

TECHNICIANLINK APPLICATION TERMS OF USE



1. Application terms and conditions of use

- 1.1. This document sets out the terms and conditions ("Terms") of *XLink Communications (Pty) Ltd* ("Service Provider") pertaining to the access and use of the information, services and functions provided on the TechnicianLink application ("Application").
- 1.2. Should any person that accesses the Application you ("you" or "user") disagree with any of the Terms, you must refrain from accessing the Application and/or using our services.
- 1.3. If you are under the age of 18, you must obtain your parents' or legal guardians' advance authorisation, permission and consent to be bound by these Terms before subscribing to the Application.
- 1.4. Service Provider reserves the right. In its sole discretion, to amend and/or replace any of, or the whole of, the Terms. Such amendments shall supersede and replace any previous Terms and shall be made available on the Application or www.xlink.co.za/mobileterms.html. Each time a user accesses the Application and/or uses the services, the user shall be deemed to have consented, by such access and/or use, to the Terms, as amended and/or replaced by Service Provider from time to time. If you are not satisfied with the amended Terms, you should refrain from using the Application.
- 1.5. We will however give you prior notice where we have collected personal information from you and the purpose for which we collected that information, is affected by the intended amendment.
- 1.6. If there is anything in these Terms that you do not understand then please contact us as soon as possible - see clause 11 below for contact details. Please note that calls to us are charged at national rates and may be monitored for training, security and quality assurance purposes.

2. Content of the Application

- 2.1. Service Provider reserves the right to make improvements, to change or to discontinue, without notice, any aspect or feature of the Application and any information or content on the Application.
- 2.2. Service Provider reserves the right to change and amend the information quoted or information, services or functions available on this Application from time to time without notice.
- 2.3. Service Provider may use the services of third parties to provide information on the Application. Service Provider has no control over this information and makes no representations or warranties of any nature as to its accuracy, appropriateness or correctness. The user agrees that such information is provided "as is" and that Service Provider and its online partners shall not be liable for any losses or damages that may arise from the user's reliance on it, howsoever these may arise.
- 2.4. Service Provider makes no representations or warranties, whether express or implied, as to the accuracy, completeness or reliability of any information, data and/or content on the Application, including without limitation:
 - 2.4.1. Service Provider does not warrant that the Application or information or downloads shall be error-free or that they shall meet any particular criteria of performance or quality. Service Provider expressly disclaims all implied warranties, including without limitation, warranties of merchantability, fit-ness for a particular purpose, non-infringement, compatibility, security and accuracy;
 - 2.4.2. Whilst Service Provider has taken reasonable measures to ensure the integrity of the Application and its contents, no warranty, whether express or implied, is given that any files, downloads or applications available via this Application are free of viruses, or any other data or code which has the ability to corrupt, damage or affect the operation of the user's system; and
 - 2.4.3. Service Provider disclaims any responsibility for the verification of any claims. Information published on this Application may be done so in the format in which Service Provider receives it and statements from external parties are accepted as fact.

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3. Linked third party websites/applications and third party content

- 3.1. Service Provider may provide links to third party websites/applications on the Application. These links are provided to the user for convenience purposes only and Service Provider does not endorse, nor does the inclusion of any link imply Service Provider's endorsement of, such Applications, their owners, licensees or administrators or such Applications' content or security practices and operations.
- 3.2. While Service Provider tries to provide links only to reputable websites/applications or online partners, Service Provider cannot accept responsibility or liability for the information provided on other websites/applications. Linked websites/applications or pages are not under, nor subject to, the control of Service Provider. Service Provider is not responsible for and gives no warranties or makes any representations in respect of the privacy policies or practices of linked or any third party or advertised websites/applications on the Application.
- 3.3. You agree that Service Provider shall not be held liable, directly or indirectly, in any way for the content, the use or inability to use or access any linked Application or any link(s) contained in a linked Application, nor for any loss or damage of any sort incurred as a result of any dealings with, or as the result of the presence of such third party linked Applications on the Application. Any dealings that you may have with any linked Applications, including advertisers, found on the Application, are solely between you and the third party Application.

4. Usage Restrictions

The user hereby agrees that it shall not itself, nor through a third party:

- 4.1. copy (other than for backup, archival or disaster recovery purposes), reproduce, translate, adapt, vary, modify, lease, licence, sub-licence, encumber or in any other way deal with any part of the Application for any reason and in any manner, unless it is consistent with the intent and purpose of these Terms;
- 4.2. decompile, disassemble or reverse engineer any portion of the Application;
- 4.3. write and/or develop any derivative of the Application or any other software program based on the Application;
- 4.4. modify or enhance the Application. In the event of a user effecting any modifications or enhancements to the Application in breach of this clause, such modifications and enhancements shall be the property of Service Provider;
- 4.5. without Service Provider's prior written consent, provide, disclose, divulge or make available to or permit the use of or give access to the Application by persons other than the user;
- 4.6. remove any identification, trademark, copyright or other notices from the Application;
- 4.7. post or transmit, by means of reviews, comments, suggestions, ideas, questions or other information through the Application, any content which is unlawful, harmful, threatening, abusive, harassing, defamatory, vulgar, obscene, sexually-explicit, profane or hateful, or racially, ethnically or otherwise objectionable content of any kind; and/or
- 4.8. notwithstanding anything contained to the contrary in these Terms, use the Application for any purpose other than personal, non-commercial and information purposes to execute the Service Provider's business operations as specified by the Service Provider.

5. Security

- 5.1. In order to ensure the security and reliable operation of the services to all Service Provider's users, Service Provider hereby reserves the right to take whatever action it may deem necessary to preserve the security, integrity and reliability of its network and back-office applications.
- 5.2. You may not utilise the Application in any manner which may compromise the security of Service Provider's networks or tamper with the Application in any manner whatsoever, which shall include without limitation, gaining or attempting to gain unauthorised access to the Application, or delivering or attempting to deliver any unauthorised, damaging or malicious code to the Application,

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all of which is expressly prohibited. Any person or entity which does so, or attempts to do so, shall be held criminally liable. Further, should Service Provider suffer any damage or loss, civil damages shall be claimed by Service Provider against the user.

- 5.3. Any user who commits any of the offences detailed in Chapter 13 of the Electronic Communications and Transactions Act 25 of 2002 ("ECTA") (specifically sections 85 to 88 (inclusive)) shall, notwithstanding criminal prosecution, be liable for all resulting liability, loss or damages suffered and/or incurred by Service Provider and its affiliates, agents and/or partners.

6. Intellectual property rights

- 6.1. For the of this clause, the following words shall have the following meanings ascribed to them:

6.1.1. "Intellectual property rights" means all and any of the rights in and to intellectual property of any nature whatsoever owned and/or controlled directly or under licence by Service Provider, now or in the future, including without limitation, Service Provider's rights, title and interest in and to all technology, source code/s, trade secrets, logos, systems, methods, trademarks, trade names, styles, insignia, designs, patents and copyright, and all similar proprietary rights which may subsist in any part of the world, whether registered or not.

- 6.2. All copyright and other intellectual property rights in all content, trademarks, software, data, material, including logos, databases, text, graphics, icons, hyperlinks, confidential information, designs, agreements, and multimedia works, published on or via the Application ("proprietary material"), are the property of, or are licensed to, Service Provider and as such are protected from infringement by local and international legislation and treaties.

- 6.3. By submitting reviews, comments and/or any other content (other than your personal information) to Service Provider for posting on the Application, you automatically grant Service Provider and its affiliates a non-exclusive, royalty-free, perpetual, irrevocable right and licence to use, reproduce, publish, translate, sub-license, copy and distribute such content in whole or in part worldwide, and to incorporate it in other works in any form, media, or technology now known or hereinafter developed, for the full term of any copyright that may exist in such content. Subject to this licence, you retain any and all rights that may exist in such content.

- 6.4. All rights not expressly granted are reserved and no right, title or interest in any proprietary material or information contained in this Application is granted to you.

- 6.5. Except with Service Provider's express written permission, no proprietary material from this Application may be copied or retransmitted.

- 6.6. Irrespective of the existence of copyright, the user acknowledges that Service Provider is the proprietor of all material on the Application (except where a third party is indicated as the proprietor), whether it constitutes confidential information or not, and that the user has no right, title or interest in any such material.

- 6.7. Service Provider authorises you only to view, copy, temporarily download to a local drive and to print the content of this Application, or any part thereof, provided that such content is used for personal purposes and for information purposes only, and such content is used for non-commercial purposes.

7. Risk, limitation of liability and indemnity

- 7.1. The user's use of this Application and the information contained on the Application is entirely at the user's own risk and the user assumes full responsibility and risk of loss resulting from the use thereof.

- 7.2. The transmission of information via the internet, including without limitation e-mail, is susceptible to monitoring and interception. The user bears all risk of transmitting information in this manner. Under no circumstances shall service provider be liable for any loss, harm, or damage suffered by the user as a result thereof. Service provider reserves the right to request independent verification of any information transmitted via e-mail and the user consents to such verification should service provider deem it necessary.

- 7.3. To the extent permissible by law;

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- 7.3.1. Neither service provider, its affiliates, shareholders, agents, consultants or employees shall be liable for any damages whatsoever, including without limitation any direct, indirect, special, incidental, consequential or punitive damages, howsoever arising (whether in an action arising out of contract, statute, delict or otherwise) related to the use of, or the inability to access or use the content of the Application or any functionality thereof, or the information contained on the Application, or of any linked Application, even if service provider knows or should reasonably have known or is expressly advised thereof.
- 7.3.2. The liability of service provider for faulty execution of the Application as well as all damages suffered by the user, whether direct or indirect, as a result of the malfunctioning of the Application shall be limited to service provider rectifying the malfunction, within a reasonable time and free of charge, provided that service provider is notified immediately of the damage or faulty execution of the Application. This liability shall fall away and be expressly excluded if the user attempts to correct or allows third parties to correct or attempt to correct the Application without the prior written approval of service provider. However, in no event shall service provider be liable to the user for loss of profits or for special, incidental, consequential or punitive losses or damages arising out of or in connection with the Application or its use or the delivery, installation, servicing, performance or use of it in combination with other computer software.
- 7.3.3. You hereby unconditionally and irrevocably indemnify service provider and agree to hold service provider free from all loss, damages, claims and/or costs, of whatsoever nature suffered or incurred by service provider or instituted against service provider as a direct or indirect result of:
- 7.3.3.1. your use of the Application;
 - 7.3.3.2. software programs and support services supplied by, obtained by or modified by you or any third party without the consent or knowledge of service provider;
 - 7.3.3.3. your failure to comply with any of the terms or any other requirements which service provider may impose from time to time;
 - 7.3.3.4. the actions or requirements of any telecommunications authority or a supplier of telecommunications services or software; or
 - 7.3.3.5. any unavailability of, or interruption in, the service which is beyond the control of service provider.
- 7.4. Service provider makes no warranty or representation as to the availability, accuracy or completeness of the content of the Application. You expressly waive and renounce all your rights of whatever nature that you may have against service provider for any LOSS suffered by you, as a result of information supplied by service provider being incorrect, incomplete or inaccurate.

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8. Service provider privacy policy

8.1. This clause 8 provides details about our Privacy Policy, which Policy forms part of these Terms. Service Provider takes your privacy seriously and is committed to protecting your personal information. We use the personal information that we collect from you in accordance with this Privacy Policy.

8.2. Personal information when used in this Policy means information that can identify you as an individual or is capable of identifying you. By personal information we don't mean general, statistical, aggregated or anonymised information.

8.3. Your use of our services signifies your consent to us collecting and using your personal information as specified below.

8.4. How we collect information about you:

- Your personal information consisting of your name, surname, email address and cellphone number are required to activate your subscription.
- All interactions on the Application are geolocation tagged and time stamped.
- The Application access your photo library and allows you to upload photo's.

8.5. How we use your information:

The application is a business tool to assist our authorised technicians to provide a more efficient and effective service to our end customers, through the use of a digital platform. The information listed in clause 8.4 will be used solely for the Service Provider's business operations.

8.6. How long do we keep your information for?

The time periods for which we keep your information may vary according to the use or purpose attached to the information. Unless there is a specific legal requirement requiring us to keep your information, however, we will not keep it for longer than necessary for the purpose for which the information was collected or for which it is to be processed.

8.7. Disclosing your information to third parties:

Information will only be disclosed to third parties who act as authorised representatives of the Service Provider and who are directly involved in the service delivery to our end customers, to the extent as it may be necessary.

9. Confidentiality

9.1. By subscribing as a user, you acknowledge that information available on the Application constitute confidential information of the Service Provider and agree that you shall hold in the strictest confidence and not disclose to any third party information acquired in connection with any aspect of the products and/or services offered by Service Provider. You shall notify Service Provider should you discover any loss or unauthorised disclosure of the information.

9.2. Any information or material, which are not confidential information of the Service Provider, sent by you to Service Provider will be deemed not to be confidential, unless otherwise agreed in writing by the user and Service Provider.

10. Breach or cancellation by service provider

10.1. Service Provider is entitled without notice, in addition to any other remedy available to it at law or under these Terms, including obtaining an interdict, to cancel these Terms, limit or deny such user use of the Application and services, or to claim specific performance of any obligation whether or not the due date for performance has arrived, in either event without prejudice to Service Provider's right to claim damages, should any user:

10.1.1. breach any of these Terms;

10.1.2. in the sole discretion of Service Provider, use the Application in an unauthorised manner; or

10.1.3. infringe any statute, regulation, ordinance or law.

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10.2. Breach of these Terms entitles Service Provider to take legal action without prior notice to the user and the user agrees to reimburse the costs associated with such legal action to Service Provider on an attorney and own client scale.

11. Compliance with section 43(1) of ECT Act

In compliance with section 43(1) of the ECT Act, the following is noted:

- 11.1. Full name: XLink Communications (Pty) Ltd
- 11.2. Registration number: 2004/000478/07
- 11.3. Address: Unit 4 Burnside Island Office Park, 410 Jan Smuts Avenue, Craighall, 2192
- 11.4. Telephone number: 011 438 300
- 11.5. Website address: www.xlink.co.za
- 11.6. Email address: legal@xlink.co.za
- 11.7. Name of office bearers: Roy van Vuuren, Acting CEO
- 11.8. Registered at: Unit 4 Burnside Island Office Park, 410 Jan Smuts Avenue, Craighall, 2192

12. Compliance with laws

You shall comply with all applicable laws, statutes, ordinances and regulations pertaining to your use of and access to this Application.

13. Notices

Except as explicitly stated otherwise, any notices shall be given by email to legal@xlink.co.za (in the case of Service Provider) or to the e-mail address you have provided to Service Provider (in your case), or such other address that has been specified. Notice shall be deemed given 48 (forty eight) hours after an email is sent, unless the sending party is notified that the email address is invalid. Alternatively, Service Provider may give you notice by registered mail, postage prepaid and return receipt requested, to the address which you have provided to Service Provider. In such case, notice shall be deemed given 7 (seven) days after the date of mailing. You acknowledge that all agreements, notices or other communication required to be given in terms of the law or these Terms may be given via electronic means and that such communications shall be "in writing". Notwithstanding anything to the contrary, 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 at its chosen address(es) for that purpose.

14. General clauses

- 14.1. These Terms shall be governed in all respects by the laws of the Republic of South Africa as such laws are applied to agreements entered into and to be performed within South Africa.
- 14.2. This Application is controlled, operated and administered by Service Provider from its offices within the Republic of South Africa. Service Provider makes no representation that the content of the Application is appropriate or available for use outside of South Africa. Access to the Application from territories or countries where the content of the Application is illegal is prohibited. Users may not use this Application in violation of South African export laws and regulations. If the user accesses this Application from locations outside of South Africa, that user is responsible for compliance with all local laws.
- 14.3. Service Provider does not guarantee continuous, uninterrupted or secure access to our services, as operation of our Application may be interfered with as a result of a number of factors which are outside of our control.
- 14.4. If any provision of these Terms is held to be illegal, invalid or unenforceable for any reason, such provision shall be struck out from these Terms and the remaining provisions shall be enforced to the full extent of the law.
- 14.5. Service Provider's failure to act with respect to a breach by you or others does not constitute a waiver of our right to act with respect to subsequent or similar breaches.
- 14.6. You shall not be entitled to cede your rights or assign your rights or delegate your obligations in terms of these Terms to any third party without the prior written consent of Service Provider.
- 14.7. No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

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- 14.8. The head notes to the paragraphs to these Terms are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 14.9. Words importing the singular shall include the plural and *vice versa*, and words importing the masculine gender shall include females and words importing persons shall include partnerships and corporate and unincorporated entities.
- 14.10. These Terms set forth the entire understanding and agreement between Service Provider and you with respect to the subject matter hereof.