



Referral Appointment - ZA

v11.0.0

This **Referral Appointment v11.0.0** replaces all previously signed/incorporated version(s) of the Referral Appointment(s) (if any). Where signed electronically and contained within a digital envelope, the signature hereof binds the signer to all annexures and provisions contained within the same digital envelope. Words and phrases shall have the following meanings unless the context otherwise requires:

Service Provider or SP means **Flowgear (Pty) Ltd**, Registration number **2010/017992/07**, including its authorised sub-contractors and agents.

Company, individual, CC or Partnership	(‘Counterpart’)		
Company Registration or ID Number		Tax (VAT) Number	
Physical Address			
Postal Address			
Tel Number		Fax Number	

Primary Contact Name		Email Address	
Telephone Number		Mobile Number	

For and on behalf of the Referring Party (who warrants their authority)		For and on behalf of the Service Provider	
Signature		Signature	
Printed Name		Printed Name	
Designation		Designation	
Place		Place	
Date		Date	

1. Interpretation:

- 1.1. **"Account"** means any bank account details on the Referrer invoice or Referrer Portal created by or used by the Referring Party and its Authorised Representatives.
- 1.2. **"Referring Party"** or **"Referrer"** means the person or entity on whose behalf this Agreement is accepted and the party submitting a Lead Referral Form.
- 1.3. **"Referrer Account Information"** means information that alone or in combination with other information, can provide an individual with access to any portion of the Referrer's Account, including but not limited to Referrer's account number, login names, passwords, financial information, security questions and their respective answers, and any other similar information. To avoid doubt, Referrer Account Information will include any of the foregoing information related to accounts of Authorized Representatives.
- 1.4. **"Referral Commission"** means the commission amount calculated per the prevailing Commission Annexure.
- 1.5. **"Referrer Data"** means all data submitted by the Referring Party
- 1.6. or Authorized Representatives to SP in connection with this Agreement, including all Referrer Account Information, content, material, IP and similar addresses, Account information, Account-related settings and information contained in the Lead Referral Form.

- 1.7. **"Referrer ID"** means the unique ID that SP may provide to the Referrer, which the Referrer provides to prospective Customers to identify the Referrer during the agreement execution process. The Referrer ID may be in the form of a code, an encrypted link or another form determined by SP
- 1.8. **"Referrer Portal"** means the online interface operated by SP through which SP may make available to Referrer accounting information, marketing materials, Customer tracking, Lead Referral Form, or other information or materials that relate to the subject matter of this Agreement and through which Referrer may make available to SP certain information related to Referrer's Account, such as contact or payment information.
- 1.9. **"Applicable Law"** means (i) all common-law duties and rules, national, provincial and municipal legislation (including regulations and other subsidiary legislation) and self-executing provisions of international agreements and (ii) directives, orders or other instructions lawfully given by any organ of state or state functionary exercising powers under any law referred to in subparagraph (i), and (iii) permits, authorisations and exemptions issued under any law referred to in subparagraph (i).
- 1.10. **"Authorised Representative"** means any of the Referrer's employees, representatives, consultants or independent contractors to whom the Referrer authorises to assist it in carrying out its duties or exercising its rights under this Agreement.
- 1.11. **"Best Industry Practice"** means the exercise of a degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced supplier of professional services seeking in good faith to comply with its contractual obligations in complying with all Applicable Law and engaged in the same type of undertaking and under the same or similar circumstances and conditions.
- 1.12. **"Change"** means amendment, variation or supplementing of or the addition to this Referrer Appointment Agreement and **"Changed"** shall have the corresponding meaning.
- 1.13. **"Confidential Information"** is all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure.
- 1.14. **"Customer"** means an Entity to whom SP provides the Services according to a Customer Contract.
- 1.15. **"Customer Contract"** means an agreement concluded between the SP and a Customer in terms of which SP provides Services to the Customer.
- 1.16. **"Customer Information"** means data, information, video, graphics, sound, music, photographs, software and any other materials (in whatever form) published or otherwise made available on the Customer equipment (directly or indirectly) by or on behalf of the Customer by using SP Services. Customer Information may include information about the Customer (including individual employees or its representatives) or the Customer's users, which may include personal information.
- 1.17. **"DocuSign Process"** means the process by which this Referrer Appointment Agreement may be electronically reviewed and signed by the Parties through www.docusign.net and by way of a digital envelope bearing a unique number which the SP has created a digital envelope for the Referring Party.
- 1.18. **"Electronically Signed"** means affixing an electronic initial and an electronic signature to this Referrer Appointment Agreement by way of the DocuSign Process or RSign Process, and **"Electronic Signature"** shall have a corresponding meaning.
- 1.19. **"Entity"** means a company, close corporation, partnership, association, trust, unincorporated organisation, government or political subdivision or any other legal entity.
- 1.20. **"Initial Period"** means the first ninety (90) days after SP accepts a customer's Triggering Contract and receives payment of the Customer's first Invoice.
- 1.21. **"Material Gross Breach"** means an unlawful or wilful effort by the Referrer to defraud SP or the Customer. It also includes any mishandling, misuse, or negligent care of PII. This type of breach will be cause for immediate termination.
- 1.22. **"Parties"** means SP and the Referring Party, and **"Party"** shall, as the context requires, mean either of them.
- 1.23. **"Personally Identifiable Information"** or **"PII"** means Customers' names, addresses, telephone numbers, or electronic addresses in **combination** with any of the following: passwords, social security numbers, credit card numbers or other credit or account data, location-based information, all Device or other identification numbers issued to Customers, all electronic serial numbers, MAC addresses, all automatic identification information and all information described in the 'FCC's definition of "Customer Proprietary Network Information" as outlined in 47 USC. Section 222(h)(1) (as amended and interpreted from time to time) and its implementing regulations (but subject to the exceptions outlined in 47 USC Section 222 as amended and interpreted from

time to time).

- 1.24. **"Risgn Process"** means the process by which this Referrer Appointment Agreement may be electronically reviewed and signed by the Parties through www.rsign.com and by way of a digital envelope bearing a unique number which the SP has created a digital envelope for the Referring Party."
- 1.25. **"SP Services"** means the SP Services and services identified in the Commission Annexure.
- 1.26. **"Staff"** means, in relation to a Party, the Party's directors, officers, shareholders, employees, representatives and agents.
- 1.27. **"Triggering Contract"** means an agreement executed between SP and a Customer in which SP agrees to provide the Customer with SP Services. A Triggering Contract excludes agreements between SP and existing Customers.

2. Grant of Rights and Account Information

- 2.1. SP hereby grants to the Referrer a non-exclusive, revocable, personal, non-transferable and non-assignable right to market the SP Services to prospective Customers and Prospects subject to the terms and conditions of this Agreement. A breach of this Agreement by any Authorised Representative will be deemed to be a breach by Referrer.
- 2.2. The registered Account holder will serve as the primary contact with SP for all matters relating to this Agreement. The Referring Party may change such designated individual by providing notice to SP.
- 2.3. SP grants to the Referring Party a non-exclusive, non-transferable, non-sublicensable (except to Authorized Representatives) right and license, solely during the term, to use the Referrer Portal made available by SP to the Referring Party solely to perform under this Agreement and subject to the terms and conditions of this Agreement and other policies, terms, and conditions that SP may publish from time to time. The SP Privacy Policy governs the collection, use, and disclosure of information through any Referrer Portal (a current copy of which is available at <https://www.flowgear.net/privacy-policy>).
- 2.4. All information related to the Referrer's Account (including contact and payment information) will remain accurate and up to date at all times.
- 2.5. The Referring Party is solely responsible for (i) maintaining the confidentiality and security of Referrer Account Information and (ii) all activities that occur in connection with Referrer's Account. The Referring Party will notify SP immediately of any unauthorised use of the Referrer's Account, Referrer Account Information, Referrer ID or any other actual or potential breach of security of SP Services. The Referrer will indemnify SP for losses resulting from such failure to maintain confidentiality and security.

3. Referrer representations and duties

- 3.1. The Referring Party will use commercially reasonable efforts to promote the SP Services to prospective Customers.
- 3.2. The Referring Party will not send SPAM or unsolicited emails and communications (whether personalised or bulk, personal or commercial) promoting SP or any SP Product. Any single-purpose introduction or recommendation between the SP and a Prospect will not be considered SPAM.
- 3.3. The Referring Party will comply with all applicable laws and regulations.
- 3.4. The Referring Party will accept reasonable sales and marketing direction from SP in marketing SP Services.
- 3.5. The Referring Party will maintain and provide SP reasonable access to any of the Referring Party's records and documentation regarding the marketing of SP Services and performance under this Agreement.
 - 3.5.1. The Referring Party has the legal right to enter into and perform the obligations outlined in this Agreement.
- 3.6. The Referring Party will not misrepresent the features, performance specifications or other components of 'SP's services.
- 3.7. The Referring Party will notify SP of any breach of PII.
- 3.8. The Referring Party acknowledges that through the promotion of the SP Services to Customers, the Referrer may gain knowledge of and access to Customers. The Referring Party, therefore, undertakes in favour of SP that it will not, for so long as this Agreement remains in force and for 2 (two) years after that:
 - 3.8.1. divert, entice, or otherwise take away from SP the business or patronage of any Customer, for itself or any other person or entity;
 - 3.8.2. solicit or induce any Customer to terminate or reduce its relationship with SP or

- 3.8.3. attempt to do any of the above.

4. SP Services

- 4.1. SP or its licensors retain ownership of the SP Services and any software made available in connection with the Service. SP retains the right to modify any features of the SP Services in its sole discretion or may cease offering a particular SP Product at any time in its sole discretion. The Referring Party shall have no rights arising from any such change to the SP Services.
- 4.2. SP may, in its sole discretion, provide training to the Referring Party for the SP Services.

5. Authority and Independent Contractors

- 5.1. Neither party will have any authority, nor will either party represent that it has any authority, to assume or create any obligation, express or implied, on behalf of the other party. The Referring Party is neither a distributor of SP Services nor an agent of SP. The Referring Party will not:
 - 5.1.1. make any representations or promises or provide any warranties related to the SP Services except with the express written permission of SP; or
 - 5.1.2. enter into any agreement with a prospective Customer on behalf of SP or
 - 5.1.3. enter into, or attempt to enter into, any agreement with SP on behalf of any prospective or existing Customer, including a Triggering Contract; or
 - 5.1.4. modify, or attempt to modify, the terms of the Triggering Contract directly or indirectly, orally or in writing.
- 5.2. Each party is an independent contractor, and this Agreement will not be construed as creating a partnership, joint venture, agency, or employment relationship between the parties or as creating any other form of legal association that would impose liability on one party for the act or failure to act of the other party.
- 5.3. Neither party will enter into any agreement with a prospective Customer on behalf of the other.

6. Payment

- 6.1. **Referrer Commission.**
 - 6.1.1. SP will pay the Referring Party applicable Referral Commissions, subject to the Referrer's compliance with the terms and conditions of this Agreement, per Commission Annexure.
- 6.2. **Triggering Contracts.**
 - 6.2.1. SP is not required to supply any SP Services to prospective Customers or enter into any Triggering Contract.
 - 6.2.2. Triggering Contracts will be between SP and the relevant Customer, with SP having full contract approval and final pricing control.
 - 6.2.3. Triggering Contracts are confidential and will only be made available to the Referring Party in terms of clause 6.3. Payment Disputes.
- 6.3. **Payment Disputes.**
 - 6.3.1. In the event of any dispute between SP and Referrer, or between Referrer and a third party, that relates to:
 - 6.3.1.1. the determination of whether a contract is a Triggering Contract or
 - 6.3.1.2. the determination as to whether a Referrer Commission is payable to the Referrer or
 - 6.3.1.3. SP accounts; or
 - 6.3.1.4. other SP Services;
 - 6.3.2. SP may resolve such dispute in its sole discretion. Within 14 (fourteen days) after that, the Referrer (at its own cost) may challenge 'SP's decision and refer the dispute to 'SP's Auditors for review. 'SP's Auditor's decision will be final.
 - 6.3.3. Referrer agrees that in any such dispute:
 - 6.3.3.1. 'SP's records will be used; and
 - 6.3.3.2. Parties will supply each other with any information or documentation reasonably requested by the other to resolve such dispute

within 7 (seven) days.

6.4. Additional Payment Terms.

- 6.4.1. All taxes imposed in connection with the payment of any Referrer Commission will be the responsibility of the Referrer.
- 6.4.2. Referrer Commissions payable hereunder will be made in the currency as set out in the Commission Annexure.
- 6.4.3. SP will not be obligated to pay any Account Commission before the Referrer provides SP with any forms or documentation required by SP to comply with its obligations regarding taxation regulations.

7. Limitation of liability

- 7.1. Notwithstanding any other provision of this Referrer Appointment, in no event will either party, its members, directors, officers, employees, contractors, agents and/or invitees be liable to the other party for any indirect or consequential damages (including without limitation, loss of goodwill, profit, revenue, savings or interruption of business) caused by, arising from or in any way connected with the provisions of this Referrer Appointment (including breach thereof) and/or any act or omission performed or omitted to be performed in connection with the Referrer Appointment.
- 7.2. Subject to clauses 7.1, 7.3, 7.4 and any provision of this Referrer Appointment expressly limiting the liability of SP, 'SP's liability to the Referring Party in contract or delict or otherwise in relation to this Referrer Appointment is limited to the Referral Commission due by SP to Referring Party under this Referrer Appointment applicable to Triggering Contract(s) over the immediately prior three (3) month period.
- 7.3. SP shall not have any liability whatsoever in respect of any claim arising from or in any way connected with Referrer Data or a Prospect.
- 7.4. SP shall not be liable to the Referring Party, whether in contract or delict or otherwise, in respect of any claim caused by, arising from or is in any way connected with the act or omission of any other provider of telecommunications or Internet services (including domain registration authorities) or for the faults in or failures of their equipment).
- 7.5. The Referrer shall not be liable to the SP, whether in contract or delict or otherwise, in respect of any claim caused by, arising from or is in any way connected with the act or omission of any other provider of telecommunications or Internet services (including domain registration authorities) or for the faults in or failures of their equipment).
- 7.6. The Referring Party hereby indemnifies SP and holds SP harmless against all claims of whatsoever nature and howsoever arising (and whether founded in contract, delict, statute or otherwise) caused by, arising from or in any way connected with the provision of the Service by the SP to Customer including, without limitation, any cessation, delay or defect in the provision of the Service by the Referring Party.

8. Indemnity

- 8.1. Referring Party agrees to fully defend, indemnify and hold harmless SP, its officers, directors, employees and agents from any claim or damages (including reasonable attorney's fees and costs) that result from the Referring Party or an Authorized Representative's failure to comply with Material Gross Breach, negligence, misrepresentation, acts or omissions or that otherwise results from this Agreement.

9. Term and Termination

- 9.1. This Agreement will continue in full force and effect unless terminated as provided herein.
- 9.2. Either party may terminate this Agreement upon written notice to the other.
- 9.3. Upon the termination of this Agreement, the Referring Party will promptly return to the other party or (at such other party's request) destroy all copies of all Confidential Information shared under this Agreement, including without limitation SP Services, customer lists, lists of sales and marketing personnel, marketing and promotional brochures and sales kits, and certify to SP in writing, signed by a duly authorised representative of such Referring Party, that it has done so return or destroyed all such materials and information. Clause 4.1, and Section 5, 7, 8, 9, 15, 16, 17, 18 and 19 will survive termination of this Agreement.

Termination of this Agreement by either SP or the Referring Party under the terms of this Agreement will be without prejudice to the terminating party's other rights and remedies under or in connection with this Agreement, either at law and in equity.

10. Non-Solicitation and non-exclusivity

- 10.1.1. The Referring Party shall not directly or indirectly employ or solicit for work (i) any employee of the SP, or (ii) any person who had been in the employment of the SP during the 12 months before the date of employment or solicitation. This restriction applies during the term of this agreement and for twelve (12) months following the Termination Date.
- 10.1.2. The parties acknowledge that this Agreement is not exclusive. Either party may engage with other companies to source similar services or perform similar or the same services referenced herein.
- 10.1.3. The Referring Party shall not, directly or indirectly, without the prior consent of either party, during the Term and for two (2) years after that, solicit or attempt to solicit the business or offer to provide any competitive platform and competitive services that may usurp the position of the SP with respect to its Customer.

11. Use of Marks, Ownership and Publicity

11.1. License to Use Marks

- 11.1.1. During the Term of this Agreement, the Referring Party is hereby granted a non-exclusive license to use 'SP's trademarks, service marks, trade names, the Service name, logos, designs and other designations or brands used by SP in connection with the Service (collectively, the "Marks") subject to the terms and conditions of this Agreement, including any additional branding guidelines for Referring Parties that SP may publish from time to time. Such license is expressly limited to uses by the Referring Party necessary or appropriate in connection with its performance under this Agreement and as outlined in any general instructions issued by SP or as expressly permitted by SP in writing. The Referring Party will not alter the Marks in any way or remove the Marks from any materials provided by SP Subject to the provisions of this Section 11, the Referring Party may indicate its relationship to SP and refer to the Service by using the Marks, provided that such references are truthful and not misleading and that SP is designated as the owner of the Marks.

11.2. No Other Rights to Marks

- 11.2.1. SP reserves the right to disallow any use of the Marks which would, in 'SP's reasonable opinion, harm the validity or value of the Marks. Upon expiration or termination for any reason of this Agreement, the license outlined in Section 11, will immediately terminate.
- 11.2.2. Other than the license to use the Marks granted in this Section 11, the Referring Party is granted no other right, title or interest in the Marks. The Referring Party acknowledges SP's ownership of and right in and to the Marks and agrees that any use of the Marks will be for the sole benefit of SP. The Referring Party will take no action inconsistent with 'SP's ownership of the Marks and will not challenge 'SP's rights in or attempt to register any of the Marks or any other trademarks, service marks, trade names, product names, logos, designs, and other designations or brands owned or used by SP or any mark confusingly similar thereto. If at any time the Referring Party acquires any rights in or to, or any registration or application for, any of the Marks by operation of law or otherwise, it agrees to assign and hereby does assign such rights, registrations, or applications to SP, along with all associated goodwill.

11.3. Marketing Materials

- 11.3.1. SP may, from time to time, at its discretion, provide marketing materials for SP Services to the Referring Party either through the Portal or through other means. The Referring Party may use such marketing materials for the purposes set forth herein or as expressly permitted by SP in writing. The marketing materials provided to the Referring Party may only be used solely in connection with the Referring Party's obligations hereunder and may not be used to market any non-SP Service.

11.3.2. Other use of Marks

- 11.3.2.1. The Referring Party will not bid for or otherwise use (including the use by any third party on behalf of the Referring Party) any keyword or search term for use in search engines, linking or re-directing that (i) incorporates any Mark or any variant or

misspelling thereof, or (iii) infringes the intellectual property rights of SP or any third party. The Referring Party will not use any Mark: (a) in any domain name registered by the Referring Party, or (b) in connection with any SPAM or unsolicited emails (whether personalised or bulk, personal or commercial), or (c) for any unlawful purpose.

11.4. **SP Rights**

11.4.1. SP may reference the Referring Party on SP's website and in its marketing materials as a Referrer partner of SP during the Term of this Agreement.

11.5. **Other Publicity**

11.5.1. Except as outlined in this Section, neither party may issue a news release, public announcement, advertisement or any other form of publicity concerning this Agreement without the express prior written approval of the other party.

12. **Breach**

12.1. Either Party may cancel this Referrer Appointment Agreement immediately on notice if the other:

12.1.1. Commits a material breach of this Referrer Appointment Agreement, which is capable of remedy, and fails to remedy the breach within fourteen (14) days of written notice to do so; or

12.1.2. commits a material breach of this Referrer Appointment Agreement, which cannot be remedied or

12.1.3. commits an act of insolvency or

12.1.4. allows any judgment against it above the **Judgement Threshold** to remain unsatisfied for fourteen (14) days or more after it comes to the notice, or ought reasonably to have come to the notice, of the board of directors of the defaulting Party without taking steps to have the judgment rescinded or taken on appeal or review as appropriate; or

12.1.5. is placed in liquidation or under judicial management (in either case, whether provisionally or finally) or,

12.1.6. being an individual, his estate is sequestrated or voluntarily surrendered.

13. **Changes to this Referrer Appointment Agreement**

13.1. Save for the Commission Plan Annexure or as expressly provided in this Referrer Appointment Agreement, no Change to or consensual cancellation of this Referrer Appointment Agreement shall be of any force or effect unless in writing and signed by or on behalf of the Parties by an Authorised Representative of each of the Parties per this clause 13.

13.2. Subject to clause 13.1, If either Party wishes to Change this Referrer Appointment Agreement, the procedure detailed in this clause 13.2 shall be followed:

13.2.1. The requesting Party must give written notification to the other Party providing particularity of the proposed Change (including but not limited to adding additional Service Schedule(s) to this Referrer Appointment Agreement) and the reason, therefore.

13.2.2. The Parties will discuss the proposed Change.

13.2.3. Within a reasonable time of receipt of written notification from the requesting Party of a proposed Change, the other Party will notify the requesting Party in writing whether the proposed Change is feasible and the likely financial, contractual, technical and other effects and the terms and conditions of the proposed Change (Change notice).

13.2.4. Within a reasonable time of receipt of the Change Notice, the requesting Party will advise the other Party in writing whether it unconditionally accepts the Change and wishes this Referrer Appointment Agreement to be amended to incorporate the Change as contemplated in the Change Notice.

13.2.5. Where the Parties agree to Change this Referrer Appointment Agreement, such Change must be recorded in writing and signed by an Authorised Representative of both of the Parties per the provisions of clause 14.

13.3. Notwithstanding the provisions of clause 13.1, SP shall be entitled to amend this Referrer Appointment Agreement per the under-mentioned procedure:

13.3.1. SP shall give the Referring Party 60 (sixty) days written notice of its intention to amend the Referrer Appointment Agreement provided that the notice described above shall provide the Referring Party with full particularity of the proposed amendment;

- 13.3.2. The proposed amendment shall be effected on the 60th (sixtieth) day following receipt by the Referring Party of the written notice referred to in clause 13.3.1 unless the Referring Party can demonstrate that the proposed amendment reasonably results in the terms and conditions of the Referrer Appointment Agreement becoming materially commercially more onerous for the Referring Party, in which event the proposed amendment shall not be effected.

14. Signature of this Referrer Appointment Agreement and signature of Changes to this Agreement

- 14.1. Without prejudice to the provisions of clause 13, this Referrer Appointment Agreement and any Changes hereto may be physically signed or Electronically Signed or confirmed in the Referral Portal, and one form of signature will not preclude the other form of signature.
- 14.2. To the extent this Referrer Appointment Agreement is Electronically Signed, such Electronic Signature:
- 14.2.1. will be valid and binding if an Authorised Representative of each Party has followed the DocuSign Process or RSign Process;
- 14.2.2. will be effective as of and commence on the Signature Date save to the extent expressly agreed otherwise by the Parties in writing (as contemplated in clause 2.1);
- 14.3. To the extent a Change in this Referrer Appointment Agreement is Electronically Signed, such Electronic Signature:
- 14.3.1. will be valid and binding if the process contemplated in clause 13 has been complied with and has been Electronically Signed by an Authorised Representative and
- 14.3.2. will be effective as of and commence on the date on which the other Party receives the written notice of unconditional acceptance referred to in clause 13.2.5, save to the extent expressly agreed otherwise by the Parties in writing (Operational Service Date).
- 14.4. To the extent this Referrer Appointment Agreement is signed physically, such physical signature:
- 14.4.1. will be valid and binding if signed by an Authorised Representative of each of the Parties and
- 14.4.2. will be effective as of and commence on the Signature Date, save to the extent expressly agreed otherwise by the Parties (in writing as contemplated in clause 2.1);
- 14.5. To the extent a Change to this Referrer Appointment Agreement is signed physically, such physical signature:
- 14.5.1. will be valid and binding if the process contemplated in clause 13 has been complied with and has been signed by an Authorised Representative; and
- 14.5.2. will be effective as of and commence on the date on which it is last signed, save to the extent expressly agreed otherwise by the Parties in writing (Operational Service Date).
- 14.6. To the extent that this Referrer Appointment Agreement is both physically signed and Electronically signed, this Referrer Appointment Agreement:
- 14.6.1. will be valid and binding if signed by an Authorised Representative of each of the Parties; and
- 14.6.2. will be effective as of and commence on the earlier Signature Date, save to the extent expressly agreed otherwise by the Parties in writing.
- 14.7. To the extent a Change to this Referrer Appointment Agreement is both physically signed and Electronically Signed, the Change:
- 14.7.1. will be valid and binding if the process contemplated in clause 13 has been complied with and has been signed by an Authorised Representative; and
- 14.7.2. will be effective as of and commence on the date of the earlier signature, save to the extent expressly agreed otherwise by the Parties in writing (Operational Service Date), provided the process in this clause 13 has been complied with.
- 14.8. To the extent that this Referrer Appointment Agreement is concluded in the Referrer Portal, this Referrer Appointment Agreement:
- 14.8.1. will be valid and binding once requested by the Referrer and accepted by an Authorised Representative of SP; and
- 14.8.2. will be effective as of and commence on the date of acceptance of SP, save to the extent expressly agreed otherwise by the Parties in writing.

15. Matters beyond either Party's reasonable control

- 15.1. If either Party is prevented or restricted directly or indirectly from carrying out all or any of its obligations under this Referrer Appointment because of any event or circumstance beyond that Party's reasonable control, including, without limitation, lightning, flood, exceptionally severe weather, fire, explosion, war, civil disorder, industrial disputes (whether or not involving employees of either Party) or acts of local or central government or other competent authorities, or event beyond the reasonable control of suppliers to either Party, the Party so affected shall be relieved of its obligations hereunder during the period that such event and its consequences continue but only to the extent so prevented. The affected Party shall not be liable for any delay or failure in the performance of any obligations hereunder, provided always that written notice shall forthwith be given of any such inability to perform by the affected Party.
- 15.2. If either party is prevented by restrictions of a legal or regulatory nature from supplying the Service, either party will have no liability to the other party for failure to supply the Service.
- 15.3. If any of the events detailed in clauses 15.1 or 15.2 continue for more than three (3) months, either Party may serve notice on the other terminating this Referrer Appointment.

16. General

- 16.1. Either Party shall be liable for all costs incurred by the other in the recovery of any amounts or the enforcement of any rights which it has hereunder, including collection fees and costs as between attorney and own client scale, whether incurred before or during the institution of legal proceedings or if a judgment has been granted, in connection with the satisfaction or enforcement of such judgment.
- 16.2. No indulgence by a Party to another or failure strictly to enforce the terms of any of the provisions of this Referral Appointment Agreement or any document issued or executed according to or in terms of this Referrer Appointment shall be construed as a waiver or be capable of founding an estoppel.
- 16.3. Each provision of this Referrer Appointment is severable from all others, notwithstanding how they are linked together or grouped grammatically and if, in terms of any judgment or order, any provision, phrase, sentence, paragraph or clause is found to be defective or unenforceable for any reason, the remaining provisions, phrases, sentences, paragraphs and clauses shall nevertheless continue to be of full force and effect.
- 16.4. Collection Costs: The Referrer hereby agrees that all invoices due to SP will be paid on time on the due date specified on the invoice. In the absence of a due date specified on the invoice, all invoices will be paid on-time on net 30 days from the date of invoice. The Referrer also agrees to pay to SP any/all incurred reasonable attorney's fees and 3rd-party collection expenses, as well as accrued interest resulting from any past-due indebtedness beyond the due date. It shall not be necessary first to institute a suit nor to pursue or exhaust its remedies due to any payment delinquency in order to unconditionally entitle SP to the full and total obligation owed by the Referrer and/or the undersigned guarantor.
- 16.5. The Referring Party agrees that SP is not presently responsible for more than sixty per cent (60%) of the total annual revenue of the Referring Party. The Referring Party further agrees that should SP account for more than sixty per cent (60%) of the annual revenue of that Referring Party, that the Referring Party will advise SP accordingly within sixty (60) days, in writing.

17. Assignment

- 17.1. The Referring Party may not, without the prior written consent, which shall not be unreasonably withheld, cede its rights or delegate its obligations under this Referrer Appointment to any other person.
- 17.2. SP shall be entitled to (i) cede any of its rights, and (ii) delegate any of its obligations under this Referrer Appointment, to any third party.

18. Entire agreement

- 18.1. This Referrer Appointment contains the whole agreement between the Parties and supersedes all previous written or oral agreements relating to its subject matter.

- 18.2. The Parties acknowledge and agree that they have not been induced to enter into this agreement by any representation, warranty or other assurance not expressly incorporated into it; and neither Party shall be bound by any express or implied representation, warranty, promise or the like not recorded herein.

19. Addresses and Domicilium

- 19.1. Each Party chooses the address set out opposite its name below as its address to which any written notice in connection with this Referrer Appointment (save for operational notices as contemplated in the Master Services Schedule may be addressed);
- 19.1.1. **SP:**
- 19.1.1.1. SP Address
- 19.1.1.2. Attention: Managing Director.
- 19.1.2. **The Referring Party:**
- 19.1.2.1. The physical address or email of the Referring Party reflected in Referral Portal.
- 19.1.2.2. For the attention of the signatory of the Referring Party to this Referrer Appointment.
- 19.2. Any notice or communication required or permitted to be given in terms of clause 19.1 shall be valid and effective in writing, but it shall be competent to give Notice by email.
- 19.3. The Parties choose domicilia citandi et executandi for all purposes of and in connection with this Agreement at the addresses set out in clause 19.1 above.
- 19.4. Any Party may by written notice to the other party change its chosen address for purposes of this clause to another address, provided that the change shall become effective on the 14th (fourteenth) day after receipt of the notice by the addressee.

20. Regional Terms

- 20.1. **South Africa:** These terms apply if SP is **Flowgear (Pty) Ltd**:
- 20.1.1. **SP Address:**
- 20.1.1.1. 5th Floor, Global House, 28 Sturdee Avenue, Rosebank, Johannesburg, South Africa, 2196
- 20.1.2. **Governing Law (RSA):**
- 20.1.2.1. This agreement is governed by and shall be construed in accordance with the laws of South Africa.
- 20.1.2.2. The Parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the South Gauteng High Court, Johannesburg, regarding all matters arising from this Master Services Agreement.
- 20.1.3. **"Judgement Threshold"** means R50 000 (Five Thousand Rand).

20.2. **All other Regions:** These terms apply if SP is **Flowgear LLC, EIN 38-4131033:**

20.2.1. **SP Address:**

20.2.1.1. 10151 Deerwood Park Blvd, Jacksonville, FL 32256, United States of America

20.2.2. **Governing Law (All other regions including the United States)**

20.2.2.1. This Agreement is governed by the laws of the state of Delaware without regard to its principles of choice of law. With the exception of a payment dispute between the parties, a party must bring and maintain any action within the legal jurisdiction of the state of Delaware.

20.2.2.2. **Payment Disputes:** In the event of a payment dispute between the Parties, they will mutually endeavour to resolve the matter informally by way of discussions and negotiations between themselves and/or between their respective legal counsel or another 3rd party mediator. In the event the Parties are unable to reach an accord and legal remedies are indicated, such action shall be enforceable in any U.S. state, city or county jurisdictional venue at SP's discretion.

20.2.3. **"Judgement Threshold"** means \$5 000 (Five Thousand Dollars).



Referrer Agreement:

Commission Annexure v11.0.0

This **Commission Annexure v11.0.0** replaces all previously signed/incorporated version(s) of the Commission Annexure(s) (if any). Words and phrases shall have the following meanings unless the context otherwise requires:

1. Interpretation

- 1.1. **"Advisors"** means an Entity that has signed the SP Advisor Appointment Agreement to resell and implement SP Services.
- 1.2. **"Business Day"** means any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa.
- 1.3. **"Customers Commercial Representative"** means the person designated as the commercial representative on a Customer Contract.
- 1.4. **"Preauthorized Content"** means the content as created by the SP, available under the Referring Party's Portal, for publication only on the designated social media platforms.
- 1.5. **"Commission Plan Period"** means the period from **1st January 2024** until the **31st December 2024**.
- 1.6. **"SP Services"** are only those SP Services and services that SP makes available for online purchases to Customers through its public-facing website listed in the table below:

Service name	Version
Flowgear Integration Services	From V9.06 or higher

- 1.7. **"Completed Transaction"** means a valid Triggering Contract between the SP and Prospect (who becomes a Customer) completed within six (6) months after the SP's acceptance of the Qualified Lead.
- 1.8. **"First-Months Proceeds"** means the first-months subscription fees paid to the SP for the SP Services for a Completed Transaction, less (a) any debooked amounts, (b) losses due to fraud, and (c) the value of any discount provided to the Customer. For the avoidance of doubt, First-Months Proceeds do not include: renewals; any professional services fees (e.g., for installation, implementation, training, or support above standard support included in product subscription fees); taxes, duties and other similar government charges.
- 1.9. **"Lead Referral Form"** means the form on the Referral Portal for submitting Prospects to the SP.
- 1.10. **"Prospect"** means an Entity a Referring Party refers to the SP, which is submitted pursuant to the process outlined herein.
- 1.11. **"Qualified Lead"** means a Prospect that has been submitted as provided herein and has been accepted by the SP.
- 1.12. **"Referral Commission Amounts"** means the amounts as indicated under the Referral Fees in 3.1..
- 1.13. **"Invoice"** means the invoice issued by the SP to the Customer for the Services.

2. Effective date and duration

- 2.1. This Commission Annexure is applicable for the Commission Plan Period.
- 2.2. SP may, at any time and in its sole discretion, modify, add to, reduce or otherwise change the terms and conditions of the Commission Annexure and Referral Commission Amount, with such changes being effective thirty (30) days after written notice to the Referring Party. Referring Party confirms that notification of changes by email, posting or otherwise publishing such changes on the SP Website or Referral Portal shall be deemed by the Referring Party to be sufficient notice.
- 2.3. The Referring Party shall have ninety (90) days to comply with the new requirements of the Commission Annexure.

3. Referral Fees and Incentive Fees

3.1. Referral Fees

- 3.1.1. The referral fee is equivalent to the First-Months Proceeds as reflected on the Invoice.
- 3.1.2. All referral Commission Amounts are expressed and paid in currency as reflected on the Invoice.
- 3.1.3. All taxes imposed in connection with the payment of any Referral Commission Amount will be the responsibility of the Referring Party.
- 3.1.4. SP will have no obligation to pay any Referral Commission Amount before the Referring Party provides the SP with any forms or documentation required by SP to comply with its obligations to the applicable tax authorities.
- 3.1.5. Where the Referring Party is an employee of a SP Customer or Prospect, the SP will have no obligation to pay any Referral Commission Amount before the Referring Party provides the SP within any forms or documentation required by SP to confirm that the Customers Commercial Representative on record has been made aware of and has accepted the terms of the Commission Amount.

3.2. Referral Fees

- 3.2.1. If the SP enters into a Completed Transaction within six (6) months after its acceptance of the Prospect, it shall pay the applicable Referral Fee to the Referring Party.
- 3.2.2. SP will pay the Referring Party the one-time payment following the Initial Period and receipt of the First Months Proceeds.
- 3.2.3. SP will not be obligated to pay the Referrer Fee for a Triggering Contract that is terminated before the end of the respective Initial Period.
- 3.2.4. SP shall be entitled to claim back any One-Time Payment if the customer terminates a Triggering Contract before the first anniversary of the contract.
- 3.2.5. The Referrer acknowledges and agrees that SP's payment of One-Time Payments is predicated on the expectation that the Customer will pay SP in full for the duration of the 12-month subscription period.
Suppose the Referring Party has already been paid a Referral Fee on account of First-Months Proceeds which have later been debooked. In that case, the Referral Fee shall be refunded or at the SP discretion, set off against future Referral Fees payable by SP to the Referring Party, Upon the Referring Party's written request, the SP shall provide reasonable confirmation of the Customer termination. Supporting documentation, which shall be Confidential Information.

4. Referral Process.

- 4.1. SP shall provide the Referring Party with access to the Referral Portal and instructions how to submit a Lead Referral Form. If SP changes the Lead Referral Form or its submission process, any Prospects submitted in accordance with the old instructions shall be honoured if received prior to such change.
- 4.2. SP reserves the right, at its sole discretion, to accept or reject any Prospect.
- 4.3. SP shall have reasonable, good faith internal criteria for accepting or rejecting Prospects. Such criteria may include but are not limited to:
 - 4.3.1. whether the Prospect is already an existing Customer of the SP;
 - 4.3.2. whether the Prospect is already an existing Advisor of the SP;
 - 4.3.3. whether the SP or any of its Advisors has been in contact with the Prospect prior to receipt of the Lead Referral Form;
 - 4.3.4. whether the Prospect has already been referred by a third party to the SP prior to receipt of the Lead Referral Form,
 - 4.3.5. whether the SP is prohibited by contract or arrangement with any third party or any law or regulation from accepting the Prospect or the Lead Referral Form from the Referring Party;
 - 4.3.6. Where the Prospect operates in an industry not covered by the SP service offerings, as determined solely by SP.
 - 4.3.7. missing, inaccurate or false information provided on the Lead Referral Form
 - 4.3.8. whether the SP deems the Referring Party to be abusing the Referral Appointment;
 - 4.3.9. whether a conflict of interest exists, including but not limited to circumstances when:

- 4.3.9.1. the Referring Party is an employee of the Prospect (Can be waived if written consent for the commission is received from a Director of the Prospect Entity);
- 4.3.9.2. the Referring Party is an employee of an existing Advisor
- 4.4. The Referring Party must submit a Lead Referral Form for each Prospect in accordance with the Receiving Party's instructions, including making a formal email introduction between the SP and the Prospect. Failure to use the Lead Referral Form or to follow the submission instructions for a Prospect will, in the SP's discretion, result in forfeiture of the Referral Fee for such Prospect.
- 4.5. The SP shall promptly review each Lead Referral Form that has been submitted in accordance with its instructions and, within ten Business Days (10) days after receipt of the Lead Referral Form, shall notify the Referring Party of its decision to accept or reject the Prospect. Upon the Referring Party's written request, the Receiving Party shall provide a reasonable explanation of its reasons for rejecting a Prospect, which shall be Confidential Information.
- 4.6. Non-Exclusivity. SP has the right to solicit Prospects directly and/or to appoint other representatives or agents to provide leads to it.