox.

19.3. Nothing in the Terms shall constitute or be deemed to constitute a partnership, employment relationship or agency between the Company and Flink.

19.4. Flink may assign, delegate, novate or otherwise transfer any of our rights or obligations under the Terms without notice to the Company and without the Company's consent. The Company may not assign, delegate, novate or otherwise transfer any of its rights under the Terms.

19.5. If at any time any provision of the Terms is or becomes invalid, illegal or

unenforceable in any respect, that provision shall be deemed severed from the Terms, but the validity, legality and enforceability of the remaining provisions of the Terms shall not be affected or impaired by the severance.

- 19.6. Any waiver by us of a breach of any provision of the Terms will not be deemed a waiver of any subsequent breach of the same or another provision.
- 19.7. The Terms shall be governed by and be construed in accordance with South African law. The Company consents and submits to the jurisdiction of the Gauteng Local Division of the High Court of the Republic of South Africa, Pretoria, in any dispute arising from or in connection with the Terms.